

PENNSYLVANIA BULLETIN

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(Master Transmittal Sheet):**

No. 537, August 2019

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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.

The *Pennsylvania Bulletin* is available at www.pabulletin.com.

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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

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THE GOVERNOR

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 6]

[EXECUTIVE ORDER NO. 2019-05]

Office of Advocacy and Reform

July 31, 2019

Whereas, all Pennsylvanians should be safe from harm, mistreatment, and abuse; and

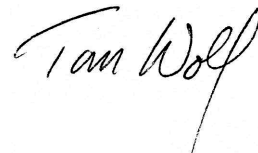
Whereas, the Commonwealth's responsibility for the health and safety of all Pennsylvanians is demonstrated by its commitment to strengthen laws, regulations, and programs that protect its citizens, and to seek out, respond to, and resolve concerns regarding the health, safety, and welfare of its citizens; and

Whereas, it is imperative that state and local institutions are properly equipped and individuals responsible for the care and protection of Pennsylvanians are trained and supported so that individuals requiring services or care from state programs and institutions do not fear abuse, neglect, or intimidation from those trusted to provide care; and

Whereas, Sections 501 and 502 of The Administrative Code of 1929 (71 P.S. §§ 181 and 182) require administrative departments and the several independent and departmental administrative boards and commissions to coordinate their work and activities with other departments, boards, and commissions; and

Whereas, all Pennsylvanians should be active partners in advocating for the safety and welfare of our family, friends, neighbors, and community members.

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 the Office of Advocacy and Reform, the position of Child Advocate and the Council on Reform, and do order and direct as follows.



Governor

Fiscal Note: GOV-2019-05. 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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§ 6.751. Office of Advocacy and Reform.

The Office of Advocacy and Reform (Office) shall serve as the central coordinating body to promote the implementation of this subchapter.

(a) *Composition.*—The Office shall consist of, at a minimum, an Executive Director, the Child Advocate and the Long-Term Care Ombudsman.

(b) *Executive Director.*—The Governor shall appoint an Executive Director who shall serve at the pleasure of the Governor. The Executive Director shall:

- (1) Manage and provide organizational direction for the Office;
- (2) Work with the Governor's Office, Commonwealth agencies and the General Assembly to review laws, policies and procedures impacting the delivery of services to vulnerable populations;
- (3) Facilitate opportunities for training and collaboration between and among State and local agencies that serve vulnerable populations;
- (4) Work with State agencies to establish coordinated and consistent trauma-informed training and practices in State-operated and State-funded programs to make the Commonwealth a trauma-informed State;
- (5) Collaborate with Commonwealth agencies to identify best practices for the delivery of services to vulnerable populations.

§ 6.752. Child Advocate.

A Child Advocate shall be appointed by and shall serve at the pleasure of the Governor and shall report to both the Executive Director of the Office of Advocacy and Reform (Office) and the Secretary of Human Services. The Child Advocate shall:

- (a) Serve as a liaison and a resource to connect children and families with appropriate and available government services;
- (b) Recommend system-wide improvements, including changes in laws, regulations, policies and actions, to benefit the health, safety, welfare and rights of children;
- (c) Triage complaints regarding government services for children and families, including child protective services; foster care, adoption, mental health and substances use services; child development and early learning; and juvenile justice services that may adversely affect the health, safety, or welfare of a child or children;
- (d) Represent the health, safety and welfare interests of children before the General Assembly;
- (e) Carry out such other duties as the Office and the Secretary of Human Services determine to be appropriate.

§ 6.753. Long-Term Care Ombudsman.

The State Long-Term Care Ombudsman, established by section 712 of the Older Americans Act of 1965, (42 U.S.C.A. § 3058g), and placed under the authority of the Department of Aging through section 2203-A(a)(24.2) of the Administrative Code of 1929, (71 P.S. § 581-3(a)(24.2)), and presently existing within the Department of Aging, shall report to the Office of Advocacy and Reform and the Secretary of Aging.

§ 6.754. Council on Reform.

(a) *Purpose.* The purpose of the Council on Reform (Council) is to study best practices related to the health, safety and welfare of vulnerable populations and to make recommendations to improve the support and protection of vulnerable residents of this Commonwealth.

(b) *Responsibilities.* The Council shall:

- (1) Confer with constituents, partners, committees, councils and subject matter experts that assist vulnerable populations to gain their insight on issues and best practices;

(2) Review recommendations made previously by existing oversight and advisory bodies that assist vulnerable populations, evaluate the effectiveness or progress of those recommendations that have been implemented, and determine whether any recommendations that have not been implemented should be considered further;

(3) Recommend additional reforms to further protect vulnerable populations.

(c) *Report.* The Council shall submit a report to the Governor that outlines its recommendations on or before November 1, 2019.

(d) *Composition.*

(1) The Council shall consist of up to 25 members who shall be appointed by and serve at the pleasure of the Governor. Members shall not appoint designees to act or serve on their behalf. The Governor will fill vacancies as they occur. Members will be selected from representatives who are themselves, or are family of, individuals who are currently receiving or have previously received services from the Commonwealth in an institutional setting; individuals or groups that are members of, serve, or work with vulnerable populations, including but not limited to local government and law enforcement officials, advocates—including a child advocate, senior advocate, disability advocate, a veteran living with a disability, academic and medical professionals, and care providers.

(2) The Council shall also include the following ex officio members:

(a) The Secretary of Human Services or designee;

(b) The Secretary of Health or designee;

(c) The Secretary of Aging or designee;

(d) The Secretary of Drug and Alcohol Programs or designee;

(e) The Secretary of Education or designee;

(f) The Secretary of Corrections or designee;

(g) The Chairperson of the Commission on Crime and Delinquency or designee;

(h) The Commissioner of the Pennsylvania State Police or designee;

(i) The Adjutant General of Pennsylvania or designee;

(j) The Victim Advocate or designee;

(k) The Executive Director of the Juvenile Court Judges Commission.

(e) *Council Operations.*

(1) The Governor may appoint other members of the Council to serve in leadership positions as needed. Any leadership appointees shall serve in the appointed positions at the pleasure of the Governor.

(2) The Council may establish committees, rules and procedures necessary to effectively fulfill its obligations.

(3) A majority of the members of the Council shall constitute a quorum.

(4) Members of the Council may attend Council meetings in person or virtually by telephone, Skype or other electronic communications method approved by the Council. Virtual attendance shall be considered attendance for purposes of constituting a quorum.

(f) *Compensation.* Members of the Council shall not receive compensation for their service on the Council, except that members may be entitled to receive reimbursement for reasonable travel costs and expenditures incurred while performing Council business in accordance with the Commonwealth's travel and subsistence policies. The Department of Aging, Department of Health, Department of Drug and Alcohol Programs, Commission on Crime and Delinquency, and Department of Human Services shall each pay one-fifth of the approved travel and subsistence expenses of the Council members. See Chapter 40 (relating to travel and subsistence).

(g) *Support.*

(1) The Department of Human Services Director of Intergovernmental Affairs shall serve as the Executive Director for the Council.

(2) The Commonwealth agencies represented by ex officio membership on the Council shall provide administrative and other support to assist the Council in carrying out the Council's responsibilities and duties.

§ 6.755. Responsibilities of Commonwealth agencies.

Commonwealth agencies and other entities referenced herein shall undertake the following:

(a) Agencies shall review and update plan of correction processes for licensed providers. The processes shall be revised to provide standardized time periods, as appropriate, in establishing a plan of correction following the identification of a violation. The processes shall include verification of timely compliance with and implementation of a plan of correction and commencement of a licensure action against a provider who does not timely comply with a plan of correction.

(b) The Department of Human Services shall issue a procurement for a state-of-the-art licensing information technology system to be shared by the Department of Human Services, Department of Health, Department of Aging and Department of Drug and Alcohol Programs with the goals of managing licensing applications, renewals and activities related to licensing inspections and surveys; increasing collaboration and communication between and within Commonwealth agencies; streamlining business processes; and improving communication and services between Commonwealth agencies and licensed providers.

(c) Commonwealth agencies responsible for licensed residential facilities serving vulnerable populations shall develop methodologies and processes to assist in the identification of a facility that is at high risk of incurring an adverse event. Agencies that jointly license identified facilities shall collaborate to avoid adverse events and improve services.

(d) Commonwealth agencies shall set targets to transition to home-based and community-based services in conjunction with targets to reduce placements in child residential treatment facilities, nursing homes or child congregate care settings.

(e) The Department of Human Services shall issue a procurement for a Statewide electronic child welfare case management information system.

(f) The Department of Aging shall update and disseminate Older Adult Protective Services Mandatory Reporting training to mandatory reporters.

(g) In coordination with the Governor's Office of Performance through Excellence, the Office of Advocacy and Reform (Office) shall offer assistance in Lean process improvement to county child welfare agencies to identify opportunities for administrative efficiencies at the county level and inform statutory or regulatory reforms, or both, to support increased efficiency.

(h) The Office shall conduct a study on the financial impact to the Commonwealth because of financial exploitation of older adults.

(i) The Office shall facilitate an examination of sustainable housing and long-term services and supports for individuals exiting the corrections system with nursing facility level of care needs who have physical, intellectual and behavioral dual diagnoses.

§ 6.756. Implementation.

All Commonwealth agencies under the Governor's jurisdiction are directed to take all steps necessary to implement this subchapter. Independent agencies are also strongly encouraged to implement this subchapter.

§ 6.757. General provisions.

This subchapter shall 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, agencies, or entities, its officers, employees, or agents, or any other person.

§ 6.758. Effective date.

This subchapter shall take effect immediately.

§ 6.759. Termination date.

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

[Pa.B. Doc. No. 19-1306. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 4—ADMINISTRATION
PART I. GOVERNOR’S OFFICE
[4 PA. CODE CH. 7a]
[EXECUTIVE ORDER NO. 2016-07 AS AMENDED]
Open Data, Data Management and Data Governance

July 24, 2019

Whereas, Commonwealth agencies under the Governor’s jurisdiction (the “Enterprise”) obtain, create, and store significant amounts of data; and

Whereas, these public stores of data have many potential public and private uses, including use as “open data” (i.e. publicly available data structured in a way that enables the data to be fully available and usable by end users); and

Whereas, data planning, development, investment, access and sharing efforts should be prioritized and coordinated across the Enterprise to maximize efficiency and cost effectiveness, and enhance existing information sharing and technology compatibility through standardization by means of Information Technology Policies and reduce expenditures for research and development; and

Whereas, private enterprises obtaining, creating and storing data have similar needs for efficiency and standardization, and can both benefit from and assist in these efforts; and

Whereas, it is essential that the Commonwealth utilize a central organization to govern, evaluate, coordinate, implement, and improve Enterprise data development, open data planning and cooperation, research, project prioritization, investment, and effectiveness; and

Whereas, The Administrative Code of 1929 (Act 1929-175, P.L. 177, as amended), at Sections 501 and 502 (71 P.S. §§ 181, 182), requires administrative departments and several independent and departmental administrative boards to coordinate their work and activities with other departments, boards, and commissions; and

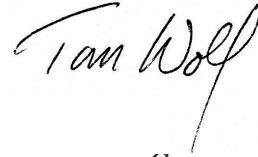
Whereas, the confidentiality, security and privacy requirements associated with Commonwealth data and facilities must remain a priority in all open data, data governance and data development efforts; and

Whereas, the Commonwealth, in order to foster innovation, cooperation and transparency, should seek to share and/or provide access to all data, both internally and externally, whenever possible unless restricted by federal, state, or other statutes or regulations, or policies, standards or best practices that prohibit the sharing of specific data; and

Whereas, privacy and protection efforts must be prioritized and coordinated across the Enterprise and across Agencies under the Governor’s jurisdiction to maximize the data privacy, privacy standardization, and to reduce the risk of unauthorized public exposure; and

Whereas, the privacy requirements associated with Commonwealth data and facilities must remain a priority in all data efforts.

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 order and direct the Governor's Office of Administration as follows:



Governor

Fiscal Note: GOV-2016-07 (Amended). No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 7a. ADDITIONAL MISCELLANEOUS PROVISIONS

Subchapter N. OPEN DATA, DATA MANAGEMENT AND DATA GOVERNANCE

§ 7a.151. Powers and duties.

(a) The Governor's Office of Administration (OA) shall develop data priorities, strategic plans, direct data investments, procurements and policy for Commonwealth agencies under the Governor's jurisdiction (Enterprise). The Enterprise shall comply with direction from OA regarding the matters which are the subject of this subchapter. OA shall make decisions on behalf of the Enterprise regarding operational matters regarding open data, data governance, data protection, data development, data analytics, data sharing and other responsibilities within the scope of this subchapter.

(b) OA shall develop and facilitate the approach of the Enterprise to engagement with private and other public stakeholders on the matters which are the subject of this subchapter.

§ 7a.152. Responsibilities.

The Governor's Office of Administration (OA) shall be responsible for the following:

(a) Creating the position of a Chief Data Officer tasked with establishing and maintaining a master data management plan that will be made available to the public, updated annually and incorporates the following:

(b) Creating an advisory group (which should include, among others, agency Chief Information Officers, Information Security Officers, Data Stewards, architects, privacy officers, risk managers and legal representation) to advise OA, Office for Information Technology regarding overall data governance.

(c) Creating frameworks that include policies, processes and standards that adhere to commonly accepted principles and legal requirements for data governance, data development, and the quality, sourcing, use, access, content, ownership, licensing of relevant data and Enterprise data sharing.

(d) Creating a maintenance plan for the Enterprise Open Data Portal for the Enterprise and public access.

(e) Providing guidance to the Enterprise regarding the procurement and standardization of technologies and services related to the subject matter of this subchapter through the use of Information Technology Policies.

(f) Communicating with the public both by publishing Enterprise open data plans and policies and by soliciting or allowing for public input, or both, on the subject matter of this subchapter.

(g) Examining internally the Commonwealth data sets for business, confidentiality, privacy and security issues, and the reasonable mitigation of those issues, prior to the data's release for open data purposes.

(h) Developing and facilitating the approach of the Enterprise to engagement with private and other public stakeholders, including, but not limited to, arranging for and expediting data-sharing and data access agreements, such as Memoranda of Understanding, and encouraging and facilitating cooperation and substantive and administrative efficiencies.

(i) Prioritizing and coordinating data privacy and protection efforts across the Enterprise to maximize the privacy and protection of all data and to reduce the risk of public exposure of private or protected data.

(j) Identifying other potential areas of risk related to data storage, processing, access and sharing, and creating ways to manage that risk.

(k) Creating a framework for internal and external entities of the Enterprise to enable data access between citizen profiles and systems of record, data sharing, improve data portability and access, inventories, and analytics, and address barriers to implementing the framework.

§ 7a.153. Executive agencies.

Agencies under the Governor's jurisdiction shall provide assistance to and cooperate with Governor's Office of Administration (OA) as requested by OA in the pursuit of the matters which are the subject of this subchapter.

§ 7a.154. Independent agencies, State-affiliated entities and State-related entities.

Independent agencies, State-affiliated entities and State-related agencies are strongly encouraged to implement this subchapter.

§ 7a.155. Effective date.

This subchapter takes effect immediately.

§ 7a.156. Termination date.

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

[Pa.B. Doc. No. 19-1307. Filed for public inspection August 30, 2019, 9:00 a.m.]

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

Amendment of Rule 1.6 of the Pennsylvania Rules of Professional Conduct; No. 182 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 15th day of August, 2019, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania; the proposal having been published for comment in the *Pennsylvania Bulletin*, 48 Pa.B. 7743 (December 22, 2018):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1.6 of the Pennsylvania Rules of Professional Conduct is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

CLIENT-LAWYER RELATIONSHIP

Rule 1.6. Confidentiality of Information.

* * * * *

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

* * * * *

(3) to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; **[or]**

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; **[or]**

(5) to secure legal advice about the lawyer's compliance with these Rules; **[or]**

(6) to effectuate the sale of a law practice consistent with Rule 1.17; **[or]**

(7) to detect and resolve conflicts of interest from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client **[.]; or**

(8) to comply with other law or court order.

* * * * *

Comment:

* * * * *

(18) Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. **If, however, the other law supersedes this Rule and requires disclosure, paragraph (c)(8) permits the lawyer to make such disclosures as are necessary to comply with the law.**

* * * * *

(21) A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. **Unless review is sought, paragraph (c)(8) permits the lawyer to comply with the court's order.**

* * * * *

(23) Paragraph (c) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (c)(1) through **[(c)(7)] (c)(8)**. In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (c) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (c). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

* * * * *

[Pa.B. Doc. No. 19-1308. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 81]

Proposed Amendments to the Pennsylvania Rules of Professional Conduct Relating to Misconduct

Notice is hereby given that the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) plans to recommend to the Supreme Court of Pennsylvania that it adopt amendments to Pennsylvania Rule of Professional Conduct (“RPC”) 8.4 relating to misconduct, as set forth in Annex A. This proposed rule amendment is intended to make it professional misconduct for a lawyer, in the practice of law, to intentionally manifest bias or prejudice, or engage in harassment or discrimination.

By way of background, on August 8, 2016, the American Bar Association (“ABA”) amended Model Rule of Professional Conduct 8.4 to add new paragraph (g) relating to discrimination and harassment. As adopted, the Model Rule makes it misconduct for a lawyer to “engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”

Pennsylvania historically has supported adoption of the ABA Model Rule amendments to promote consistency in application and interpretation of the rules among jurisdictions, except where policy considerations justify a deviation from the Model Rule language.

At present, in contrast to many other jurisdictions, Pennsylvania’s rules do not address harassment or discrimination in the black letter law or in the comments.¹ For a significant time, both prior to and after the ABA’s adoption of Model Rule 8.4(g), bar associations and related organizations and institutions in Pennsylvania have engaged in active debate over whether to include discrimination and harassment as professional misconduct. The Board supports these efforts and we conclude that it is in the best interests of the profession and the public for Pennsylvania to amend its rules to formally disapprove the conduct of any lawyer who, in the practice of law, knowingly manifests bias or prejudice, or engages in harassment or discrimination.

The proposed change to RPC 8.4 is the product of the Board’s due deliberation, discussion, and extensive study and review of Model Rule 8.4(g), rules of other jurisdictions, and comments received in response to the Board’s previous rulemaking efforts.² The proposed rule promotes the profession’s goal of eliminating intentional harassment and discrimination, assures that the legal profession functions for all participants, and affirms that no lawyer is immune from the reach of law and ethics.

¹ According to the most recent compilation of data analyzing 56 jurisdictions (U.S. states, the District of Columbia, and territories), at least 39 jurisdictions have anti-discrimination/anti-harassment provisions in their rules of professional conduct. Of these jurisdictions, 28 place the provision in the black letter law and 11 place the provision in the commentary.

² The Board has engaged in review of this issue since 2016 and has proposed rule amendments on two previous occasions. See, 46 Pa.B. 7519 and 48 Pa.B. 2936. These amendments were not adopted by the Court.

The Board’s proposal creates a new paragraph (g) and adds new comments [3] and [4] as follows:

It is professional misconduct for a lawyer to:

* * *

(g) in the practice of law, by words or conduct, knowingly manifest bias or prejudice, or engage in harassment or discrimination, as those terms are defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.

Comment:

* * *

[3] For the purposes of paragraph (g), conduct in the practice of law includes participation in activities that are required for a lawyer to practice law, including but not limited to continuing legal education seminars, bench bar conferences and bar association activities where legal education credits are offered.

[4] The substantive law of antidiscrimination and anti-harassment statutes and case law guide application of paragraph (g) and clarify the scope of the prohibited conduct.

* * *

The Board’s proposal differs from Model Rule 8.4(g) in several respects: (1) it limits the scope of the prohibited activity to “in the practice of law”; (2) it eliminates the “reasonably should know” standard in favor of “knowingly”; (3) it adds the language “manifest bias or prejudice”; (4) it clarifies the scope of the prohibited activity as “defined in applicable federal, state and local statutes or ordinances”; and (5) it eliminates the qualifier “legitimate” to describe a lawyer’s advocacy.

In crafting the language of the proposal, the Board studied other jurisdictions’ language relative to the scope of the prohibited conduct. Thirty-four jurisdictions require that the conduct have some connection to the practice of law.³ For example, “in the representation of a client”;⁴ “in connection with the practice of law”;⁵ “in a professional capacity”;⁶ “in the practice of law”;⁷ “in the course of representing a client”;⁸ and “in connection with the lawyer’s professional activities.”⁹

Based on our review, the Board proposes the language “in the practice of law” as the scope of the prohibited conduct. This scope encompasses activities that are required for a lawyer to practice law, as such activities have a sufficient and obvious nexus to the practice of law to fall within the application of the rule. Proposed comment [3] provides that “in the practice of law” includes a lawyer’s participation in activities such as Continuing

³ Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Washington, D.C., Florida, Idaho, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

⁴ Among the jurisdictions that use this verbiage are Colorado, Idaho and Missouri.

⁵ Among the jurisdictions that use this verbiage are Arkansas and Florida.

⁶ Among the jurisdictions that use this verbiage are Indiana, Massachusetts, Maryland, Nebraska, New Jersey and Ohio.

⁷ Among the jurisdictions that use this verbiage are Iowa and New York.

⁸ Among the jurisdictions that use this verbiage are Arizona, Connecticut, Delaware, Maine, North Dakota, New Hampshire, Oregon, South Carolina, Tennessee and Washington.

⁹ Among the jurisdictions that use this verbiage are Minnesota and Wisconsin.

Legal Education seminars, and other activities that address that concept, such as bar association meetings and bar conferences where continuing legal education credit is offered.

The Board proposes the use of the word “knowingly,” which requires actual knowledge, as defined in RPC 1.0(f). The knowledge requirement prevents unintentional violation of the rule, and serves to exclude inadvertent or negligent conduct.

The Board proposes the language “manifest bias or prejudice,” based on the language contained in the Pennsylvania Code of Judicial Conduct. Pa.R.J.C. 2.3 governs bias, prejudice and harassment; subsection (B) prohibits judges from engaging in such conduct in the performance of their judicial duties, and subsection (C) directs judges to require lawyers to refrain from such conduct in proceedings before the court. The Board favors similar language, in order that a lawyer’s ethical obligations under the RPC correspond to the conduct prohibited in the Code of Judicial Conduct.

The Board proposes the inclusion of the language “as those terms are defined in applicable federal, state or local statutes or ordinances” to give lawyers adequate guidance regarding what actions constitute the prohibited conduct. As set forth in proposed comment [4], this language clarifies the scope of the prohibited conduct to conform to governing substantive law.

Consistent with Model Rule 8.4(g), the Board proposes the inclusion of language relative to RPC 1.16, so that lawyers may retain professional independence and are not limited in their ability to accept, decline or withdraw from representation, except as set forth in RPC 1.16.

The Board’s proposal affirms that paragraph (g) does not preclude advice or advocacy concerning the protected classes that is consistent with the Rules of Professional Conduct. This language differs from the Model Rule because it omits the adjective “legitimate” to describe the advice or advocacy. In the Board’s view, the word “legitimate” is superfluous, as RPC 3.1 provides that advocacy must have merit. Additionally, the word “legitimate” may cause lawyers undue confusion and potentially undermine a lawyer’s zealous advocacy of a client.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Executive Office, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3381), Email address Dboard.comments@pacourts.us on or before September 30, 2019.

*By the Disciplinary Board of the
Supreme Court of Pennsylvania*

JESSE G. HEREDA,
Executive Director

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * * * *

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(g) in the practice of law, by words or conduct, knowingly manifest bias or prejudice, or engage in harassment or discrimination, as those terms are defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.

Comment:

(1) Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer’s behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client of action the client is lawfully entitled to take.

(2) Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

(3) For the purposes of paragraph (g), conduct in the practice of law includes participation in activities that are required for a lawyer to practice law, including but not limited to continuing legal education seminars, bench bar conferences and bar association activities where legal education credits are offered.

(4) The substantive law of antidiscrimination and anti-harassment statutes and case law guide application of paragraph (g) and clarify the scope of the prohibited conduct.

[3] (5) A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope,

meaning or application of the law apply to challenges of legal regulation of the practice of law.

[4] (6) Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[Pa.B. Doc. No. 19-1309. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

GREENE COUNTY

Local Rules; C.A. No. 14 of 2019

Order

And Now, this 12th day of August, 2019, in compliance with Pa. Rule of Judicial Administration 103(c) and (d), it is hereby Ordered, Directed and Decreed that all previous Greene County Local Rules (G.C.L.R.) are hereby rescinded and we adopt the following Civil and Judicial Administration Rules.

Rules of Civil Procedure:

G205.2(b)	Cover Page
G206.4(c)	Rule to Show Cause
G208.3(a)	Motions
G212	Scheduling Conferences
G212.3	Pretrial Conferences
G216	Continuances
G229	Discontinuances
G300	Status Conferences
G320	Mortgage Foreclosure
G1018.1	Notice to Defend—Judicial Administration
G1028(c)	Preliminary Objections
G1034(a)	Motion for Judgment on the Pleadings
G1035.2(a)	Motion for Summary Judgment
G1301	Judicial Arbitration
G1302	Arbitrators
G1308	Appeal from Arbitration
G1309	Parties to Appeal
G1915.4-2	Custody Hearing
G1920.51	Master in Divorce
G1920.55-2	Master's Report, Notice, Exceptions, Final Decree
G4050	Board of View
G4051	Background Checks for Adoptive Parents
G4053	Fees and Costs

Rules of Judicial Administration:

G1910	Broadcasting in the Courtroom
G4008(A)(1)	Transcript Costs

In compliance with Pa. Rule of Judicial Administration 103, we promulgate the following Greene County Local Rules and the District Court Administrator shall:

(a) File one copy of the local rules with the Administrative Office of Pennsylvania Courts via email at adminrules@pacourts.us;

(b) File two paper copies and one electronic copy containing the text of the local rules (in Microsoft Word format) with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and mailed to the following address:

Pa. Code and Bulletin
Legislative Reference Bureau
647 Main Capitol Building
Harrisburg, PA 17120;

(c) File one electronic copy with the Civil Procedural Rules Committee and Domestic Relations Rules Committee;

(d) File a copy of the local rules, which shall be continuously available for inspection and copying, in the Office of the Prothonotary of Greene County; and

(e) Publish the local rules on the Court's website at www.greenepacourts.us.

These local rules shall become effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

FARLEY TOOTHMAN,
President Judge

Rules of Civil Procedure

Local Rule G205.2(b). Cover Page.

1. For the initial pleading in any civil action, the pleading shall be accompanied by a completed Pennsylvania Rule of Civil Procedure 205.5 Cover Sheet which can be found at <http://www.pacourts.us/forms/for-the-public>.

Local Rule G206.4(c). Rule to Show Cause.

We hereby adopt Pa.R.C.P. 206.5 as local procedure for rules to show cause.

Local Rule G208.3(a). Motions.

1. Court shall hear Motions at 8:45 A.M. on Mondays and Wednesdays of each week. In the event of a holiday, it will be held on the first business day thereafter. Any changes to Motions Court shall be published on the website of the Greene County Court of Common Pleas.

a. All motions shall be in writing, except as permitted by the court or when made in open court during a trial or hearing.

b. A written motion shall comply with the following requirements:

(i) Notice of the presentation of the motion shall be in writing and a copy of the motion sent to opposing counsel or an unrepresented party at least four (4) Court business days in advance of its presentation to the Court.

(ii) A motion may be presented in person in Motions Court after being filed with the appropriate court filing office. Motions that are agreed upon shall contain the consenting signatures or attached consents of all attorneys or unrepresented parties of interest and motions for routine scheduling of hearings and rule returnable/citations may be delivered to the appropriate filing office where it shall be docketed and immediately thereafter delivered to the Office of District Court Administration, for consideration by the Court.

(iii) The motion shall be signed by the person or attorney making the motion. The signature of an attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay. The motion also shall contain a certification that the motion complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts regarding confidential information and documents.

(iv) The motion shall include the court, caption, term, and number of the case in which relief is requested.

(v) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief requested.

(vi) The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(vii) The motion shall include any requests for hearing or argument, or both.

(viii) If the motion sets forth facts that do not already appear of record in the case, the motion shall be verified by the sworn affidavit of a person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Pennsylvania Crimes Code, 18 Pa.C.S. § 4904.

2. The failure, in any motion, to state a type of relief or a ground therefore may constitute a waiver of such relief or ground.

3. Any motion may request such alternative relief as may be appropriate.

4. Any motion shall be accompanied by a proposed Order consistent with the motion and the relief requested.

Local Rule G212. Scheduling Conferences.

The District Court Administrator may place any case on the next available scheduling conference list where an Answer in response to a Complaint has been filed.

As the Court may direct, the District Court Administrator may place any case for scheduling and/or status conference.

Local Rule G212.3. Pretrial Conferences.

1. Pretrial conferences shall be scheduled at the direction of the trial judge.

2. The pretrial judge shall generally be the trial judge.

3. Notice of the pretrial conference shall be contained within an order issued by the trial judge.

4. Narratives shall be required for the pretrial conference and shall be filed ten (10) days prior to the date of the conference.

5. The narrative shall contain the following:

a. A brief summary of the facts;

b. All items of economic damages which the Plaintiff intends to prove, including medical bills, property damage bills and loss of earnings;

c. The names and addresses of all persons who may be called as witnesses, classifying them as liability and/or damage witnesses;

d. Copies of all reports of any expert who treated, examined, or was consulted in connection with the injuries complained of, and who may be called as an expert witness;

e. Copies of all reports of any expert whose opinion will be in evidence at the time of trial. Such reports shall include the findings and conclusions of the expert;

f. Any special legal or evidentiary issues;

g. The estimated length of trial;

h. Any scheduling problems;

i. The settlement demand and any responsive offers; and

j. A list of anticipated exhibits to be used at the time of trial.

6. At least one week prior to the pretrial conference, all parties shall confer and consult with each other as often as may be necessary for the following purposes:

7. To explore in every respect the possibility of settlement; including exchange of good faith demand and offer, and

8. To consider the factual and legal issues involved.

9. Supplements to a written pretrial memorandum may be filed by any party after their original pretrial memorandum has been filed. However, no supplemental pretrial memorandum may be filed later than thirty (30) days prior to the scheduled jury selection, except with permission of the Court. Should any party need additional time for preparation, or discovery as a result of a supplemental pretrial memorandum being filed, a petition must be promptly filed with the Court seeking such an extension of time prior to the scheduled trial date.

10. Any narrative and/or supplement not timely filed may result in a fine and a copy of the sanctioning order shall be sent to the litigants by the Court.

11. Counsel attending the pretrial conference must have complete authority to stipulate regarding items of evidence and admissions and must have full settlement authority. Counsel shall have the client and those with settlement authority available either in person or by phone for consultations regarding settlement.

12. At the pretrial conference, counsel shall be prepared to discuss fully with the Court the possibility of settlement of the case. At the conclusion of the conference, the judge may make an order reciting the actions taken at the conference, including the agreements made by the parties as to any of the matters considered, the issues of trial and the admissions of fact obtained at the conference. The pretrial conference Order shall include a date for the filing of any pretrial motions and supporting briefs, voir dire questions, and a scheduled date for argument, if appropriate.

13. It is the preference of the Court to resolve Motions for Summary Judgment, consolidation, bifurcation and severance, if possible, prior to the pretrial conference. Such motions generally require a decision before meaningful progress can be made in preparing a case for trial or negotiating a resolution to the lawsuit.

14. Unless the Court grants otherwise, the following must be filed with the Court at least ten (10) days before the date of the pretrial conference: motions in limine, briefs on unusual legal issues, proposed jury instructions, a proposed verdict slip.

Local Rule G216. Continuances.

1. The Court disfavors continuances due to the difficulty in promptly rescheduling matters. All applications for continuance shall be made by written motion. The continuance shall specify the factual basis for the request of the proposed continuance. The request for continuance shall be presented to the assigned Judge, if possible.

2. Any request must specify the position of the opposing party/parties. Failure to specify the position of the opposing party/parties may result in denial of the request.

3. Requests for continuances shall be filed at least ten (10) days in advance of the hearing date. Where the continuance is not timely filed, the reasons for the delay shall be specifically set forth in the motion.

4. Any continuance request shall contain the signature of a party or the attorney of record.

Local Rule G229. Discontinuances.

1. Any discontinuance of an action shall be in accordance with Pa.R.C.P. 229. A discontinuance may also be entered by a written direction (praecipe) to the Prothonotary if it is signed by the attorney for the plaintiff or by a self-represented plaintiff and the same shall be accepted by the Prothonotary, if all costs due the Prothonotary have been paid.

2. Counsel shall provide a copy of the discontinuance to Court Administration simultaneous with providing the original to the Prothonotary. Any written direction to the Prothonotary complying with this rule may be sent to the Prothonotary by mail and shall be accepted for filing.

Local Rule G300. Status Conferences.

1. In any complex case or other action which the Court deems applicable, a status conference may be scheduled by the Court for purposes of discussing the following, including, but not limited to:

2. The facts of the case;
3. The status of discovery and what discovery is anticipated in the case;
4. Setting and/or modifying discovery deadlines. The Court reserves the right to set discovery deadlines prior to a status conference;
5. Status conferences may be scheduled upon request of the parties or at the discretion of the Court;
6. Subsequent to the status conference, the court may issue any Order deemed necessary providing counsel with dates and times for any future proceedings that may be required;
7. No written narratives need be filed for status conferences.

Local Rule G320. Mortgage Foreclosure.

1. In all cases initiated by the filing of a Mortgage Foreclosure Complaint, the matter shall be set for a conciliation conference within sixty (60) days with the presiding judge.

2. The Plaintiff shall come to the Conciliation Conference prepared to provide proof of the defaulted mortgage and the exact amount, including costs and penalties, needed to bring the mortgage current as of that date. Failure to do so will preclude the recovery of any interest due on the mortgage after that date.

3. The Defendant shall come to the Conciliation Conference prepared to provide the following:

- a. Proof of income from all sources (i.e. pay stubs, social security disability letter of determination, workers compensation letter of determination, annual income tax returns, child and spousal support orders, etc.);
- b. Proof of expenses and debt statements (i.e. regular monthly mortgage payment, payments related to water/sewer, electricity, heating, telephone, cable, credit card(s), tuition and day care expenses, etc.); and
- c. Act 91 Notice and any other documents received regarding this mortgage foreclosure.

4. For the purposes of the case, civil case management, and further pleading deadlines are suspended pending the outcome of the Conciliation Conference. Suspension is effective as of the date of the Order setting the Conciliation Conference.

Local Rule G1018.1. Notice to Defend—Judicial Administration.

1. The agency to be contacted for legal help as provided in Pa.R.C.P. 1018.1 for Notice to Defend is:

District Court Administrator
Greene County Courthouse
10 E. High Street, Suite 218
Waynesburg, PA 15370
(724) 852-5237

Southwestern Pennsylvania Legal Aid Society
63 S. Washington Street
Waynesburg, PA 15370
(724) 627-3127

Local Rule G1028(c). Preliminary Objections.

1. Preliminary objections, unless otherwise directed by the Court, may be placed on the next available argument list by the District Court Administrator. The parties may petition the Court to be heard solely on the briefs.

a. The legal brief or memorandum of the moving party regarding preliminary objections shall be filed with the appropriate filing office. The parties will be notified by Court Order of a briefing schedule and the date scheduled for argument, if applicable. Failure to strictly comply with the briefing schedule may constitute a default authorizing the Court to grant or deny the relief at issue, prohibit the noncompliant party from making argument, and take such other action as the Court deems necessary for the proper administration of justice.

Local Rule G1034(a). Motion for Judgment on the Pleadings.

1. Motion for Judgment on the Pleadings, unless otherwise directed by the Court, may be placed by the District Court Administrator on the next available argument list. The parties may petition the Court to be heard solely on the briefs.

a. The legal brief or memorandum of the moving party regarding motion for judgment on the pleadings shall be filed with the appropriate filing office. The parties will be notified by Court Order of a briefing schedule and the date scheduled for argument, if applicable. Failure to strictly comply with the briefing schedule may constitute a default authorizing the Court to grant or deny the relief at issue, prohibit the noncompliant party from making argument, and take such other action as the Court deems necessary for the proper administration of justice.

Local Rule G1035.2(a). Motion for Summary Judgment.

1. Motion for Summary Judgment, unless otherwise directed by the Court, may be placed by the District Court Administrator, on the next available argument list. The parties may petition the Court to be heard solely on the briefs.

a. The legal brief or memorandum of the moving party regarding Motion for Summary Judgment shall be filed with the appropriate filing office. The parties will be notified by Court Order of a briefing schedule and the date scheduled for argument, if applicable. Failure to strictly comply with the briefing schedule may constitute a default authorizing the Court to grant or deny the relief at issue, prohibit the noncompliant party from making argument, and take such other action as the Court deems necessary for the proper administration of justice.

Local Rule G1301. Judicial Arbitration.

1. Pursuant 42 Pa.C.S.A. Section 7361 of the Judicial Code, and Pa.R.C.P. 1301, all civil suits or actions where

the amount in controversy is \$50,000.00 or less, shall first be tried by a Board of Arbitrators, except for actions involving title to real estate or actions in equity. This includes all appeals from a civil judgment of magisterial district judges. Matters may be placed at arbitration by consent of the parties even if the amount in controversy is in excess of \$50,000.00.

a. *Cases for Submission:*

i. *By Court Administration*—Court Administration, through Civil Case Management, will schedule all Civil Cases which are at issue wherein the amount in controversy (exclusive of interest and costs) shall be \$50,000.00 or less, per the pleadings. The above cases identified shall be submitted to, heard and decided by a Board of Arbitrators, consisting of three (3) members admitted to practice law in Pennsylvania to be selected as hereinafter provided.

ii. *By the Parties*—Cases, regardless of amount or subject in controversy, may be referred to a Board of Arbitrators by written agreement signed by all parties or their counsel, and may contain stipulations with respect to facts submitted or agreed upon or defense in such cases, the written agreement may take the place of the pleadings in the case and shall be filed of record.

iii. *By the Court*—Cases may be referred to arbitration where the Court is satisfied that the matter involves \$50,000.00 or less, in accordance with Pa.R.C.P. 1301.

Local Rule G1302. Arbitrators.

1. The District Court Administrator shall appoint a Board of Arbitrators by seeking voluntary appointment, and if unable to obtain a Board in that manner within thirty (30) days, the Court shall appoint arbitrators for the unfilled vacancies. Each member of the Greene County Bar who is practicing law full-time is expected to accept appointment.

2. The panel of arbitrators shall be appointed insofar as is possible on a rotating basis by the District Court Administrator.

3. The chairperson of any Board of Arbitration must be an attorney with at least three (3) years experience.

4. Not more than one member or associate of a law firm or association of attorneys shall be appointed to serve on the same Board of Arbitration.

5. Attorneys should disqualify themselves from serving on a Board of Arbitration if serving would present a conflict of interest or if a judge in a similar situation would disqualify himself or herself.

6. The parties shall pay a fee of \$400.00 and that fee shall be deposited with the Greene County Prothonotary. The allocations of cost shall be a 50%/50% split, payment by the moving party in full or as established by order of Court. The Arbitrators shall not be appointed until the fee is paid in full.

7. Arbitrators shall be compensated per case at a rate of \$150.00 for the Chairperson and \$125.00 for the two remaining panel members.

8. The arbitrators appointed pursuant to this section shall have powers and shall proceed in such manner as shall be prescribed by general rules.

9. A party moving for a continuance shall file a written continuance.

a. At the Court's discretion, each party may be granted one (1) continuance without imposition of any fee.

b. A party requesting an additional continuance shall pay to the Prothonotary a Continuance Fee of \$50.00 at the time of the continuance request. The moving party shall notify in writing the assigned Judge and Court Administration of such payment.

c. A party requesting any continuance within seventy-two (72) hours of the scheduled arbitration time shall pay to the Prothonotary the Arbitration Costs at the time of the continuance request. Such Arbitration costs shall be set at \$100.00 for the Chairperson of the arbitration panel, and \$75.00 for each additional Arbitrator of the arbitration panel. Such payment shall not impact the applicability of any other Arbitration costs.

d. If a continuance request is granted, Court Administration, or its designee, shall give to the parties, or the attorneys of record, and the assigned Judge notice in writing of the new date, time and place of the arbitration hearing. The arbitration hearing shall be rescheduled by Court Administration only upon the moving party's payment of any applicable Continuance Fees or Arbitration Costs.

10. Counsel shall work diligently to assure settlements will be reached prior to the arbitration hearing.

a. If a settlement occurs prior to the scheduled arbitration hearing, the parties shall notify in writing the assigned Judge and Court Administration of the settlement no later than five (5) days prior to the scheduled arbitration hearing.

b. If a settlement occurs within five (5) days of the scheduled arbitration hearing, or if the parties fail to timely notify the assigned Judge and Court Administration, the parties shall pay the Arbitration costs.

c. The arbitration costs shall be set at \$100.00 for the Case Manager of the arbitration panel, and \$75.00 for each additional Arbitrator of the arbitration panel.

d. Such arbitration costs are to be paid to the Prothonotary by the parties, with fifty percent (50%) contribution from the plaintiff(s), jointly and severally, and fifty percent (50%) contribution from the defendant(s), jointly and severally, unless otherwise agreed upon by the parties.

e. Such payment shall be made within five (5) days of the scheduled arbitration hearing.

11. A party who willfully fails to appear at any appropriately scheduled arbitration hearing under G.C.L.R. 1302 may be held in Contempt of Court. Such finding and any appropriate sanction shall be in the discretion of the assigned judge.

12. Any applicable continuance fees, arbitration costs, or other payment obligations designated under this provision shall be enforced by Order of the Court.

Local Rule G1308. Appeal from Arbitration.

1. An appeal from an award of a Board of Arbitrators shall be taken in conformity with Pa.R.C.P. 1313 within thirty (30) days after the entry of the award on the docket.

2. The appealing party shall pay to the Prothonotary the sum of \$400.00 or fifty percent (50%) of the amount in controversy, whichever is less, as compensation for the Arbitrators which shall not be taxed as costs or be recoverable in any proceeding.

3. The Court, for cause shown, may permit an appeal to proceed in forma pauperis.

Local Rule G1309. Parties to Appeal.

1. An appeal by any party shall be deemed an appeal by all parties as to all issues unless all parties stipulate in writing otherwise.

Local Rule G1915.4-2. Custody Hearing.

1. The parties are now on notice that Greene County follows alternative hearing procedure Pa.R.C.P. 1915.4-2 wherein an action for partial custody may be heard by a Hearing Officer as outlined in Pa.R.C.P. 1915.4-2(b).

2. When any petition/complaint for custody or a modification of custody is filed, the District Court Administrator shall set the matter before a Custody Conference Officer with a view towards reaching an agreement through conciliation. If an agreement is reached, the Custody Conference Officer will propose an Order for confirmation by the Court of Common Pleas.

3. In the event the matter is for partial custody and there is no existing custody order and no agreement is reached between the parties at the conciliation conference, the hearing officer may consider evidence and enter a recommended interim custody order pending the pre-trial conference.

4. In addition, if an agreement cannot be reached through conciliation, the matter will be set before the Court for a pre-trial conference. The Court will attempt to facilitate an agreement. If no agreement is reached, the Court will then determine whether the matter shall be sent to a Custody Hearing Officer or heard by the Court. In the event the matter is for partial custody, it shall be sent to the Custody Hearing Officer and shall be conducted of record and appeal shall be by exceptions to the Court of Common Pleas.

Local Rule G1920.51. Master in Divorce.

(a) At the request of the parties, or at the discretion of the Court, the Court shall appoint a Master in Divorce. The Master in Divorce shall be an attorney licensed to practice in the Commonwealth of Pennsylvania for at least five (5) years.

(b) Prior to the appointment of a Master in Divorce, the parties shall pay a fee of \$500.00 which shall be deposited with the Greene County Prothonotary. Thereafter, the matter shall first be set for conciliation by the Master in Divorce. The Master shall receive a fee of \$500.00 for presiding over the conciliation. Proceedings before a Master in Divorce shall be conducted within the borders of Greene County, Pennsylvania, unless otherwise directed by Court Order or agreement of the parties.

(c) In the event no agreement is reached through conciliation and prior to the Master in Divorce scheduling a hearing, the parties shall deposit with the Greene County Prothonotary a fee of \$2,000.00 per calendar day. The Master in Divorce shall be paid \$1,000.00 per calendar day of hearing with the remaining monies to be on deposit as a fund for the reimbursement of the stenographer.

(d) An additional \$2,000.00 shall be deposited prior to each additional calendar day of proceeding before the Master in Divorce.

(e) The Prothonotary shall only release payment to the Master in Divorce and/or stenographer pursuant to Court Order.

(f) The cost as stated above shall be divided evenly between the parties or by payment of the moving party in full or as established by order of Court. The Master is

granted discretion to reallocate any fees paid by the parties in the Master's report.

Local Rule G1920.55-2. Master's Report, Notice, Exceptions, Final Decree.

(a) The Master shall submit the Master's Report within 20 days in uncontested matters and within 30 days of the latter of the receipt of transcript or close of record in contested matters.

(b) If exceptions are filed, the Court will schedule the matter for argument and may direct the parties to provide proposed findings of fact and conclusions of law and a proposed order.

Local Rule G4050. Board of View.

1. When appropriate the parties may request the appointment of a Board of View, or at the discretion of the Court, the Court may appoint a Board of View.

2. The Board of View shall be made up of three (3) adult individuals. One shall be a chairperson appointed by the Court and shall be paid \$125.00. The two (2) remaining members shall be appointed by the Court and shall be paid \$100.00. In addition to the fee mentioned above, the board members shall be paid mileage at the annual rate as established by the County of Greene.

3. Prior to the appointment of a Board of View, the petitioning party shall deposit a fee of \$325.00 with the Greene County Prothonotary. The cost shall be divided evenly between the parties or payment by the petitioning/moving party in full or as established by order of Court. A Board of View shall not be appointed until the fee is paid in full. The Board shall make a final recommendation to the Court within sixty (60) days of the view. If there is no recommendation filed within sixty (60) days, the Court may sua sponte set the matter for a status conference.

Local Rule G4051. Background Checks for Adoptive Parents.

1. All proposed adoptive parents shall undergo and shall file with the Court Childline and criminal clearances.

Local Rule G4053. Fees and Costs.

1. Fees and costs shall be set by Administrative Order and recorded in the Prothonotary's Office in the Court Administration Docket.

Rules of Judicial Administration**Local Rule G1910. Broadcasting in the Courtroom.**

1. *Pa.R.J.A. 1910 Photography, Recording, Broadcasting, and Electronic Equipment*

a. The taking of photographs, including video pictures and recording, and the use of audio broadcast and audio recording equipment and any other device capable of capturing or transmitting sound or images, in a courtroom or hearing room or its environs during the progress of or in connection with any action, whether or not court is actually in session is prohibited. Violation of Rule 112(a) may lead to criminal prosecution.

b. *Environs Defined:* Environs of a courtroom or hearing room shall include the entire floor on which is located any courtroom, hearing room, jury room, grand jury room, sheriff's office, or station, Prothonotary's or Clerk of Court's office, office of the District Attorney, or any lock-up or prisoner holding area.

c. *Recording Devices and Cellular Telephones, Prohibited:* Cameras, cellular telephones, portable electronic data devices and any other device capable of capturing or

transmitting images or sound are prohibited inside of the Greene County Courthouse (hereafter “Courthouse”), Adult Probation and Parole offices, Domestic Relations lobby and offices, and inside a Magisterial District Court offices at the discretion of the Magisterial District Judge.

(i) *Employee Exception*: The prohibition in Section (c) shall not apply to those individuals employed by the Court or County in the Courthouse, Magisterial District Court, Adult Probation and Parole Offices, or Domestic Relations who clearly display an identification badge issued by the County of Greene provided, however, that the device shall be in a “silent” or “vibrate only” mode when the employee enters a courtroom, hearing room, or grand jury room.

(ii) *Attorney exception*: The prohibition to those facilities enumerated in Section (c) above shall not apply to an attorney at law who enters the Courtroom or a Magisterial District Court on business related to the representation of a client, provided however, that the device shall be in a “silent” or “vibrate only” mode when the attorney enters a courtroom, hearing room or grand jury room.

(iii) *Emergency Responder Exception*: The prohibition to those facilities enumerated in Section (c) above shall not apply to emergency medical or other personnel responding to a call within the Courthouse, Office of Adult Probation, or Magisterial District Court.

(iv) *Juror Exception*: The prohibition in Section (c) above shall not apply to jurors summoned by Court Administration during the Jury Selection process and at any other time permitted by the presiding judge.

(v) *Evidence Exception*: The prohibition in Section (c) above shall not apply to the use of such devices for the purpose of presenting evidence in any court proceeding and for legal research.

(vi) *Law Enforcement Exception*: The prohibition to those facilities enumerated in Section (c) above shall not apply to a member of law enforcement who provides proper identification and is on business related to a case before the Court and/or a meeting with the Office of the District Attorney. However, the device shall have the power switched “off” when the member of law enforcement enters a courtroom, hearing room, or grand jury room.

(vii) *Presiding Judge Exception*: The presiding judge may permit, at their discretion, the use of cellular devices on a case by case basis.

d. *Special Proceedings*: In the discretion of the presiding judge, photographing, making video or audio recordings, televising, or broadcasting any special proceedings such as investiture, naturalization, or ceremonial proceedings, in a courtroom or its environs may be permitted under such conditions as the presiding judge may prescribe.

e. *Recordings*: Except as permitted by law or rule of Court, the recording by any means of any judicial proceedings by anyone other than the official court reporter/recorder in a court case, for any purpose, is prohibited.

f. *Special Permission*: The President Judge may, upon application, make exceptions (i.e. Public Ceremonies) to the prohibitions contained in this Rule under such circumstances and subject to such conditions as the President Judge may prescribe.

g. *Special Cases*: The court may make such orders as may be necessary in connection with any specific case to protect the rights of all parties and the public.

Local Rule G4008(A)(1). Transcript Costs Payable by a Requesting Party.

(A) Costs

1. Greene County follows the statewide rules related to requests for transcripts. However, due to limited resources, a party requesting the following certain types of transcripts must appear at Motions Court and gain Court approval:

“Expedited”—within 72 hours of request excluding weekends and holidays

“Daily”—within 18 hours of request excluding weekends and holidays

“Same Day”—within 6 hours of request.

[Pa.B. Doc. No. 19-1310. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Local Rule of Civil Procedure 1910.25-4 Civil Contempt. Alternative Procedure; AD77-19

Order of Court

And Now, this 13th day of August, 2019, at 3:30 p.m., the Schuylkill County Court of Common Pleas hereby adopts Local Rule of Civil Procedure No. 1910.25-4 for use in the Schuylkill County Court of Common Pleas, Twenty-First Judicial District, effective 30 days after publication in the *Pennsylvania Bulletin*.

The Schuylkill County District Court Administrator is Ordered and Directed to do the following:

1) File one (1) copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts via email to adminrules@pacourts.us.

2) File two (2) paper copies of this Order and Rule and (1) electronic copy in a Microsoft Word format to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) Publish the local rule on the Schuylkill County Court website at www.co.schuylkill.pa.us.

4) Incorporate the local rule into the set of local rules on www.co.schuylkill.pa.us within thirty (30) days after publication in the *Pennsylvania Bulletin*.

5) File one (1) copy of the local rule in the Office of the Schuylkill County Clerk of Courts and provide a copy to the Prothonotary for public inspection and copying.

6) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule of Civil Procedure 1910.25-4. Contempt. Alternative Procedure. Record Hearing. Report. Exceptions. Order.

Civil Contempt for Non Payment of Support shall proceed in accordance with Pa.R.C.P. 1910.25-4.

[Pa.B. Doc. No. 19-1311. Filed for public inspection August 30, 2019, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Administrative Suspension

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated July 17, 2019, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective August 16, 2019 for Compliance Group 3.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been administratively suspended by said Order, was published in the appropriate county legal journal.

Adinolfi, Robert J.
Haddonfield, NJ
Brodie, Julie Rae
Arlington, VA
Bronder, Sarah A.
Sackets Harbor, NY
Campbell, Robert Paul
Akron, OH
Carter, John Rex
Edgewater Park, NJ
Carter, John William
Saltville, VA
Daitz, Jeffrey Michael
Monroe, NJ
Degnan, Philip J.
Moorestown, NJ
DiCerbo, Nicholas Anthony
Olean, NY
Downey, Paul James
Dallas, TX
Dunn, Paul Christopher
Chicago, IL
Fortney, David Scott
Washington, DC
Gaylord, Samuel Michael
West Trenton, NJ
Gemerek, Simon James
Quinton, VA

Gowen, Christopher James
Washington, DC
Kaye, Laura Rose
Leauge City, TX
Kovatch, William James, Jr.
Lorton, VA
Leikauf, Conrad R.
Branchburg, NJ
Lubin, Jeffrey
Cherry Hill, NJ
Marshall, Christina Jennifer
Troy, MI
Morris, Stefanie LaDawn
Newark, NJ
Murphy, Robert Brian
Washington, DC
Nelson, Vernon A., Jr.
Las Vegas, NV
Pabon, Mario
San Juan, PR
Sales, Kenneth Lawrence
Louisville, KY
Sam, Christian Paul
Wheeling, WV
Scanlon, Peter John
Washington, DC
Scotto D'Aniello, Jason
Garfield, NJ
Spivak, Heidi R. Finston
Marlton, NJ
St. Hill, Jenai Helen
Oakland, CA
Tate, Charles Louis, Jr.
Wilmington, DE
Weisbrot, Steven M.
Parkland, FL
Whitehead, Jeffrey Allen
Chicago, IL
Williams, Ralph
Columbia, SC

SUZANNE E. PRICE,
Attorney Registrar

[Pa.B. Doc. No. 19-1312. Filed for public inspection August 30, 2019, 9:00 a.m.]

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Special Regulations Counties

The Fish and Boat Commission (Commission) 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). The amendments update the Commission's list of waters subject to special regulations.

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.fishandboat.com.

C. Statutory Authority

The amendments to § 111.2 (relating to Allegheny County) are published under the statutory authority of section 5124(a) of the code (relating to particular areas of water).

D. Purpose and Background

The specific purpose and background of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

The area known as the Point in Pittsburgh is where the Monongahela and Allegheny Rivers come together to form the Ohio River. This busy boating destination is regulated specifically by § 111.2. During the busy boating season, a No Wake Zone is enforced from the Fort Pitt Bridge over the Monongahela River and the 9th Street Bridge over the Allegheny River to the West End Bridge on the Ohio River. This zone is in effect on weekends from May 1 to October 1 each year as well as on the three summer holidays.

Recently, several entities including the City of Pittsburgh, Pittsburgh Safe Boating Council, 3 Rivers Rowing Association and the Pittsburgh Downtown Community Development Corporation have requested that the Commission consider extending the zone on the Allegheny River to the Veterans Bridge and keeping it in effect through November 1 of each year. This change is needed due to increased boating traffic in the fall for various events in the area. Additionally, the zone would create safer conditions for mooring vessels along the Riverwalk. This amendment was approved by the Boating Advisory Board at their recent meeting on January 8, 2019.

The Commission therefore amends § 111.2 to read as set forth in the proposed rulemaking published at 49 Pa.B. 1152 (March 16, 2019).

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 have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 49 Pa.B. 1152. The Commission did not receive any public comments regarding 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 (relating to notice of proposed rulemaking; and adoption of regulations).

(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 111, are amended by amending § 111.2 to read as set forth at 49 Pa.B. 1152.

(B) The Executive Director will submit this order and 49 Pa.B. 1152 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 49 Pa.B. 1152 and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-289 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 19-1313. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Big Game

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 23, 2019, meeting amended § 141.47 (relating to elk) to reduce the minimum caliber and bullet weight to .26 caliber and 120 grains, respectively.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 49 Pa.B. 2611 (May 25, 2019).

1. *Purpose and Authority*

Formerly, the minimum caliber and bullet weight requirements to hunt elk were .27 caliber and 130 grains, respectively. These requirements did not permit the use of the 6.5 mm Creedmoor round. Sportsmen have requested that the Commission review current regulations and consider adjustments to allow use of the 6.5 mm Creedmoor round and related .26 caliber firearms. The Commission has since reviewed the .26 caliber range and determined that these firearms provide adequate and commonly accepted kinetic energies to efficiently and ethically harvest elk. The Commission amended § 141.47 to reduce the minimum caliber and bullet weight to .26 caliber and 120 grains, respectively.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to “promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used.” The amendments to § 141.47 are adopted under this authority.

2. *Regulatory Requirements*

This final-form rulemaking amends § 141.47 to reduce the minimum caliber and bullet weight to .26 caliber and 120 grains, respectively.

3. *Persons Affected*

Persons wishing to hunt or take elk within this Commonwealth may be affected by this final-form rulemaking.

4. *Comment and Response Summary*

The Commission received a total of one comment in general support of this final-form rulemaking.

5. *Cost and Paperwork Requirements*

This final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

This final-form rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding this final-form rulemaking, contact Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking; and adoption of regulations).

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.47.

(b) The Executive Director of the Commission shall certify this order and 49 Pa.B. 2611 and deposit them with the Legislative Reference Bureau as required by law.

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

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-444 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter C. BIG GAME

§ 141.47. Elk.

(a) *Permitted devices.* It is lawful to hunt elk during the elk season with any of the following devices:

(1) A manually operated, centerfire rifle or handgun. The firearm must be a .26 caliber or larger firearm that propels single-projectile ammunition 120 grains or larger.

* * * * *

[Pa.B. Doc. No. 19-1314. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Furbearers

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 23, 2019, meeting amended §§ 141.63, 141.67 and 141.68 (relating to definitions; furbearer seasons; and prohibited devices) to provide greater clarity in common trapping terminology and increased understanding in what trapping devices are permitted within the Commonwealth.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 49 Pa.B. 2612 (May 25, 2019).

1. *Purpose and Authority*

The Commission amended §§ 141.63, 141.67 and 141.68 to provide greater clarity in common trapping terminology and increased understanding in what trapping devices are permitted within the Commonwealth. To this end, the Commission amended § 141.63 to add definitions of the terms body-gripping trap, cage or box trap and leg-hold trap.

The Pennsylvania Trapper's Association requested that the Commission amend the definition of a snare to establish consistent definitions for the locks that are legal for use for cable restraints and snares. Cable restraint regulations and definitions were developed to allow live restraint of canids, whereas regulations and definitions for snares were developed to allow for live restraint or kill sets for beaver and otter. Former language in § 141.63 required that a snare be "equipped with a mechanical sliding metal release lock" and that "Cable restraints must be equipped with an approved lock." The "approved" locks are listed and visually represented in § 141.66(g). The current list of approved locks is based upon research conducted during the development of Best Management Practices for Trapping in the United States. The change was intended to expand the number and types of locks available to trappers using snares. Furthermore, these changes will provide consistency in the legal lock requirements for cable restraints and snares.

Cage or box traps are efficient, selective and humane tools for harvesting furbearers. Section 2361 of the code (relating to unlawful acts concerning taking of furbearers) references the Commission's authority to approve cage or box type traps for taking furbearers, but their permitted use has not been asserted in the trapping regulations. The Commission amended §§ 141.67 and 141.68 to specifically add cage or box traps, as well as other currently accepted trapping devices, to the list of approved devices.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." The amendments to §§ 141.63, 141.67 and 141.68 are adopted under this authority.

2. Regulatory Requirements

This final-form rulemaking amends §§ 141.63, 141.67 and 141.68 to provide greater clarity in common trapping terminology and increased understanding in what trapping devices are permitted within this Commonwealth.

3. Persons Affected

Persons wishing to trap or take furbearers within this Commonwealth may be affected by this final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

5. Cost and Paperwork Requirements

This final-form rulemaking should not result in any additional cost or paperwork.

6. Effective Date

This final-form rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding this final-form rulemaking, contact Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking; and adoption of regulations).

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending §§ 141.63, 141.67 and 141.68.

(b) The Executive Director of the Commission shall certify this order and 49 Pa.B. 2612 and deposit them with the Legislative Reference Bureau as required by law.

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

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-443 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter D. FURBEARERS

§ 141.63. Definitions.

In addition to the definitions contained in the act and this part, the following words, when used in the enforcement of section 2361 of the act (relating to unlawful acts concerning taking of furbearers) have the following meanings, unless the context clearly indicates otherwise:

Artificial cubby—A baited enclosure constructed of natural or artificial material that is designed to house and corral a furbearer into a body-gripping trap.

Body-gripping trap—A jawed trap device designed to capture and kill a furbearer by compression of the neck or body through the operation of one or two rotating, spring-loaded jaws activated by a trigger.

Cable restraint—A galvanized stranded steel cable with a minimum diameter of 3/32 inches. The cable must be constructed of either 7 bundles comprised of 7 wires per bundle, 7 bundles comprised of 19 wires per bundle or 1 bundle comprised of 19 wires. The cable may not exceed 7 feet in length from the anchor point to the lock contacting the fully closed loop stop, must be equipped with at least one swivel device (which allows for 360° rotation) between the loop and the anchor and must have stops affixed to the cable to ensure that the circumference of the cable which makes up the loop may not be greater than 38 inches when fully open, or less than 8 inches when fully closed. Cable restraints must be equipped with an approved lock. The lock may not be constructed with moving parts. A cable restraint must include a breakaway device affixed between the lock and cable or at the end of the

cable that is rated at 375 pounds or less. The cable must be maintained in good condition so that all components operate properly.

Cage or box trap—An enclosure trap designed to capture and restrain a live furbearer by confinement in a cage or box through the operation and closure of a door or portal activated by a trigger.

Foot encapsulating trap—A device that has all triggering and restraining mechanisms enclosed by a housing which, once set, allows access to the triggering mechanism through a single opening not to exceed 2 inches in diameter or diagonally and is anchored by a swivel-mounted anchoring mechanism.

Leg-hold trap—A jawed trap device designed to capture and restrain a live furbearer by the foot through operation of one or two rotating, spring-loaded jaws activated by a trigger.

Marsh, pond or dam—A standing body of water.

Snare—A looped galvanized or stainless stranded steel cable 3/32 inches in diameter equipped with an approved lock listed in § 141.66(g) (relating to cable restraints). A metal ferrule shall be crimped on the cable to prevent the snare loop from closing to a circumference less than 7 inches.

Waterway or watercourse—A riverine system that contains water which includes the semi-permanent flooded area.

§ 141.67. Furbearer seasons.

(a) *Permitted devices.* It is lawful to hunt or take furbearers during any furtaking season with the following devices:

- (1) A manually operated or semiautomatic rifle or manually operated handgun that propels single-projectile ammunition.
- (2) A manually operated or semiautomatic, centerfire shotgun or muzzleloading shotgun. The firearm must be 10 gauge or less, that propels single-projectile ammunition or multiple-projectile shotgun ammunition not larger than # 4 buckshot. The centerfire shotgun's magazine capacity may not exceed two rounds. The shotgun's total aggregate ammunition capacity may not exceed three rounds.
- (3) A muzzleloading rifle or handgun that propels single-projectile ammunition.
- (4) A bow and arrow.
- (5) A crossbow and bolt.
- (6) A manually operated or semiautomatic air rifle or manually operated air handgun .22 caliber or larger that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.
- (7) A leg-hold trap, except as prohibited under section 2361(a)(8) of the act (relating to unlawful acts concerning taking of furbearers).
- (8) A body-gripping trap, except as prohibited under section 2361(a)(11) of the act.
- (9) A cable restraint device authorized by § 141.66 (relating to cable restraints).
- (10) A snare, except as prohibited under § 141.62(b) (relating to beaver and otter trapping).
- (11) A cage or box trap, except as prohibited under section 2361(a)(17) of the act.

(b) *Prohibitions.* While hunting furbearers during any furbearer hunting or trapping season, it is unlawful to:

- (1) Use or possess multiple-projectile shotgun ammunition larger than # 4 buckshot, except as authorized under section 2525 of the act (relating to possession of firearm for protection of self or others).
- (2) Use or possess a device or ammunition not provided for in the act or in this section, except as authorized under section 2525 of the act.
- (3) Use any firearm, other than authorized in this paragraph, to dispatch legally trapped furbearers during the overlap with the regular or special firearms deer seasons:
 - (i) A manually operated or semiautomatic rimfire rifle or manually operated rimfire handgun .22 caliber or less.
 - (ii) A manually operated or semiautomatic air rifle or manually operated air handgun between .177 and .22 caliber, inclusive, that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

§ 141.68. Prohibited devices.

It is unlawful to take furbearers through the use of the following devices;

- (1) Fish hooks, snagging hooks or any other hooks of similar design.
- (2) Implements that are not lawful traps, snares, cable restraints, firearms, bows or crossbows.

[Pa.B. Doc. No. 19-1315. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Wild Pheasant Recovery Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 23, 2019, meeting amended § 141.28 (relating to wild pheasant recovery areas) by eliminating the Hegins-Gratz Valley Wild Pheasant Recovery Area (WPRA), modifying the boundaries of the Central Susquehanna and Franklin County WPRAs and removing the dog training restriction within areas designated as WPRAs to better represent and protect existing populations of wild pheasants.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 49 Pa.B. 2614 (May 25, 2019).

1. Purpose and Authority

The Commission completed a final report on the Wild Pheasant Recovery Area (WPRA) project and made several amendments to § 141.28 based upon the findings of this report. The Hegins-Gratz Valley WPRA was established by the Commission in 2010. In 2011, 300 wild pheasants were trapped and transferred to the WPRA and annual population and habitat monitoring have

continued through 2018. Population surveys show that current wild pheasant numbers in this WPRAs are very low, and much lower than the initial population at the conclusion of releases. The Commission has concluded that due to habitat conditions, a huntable wild pheasant population is not achievable or sustainable within this WPRAs, and that in keeping with guidelines established in the Pennsylvania Ring-necked Pheasant Management Plan for unsuccessful WPRAs, the Hegins-Gratz Valley WPRAs was dissolved and the area reopened to either-sex pheasant hunting and to the stocking of game farm pheasants. Boundary changes for both the Central Susquehanna and Franklin County WPRAs were completed, reducing the size of each WPRAs to better represent existing populations of wild pheasants. Finally, the Commission removed the dog training restriction within WPRAs based upon its assessment that there is low likelihood of negative impacts from this activity on now-established pheasant populations.

Section 2102(a) of the code (relating to regulations) provides that “[t]he commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 141.28 are adopted under this authority.

2. Regulatory Requirements

This final-form rulemaking amends § 141.28 by eliminating the Hegins-Gratz Valley WPRAs, modifying the boundaries of the Central Susquehanna and Franklin County WPRAs and removing the dog training restriction within areas designated as WPRAs to better represent and protect existing populations of wild pheasants.

3. Persons Affected

Persons wishing to hunt or take pheasants or train dogs on small game within areas designated as WPRAs may be affected by this final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

5. Cost and Paperwork Requirements

This final-form rulemaking should not result in any additional cost or paperwork.

6. Effective Date

This final-form rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding this final-form rulemaking, contact Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking; and adoption of regulations).

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.28.

(b) The Executive Director of the Commission shall certify this order and 49 Pa.B. 2614 and deposit them with the Legislative Reference Bureau as required by law.

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

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-442 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.28. Wild pheasant recovery areas.

(a) *Definition.* For the purpose of this section, the phrase “wild pheasant recovery area” (WPRAs) includes and is limited to the following geographic locations.

(1) *Central Susquehanna WPRAs.* Portions of WMU 4E in Northumberland, Montour and Columbia Counties, bounded and described as follows. Beginning in the southwestern extent of the WPRAs at the intersection of Interstate 80 and Interstate 180, proceed north on Interstate 180 for approximately 7.2 miles to the intersection of Hughes Road. The boundary follows Hughes Road east for 0.2 mile to Susquehanna Trail. Follow Susquehanna Trail south for 0.2 mile to Schmidt Road. Follow Schmidt Road for 1.6 miles to Miller Road. Follow Miller Road east for 1.1 miles to intersection of Hockey Hill Road. Go right on Hockey Hill Road then left onto Pugmore Lane. Follow Pugmore Lane for 0.7 mile to Harrison Road. The boundary follows Harrison Road south for 0.7 mile to Showers Road. Follow Showers Road for 1.2 miles east to intersection of Gearhart Road. Turn right on Gearhart Road and go south for 0.6 mile to the intersection of Hickory Road. The boundary follows Hickory Road east for 0.6 mile then left onto Mingle Road for 0.9 mile until rejoining Hickory Road for another 0.8 mile to the intersection of Muncy Exchange Road. The boundary follows Muncy Exchange Road south for 1.4 miles to bridge over the West Branch of Chillisquaue Creek near the intersection of State Highway 44. The boundary follows the West Branch of Chillisquaue Creek south for approximately 2.1 miles to the bridge on Arrowhead Road. The boundary follows Arrowhead Road west for 0.8 mile to the intersection of State Highway 54. Follow State Highway 54 south for 2.6 miles to the intersection of State Highway 254. Follow State Highway 254 west for 6.6 miles to the intersection of Interstate 80. Follow

Interstate 80 west for 3.4 miles to the intersection of Interstate 180 and the point of origin.

(2) *Franklin County WPRAs*. That portion of WMUs 4A and 5A in Franklin County bounded and described as follows: Beginning at the town of Mercersburg at the intersection of PA Rt. 16 (N. Main St.) and Johnstons Ln., proceed 1.9 miles west on Johnstons Ln. At the intersection of Johnstons Ln. and Charlestown Rd., proceed 0.7 miles due west following the Montgomery/Peters Township lines to the top of Cove Mountain. Proceed south along the Montgomery/Warren Township lines following the spine of Cove Mountain 7.9 miles to its intersection with cleared gas line utility right-of-way. Proceed 4.3 miles northeast along utility right-of-way to its intersection with Blairs Valley Rd. Proceed 1 mile south on Blairs Valley Rd. to the intersection with Hunter Rd. Proceed 2.5 miles east on Hunter Rd. to the intersection with Rt. 75 (Fort Loudon Rd.). Proceed across Rt. 75 onto Garnes Rd. and follow 2.6 miles northeast to the intersection with Rt. 416 (Mercersburg Rd.). Proceed 2.4 miles north on Rt. 416 to the intersection with Rt. 16 (Buchanan Trail West). Proceed 2.7 miles northwest on Rt. 16 through the town of Mercersburg to the intersection with Johnstons Ln. at point of origin.

(b) *Prohibitions*. It is unlawful to:

(1) Release artificially propagated pheasants any time within any area designated as a WPRAs.

(2) Hunt pheasants within any area designated as a WPRAs, except the Director may authorize limited youth pheasant hunting opportunities by Commission-issued access permit in the Central Susquehanna WPRAs. During any year youth pheasant hunting opportunities are authorized in the Central Susquehanna WPRAs, the Director will establish the number of hunting access permits to be issued, a manner of distribution for a limited number of access permits to be raffled off by an organization promoting pheasant recovery efforts within this Commonwealth, and designate one or more pheasant hunt zones within the WPRAs prior to the opening of the earliest established youth pheasant season. The Director or a designee will establish the application deadline and the date, time and location for the random drawing of applications for the issuance of any remaining limited youth pheasant hunting access permits within the Central Susquehanna WPRAs. Limited youth pheasant hunting access permits are not transferrable. A pheasant hunting access permit shall be signed and carried on person when hunting or taking pheasants within the Central Susquehanna WPRAs.

[Pa.B. Doc. No. 19-1316. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Deer Control

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 23, 2019, meeting, amended § 147.322 (relating to application for deer control permit) to require applicants to provide specific hunter and hunter harvest information from previous public hunting activities upon their application.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 49 Pa.B. 2616 (May 25, 2019).

1. Purpose and Authority

Section 147.322(c) has historically required that all “[p]ublic land within the proposed boundaries shall be open to lawful public hunting unless otherwise prohibited under this title or as otherwise authorized or waived by the Director.” In large part, this requirement is derived directly from section 103(b) of the code (relating to ownership, jurisdiction and control of game and wildlife) which provides, in relevant part, that “[t]he commission shall utilize hunting and trapping as methods of effecting necessary management of game, furbearer and wildlife populations.” While section 103 does not limit management of wild resources to public hunting only, the Commission has concluded that it is clearly intended as the primary method of management.

Over the years, the Commission has observed that deer control permit applicants utilize varying degrees of use of public hunting as a prerequisite to meeting the public hunting requirement of § 147.322. Many applicants have established organized controlled hunts, while others have organized or invited established hunting clubs onto the public or private, or both, properties covered by the permit to help reduce deer populations. However, at present, the Commission has no way to validate the information provided within deer control applications concerning these public hunt activities. The Commission amended § 147.322 to require applicants to provide specific hunter and hunter harvest information from previous public hunting activities with the application. This action will improve the use and prominence of public hunting as the primary method of wild resource management without unduly restricting the purpose and ultimate goals of the deer control permit program.

Section 2901(b) of the code (relating to authority to issue permits) provides that “the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” The amendments to § 147.322 were adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 147.322 to require applicants to provide specific hunter and hunter harvest information from previous public hunting activities with the application.

3. Persons Affected

Persons wishing to make application for a deer control permit within this Commonwealth may be affected by this final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

5. Cost and Paperwork Requirements

This final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

This final-form rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding this final-form rulemaking, contact Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking; and adoption of regulations).

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.322.

(b) The Executive Director of the Commission shall certify this order and 49 Pa.B. 2616 and deposit them with the Legislative Reference Bureau as required by law.

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

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-445 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter R. DEER CONTROL

POLITICAL SUBDIVISIONS

§ 147.322. Application for deer control permit.

(a) An application for a deer control permit shall be completed and submitted by an authorized officer or employee of the political subdivision, homeowners association or nonprofit land-holding organization in the form and manner required by the Director.

(b) An application for a deer control permit must contain the following information:

(1) *Description.* A comprehensive description of the background and scope of the white-tailed deer population or damage problem, or both. The description must include a report of all alternative solutions or other steps taken by the applicant to mitigate the white-tailed deer population or damage problem, or both, prior to application for this permit.

(2) *Public hunting requirement.* The application must specifically define how licensed public hunting for white-tailed deer has been utilized in the problem area and

what results hunting activities have had on the population or damage problem, or both. The application must list the name, C.I.D. number and hunter harvest information related to public hunting activities that have previously taken place in the problem area.

(3) *Deer management plan.* A comprehensive deer management plan which sets forth the applicant's white-tailed deer management goals, recommended implementation plan and a reference to the specific number of animals south to be removed. The applicant shall specifically define how licensed public hunting for white-tailed deer will be utilized in the problem area during the term of the requested deer control permit.

(4) *Map.*

(i) A map or set of maps showing the proposed project area and its boundaries and clearly illustrating all of the following distinct features and areas within the proposed project area:

- (A) Land uses.
- (B) Cover types.
- (C) Areas open to public hunting for white-tailed deer.
- (D) Areas damaged by white-tailed deer.
- (E) Areas of white-tailed deer congregation.
- (F) Applicable safety zones.
- (G) Proposed white-tailed deer control areas.

(ii) The map must indicate the individual acreage values for each of the listed features and acres.

* * * * *

[Pa.B. Doc. No. 19-1317. Filed for public inspection August 30, 2019, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 617a, 625a, 637a, 639a, 641a, 643a, 647a, 653a, 655a, 657a, 677a, 679a AND 684a]

Table Game Rules of Play

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 13A02(1) and (2) (relating to regulatory authority), amends Chapters 617a, 625a, 637a, 639a, 641a, 643a, 647a, 653a, 655a, 657a, 677a, 679a and adds 684a to read as set forth in Annex A.

Purpose of this Final-Form Rulemaking

This final-form rulemaking incorporates new side wagers, payout tables and variations of existing table games and adds a new table game to the compliment of games available for play in this Commonwealth.

Explanation

Minor revisions were made throughout this final-form rulemaking for clarity and for consistency amongst all table game chapters. Revisions to specific chapters are as follows:

Chapter 617a. Roulette

Touchdown Roulette, a new side wager, is added in Chapter 617a (relating to roulette). The layout require-

ments for Touchdown Roulette are added in § 617a.1 (relating to Roulette ball; Roulette wheel and table; physical characteristics; double zero Roulette wheel used as a single zero Roulette wheel), a description of the wagers is added in § 617a.3 (relating to placement of wagers) and the payout odds for the wager are added to § 617a.4 (relating to payout odds).

Chapter 625a. Sic Bo

A new variation is added to the game of Sic Bo in which a player can activate the automated Sic Bo shaker. Additionally, a new payout table is added to the game in § 625a.6(a) (relating to payout odds) and the language in subsection (b) was amended for clarity.

Chapter 637a. Poker

Section 637a.10 (relating to Seven-card Stud Poker; procedures for dealing the cards; completion of each round of play) allows up to nine players to participate in a round of play, which is consistent with the number of players allowed in other Poker games.

Chapter 639a. Caribbean Stud Poker

In § 639a.12(d) (relating to payout odds; rate of progression) new payout tables are added to the progressive payout wager. The same payout tables are also approved for the progressive payout wager (or referred to as the Five-Card Progressive Payout Wager) in Chapters 641a, 643a, 647a, 653a, 655a and 657a.

Additionally, seed/reseed and incrementation rates are specified for all progressives as these rates correspond with the rates submitted by the manufacturer that were tested/approved by the Board's Gaming Lab. The same revisions are also made in Chapters 641a, 643a, 647a, 653a, 655a and 657a.

Chapter 641a. Four Card Poker

A new side wager, the Six Card Bonus Wager, is added to the game. Layout requirements for the new wager are added in § 641a.2 (relating to Four Card Poker table physical characteristics), the description of the winning hands is added in § 641a.6 (relating to Four Card Poker rankings), a description of the wager is added in § 641a.7 (relating to wagers), the procedure for dealing the Six Card Bonus Wager card is added in §§ 641a.8—641a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe) and the procedure to complete the round of play when a patron has placed a Six Card Bonus Wager is added in § 641a.11 (relating to procedures for completion of each round of play). The permissible payout odds for the wager are added in § 641a.12 (relating to payout odds; Envy Bonus; rate of progression).

The Six Card Bonus Wager is also added, in the same format, to Chapters 643a, 647a, 653a, 655a and 657a.

Chapter 643a. Let It Ride Poker

In § 643a.12 (relating to payout odds; payout limitation), the odds for the Five Card Bonus Wager in subsection (b) are corrected to reflect that odds are paid out based on the denomination of the wager placed by the player and should thus be in the consistent "to 1" format.

Chapter 653a. Ultimate Texas Hold 'Em Poker

A Bad Beat Bonus Wager is added to Ultimate Texas Hold 'Em Poker. The table layout requirements for the wager is added in § 653a.2 (relating to Ultimate Texas Hold 'Em Poker table physical characteristics), a descrip-

tion of the wager is added in § 653a.7 (relating to wagers), how the dealer is to complete the round of play when a player has placed a Bad Beat Bonus Wager is added to § 653a.11 (relating to procedures for completion of each round of play) and the payout odds are added in § 653a.12(g) (relating to payout odds; Envy Bonus; rate of progression; payout limitation).

Additionally, the payout limitation in § 653a.12 reflects that only required wagers are subject to a payout limitation. Wagers that are optional for players should not be included as a cap on payouts as it alters the approved hold percentages. Amendments to payout limitations to reflect that only required wagers may be subject to a cap were also made in Chapters 677a and 679a (relating to World Poker Tour Heads-Up Hold 'Em; and Three Card Prime).

Chapter 655a. Mississippi Stud

Other table game chapters contain a section addressing the procedures for handling irregularities that occur during play of the game. Section 655a.13 (relating to irregularities) is therefore amended for consistency with other table game chapters.

Chapter 679a. Three Card Prime

In §§ 679a.8—679a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe), an alternative dealing procedure is added which allows operators to deal only one community card to be used by all players who placed a Pair Bonus Wager rather than dealing each player who placed the wager an additional card.

Chapter 684a. Four Card Frenzy

Chapter 684a (relating to Four Card Frenzy) contains the requirements for a new table game, Four Card Frenzy. Section 684a.1 (relating to definitions) contains the definitions used throughout the chapter. Section 684a.2 (relating to Four Card Frenzy table physical characteristics) contains the physical characteristics of the table layout. Section 684a.3 (relating to cards; number of decks) details the number of cards and decks used to play the game. Section 684a.4 (relating to opening of the table for gaming) addresses how the dealer is to open the table game for play. Section 684a.5 (relating to shuffle and cut of the cards) details how the cards are to be shuffled and cut. Section 684a.6 (relating to Four Card Frenzy rankings) addresses the rank of the cards and hands. Section 684a.7 (relating to wagers) outlines the permissible wagers players may place during a round of play.

Sections 684a.8—684a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe) address how the cards are to be dealt and the number of cards dealt to each player. Section 684a.11 (relating to procedures for completion of each round of play) specifies how wagers are to be settled and a round of play completed. Section 684a.12 (relating to payout odds; payout limitation) outlines the permissible payout odds for winning wagers and allows the operator to place a payout limit, per player per round of play on required wagers. Section 684a.13 (relating to irregularities) addresses how a dealer is to handle irregularities during play.

The approved payout tables in § 684a.12 have a hold percentage of between 1.19% and 1.67% for required wagers. For optional wagers, the hold percentage ranges

from 1.7% to 7.23% for the Four Bonus Wager, between 6.74% to 18.1% for the All Six Bonus Wager (the same wager offered in Four Card Prime and Cajun Stud), and from 4.74% to 9.8% for the Prime Wager.

Comment and Response Summary

Notice of the proposed rulemaking was published at 47 Pa.B. 3182 (June 10, 2017). The Board did not receive comments from the public or the regulated community. The Independent Regulatory Review Commission (IRRC) reviewed the proposed rulemaking and issued no comments or recommendations. All changes from the proposed rulemaking to this final-form rulemaking were editorial changes made for publication in the *Pennsylvania Bulletin*.

Fiscal Impact

Commonwealth. The Board does not expect that the provisions contained in this final-form rulemaking will have a fiscal impact on the Board or any other Commonwealth agency. Updates to Rules Submission forms and internal control procedures will be reviewed by existing Board staff.

Political Subdivisions. This final-form rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private Sector. The amendments contained in this final-form rulemaking will provide certificate holders with additional table game options. If a certificate holder decides to offer one of the games or side wagers within the licensed facility, the certificate holder will be required to train their dealers on the rules of play and purchase new equipment—specifically table layouts corresponding to the game and wagers offered. Costs incurred to train employees or purchase/lease equipment should be offset by the proceeds of gaming.

General Public. This final-form rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

If a certificate holder selects different options for the play of table games, the certificate holder will be required to submit an updated Rules Submission form reflecting the changes. These forms are available and submitted to Board staff electronically. Table game Rules Submission forms are available at <http://gamingcontrolboard.pa.gov/?p=187>.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 22, 2017, the Board submitted a copy of the proposed rulemaking, published at 47 Pa.B. 3182 (June 10, 2017) and a copy of the Regulatory Analysis Form to the IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees are provided with copies of comments received during the public comment period, as well as other documents when requested. With regard to this final-form rulemaking, no comments were received from the Committees.

Under section 5a(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form rulemaking was deemed approved by the Committees. IRRC met on July 18, 2019, and approved this final-form rulemaking in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments 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. (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) This final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(1) The regulations of the Board, 58 Pa. Code Chapters 617a, 625a, 637a, 639a, 641a, 643a, 647a, 653a, 655a, 657a, 677a, 679a and 684a, are amended by adding §§ 684a.1—684a.13 and amending §§ 617a.1, 617a.3, 617a.4, 625a.1, 625a.5, 625a.6, 637a.10, 639a.7, 639a.10, 639a.12, 641a.2, 641a.6—641a.12, 643a.2, 643a.6—643a.12, 647a.2, 647a.6—647a.12, 653a.2, 653a.6—653a.12, 655a.2, 655a.6—655a.13, 657a.2, 657a.6—657a.12, 677a.7, 677a.12 and 679a.8—679a.12 to read as set forth in Annex A.

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

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

DAVID M. BARASCH,
Chairperson

(*Editor's Note:* See 49 Pa.B. 4087 (August 3, 2019) for IRRC's approval order.)

Fiscal Note: Fiscal Note 125-205 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart K. TABLE GAMES

CHAPTER 617a. ROULETTE

§ 617a.1. Roulette ball; Roulette wheel and table; physical characteristics; double zero Roulette wheel used as a single zero Roulette wheel.

* * * * *

(f) The layout for a Roulette table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) and contain, at a minimum:

* * * * *

(4) If the certificate holder offers the Five Adjacent Number Wager authorized under § 617a.3, a replica of the Roulette wheel.

(5) If the certificate holder offers the Touchdown Roulette Wager offered on a fully automated electronic table game, the electronic layout must contain a separate area designated for the electronic placement of the Touchdown Roulette Wager for each player. If the certificate holder is offering the Touchdown Roulette Wager, Roulette shall be played on a double zero Roulette wheel as described in subsection (d).

(g) Each Roulette table must have a drop box and tip box attached in locations as approved by the Bureau of Casino Compliance in accordance with § 601a.10(g).

§ 617a.3. Placement of wagers.

* * * * *

(e) The wagers in the game of Roulette include:

* * * * *

(14) A 19—36 Wager that the Roulette ball will come to rest in a compartment of the Roulette wheel that corresponds to any 1 of 18 consecutive numbers from 19—36. The player shall make a 19—36 Wager by placing a wager within the box on the Roulette layout that is labeled 19—36.

(f) If the certificate holder offers Touchdown Roulette on a fully automated electronic gaming table, a player may make a Touchdown Roulette Wager before each Roulette spin unless a Touchdown Roulette game is already in progress. A Touchdown Roulette Wager shall be made by electronically placing a value chip on the designated area of the table layout. After placing a Touchdown Roulette Wager, if the Roulette ball comes to rest on:

(1) Any number (1—36), the Touchdown Roulette Wager shall lose and be collected.

(2) A 0 or 00, the player shall choose either the red team or black team. To begin the Touchdown Football

game, the electronic football shall be placed at the 50 yard line. Each Touchdown Roulette game shall last for the next four spins (downs). The player has four downs to move the football as close to the chosen team’s end zone, based on the value of the compartment upon which the ball lands. The color of the compartment determines whether the football moves toward the end zone of the red team or black team. For example, if a player selected the red team and if over the course of the next four spins the football collectively moved:

(i) To the 18 yard line for the red team, the player would be paid out for a win on the 11—20 yard line as provided in § 617a.4(d) (relating to payout odds).

(ii) To the 18 yard line for the black team, the player would be paid out for selecting the losing team as provided in § 617a.4(d).

§ 617a.4. Payout odds.

* * * * *

(c) When Roulette is played on a double zero wheel being used as a single zero wheel, as provided in § 617a.1 (relating to Roulette ball; Roulette wheel and table; physical characteristics; double zero Roulette wheel used as a single zero Roulette wheel), the following apply:

(1) Notice shall be provided that the double zero wheel is being used as a single zero wheel.

(2) If the Roulette ball comes to rest in a compartment marked double zero (00), the dealer shall announce “no spin,” declare the spin void and respin the wheel.

(3) Wagers on red, black, odd, even, 1—18 and 19—36 will be lost if the Roulette ball comes to rest in a compartment marked zero (0).

(d) The certificate holder shall pay out winning Touchdown Roulette Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission form filed in accordance with § 601a.2 (relating to table games Rules Submissions):

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Touchdown	1,000 to 1	500 to 1	1,000 to 1	500 to 1
1—10 yard line	150 to 1	250 to 1	200 to 1	200 to 1
11—20 yard line	75 to 1	75 to 1	75 to 1	100 to 1
21—30 yard line	50 to 1	50 to 1	50 to 1	50 to 1
31—40 yard line	25 to 1	25 to 1	25 to 1	25 to 1
41—49 yard line	10 to 1	10 to 1	10 to 1	10 to 1
Tie—50 yard line	5 to 1	5 to 1	5 to 1	5 to 1
Losing team	1 to 1	1 to 1	1 to 1	1 to 1

CHAPTER 625a. SIC BO

§ 625a.1. Sic Bo table; Sic Bo shaker; physical characteristics.

* * * * *

(d) Sic Bo shall be played with a Sic Bo shaker approved in accordance with § 601a.10(a), which shall be used to shake the dice to arrive at the winning combinations.

* * * * *

(2) An automated Sic Bo shaker, approved by the Bureau of Gaming Laboratory Operations in accordance with § 461a.4, may be used in the game of Sic Bo, provided that:

(i) The automated Sic Bo shaker must have a transparent compartment that is capable of being sealed or locked to secure the three dice and, depending on the shaker selected by the certificate holder, may utilize a separate opaque cover which conceals the dice while the automated Sic Bo shaker is activated.

* * * * *

§ 625a.5. Procedures for opening and dealing the game.

* * * * *

(f) After all losing wagers have been collected and all winning wagers have been paid, the dealer shall clear the previously illuminated winning combinations from the table.

(g) Notwithstanding the requirements in subsections (b) and (c), if the certificate holder is utilizing an automated Sic Bo shaker without an opaque cover or a player-activated Sic Bo shaker, all wagers shall be placed prior to the shaker being activated. After the dealer announces “no more bets,” the dealer, or a selected player if utilizing a player-activated shaker, shall then activate the automated dice shaker and complete the requirements in subsections (d)—(f).

§ 625a.6. Payout odds.

(a) The certificate holder shall pay out winning Sic Bo wagers at the odds in one of the following paytables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2 (relating to table games Rules Submissions):

<i>Wager</i>	<i>Paytable A</i>	<i>Paytable B</i>
Three of a Kind	150 to 1	180 to 1
Two of a Kind	8 to 1	11 to 1
Any Three of a Kind	24 to 1	31 to 1
Total Value Bet of 4	50 to 1	62 to 1
Total Value Bet of 5	18 to 1	31 to 1
Total Value Bet of 6	14 to 1	18 to 1
Total Value Bet of 7	12 to 1	12 to 1
Total Value Bet of 8	8 to 1	8 to 1
Total Value Bet of 9	6 to 1	7 to 1
Total Value Bet of 10	6 to 1	6 to 1
Total Value Bet of 11	6 to 1	6 to 1
Total Value Bet of 12	6 to 1	7 to 1
Total Value of Bet 13	8 to 1	8 to 1
Total Value of Bet 14	12 to 1	12 to 1
Total Value of Bet 15	14 to 1	18 to 1
Total Value Bet of 16	18 to 1	31 to 1
Total Value Bet of 17	50 to 1	62 to 1
Any Two Dice Combination	5 to 1	6 to 1
Small Bet	1 to 1	1 to 1
Big Bet	1 to 1	1 to 1

(b) For purposes of a One of a Kind Wager:

(1) If only one of the dice show the numeric value upon which the wager was placed, the One of a Kind Wager shall be paid at 1 to 1.

(2) If two of the dice show the numeric value upon which the wager was placed, the One of a Kind Wager shall be paid at 2 to 1.

(3) If all three dice show the same numeric value upon which the wager was placed and if the certificate holder selected:

(i) Paytable A in subsection (a), the One of a Kind Wager shall be paid at 3 to 1.

(ii) Paytable B in subsection (a), the One of a Kind Wager shall be paid at 12 to 1.

(c) A certificate holder may list its payouts odds in subsections (a) and (b) as either “to 1” or “1 wins.”

CHAPTER 637a. POKER

§ 637a.10. Seven-card Stud Poker; procedures for dealing the cards; completion of each round of play.

* * * * *

(b) No more than nine players may participate in a Seven-card Stud Poker game. Each player who elects to participate in a round of play may be required to place an Ante bet. The rules governing the placement of an Ante bet and the amount of the Ante bet, if any, shall be specified in the certificate holder’s Rules Submission under § 601a.2 (relating to table games Rules Submissions) and posted on a sign at each Poker table.

* * * * *

CHAPTER 639a. CARIBBEAN STUD POKER

§ 639a.7. Wagers.

* * * * *

(e) The certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 639a.10. Procedures for dealing the cards from an automated dealing shoe.

* * * * *

(b) The dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to the player farthest to the dealer’s left who has placed an Ante Wager in accordance with § 639a.7(d)(1) (relating to wagers). As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed an Ante Wager. The dealer shall then deliver a stack of five cards face down to the area designated for the placement of the dealer’s cards and spread the cards face down on the layout so the top card of the stack is to the dealer’s right and the bottom card is to the dealer’s left. The dealer shall turn the bottom card of the stack (the card on the dealer’s far left) face up and leave the other four cards in the stack face down on the area designated for the placement of the dealer’s cards.

* * * * *

§ 639a.12. Payout odds; rate of progression.

* * * * *

(d) If a certificate holder offers the Progressive Payout Wager:

(1) The certificate holder shall pay out winning Progressive Payout Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>
Royal flush	100% of meter	100% of meter	100% of meter
Straight flush	5,000 for 1	10% of meter	10% of meter
Four-of-a-kind	500 for 1	500 for 1	200 for 1
Full house	100 for 1	100 for 1	50 for 1
Flush	50 for 1	50 for 1	40 for 1
Straight	10 for 1	10 for 1	30 for 1
Three-of-a-kind	3 for 1	3 for 1	9 for 1
Two pair	2 for 1	2 for 1	N/A

<i>Hand</i>	<i>Paytable D</i>	<i>Paytable E</i>
Royal flush	100% of meter	100% of meter
Straight flush	10% of meter	10% of meter
Four-of-a-kind	300 for 1	500 for 1
Full house	50 for 1	100 for 1
Flush	40 for 1	50 for 1
Straight	30 for 1	N/A
Three-of-a-kind	9 for 1	N/A

<i>Hand</i>	<i>Paytable F</i>	<i>Paytable G</i>	<i>Paytable H</i>
Royal flush	100% mega jackpot	100% mega jackpot	100% mega jackpot
Straight flush	100% major jackpot	100% major jackpot	100% major jackpot
Four-of-a-kind	300 for 1	100% minor jackpot	100% minor jackpot
Full house	50 for 1	50 for 1	50 for 1
Flush	40 for 1	40 for 1	40 for 1
Straight	30 for 1	30 for 1	30 for 1
Three-of-a-kind	9 for 1	10 for 1	9 for 1

(2) A player shall receive the payout for only the highest ranking five-card Poker hand formed.

(3) Paytables A, B, C and E may not be selected by the certificate holder if the Progressive Payout Wager is offered on multiple linked games with a shared progressive jackpot.

(4) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>	<i>Paytable E</i>
Seed/reseed	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1
Incrementation rate					
Primary	53%	53%	25%	21%	65%
Reserve	15%	15%	N/A	N/A	5%

	<i>Paytable F</i>	<i>Paytable G</i>	<i>Paytable H</i>
Seed/reseed			
Mega	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1
Major	\$1,000 for 1	\$1,000 for 1	\$1,000 for 1
Minor	N/A	\$250 for 1	\$250 for 1
Incrementation rate			
Mega	11%	9%	10%
Major	10%	7%	8%
Minor	N/A	3%	3%

(5) Winning Progressive Payout Hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with § 639a.11(c)(5) (relating to procedure for completion of each round of play).

(6) If the certificate holder selects Paytables D, F, G or H, Envy Bonus payouts shall be made according to the following payouts for Envy Bonus Qualifying Hands based upon the amount of the Progressive Payout Wager placed by the player receiving the Envy Bonus:

* * * * *

(e) If a certificate holder offers the Five Card Hand Bonus Wager:

* * * * *

(4) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

Seed	\$10,000 for 1
Reseed	\$0
Incrementation rate	
Primary	13%
Reserve	8%

CHAPTER 641a. FOUR CARD POKER

§ 641a.2. Four Card Poker table physical characteristics.

* * * * *

(b) The layout for a Four Card Poker table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

* * * * *

(5) If a certificate holder offers the Five Card Hand Bonus Wager authorized under § 641a.7(d)(7), each betting position must contain an electronic wagering system for the placement of the Five Card Hand Bonus Wager.

(6) If the certificate holder offers the Six Card Bonus Wager authorized under § 641a.7(d)(8), the layout must contain:

- (i) A separate area designated for the placement of the Six Card Bonus Wager for each player.
- (ii) A designated area on the layout for the additional Six Card Bonus card.

(7) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers offered by the certificate holder. If payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each Four Card Poker table.

* * * * *

§ 641a.6. Four Card Poker rankings.

* * * * *

(d) When the certificate holder offers a payout based on the rank of a five-card Poker hand, the rank of the hands must be:

* * * * *

(7) A three-of-a-kind, which is a hand consisting of three cards of the same rank.

(e) If the certificate holder offers the optional Six Card Bonus Wager, the Poker hands eligible for a payout are:

- (1) A six-card royal flush, which is a hand consisting of an ace, king, queen, jack, 10 and 9 of the same suit.
- (2) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.
- (3) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking.

(4) A four-of-a-kind, which is a hand consisting of four cards of the same rank, regardless of suit.

(5) A full house, which is a hand consisting of three-of-a-kind and a pair.

(6) A flush, which is a hand consisting of five cards of the same suit.

(7) A straight, which is a hand consisting of five cards of consecutive rank, regardless of suit.

(8) A three-of-a-kind, which is a hand consisting of three cards of the same rank, regardless of suit.

§ 641a.7. Wagers.

* * * * *

(d) The following wagers may be placed in the game of Four Card Poker:

* * * * *

(7) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player at a Four Card Poker table the option to make an additional Five Card Hand Bonus Wager that the player's five-card Poker hand or the dealer's five-card Poker hand, or both, will contain a flush or better as defined in § 641a.6(d) (relating to Four Card Poker rankings). After placing an Ante Wager, a player may make the additional Five Card Hand Bonus Wager on the player's hand or the dealer's hand, or both, by using the electronic wagering device designated for that player. Each player shall be responsible for verifying that the player's Five Card Hand Bonus Wager has been accepted.

(8) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player who placed an Ante Wager the option of placing a Six Card Bonus Wager which shall win if the player's five cards and the additional Six Card Bonus card forms a three-of-a-kind or better as described in § 641a.6(e). A Six Card Bonus Wager does not have bearing on any other wagers made by the player.

(e) A certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 641a.8. Procedures for dealing the cards from a manual dealing shoe.

* * * * *

(d) After all wagers have been placed, if any player placed a Six Card Bonus Wager, the dealer shall deal one card, face down, to the area on the layout designated for the placement of the Six Card Bonus card. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who has placed a wager in accordance with § 641a.7 (relating to wagers) and to the dealer until each player who placed a wager has five cards and the dealer has six cards. All cards dealt to the players and the first five cards dealt to the dealer shall be dealt face down. The dealer's sixth card shall be dealt face up. The dealer's fifth and sixth cards shall be dealt consecutively.

* * * * *

§ 641a.9. Procedures for dealing the cards from the hand.

* * * * *

(b) The dealer shall deal each card by holding the deck of cards in the chosen hand and use the other hand to

remove the top card of the deck and place it face down on the appropriate area of the layout. If any player placed a Six Card Bonus Wager, the dealer shall deal one card, face down, to the area on the layout designated for the placement of the Six Card Bonus card. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who has placed a wager in accordance with § 641a.7 (relating to wagers) and to the dealer until each player who placed a wager has five cards and the dealer has six cards. All cards dealt to the players and the first five cards dealt to the dealer shall be dealt face down. The sixth card dealt to the dealer shall be dealt face up. The dealer's fifth and sixth cards shall be dealt consecutively.

* * * * *

§ 641a.10. Procedures for dealing the cards from an automated dealing shoe.

* * * * *

(b) The dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to the player farthest to the dealer's left who has placed a wager in accordance with § 641a.7 (relating to wagers). As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed a wager in accordance with § 641a.7. The dealer shall then deliver a stack of five cards face down to the area designated for the placement of the dealer's cards.

(c) The dealer shall then remove the next stack of five cards dispensed by the automated dealing shoe and turn the bottom card of the stack face up on the dealer's hand. If any player placed a Six Card Bonus Wager, the dealer shall then deal the next card in the stack face down on the area of the layout designated for the placement of the Six Card Bonus card. The dealer shall then place the remaining cards of that stack in the discard rack without exposing the cards. After the cards have been dispensed and delivered, the dealer shall remove the stub from the automated dealing shoe and, except as provided in subsection (d), place the remaining cards in the discard rack without exposing the cards.

* * * * *

§ 641a.11. Procedures for completion of each round of play.

* * * * *

(b) After each player has examined his cards and placed the cards face down on the layout, the dealer shall, beginning with the player farthest to the dealer's left and moving clockwise around the table, ask each player who placed an Ante Wager if he wishes to make a Play Wager in an amount from one to three times the amount of the player's Ante Wager or forfeit the Ante Wager and end his participation in the round of play. If a player:

- (1) Has placed an Ante Wager and an Aces Up or Six Card Bonus Wager but does not make a Play Wager, the player shall forfeit the Ante Wager but may not forfeit the Aces Up or Six Card Bonus Wager.
- (2) Has placed an Ante Wager and a Four or Five-Card Progressive Payout Wager but does not make a Play Wager, the player shall forfeit both the Ante Wager and the Progressive Payout Wager but may not forfeit the eligibility to receive an Envy Bonus under § 641a.12(d) or (e) (relating to payout odds; Envy Bonus; rate of progression).

(c) After each player who has placed an Ante Wager has either placed a Play Wager on the designated area of the layout or forfeited his Ante Wager, the dealer shall collect all forfeited wagers and associated cards, if applicable, and place the cards in the discard rack. The dealer shall then reveal the dealer's cards and select the four cards that form the highest possible ranking Four Card Poker hand. After the dealer's cards are turned face up, the dealer shall, beginning with the player farthest to the dealer's right and continuing around the table in a counterclockwise direction, complete the following applicable procedures in succession for each player:

* * * * *

(6) After settling any Aces Up Wagers, the dealer shall settle a player's Bad Beat Bonus Wager as follows:

(i) If the player's hand contains a two pair or better and the dealer's hand outranks the player's hand, as provided in § 641a.6(b) (relating to Four Card Poker rankings), the certificate holder shall pay the winning Bad Beat Bonus Wager in accordance with § 641a.12(f) based on the rank of the player's losing hand.

(ii) If the dealer's hand contains a two pair or better and the player's hand outranks the dealer's hand, as provided in § 641a.6(b), the certificate holder shall pay the winning Bad Beat Bonus Wager in accordance with § 641a.12(f) based on the rank of the dealer's losing hand.

(iii) If the player's hand and the dealer's hand tie, if the player's hand of two pair or better does not lose to the dealer's hand, or if the dealer's hand of two pair or better does not lose to the player's hand, the dealer shall collect the player's losing Bad Beat Bonus Wager.

(7) After settling a player's Aces Up Wagers, the dealer shall settle the Five Card Hand Bonus Wager, if offered by the certificate holder, and any Magic Card or Lucky Bonus payouts. The dealer shall form the highest ranking five-card Poker hand of the player and the dealer. For the dealer's hand, the dealer shall form the highest ranking five-card Poker hand from the first five cards dealt to the dealer. A winning Five Card Hand Bonus Wager shall be paid irrespective of whether the player's hand outranks the dealer's hand. If a player has won a Five Card Hand Bonus or any Magic Card or Lucky Bonus payout, the dealer shall:

- (i) Verify that the hand is a winning hand.
- (ii) Have a floorman or above verify any Five Card Hand Bonus payout with odds of 500 for 1 or a payout that is a percentage of the jackpot amount on the progressive meter in accordance with approved internal control procedures submitted under § 465a.2 (relating to internal control systems and audit protocols).

(iii) Credit the player's game account for the winning Five Card Hand Bonus Wager or the Magic Card or Lucky Bonus payout in accordance with § 641a.12(g). If a player has won a Five Card Hand Bonus payout that is a percentage of the jackpot amount on the progressive meter, the payout may not be paid to the player's game account. If a player has won a payout that is not being paid to the player's game account, the winning hand must remain on the table until the necessary documentation has been completed.

(8) The dealer shall then settle a player's Six Card Bonus Wager by revealing the Six Card Bonus card and combining it with the player's five cards to form the highest ranking Poker hand as provided with § 641a.6(e). If the player's hand:

(i) Does not contain a three-of-a-kind or better, the dealer shall collect the player's losing Six Card Bonus Wager.

(ii) Contains a three-of-a-kind or better, the dealer shall pay the winning Six Card Bonus Wager in accordance with § 641a.12(h).

(d) After all wagers of the player have been settled, the dealer shall remove all remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 641a.12. Payout odds; Envy Bonus; rate of progression.

* * * * *

(d) If a certificate holder offers a Four-Card Progressive Payout Wager:

(1) The certificate holder shall pay out winning Four-Card Progressive Payout Wagers at the odds in one of the following paytables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

Hand	Paytable A	Paytable B
Four aces	100% of meter	100% of meter
Four-of-a-kind	300 for 1	300 for 1
Straight flush	100 for 1	100 for 1
Three-of-a-kind	9 for 1	15 for 1

Hand	Paytable A	Paytable B	Paytable C	Paytable D
Royal flush	100% of meter	100% mega jackpot	100% mega jackpot	100% mega jackpot
Straight flush	10% of meter	100% major jackpot	100% major jackpot	100% major jackpot
Four-of-a-kind	300 for 1	300 for 1	100% minor jackpot	100% minor jackpot
Full house	50 for 1	50 for 1	50 for 1	50 for 1
Flush	40 for 1	40 for 1	40 for 1	40 for 1
Straight	30 for 1	30 for 1	30 for 1	30 for 1
Three-of-a-kind	9 for 1	9 for 1	10 for 1	9 for 1

(2) A player shall receive the payout for only the highest ranking five-card Poker hand formed.

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	Paytable A
Seed/reseed	\$10,000 for 1
Incrementation rate	
Primary	21%
Reserve	N/A

	Paytable B	Paytable C	Paytable D
Seed/reseed			
Mega	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1
Major	\$1,000 for 1	\$1,000 for 1	\$1,000 for 1
Minor	N/A	\$250 for 1	\$250 for 1

(2) A player shall receive the payout for only the highest ranking Four Card Poker hand formed.

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	Paytable A	Paytable B
Seed/reseed	\$5,000 for 1	\$1,000 for 1
Incrementation rate		
Primary	29%	25%
Reserve	N/A	5%

(4) Winning Four-Card Progressive Payout Hands shall be paid the amount on the meter when it is the player's turn to be paid in accordance with § 641a.11(c)(5) (relating to procedures for completion of each round of play).

* * * * *

(e) If a certificate holder offers the Five-Card Progressive Payout Wager:

(1) The certificate holder shall pay out winning Five-Card Progressive Payout Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

	Paytable B	Paytable C	Paytable D
Incrementation rate			
Mega	11%	9%	10%
Major	10%	7%	8%
Minor	N/A	3%	3%

(4) Winning Five-Card Progressive Payout Hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with § 641a.11(c)(5).

* * * * *

(f) If a certificate holder offers the Bad Beat Bonus Wager, the certificate holder shall pay out winning Bad Beat Wagers at the odds in one of the following paytables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

* * * * *

(g) If a certificate holder offers the Five Card Hand Bonus Wager:

* * * * *

(4) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

Seed	\$10,000 for 1
Reseed	\$0
Incrementation rate	
Primary	13%
Reserve	8%

(h) A certificate holder shall pay out winning Six Card Bonus Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

Hand	Paytable A	Paytable B	Paytable C
Royal flush	1,000 to 1	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1	200 to 1
Four-of-a-kind	50 to 1	50 to 1	100 to 1
Full house	25 to 1	25 to 1	20 to 1
Flush	20 to 1	15 to 1	15 to 1
Straight	10 to 1	10 to 1	9 to 1
Three-of-a-kind	5 to 1	5 to 1	8 to 1

Hand	Paytable D	Paytable E
Six-card royal flush—diamonds		200,000 to 1
Six-card royal flush—hearts, spades or clubs		20,000 to 1
Royal flush	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1
Four-of-a-kind	100 to 1	50 to 1
Full house	20 to 1	20 to 1
Flush	15 to 1	15 to 1
Straight	10 to 1	10 to 1
Three-of-a-kind	7 to 1	5 to 1

CHAPTER 643a. LET IT RIDE POKER

§ 643a.2. Let It Ride Poker table physical characteristics.

* * * * *

(b) The layout for a Let It Ride Poker table shall be submitted to the Bureau of Gaming Operations in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

* * * * *

(8) If a certificate holder offers the Five Card Hand Bonus Wager authorized under § 643a.7(i), each betting position must contain an electronic wagering system for the placement of the Five Card Hand Bonus Wager.

(9) If the certificate holder offers the Six Card Bonus Wager authorized under § 643a.7(j), the layout must contain:

(i) A separate area designated for the placement of the Six Card Bonus Wager for each player.

(ii) A designated area on the layout for the Six Card Bonus card.

(10) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers offered by the certificate holder. If payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each Let It Ride Poker table.

(11) An inscription indicating the payout limit per hand established by the certificate holder under § 643a.12(h) (relating to payout odds; payout limitation) or a generic inscription indicating the game is subject to the posted payout limit. If the payout limit is not inscribed on the layout, a sign which sets forth the required information shall be posted at each Let It Ride Poker table.

* * * * *

§ 643a.6. Let It Ride Poker rankings.

* * * * *

(d) If the certificate holder offers the Three-Card Progressive Payout Wager under § 643a.7(g), the following hands eligible for a payout are:

(1) A mini-royal, which is a hand consisting of an ace, king and queen of the same suit.

(2) A straight flush, which is a hand, other than a mini-royal, consisting of three cards of the same suit in consecutive rank.

(3) A three-of-a-kind, which is a hand consisting of three cards of the same rank.

(4) A straight, which is a hand consisting of three cards of consecutive rank, including an ace, 2 and 3.

(e) If the certificate holder offers the optional Six Card Bonus Wager, the Poker hands eligible for a payout are:

(1) A six-card royal flush, which is a hand consisting of an ace, king, queen, jack, 10 and 9 of the same suit.

(2) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.

(3) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking.

(4) A four-of-a-kind, which is a hand consisting of four cards of the same rank, regardless of suit.

(5) A full house, which is a hand consisting of three-of-a-kind and a pair.

(6) A flush, which is a hand consisting of five cards of the same suit.

(7) A straight, which is a hand consisting of five cards of consecutive rank, regardless of suit.

(8) A three-of-a-kind, which is a hand consisting of three cards of the same rank, regardless of suit.

§ 643a.7. Wagers.

* * * * *

(i) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player at a Let It Ride Poker table the option to make an additional Five Card Hand Bonus Wager that the player's five-card Poker hand will contain a flush or better as defined in § 643a.6(b) (relating to Let It Ride Poker rankings). After placing an Ante Wager, a player may make the additional Five Card Hand Bonus Wager by using the electronic wagering device designated for that player. Each player

shall be responsible for verifying that the player's Five Card Hand Bonus Wager has been accepted.

(j) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player who placed Let it Ride Wagers the option of placing a Six Card Bonus Wager which shall win if the player's three cards and the three additional Six Card Bonus cards form a three-of-a-kind or better as described in § 643a.6(e). A Six Card Bonus Wager does not have bearing on any other wagers made by the player.

(k) A Five Card Bonus Wager, Three Card Bonus Wager, Five Card Hand Bonus Wager, Progressive Payout Wager and Six Card Bonus Wager do not have a bearing on any other wagers made by the player.

(l) A certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 643a.8. Procedure for dealing the cards from a manual dealing shoe.

* * * * *

(d) If any player placed a Six Card Bonus Wager, the dealer shall deal three cards, face down, to the area on the layout designated for the placement of the Six Card Bonus cards. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal the cards as follows:

* * * * *

§ 643a.9. Procedure for dealing the cards from the hand.

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(b) The dealer shall deal each card by holding the deck of cards in the chosen hand and use the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout. If any player placed a Six Card Bonus Wager, the dealer shall deal three cards, face down, to the area on the layout designated for the placement of the Six Card Bonus cards. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal the cards as follows:

* * * * *

§ 643a.10. Procedure for dealing the cards from an automated dealing shoe.

* * * * *

(b) The dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to the player farthest to the dealer's left who has placed the three required Let It Ride Poker Wagers in accordance with § 643a.7(d) (relating to wagers). As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed the three required wagers in accordance with § 643a.7(d). The dealer shall then deliver a stack of three cards face down to the area designated for the placement of the community cards and spread the stack within the designated area so that the top card is to the dealer's right and the bottom card is to the dealer's left. The dealer shall then remove the card that is to his left and place that card in the discard rack without exposing the card. If any player placed a Six Card Bonus Wager, the dealer shall then remove the next stack of three cards dispensed by the automated dealing

shoe and place the cards face down on the area of the layout designated for the placement of the Six Card Bonus cards.

* * * * *

§ 643a.11. Procedures for completion of each round of play.

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(f) After the second community card is turned face up, beginning with the player farthest to the dealer's right and continuing around the table in a counterclockwise direction, the dealer shall turn the three cards of the player face up on the layout and combine the two community cards and the three cards dealt to the player shall form the highest ranking five-card Poker hand of that player. If the player's hand:

(1) Contains a pair of 9s or lower, the dealer shall collect the player's losing Let It Ride Poker Wagers.

(2) Contains a pair of 10s or better, the dealer shall pay the player's winning Let it Ride Poker Wagers in accordance with § 643a.12(a) (relating to payout odds; payout limitation).

(g) After settling the player's Let It Ride Poker Wagers, the dealer shall settle any Five Card Bonus Wagers, Three Card Bonus Wagers, Progressive Payout Wagers or Five Card Hand Bonus Wagers as follows:

(1) If a player placed a Five Card Bonus Wager and the two community cards and the three cards dealt to the player:

(i) Form a five-card Poker hand of two pair or better, or a pair of 10s or better, depending on the payout table selected by the certificate holder, the dealer shall pay the winning Five Card Bonus Wager in accordance with § 643a.12(b).

(ii) Does not form a five-card Poker hand of two pair or better, or a pair of 10s or better, depending on the payout table selected by the certificate holder, the dealer shall collect the losing Five Card Bonus Wager.

(2) If a player placed a Three Card Bonus Wager and the three cards dealt to the player:

(i) Form a three-card Poker hand of a pair or better as defined in § 643a.6(c) (relating to Let It Ride Poker rankings), the dealer shall pay the winning Three Card Bonus Wager in accordance with § 643a.12(c).

(ii) Does not form a three-card Poker hand of a pair or better as defined in § 643a.6(c), the dealer shall collect the player's losing Three Card Bonus Wager.

(3) If a player placed a Three-Card Progressive Payout Wager and the three cards dealt to the player form a three-of-a-kind or better, as defined in § 643a.6(d), or a straight or better, depending on the payable selected by the certificate holder, the dealer shall:

(i) Verify that the hand is a winning hand.

(ii) Verify that the appropriate light on the progressive table game system has been illuminated.

(iii) Have a floorperson or above validate the progressive payout in accordance with the certificate holder's approved internal control procedures.

(iv) Pay the winning Three-Card Progressive Payout Wager in accordance with the payout odds in § 643a.12(d)(1). If a player has won a progressive payout that is 100% of the jackpot amount on the progressive meter, the progressive payout may not be paid from the

table inventory container. If a player has won a progressive payout that is not being paid from the table inventory container, the cards of that player must remain on the table until the necessary documentation has been completed.

(v) Pay any Three-Card Envy Bonus won in accordance with § 643a.12(d)(5). Players making a Three-Card Progressive Payout Wager shall receive a Three-Card Envy Bonus when another player at the same Let It Ride Poker table is the holder of a Three-Card Envy Bonus Qualifying Hand. Players are entitled to multiple Envy Bonuses if more than one player is the holder of a Three-Card Envy Bonus Qualifying Hand. A player is not entitled to a Three-Card Envy Bonus for his own hand.

(4) If a player placed a Five-Card Progressive Payout Wager and the player's three cards and the two community cards form a three-of-a-kind or better, as defined in § 643a.6(b), the dealer shall:

- (i) Verify that the hand is a winning hand.
- (ii) Verify that the appropriate light on the progressive table game system has been illuminated.
- (iii) Have a floorperson or above validate the progressive payout in accordance with the certificate holder's approved internal control procedures.

(iv) Pay the winning Five-Card Progressive Payout Wager in accordance with the payout odds in § 643a.12(e)(1). If a player has won a progressive payout that is a percentage of the jackpot amount on the progressive meter, the progressive payout may not be paid from the table inventory container. If a player has won a progressive payout that is not being paid from the table inventory container, the cards of that player must remain on the table until the necessary documentation has been completed.

(v) Pay any Five-Card Envy Bonus won in accordance with § 643a.12(e)(5). Players making a Progressive Payout Wager shall receive a Five-Card Envy Bonus when another player at the same Let It Ride Poker table is the holder of a Five-Card Envy Bonus Qualifying Hand. Players are entitled to multiple Envy Bonuses if more than one player is the holder of a Five-Card Envy Bonus Qualifying Hand. A player is not entitled to a Five-Card Envy Bonus for his own hand.

(5) If a player placed a Five Card Hand Bonus Wager, the dealer shall settle any Magic Card or Lucky Bonus payouts and any winning Five Card Hand Bonus wagers as follows:

- (i) Verify that the hand is a winning hand.
- (ii) Have a floorperson or above verify any Five Card Hand Bonus payout with odds of 500 for 1 or a payout that is a percentage of the jackpot amount on the progressive meter in accordance with approved internal control procedures submitted under § 465a.2 (relating to internal control systems and audit protocols).

(iii) Credit the player's game account for the winning Five Card Hand Bonus Wager or the Magic Card or Lucky Bonus payout in accordance with § 643a.12(f). If a player has won a Five Card Hand Bonus payout that is a percentage of the jackpot amount on the progressive meter, the payout may not be paid to the player's game account. If a player has won a payout that is not being paid to the player's game account, the winning hand must remain on the table until the necessary documentation has been completed.

(6) If a player placed a Six Card Bonus Wager, the dealer shall reveal the three Six Card Bonus cards and combine them with the player's three cards to form the highest ranking Poker hand as provided in § 643a.6(e). If the player's hand:

- (i) Does not contain a three-of-a-kind or better, the dealer shall collect the player's losing Six Card Bonus Wager.
- (ii) Contains a three-of-a-kind or better, the dealer shall pay the winning Six Card Bonus Wager in accordance with § 643a.12(g).

(h) After all wagers of the player have been settled, the dealer shall remove all remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 643a.12. Payout odds; payout limitation.

* * * * *

(b) If a certificate holder offers the Five Card Bonus Wager, the certificate holder shall pay out winning Five Card Bonus Wagers at the odds in one of the following paytables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>
Royal flush	20,000 to 1	20,000 to 1	20,000 to 1
Straight flush	2,000 to 1	2,000 to 1	2,000 to 1
Four-of-a-kind	150 to 1	200 to 1	100 to 1
Full house	75 to 1	75 to 1	75 to 1
Flush	50 to 1	50 to 1	50 to 1
Straight	25 to 1	25 to 1	25 to 1
Three-of-a-kind	4 to 1	5 to 1	9 to 1
Two pair	3 to 1	4 to 1	6 to 1
Pair of tens, jacks, queens, kings or aces	2 to 1	1 to 1	

<i>Hand</i>	<i>Paytable D</i>	<i>Paytable E</i>	<i>Paytable F</i>	<i>Paytable G</i>
Royal flush	10,000 to 1	10,000 to 1	10,000 to 1	25,000 to 1
Straight flush	2,000 to 1	2,000 to 1	2,000 to 1	2,500 to 1

<i>Hand</i>	<i>Paytable D</i>	<i>Paytable E</i>	<i>Paytable F</i>	<i>Paytable G</i>
Four-of-a-kind	200 to 1	200 to 1	100 to 1	400 to 1
Full house	75 to 1	100 to 1	75 to 1	200 to 1
Flush	50 to 1	50 to 1	50 to 1	50 to 1
Straight	25 to 1	25 to 1	25 to 1	25 to 1
Three-of-a-kind	5 to 1	10 to 1	9 to 1	5 to 1
Two pair	4 to 1	6 to 1	6 to 1	
Pair of tens, jacks, queens, kings or aces	1 to 1			

* * * * *

(d) If a certificate holder offers the Three-Card Progressive Payout Wager:

* * * * *

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payouts in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	<i>Paytable A</i>	<i>Paytable B</i>
Seed/reseed	\$1,000 for 1	\$1,000 for 1
Incrementation rate		
Primary	14%	20%

(4) Winning Three-Card Progressive Payout Wagers shall be paid the amount on the meter when it is the player's turn to be paid in accordance with § 643a.11(g)(3) (relating to procedures for completion of each round of play).

* * * * *

(e) If a certificate holder offers the Five-Card Progressive Payout Wager:

(1) The certificate holder shall pay out winning Five-Card Progressive Payout Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Royal flush	100% of meter	100% mega jackpot	100% mega jackpot	100% mega jackpot
Straight flush	10% of meter	100% major jackpot	100% major jackpot	100% major jackpot
Four-of-a-kind	300 for 1	300 for 1	100% minor jackpot	100% minor jackpot
Full house	50 for 1	50 for 1	50 for 1	50 for 1
Flush	40 for 1	40 for 1	40 for 1	40 for 1
Straight	30 for 1	30 for 1	30 for 1	30 for 1
Three-of-a-kind	9 for 1	9 for 1	10 for 1	9 for 1

(2) A player shall receive the payout for only the highest ranking five-card Poker hand formed.

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	<i>Paytable A</i>
Seed/reseed	\$10,000 for 1
Incrementation rate	
Primary	21%
Reserve	N/A

	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Seed/reseed			
Mega	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1

	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Major	\$1,000 for 1	\$1,000 for 1	\$1,000 for 1
Minor	N/A	\$250 for 1	\$250 for 1
Incrementation rate			
Mega	11%	9%	10%
Major	10%	7%	8%
Minor	N/A	3%	3%

(4) Winning Five-Card Progressive Payout Hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with § 643a.11(g)(4).

* * * * *

(f) If a certificate holder offers the Five Card Hand Bonus Wager:

* * * * *

(4) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

Seed	\$10,000 for 1
Reseed	\$0
Incrementation rate	
Primary	13%
Reserve	8%

(g) A certificate holder shall pay out winning Six Card Bonus Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

Hand	Paytable A	Paytable B	Paytable C
Royal flush	1,000 to 1	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1	200 to 1
Four-of-a-kind	50 to 1	50 to 1	100 to 1
Full house	25 to 1	25 to 1	20 to 1
Flush	20 to 1	15 to 1	15 to 1
Straight	10 to 1	10 to 1	9 to 1
Three-of-a-kind	5 to 1	5 to 1	8 to 1

Hand	Paytable D	Paytable E
Six-card royal flush—diamonds		200,000 to 1
Six-card royal flush—hearts, spades or clubs		20,000 to 1
Royal flush	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1
Four-of-a-kind	100 to 1	50 to 1
Full house	20 to 1	20 to 1
Flush	15 to 1	15 to 1
Straight	10 to 1	10 to 1
Three-of-a-kind	7 to 1	5 to 1

(h) Notwithstanding the payout odds in subsection (a), a certificate holder may establish in its Rules Submission under § 601a.2 a maximum amount that is payable to a player on a single hand. The maximum amount shall be at least \$50,000 or the maximum amount that one patron could win per round when betting the minimum permissible wager, whichever is greater. Any maximum payout limit established by a certificate holder must apply only to payouts of Let It Ride Poker Wagers under subsection (a) but may not apply to payouts of Five Card Bonus Wagers, Three Card Bonus Wagers Progressive Payout Wagers, Five Card Hand Bonus Wagers or Six Card Hand Bonus Wagers as provided in subsections (b)—(g).

CHAPTER 647a. TEXAS HOLD 'EM BONUS POKER

§ 647a.2. Texas Hold 'Em Bonus Poker table physical characteristics.

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(b) The layout for a Texas Hold 'Em Bonus Poker table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) (relating to

approval of table game layouts, signage and equipment) and contain, at a minimum:

* * * * *

(7) If a certificate holder offers the optional Five Card Hand Bonus Wager authorized under § 647a.7(d)(4), each betting position must contain an electronic wagering system for the placement of the Five Card Hand Bonus Wager.

(8) If the certificate holder offers the Six Card Bonus Wager authorized under § 647a.7(d)(5), the layout must contain:

(i) A separate area designated for the placement of the Six Card Bonus Wager for each player.

(ii) A designated area on the layout for the four Six Card Bonus cards.

(9) Inscriptions that advise patrons of the payout odds for all permissible wagers offered by the certificate holder. If the payout odds are not inscribed on the layout, a sign identifying the payout odds for all permissible wagers shall be posted at each Texas Hold 'Em Bonus Poker table.

(10) Inscriptions indicating the following:

(i) The Ante Wager will be returned if the player's winning hand is not a straight or better or a flush or better as specified in the certificate holder's Rules Submission under § 601a.2 (relating to table games Rules Submissions).

(ii) The payout limit per hand established by the certificate holder under § 647a.12(c) (relating to payout odds; payout limitation) or a generic inscription indicating that the game is subject to the posted payout limit.

(11) If the information required under paragraph (10) is not inscribed on the layout, a sign which sets forth the required information shall be posted at each Texas Hold 'Em Bonus Poker table.

* * * * *

§ 647a.6. Texas Hold 'Em Bonus Poker rankings.

* * * * *

(c) When comparing two hands that are of identical rank under subsection (b), or that contain none of the hands listed in subsection (b), the hand that contains the highest ranking card under subsection (a), which is not contained in the other hand, shall be considered the higher ranking hand. If the hands are of identical rank after the application of this subsection, the hands shall be considered a tie.

(d) If the certificate holder is offering the optional Six Card Bonus Wager, the Poker hands eligible for a payout are:

(1) A six-card royal flush, which is a hand consisting of an ace, king, queen, jack, 10 and 9 of the same suit.

(2) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.

(3) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking.

(4) A four-of-a-kind, which is a hand consisting of four cards of the same rank, regardless of suit.

(5) A full house, which is a hand consisting of three-of-a-kind and a pair.

(6) A flush, which is a hand consisting of five cards of the same suit.

(7) A straight, which is a hand consisting of five cards of consecutive rank, regardless of suit.

(8) A three-of-a-kind, which is a hand consisting of three cards of the same rank, regardless of suit.

§ 647a.7. Wagers.

* * * * *

(d) The following wagers may be placed in the game of Texas Hold 'Em Bonus Poker:

* * * * *

(4) A certificate holder may, if specified in its Rules Submission under § 601a.2, offer to each player at a Texas Hold 'Em Bonus Poker table the option to make an additional Five Card Hand Bonus Wager that the player's five-card Poker hand formed from the player's two cards and the three-card Flop, the dealer's five-card Poker hand formed from the dealer's two cards and the three-card Flop, or both, will contain a flush or better as defined in § 647a.6(b) (relating to Texas Hold 'Em Bonus Poker rankings). After placing an Ante Wager, a player may make the additional Five Card Hand Bonus Wager on the player's hand or the dealer's hand, or both, by using the electronic wagering device designated for that player. Each player shall be responsible for verifying that the player's Five Card Hand Bonus Wager has been accepted.

(5) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player who placed an Ante Wager the option of placing a Six Card Bonus Wager which shall win if the player's two cards and the four additional Six Card Bonus cards form a three-of-a-kind or better as described in § 647a.6(d). A Six Card Bonus Wager does not have bearing on any other wagers made by the player.

(e) The certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 647a.8. Procedure for dealing the cards from a manual dealing shoe.

* * * * *

(d) If any player placed a Six Card Bonus Wager, the dealer shall deal four cards, face down, to the area on the layout designated for the placement of the Six Card Bonus cards. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time, face down, to each player who placed an Ante Wager in accordance with § 647a.7(d)(1) (relating to wagers) and to the dealer, until each player who placed an Ante Wager and the dealer have two cards.

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§ 647a.9. Procedure for dealing the cards from the hand.

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(b) The dealer shall announce "no more bets" and, if the Progressive Payout Wager or Five Card Hand Bonus Wager is being offered, use the progressive table game system or electronic wagering system to prevent the placement of any additional Progressive Payout Wagers. If any Progressive Payout Wagers have been made, the dealer shall collect the wagers and, on the layout in front of the table inventory container, verify that the number of value chips wagered equals the number of Progressive Payout Wagers accepted by the progressive table game

system. The dealer shall then place the value chips into the table inventory container.

(c) The dealer shall then deal each card by holding the deck of cards in the chosen hand and use the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout.

(d) If any player placed a Six Card Bonus Wager, the dealer shall deal four cards, face down, to the area on the layout designated for the placement of the Six Card Bonus cards. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who placed an Ante Wager in accordance with § 647a.7(d)(1) (relating to wagers) and to the dealer until each player who placed an Ante Wager and the dealer have two cards.

(e) After two cards have been dealt to each player and to the area designated for the placement of the dealer's hand, the dealer shall deal the five community cards in accordance with § 647a.11(c), (e) and (f) (relating to procedure for completion of each round of play). After all community cards have been dealt, the dealer shall, except as provided in subsection (f), place the stub in the discard rack without exposing the cards.

(f) If an automated card shuffling device, which counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present, is not being used, the dealer shall count the stub at least once every 5 rounds of play to determine if the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(g) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(h) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

§ 647a.10. Procedure for dealing the cards from an automated dealing shoe.

* * * * *

(c) After each stack of two cards has been dispensed and delivered in accordance with subsection (b), the dealer shall remove the remaining cards from the automated dealing shoe. If any player placed a Six Card Bonus Wager, the dealer shall, in accordance with the procedures in § 647a.9(a)(2) (relating to procedure for dealing the cards from the hand), deal face down from his hand the top four cards of the stack to the area of the layout designated for the placement of the Six Card Bonus cards then deal the five community cards in accordance with § 647a.11(c), (e) and (f) (relating to procedure for completion of each round of play). After all five community cards have been dealt, the dealer shall, except as provided in subsection (d), place the stub in the discard rack without exposing the cards.

* * * * *

§ 647a.11. Procedure for completion of each round of play.

* * * * *

(b) After each player has examined his cards, the dealer shall, beginning with the player farthest to the dealer's left and moving clockwise around the table, ask each player if he wishes to place a Flop Wager prior to the dealing of the Flop. The player may either fold or place a Flop Wager equal to twice the amount of the player's Ante Wager. If a player:

(1) Places a Flop Wager, the wager shall be placed in the area designated for the Flop Wager.

(2) Folds, the player's Ante Wager shall be collected by the dealer and placed in the table inventory container. If the player:

(i) Has also placed:

(A) A Texas Hold 'Em Bonus or a Six Card Bonus Wager, the dealer shall place the cards of the player face down underneath the Texas Hold 'Em Bonus or a Six Card Bonus Wager pending its resolution at the conclusion of the round of play.

(B) A Progressive Payout Wager, the player is not eligible to receive a Progressive Payout. The player's cards shall remain face down on the table pending resolution of the Envy Bonus in accordance with subsection (i)(5).

(C) A Five Card Hand Bonus Wager, the dealer shall place the cards of the player face down on the table pending resolution of the Five Card Hand Bonus Wager in accordance with subsection (j).

(ii) Has not placed a Texas Hold 'Em Bonus Wager, Six Card Hand Bonus Wager, Five Card Hand Bonus Wager or a Progressive Payout Wager, the dealer shall immediately collect the player's cards and place them in the discard rack provided that if another player at the table placed a Progressive Payout Wager, the player's cards shall remain on the table pending the resolution of the Progressive Payout Wager in accordance with subsection (i).

* * * * *

(j) The dealer shall settle the Five Card Hand Bonus Wager, if offered by the certificate holder, and any Magic Card or Lucky Bonus payouts. A winning Five Card Hand Bonus shall be paid irrespective of whether the player's hand outranks the dealer's hand and based on the rank of the player's or the dealer's two cards and the three-card Flop. If a player has won a Five Card Hand Bonus or any Magic Card or Lucky Bonus payout, the dealer shall:

(1) Verify that the hand is a winning hand.

(2) Have a floorperson or above verify any Five Card Hand Bonus payout with odds of 500 for 1 or a payout that is a percentage of the jackpot amount on the progressive meter in accordance with approved internal control procedures submitted under § 465a.2 (relating to internal control systems and audit protocols).

(3) Credit the player's game account for the winning Five Card Hand Bonus Wager or the Magic Card or Lucky Bonus payout in accordance with § 647a.12(e). If a player has won a Five Card Hand Bonus payout that is a percentage of the jackpot amount on the progressive meter, the payout may not be paid to the player's game account. If a player has won a payout that is not being paid to the player's game account, the winning hand must remain on the table until the necessary documentation has been completed.

(k) To settle the Six Card Bonus Wager, the dealer shall reveal the four additional Six Card Bonus cards and combine them with the player's two cards to form the highest ranking Poker hand as provided in § 647a.6(d) (relating to Texas Hold 'Em Bonus Poker rankings). If the player's hand:

(1) Does not contain a three-of-a-kind or better, the dealer shall collect the player's losing Six Card Bonus Wager.

(2) Contains a three-of-a-kind or better, the dealer shall pay the winning Six Card Bonus Wager in accordance with § 647a.12(f).

(l) After all wagers of the player have been settled, the dealer shall remove all remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 647a.12. Payout odds; payout limitation.

* * * * *

(c) Notwithstanding the payout odds in subsection (a), the maximum aggregate payout limit on all winning Ante, Flop, Turn and River Wagers for any hand shall be \$50,000 or the maximum amount that one patron could win per round when betting the minimum wager, whichever is greater.

(d) If a certificate holder offers the Progressive Payout Wager:

(1) The certificate holder shall pay each winning Progressive Payout Wager at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Royal flush	100% of meter	100% mega jackpot	100% mega jackpot	100% mega jackpot
Straight flush	10% of meter	100% major jackpot	100% major jackpot	100% major jackpot
Four-of-a-kind	300 for 1	300 for 1	100% minor jackpot	100% minor jackpot
Full house	50 for 1	50 for 1	50 for 1	50 for 1
Flush	40 for 1	40 for 1	40 for 1	40 for 1
Straight	30 for 1	30 for 1	30 for 1	30 for 1
Three-of-a-kind	9 for 1	9 for 1	10 for 1	9 for 1

(2) A player shall receive the payout for only the highest ranking five-card Poker hand formed.

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

<i>Paytable A</i>	
Seed/reseed	\$10,000 for 1
Incrementation rate	
Primary	21%
Reserve	N/A

	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Seed/reseed			
Mega	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1
Major	\$1,000 for 1	\$1,000 for 1	\$1,000 for 1
Minor	N/A	\$250 for 1	\$250 for 1
Incrementation rate			
Mega	11%	9%	10%
Major	10%	7%	8%
Minor	N/A	3%	3%

(4) Winning Progressive Payout Hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with § 647a.11(i) (relating to procedure for completion of each round of play).

* * * * *

(e) If a certificate holder offers the Five Card Hand Bonus Wager:

* * * * *

(4) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

Seed	\$10,000 for 1
Reseed	\$0
Incrementation rate	
Primary	13%
Reserve	8%

(f) A certificate holder shall pay out winning Six Card Bonus Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>
Royal flush	1,000 to 1	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1	200 to 1
Four-of-a-kind	50 to 1	50 to 1	100 to 1
Full house	25 to 1	25 to 1	20 to 1
Flush	20 to 1	15 to 1	15 to 1

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>
Straight	10 to 1	10 to 1	9 to 1
Three-of-a-kind	5 to 1	5 to 1	8 to 1

<i>Hand</i>	<i>Paytable D</i>	<i>Paytable E</i>
Six-card royal flush—diamonds		200,000 to 1
Six-card royal flush—hearts, spades or clubs		20,000 to 1
Royal flush	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1
Four-of-a-kind	100 to 1	50 to 1
Full house	20 to 1	20 to 1
Flush	15 to 1	15 to 1
Straight	10 to 1	10 to 1
Three-of-a-kind	7 to 1	5 to 1

CHAPTER 653a. ULTIMATE TEXAS HOLD 'EM POKER

§ 653a.2. Ultimate Texas Hold 'Em Poker table physical characteristics.

* * * * *

(b) The layout for an Ultimate Texas Hold 'Em Poker table shall be submitted to the Bureau of Gaming Operations in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

* * * * *

(6) If a certificate holder offers the optional Five Card Hand Bonus Wager authorized under § 653a.7(d)(4), each betting position must contain an electronic wagering system for the placement of the Five Card Hand Bonus Wager.

(7) If the certificate holder offers the Six Card Bonus Wager authorized under § 653a.7(d)(5), the layout must contain:

(i) A separate area designated for the placement of the Six Card Bonus Wager for each player.

(ii) A designated area on the layout for the four Six Card Bonus cards.

(8) If the certificate holder offers the Bad Beat Bonus Wager authorized under § 653a.7(d)(6), the layout must contain a separate area designated for the placement of the Bad Beat Bonus Wager for each player.

(9) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers offered by the certificate holder. If the payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each Ultimate Texas Hold 'Em Poker table.

(10) Inscriptions indicating the following:

(i) An Ante Wager will push if the dealer has less than a pair.

(ii) A Blind Wager will push if the player's winning hand is not a straight or better or a flush or better, depending on the payable selected by the certificate holder.

(iii) The rules governing the required amount of a Play Wager as a multiple of the player's Ante Wager.

(iv) The payout limit per hand established by the certificate holder under § 653a.12(h) (relating to payout odds; Envy Bonus; rate of progression; payout limitation) or a generic inscription indicating that the game is subject to the posted payout limit.

(11) If the information required under paragraph (10) is not inscribed on the layout, a sign which sets forth the required information shall be posted at each Ultimate Texas Hold 'Em Poker table.

* * * * *

§ 653a.6. Ultimate Texas Hold 'Em Poker rankings.

* * * * *

(c) When comparing two Poker hands that are of identical rank under subsection (b), or that contain none of the hands listed in subsection (b), the hand that contains the highest ranking card under subsection (a), which is not contained in the other hand, shall be considered the higher ranking hand. If the hands are of identical rank after the application of this subsection, the hands shall be considered a tie.

(d) If the certificate holder is offering the optional Six Card Bonus Wager, the Poker hands eligible for a payout are:

(1) A six-card royal flush, which is a hand consisting of an ace, king, queen, jack, 10 and 9 of the same suit.

(2) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.

(3) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking.

(4) A four-of-a-kind, which is a hand consisting of four cards of the same rank, regardless of suit.

(5) A full house, which is a hand consisting of three-of-a-kind and a pair.

(6) A flush, which is a hand consisting of five cards of the same suit.

(7) A straight, which is a hand consisting of five cards of consecutive rank, regardless of suit.

(8) A three-of-a-kind, which is a hand consisting of three cards of the same rank, regardless of suit.

§ 653a.7. Wagers.

* * * * *

(d) The following wagers may be placed in the game of Ultimate Texas Hold 'Em Poker:

* * * * *

(4) A certificate holder may, if specified in its Rules Submission under § 601a.2, offer to each player at an Ultimate Texas Hold 'Em Poker table the option to make an additional Five Card Hand Bonus Wager that the player's five-card Poker hand formed from the player's two cards and the three-card Flop or the dealer's five-card Poker hand formed from the dealer's two cards and the three-card Flop, or both, will contain a flush or better as defined in § 653a.6(b) (relating to Ultimate Texas Hold 'Em Poker rankings). After placing an Ante and a Blind Wager, a player may make the additional Five Card Hand Bonus Wager on the player's hand or the dealer's hand, or both, by using the electronic wagering device designated for that player. Each player shall be responsible for verifying that the player's Five Card Hand Bonus Wager has been accepted.

(5) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player who placed

an Ante Wager the option of placing a Six Card Bonus Wager which shall win if the player's two cards and the four additional Six Card Bonus cards form a three-of-a-kind or better as described in § 653a.6(d). A Six Card Bonus Wager does not have bearing on any other wagers made by the player.

(6) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player who placed Ante, Blind and Trips Wagers the option of placing a Bad Beat Bonus Wager which shall win if either the player's hand contains a three-of-a-kind or better and the dealer's hand outranks the player's hand or the dealer's five-card hand contains a three-of-a-kind or better and the player's hand outranks the dealer's hand.

(e) The certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 653a.8. Procedure for dealing the cards from a manual dealing shoe.

* * * * *

(d) If any player placed a Six Card Bonus Wager, the dealer shall deal four cards, face down, to the area on the layout designated for the placement of the Six Card Bonus cards. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who placed the required wagers in accordance with § 653a.7(d)(1) (relating to wagers) and to the dealer, until each player who placed the required wagers, and the dealer have two cards.

* * * * *

§ 653a.9. Procedure for dealing the cards from the hand.

* * * * *

(b) The dealer shall deal each card by holding the deck of cards in the chosen hand and use the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout. If any player placed a Six Card Bonus Wager, the dealer shall deal four cards, face down, to the area on the layout designated for the placement of the Six Card Bonus cards. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who placed the required wagers in accordance with § 653a.7(d)(1) (relating to wagers) and to the dealer, until each player who placed the required wagers, and the dealer have two cards.

* * * * *

§ 653a.10. Procedures for dealing the cards from an automated dealing shoe.

* * * * *

(c) After each stack of two cards has been dispensed and delivered in accordance with subsection (b), the dealer shall remove the remaining cards from the automated dealing shoe. If any player placed a Six Card Bonus Wager, the dealer shall, in accordance with the procedures in § 653a.9(a)(2) and (b) (relating to procedure for dealing the cards from the hand), deal face down from his hand the top four cards of the stack to the area of the layout designated for the placement of the Six Card Bonus cards then deal the five community cards in accordance with § 653a.11 (relating to procedures for

completion of each round of play). After all five community cards have been dealt, the dealer shall, except as provided in subsection (d), place the stub in the discard rack without exposing the cards.

* * * * *

§ 653a.11. Procedures for completion of each round of play.

* * * * *

(f) After the final two community cards have been dealt, the dealer shall, beginning with the player farthest to the dealer's left and moving clockwise around the table, ask each player who has not already placed a Play Wager whether he wishes to fold or place a Play Wager equal in amount to the player's Ante Wager. If a player:

(1) Places a Play Wager, the wager shall be placed in the area designated for the Play Wager.

(2) Folds, the Ante, Blind and Bad Beat Bonus Wagers of the player shall be collected by the dealer and placed in the table inventory container. If the player:

(i) Has also placed a Trips Wager or a Six Card Bonus Wager, the dealer shall place the cards of the player face down underneath the player's Trips Wager or Six Card Bonus Wager pending its resolution at the conclusion of the round of play.

(ii) Has not placed a Trips Wager or a Six Card Bonus Wager, the dealer shall immediately collect the player's cards and place them in the discard rack.

* * * * *

(i) After settling a player's Ante, Blind and Play Wagers, the dealer shall settle any Trips Wager made by the player as follows:

(1) If the player's hand contains a three-of-a-kind or better as provided in § 653a.6(b) (relating to Texas Hold 'Em Bonus Poker rankings), the dealer shall pay the winning Trips Wager in accordance with § 653a.12(c).

(2) If the player's hand does not contain a three-of-a-kind or better, the dealer shall collect the player's losing Trips Wager.

(j) The dealer shall then settle the Bad Beat Bonus Wager as follows:

(1) If the player's hand contains a three-of-a-kind or better and the dealer's hand outranks the player's hand, as provided in § 653a.6(b), the certificate holder shall pay the winning Bad Beat Bonus Wager in accordance with § 653a.12(g) based on the rank of the player's losing hand.

(2) If the dealer's hand contains a three-of-a-kind or better and the player's hand outranks the dealer's hand, as provided in § 653a.6(b), the certificate holder shall pay the winning Bad Beat Bonus Wager in accordance with § 653a.12(g) based on the rank of the dealer's losing hand.

(3) If the player's hand and the dealer's hand tie, if the player's hand of a three-of-a-kind or better does not lose to the dealer's hand, or if the dealer's hand of a three-of-a-kind or better does not lose to the player's hand, the dealer shall collect the losing Bad Beat Bonus Wager.

(k) The dealer shall then settle the Progressive Payout Wager, if offered by the certificate holder. A winning Progressive Payout Wager shall be paid irrespective of whether the player's hand outranks the dealer's hand and

be based on the rank of the player's two cards and the three-card Flop. If a player has won a progressive payout, the dealer shall:

(1) Verify that the hand is a winning hand.

(2) Verify that the appropriate light on the progressive table game system has been illuminated.

(3) Have a floorperson or above validate the progressive payout in accordance with the certificate holder's approved internal control procedures.

(4) Pay the winning Progressive Payout Wager in accordance with the payout odds in § 653a.12(d). If a player has won a progressive payout that is a percentage of the jackpot amount on the progressive meter, the progressive payout may not be paid from the table inventory container. If a player has won a progressive payout that is not being paid from the table inventory container, the cards of that player must remain on the table until the necessary documentation has been completed.

(5) Pay any Envy Bonus won in accordance with § 653a.12(d). Players making a Progressive Payout Wager shall receive an Envy Bonus when another player at the same Ultimate Texas Hold 'Em Poker table is the holder of an Envy Bonus Qualifying Hand. Players are entitled to multiple Envy Bonuses if more than one other player is the holder of an Envy Bonus Qualifying Hand. A player is not entitled to an Envy Bonus for his own hand or the hand of the dealer.

(l) The dealer shall settle the Five Card Hand Bonus Wager, if offered by the certificate holder, and any Magic Card or Lucky Bonus payouts. A winning Five Card Hand Bonus shall be paid irrespective of whether the player's hand outranks the dealer's hand and based on the rank of the player's or the dealer's two cards and the three-card Flop. If a player has won a Five Card Hand Bonus or any Magic Card or Lucky Bonus payout, the dealer shall:

(1) Verify that the hand is a winning hand.

(2) Have a floorperson or above verify any Five Card Hand Bonus payout with odds of 500 for 1 or a payout that is a percentage of the jackpot amount on the progressive meter in accordance with approved internal control procedures submitted under § 465a.2 (relating to internal control systems and audit protocols).

(3) Credit the player's game account for the winning Five Card Hand Bonus Wager or the Magic Card or Lucky Bonus payout in accordance with § 653a.12(e). If a player has won a Five Card Hand Bonus payout that is a percentage of the jackpot amount on the progressive meter, the payout may not be paid to the player's game account. If a player has won a payout that is not being paid to the player's game account, the winning hand must remain on the table until the necessary documentation has been completed.

(m) To settle the Six Card Bonus Wager, the dealer shall reveal the four additional Six Card Bonus cards and combine them with the player's two cards to form the highest ranking Poker hand as provided in § 653a.6(d). If the player's hand:

(1) Does not contain a three-of-a-kind or better, the dealer shall collect the player's losing Six Card Bonus Wager.

(2) Contains a three-of-a-kind or better, the dealer shall pay the winning Six Card Bonus Wager in accordance with § 653a.12(f).

(n) After all wagers of the player have been settled, the dealer shall remove all remaining cards from the table

and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 653a.12. Payout odds; Envy Bonus; rate of progression; payout limitation.

* * * * *

(c) The certificate holder shall pay the player's winning Trips Wager at the odds in one of the following paytables,

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Royal flush	100% of meter	100% mega jackpot	100% mega jackpot	100% mega jackpot
Straight flush	10% of meter	100% major jackpot	100% major jackpot	100% major jackpot
Four-of-a-kind	300 for 1	300 for 1	100% minor jackpot	100% minor jackpot
Full house	50 for 1	50 for 1	50 for 1	50 for 1
Flush	40 for 1	40 for 1	40 for 1	40 for 1
Straight	30 for 1	30 for 1	30 for 1	30 for 1
Three-of-a-kind	9 for 1	9 for 1	10 for 1	9 for 1

(2) A player shall receive the payout for only the highest ranking five-card Poker hand formed from the player's two cards and the three-card Flop.

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	<i>Paytable A</i>
Seed/reseed	\$10,000 for 1
Incrementation rate	
Primary	21%
Reserve	N/A

	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Seed/reseed			
Mega	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1
Major	\$1,000 for 1	\$1,000 for 1	\$1,000 for 1
Minor	N/A	\$250 for 1	\$250 for 1
Incrementation rate			
Mega	11%	9%	10%
Major	10%	7%	8%
Minor	N/A	3%	3%

(4) Winning Progressive Payout Hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with § 653a.11(k) (relating to procedures for completion of each round of play).

* * * * *

(e) If a certificate holder offers the Five Card Hand Bonus Wager:

* * * * *

(4) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the

selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

* * * * *

(d) If a certificate holder offers the Progressive Payout Wager:

(1) The certificate holder shall pay the player's winning Progressive Payout Wager at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

Seed	\$10,000 for 1
Reseed	\$0
Incrementation rate	
Primary	13%
Reserve	8%

(f) A certificate holder shall pay out winning Six Card Bonus Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>
Royal flush	1,000 to 1	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1	200 to 1
Four-of-a-kind	50 to 1	50 to 1	100 to 1
Full house	25 to 1	25 to 1	20 to 1
Flush	20 to 1	15 to 1	15 to 1
Straight	10 to 1	10 to 1	9 to 1
Three-of-a-kind	5 to 1	5 to 1	8 to 1

<i>Hand</i>	<i>Paytable D</i>	<i>Paytable E</i>
Six-card royal flush—diamonds		200,000 to 1
Six-card royal flush—hearts, spades or clubs		20,000 to 1
Royal flush	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1
Four-of-a-kind	100 to 1	50 to 1
Full house	20 to 1	20 to 1
Flush	15 to 1	15 to 1
Straight	10 to 1	10 to 1
Three-of-a-kind	7 to 1	5 to 1

(g) The certificate holder shall pay out winning Bad Beat Bonus Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

Hand	Paytable A	Paytable B
Straight flush	10,000 to 1	7,500 to 1
Four-of-a-kind	500 to 1	500 to 1
Full house	40 to 1	50 to 1
Flush	25 to 1	30 to 1
Straight	20 to 1	20 to 1
Three-of-a-kind	9 to 1	9 to 1

(h) Notwithstanding the payout odds in subsections (a) and (b), a certificate holder may, in its Rules Submission under § 601a.2, establish a maximum amount that is payable to a player on a single hand. The maximum amount shall be at least \$50,000 or the maximum amount that one patron could win per round when betting the minimum wager, whichever is greater. Any maximum payout limit established by the certificate holder must apply only to payouts of Ultimate Texas Hold 'Em Poker Wagers under subsections (a) and (b) and does not apply to payouts for Trips, Progressive Payout, Five Card Hand Bonus, Six Card Bonus or Bad Beat Bonus Wagers under subsections (c)—(g).

CHAPTER 655a. MISSISSIPPI STUD

§ 655a.2. Mississippi Stud table physical characteristics.

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(b) The layout for a Mississippi Stud table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

* * * * *

(6) If a certificate holder offers the Five Card Hand Bonus Wager authorized under § 655a.7(d)(5), each betting position must contain an electronic wagering system for the placement of the Five Card Hand Bonus Wager.

(7) If the certificate holder offers the Six Card Bonus Wager authorized under § 655a.7(d)(6), the layout must contain:

(i) A separate area designated for the placement of the Six Card Bonus Wager for each player.

(ii) A designated area on the layout for the four Six Card Bonus cards.

(8) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers and the rules governing the required amount of the 3rd Street, 4th Street or 5th Street Wager as a multiple of the player's Ante Wager. If the information is not inscribed on the layout, a sign that sets forth the required information must be posted at each Mississippi Stud table.

* * * * *

§ 655a.6. Mississippi Stud hand rankings.

* * * * *

(c) For purposes of the Three Card Bonus authorized under § 655a.7(d)(4) (relating to wagers), the permissible three-card Poker hands must be:

* * * * *

(6) A pair, which is two cards of the same rank.

(d) If the certificate holder offers the optional Six Card Bonus Wager, the Poker hands eligible for a payout are:

(1) A six-card royal flush, which is a hand consisting of an ace, king, queen, jack, 10 and 9 of the same suit.

(2) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.

(3) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking.

(4) A four-of-a-kind, which is a hand consisting of four cards of the same rank, regardless of suit.

(5) A full house, which is a hand consisting of three-of-a-kind and a pair.

(6) A flush, which is a hand consisting of five cards of the same suit.

(7) A straight, which is a hand consisting of five cards of consecutive rank, regardless of suit.

(8) A three-of-a-kind, which is a hand consisting of three cards of the same rank, regardless of suit.

§ 655a.7. Wagers.

* * * * *

(c) All Ante, Progressive Payout, Three Card Bonus, Five Card Hand Bonus and Six Card Bonus Wagers shall be placed prior to the dealer announcing "no more bets" in accordance with the dealing procedure in § 655a.8, § 655a.9 or § 655a.10 (relating to procedure for dealing the cards from a manual dealing shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe). Except as provided in § 655a.11(b), (d) and (f) (relating to procedures for completion of each round of play), a wager may not be made, increased or withdrawn after the dealer announces "no more bets" and begins dealing the cards.

(d) The following wagers may be placed in the game of Mississippi Stud:

* * * * *

(5) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player at a Mississippi Stud table the option to make an additional Five Card Hand Bonus Wager that the player's five-card Poker hand will contain a flush or better as defined in § 655a.6(b). After placing an Ante Wager, a player may make the additional Five Card Hand Bonus Wager by using the electronic wagering device designated for that player. Each player shall be responsible for verifying that the player's Five Card Hand Bonus Wager has been accepted.

(6) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player who placed an Ante Wager the option of placing a Six Card Bonus Wager which shall win if the player's two cards and the four additional Six Card Bonus cards form a three-of-a-kind or better as described in § 655a.6(d). A Six Card Bonus Wager does not have bearing on any other wagers made by the player.

(e) The certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 655a.8. Procedure for dealing the cards from a manual dealing shoe.

* * * * *

(d) If any player placed a Six Card Bonus Wager, the dealer shall deal four cards, face down, to the area on the layout designated for the placement of the Six Card Bonus cards. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal the cards as follows:

* * * * *

§ 655a.9. Procedure for dealing the cards from the hand.

* * * * *

(b) If any player placed a Six Card Bonus Wager, the dealer shall deal four cards, face down, to the area on the layout designated for the placement of the Six Card Bonus cards. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal the cards as follows:

* * * * *

§ 655a.10. Procedures for dealing the cards from an automated dealing shoe.

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(c) After each stack of two cards has been dispensed and delivered in accordance with this section, the dealer shall remove the remaining cards from the automated dealing shoe. If any player placed a Six Card Bonus Wager, the dealer shall, in accordance with the procedures in § 655a.9(a)(2) (relating to procedure for dealing the cards from the hand), deal face down from his hand the top four cards of the stack to the area of the layout designated for the placement of the Six Card Bonus cards then deal the three community cards. Except as provided in subsection (d), after all three community cards have been dealt, the dealer shall place the stub in the discard rack without exposing the cards.

* * * * *

§ 655a.11. Procedures for completion of each round of play.

* * * * *

(b) After each player has examined his cards and replaced them face down on the layout, the dealer shall, beginning with the player farthest to the dealer's left and moving clockwise around the table, ask each player who placed an Ante Wager if he wishes to place a 3rd Street Wager in an amount equal to one, two or three times the amount of the player's Ante Wager or fold. If a player folds, the Ante Wager shall be immediately collected and placed in the table inventory container and the folded hand shall be collected and placed in the discard rack unless the player made a Progressive Payout, Three Card Bonus, Five Card Hand Bonus or Six Card Bonus Wager in which case the cards shall be left on the table until all optional wagers are resolved in accordance with subsection (i).

(c) Once all players have either placed a 3rd Street Wager or folded, the dealer shall turn over and reveal the first community card.

(d) Each player shall then either place a 4th Street Wager in an amount equal to one, two or three times the amount of the player's Ante Wager in the designed 4th Street betting area or fold. If a player folds, the Ante Wager and 3rd Street Wager shall be immediately col-

lected and placed in the table inventory container and the folded hand shall be collected and placed in the discard rack unless the player made a Progressive Payout, Three Card Bonus, Five Card Hand Bonus or Six Card Bonus Wager in which case the cards shall be left on the table until all wagers are resolved in accordance with subsection (i).

(e) Once all remaining players have either placed a 4th Street Wager or folded, the dealer shall turn over and reveal the second community card.

(f) Each player shall then either place a 5th Street Wager in an amount equal to one, two or three times the amount of the player's Ante Wager in the designed 5th Street betting area or fold. If a player folds, the Ante Wager and the 3rd Street and 4th Street Wagers shall be immediately collected and placed in the table inventory container and the folded hand shall be collected and placed in the discard rack unless the player made a Progressive Payout, Three Card Bonus, Five Card Hand Bonus or Six Card Bonus Wager in which case the cards shall be left on the table until all optional wagers are resolved in accordance with subsection (i).

(g) Once all remaining players have either placed a 5th Street Wager or folded, the dealer shall turn over and reveal the third community card.

(h) Beginning with the player farthest to the dealer's right and continuing around the table in a counterclockwise direction, the dealer shall turn the player's two cards face up on the layout and combine them with the three community cards to form the highest ranking five-card Poker hand of that player. If the player's hand:

(1) Is a pair of 5s or lower, the dealer shall collect the player's losing Ante, 3rd Street, 4th Street and 5th Street Wagers.

(2) Is a pair of 6s, 7s, 8s, 9s or 10s, the player's hand is a push and all Ante, 3rd Street, 4th Street and 5th Street Wagers shall be returned to the player.

(3) Is a pair of jacks or higher, the dealer shall pay the winning Ante, 3rd Street, 4th Street and 5th Street Wagers in accordance with the payout odds in § 655a.12(a) (relating to payout odds; Envy Bonus; rate of progression).

(i) After settling the player's Ante, 3rd Street, 4th Street and 5th Street Wagers, the dealer shall settle the Progressive Payout, Three Card Bonus, Five Card Hand Bonus and Six Card Bonus Wagers, if offered by the certificate holder, as follows:

(1) If a player has placed a Progressive Payout Wager and the player's two cards and the three community cards form a three-of-a-kind or better, as defined in § 655a.6(b) (relating to Mississippi Stud hand rankings), the dealer shall:

(i) Verify that the hand is a winning hand.

(ii) Verify that the appropriate light on the progressive table game system has been illuminated.

(iii) Have a floorperson or above validate the progressive payout in accordance with the certificate holder's approved internal control procedures.

(iv) Pay the winning Progressive Payout Wager in accordance with § 655a.12(c)(1). If a player has won a progressive payout that is a percentage of the jackpot amount on the progressive meter, the progressive payout may not be paid from the table inventory container. If a player has won a progressive payout that is not being paid from the table inventory container, the cards of that

player shall remain on the table until the necessary documentation has been completed.

(v) Pay any Envy Bonus won in accordance with § 655a.12(c)(5). Players making a Progressive Payout Wager shall receive an Envy Bonus when another player at the same Mississippi Stud table is the holder of an Envy Bonus Qualifying Hand. Players are entitled to multiple Envy Bonuses if more than one player is the holder of an Envy Bonus Qualifying Hand. A player is not entitled to an Envy Bonus for his own hand.

(2) If a player placed a Three Card Bonus Wager and the three community cards:

(i) Form a three-card Poker hand of a pair or better as defined in § 655a.6(c), the dealer shall pay the winning Three Card Bonus Wager in accordance with § 655a.12(d).

(ii) Does not form a three-card Poker hand of a pair or better as defined in § 655a.6(c), the dealer shall collect the player's losing Three Card Bonus Wager.

(3) If a player placed a Five Card Hand Bonus Wager, the dealer shall settle any Magic Card or Lucky Bonus payouts and any winning Five Card Hand Bonus wagers as follows:

(i) Verify that the hand is a winning hand.

(ii) Have a floorperson or above verify any Five Card Hand Bonus payout with odds of 500 for 1 or a payout that is a percentage of the jackpot amount on the progressive meter in accordance with approved internal control procedures submitted under § 465a.2 (relating to internal control systems and audit protocols).

(iii) Credit the player's game account for the winning Five Card Hand Bonus Wager or the Magic Card or Lucky Bonus payout in accordance with § 655a.12(e). If a player has won a Five Card Hand Bonus payout that is a

percentage of the jackpot amount on the progressive meter, the payout may not be paid to the player's game account. If a player has won a payout that is not being paid to the player's game account, the winning hand must remain on the table until the necessary documentation has been completed.

(4) For the Six Card Bonus Wager, the dealer shall reveal the four additional Six Card Bonus cards and combine them with the player's two cards to form the highest ranking Poker hand as provided in § 655a.6(d). If the player's hand:

(i) Contains a three-of-a-kind or better, the dealer shall pay the winning Six Card Bonus Wager in accordance with § 655a.12(f).

(ii) Does not contain a three-of-a-kind or better, the dealer shall collect the player's losing Six Card Bonus Wager.

(j) After all wagers have been settled, the dealer shall remove all remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 655a.12. Payout odds; Envy Bonus; rate of progression.

(a) A certificate holder shall pay each winning Ante, 3rd Street, 4th Street and 5th Street Wagers in accordance with the following odds:

* * * *

(c) If a certificate holder offers the Progressive Payout Wager:

(1) The certificate holder shall pay each winning Progressive Payout Wager at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2 (relating to table games Rules Submissions):

Hand	Paytable A	Paytable B	Paytable C	Paytable D
Royal flush	100% of meter	100% mega jackpot	100% mega jackpot	100% mega jackpot
Straight flush	10% of meter	100% major jackpot	100% major jackpot	100% major jackpot
Four-of-a-kind	300 for 1	300 for 1	100% minor jackpot	100% minor jackpot
Full house	50 for 1	50 for 1	50 for 1	50 for 1
Flush	40 for 1	40 for 1	40 for 1	40 for 1
Straight	30 for 1	30 for 1	30 for 1	30 for 1
Three-of-a-kind	9 for 1	9 for 1	10 for 1	9 for 1

(2) A player shall receive the payout for only the highest ranking hand formed from the player's two cards and the three community cards.

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payouts in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	Paytable A
Seed/reseed	\$10,000 for 1
Incrementation rate	
Primary	21%
Reserve	N/A

	Paytable B	Paytable C	Paytable D
Seed/reseed			
Mega	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1
Major	\$1,000 for 1	\$1,000 for 1	\$1,000 for 1
Minor	N/A	\$250 for 1	\$250 for 1
Incrementation rate			
Mega	11%	9%	10%
Major	10%	7%	8%
Minor	N/A	3%	3%

(4) Winning Progressive Payout Hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with

§ 655a.11(i)(1)(iv) (relating to procedures for completion of each round of play).

* * * * *

(e) If a certificate holder offers the Five Card Hand Bonus Wager:

* * * * *

(4) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

Seed	\$10,000 for 1
Reseed	\$0
Incrementation rate	
Primary	13%
Reserve	8%

(f) A certificate holder shall pay out winning Six Card Bonus Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

Hand	Paytable A	Paytable B	Paytable C
Royal flush	1,000 to 1	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1	200 to 1
Four-of-a-kind	50 to 1	50 to 1	100 to 1
Full house	25 to 1	25 to 1	20 to 1
Flush	20 to 1	15 to 1	15 to 1
Straight	10 to 1	10 to 1	9 to 1
Three-of-a-kind	5 to 1	5 to 1	8 to 1

Hand	Paytable D	Paytable E
Six-card royal flush—diamonds		200,000 to 1
Six-card royal flush—hearts, spades or clubs		20,000 to 1
Royal flush	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1
Four-of-a-kind	100 to 1	50 to 1
Full house	20 to 1	20 to 1
Flush	15 to 1	15 to 1
Straight	10 to 1	10 to 1
Three-of-a-kind	7 to 1	5 to 1

§ 655a.13. Irregularities.

(a) A card that is found face up in the shoe or the deck while the cards are being dealt may not be used in that round of play and shall be placed in the discard rack. If more than one card is found face up in the shoe or the deck during the dealing of the cards, all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(b) A card drawn in error without its face being exposed shall be used as though it were the next card from the shoe or the deck.

(c) If any player or the area designated for the placement of the community cards is dealt an incorrect number of cards, all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(d) If any of the community cards are inadvertently exposed prior to each player having either folded or placed a 3rd Street, 4th Street or 5th Street Wager as provided in § 655a.11 (relating to procedures for completion of each round of play), all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(e) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle or fails to complete a shuffle cycle, the cards shall be reshuffled.

(f) If an automated dealing shoe is being used and the device jams, stops dealing cards or fails to deal cards during a round of play, the round of play shall be void, all wagers shall be returned to the players and the cards shall be removed from the device and reshuffled with any cards already dealt.

(g) If an automated card shuffling device or automated dealing shoe malfunctions and cannot be used, the automated card shuffling device or automated dealing shoe shall be covered or have a sign indicating that the automated card shuffling device or automated dealing shoe is out of order placed on the device before any other method of shuffling or dealing may be utilized at that table.

CHAPTER 657a. CRAZY 4 POKER

§ 657a.2. Crazy 4 Poker table physical characteristics.

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(b) The layout for a Crazy 4 Poker table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

* * * * *

(4) If a certificate holder offers the Five Card Hand Bonus Wager authorized under § 657a.7(d)(5), each betting position must contain an electronic wagering system for the placement of the Five Card Hand Bonus Wager.

(5) If the certificate holder offers the Six Card Bonus Wager authorized under § 657a.7(d)(6), the layout must contain:

(i) A separate area designated for the placement of the Six Card Bonus Wager for each player.

(ii) A designated area on the layout for the Six Card Bonus card.

(6) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers offered by the certificate holder. If payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each Crazy 4 Poker table.

(7) Inscriptions that advise patrons of the following:

(i) The best four-card hand plays.

(ii) The dealer qualifies with a king or better.

(iii) A player who has a pair of aces or better may place a Play Wager in an amount up to three times the player's Ante Wager.

(iv) The player's Super Bonus Wager shall be returned if the player beats or ties the dealer with a hand that is not a straight or better.

(8) If the information in paragraph (7) is not on the layout, a sign which sets forth the required information must be posted at each Crazy 4 Poker table.

* * * * *

§ 657a.6. Crazy 4 Poker rankings.

* * * * *

(d) If the certificate holder offers a payout based on the rank of a five-card Poker hand, the rank of the hands must be:

* * * * *

(7) A three-of-a-kind, which is a hand consisting of three cards of the same rank.

(e) If the certificate holder offers the optional Six Card Bonus Wager, the Poker hands eligible for a payout are:

(1) A six-card royal flush, which is a hand consisting of an ace, king, queen, jack, 10 and 9 of the same suit.

(2) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.

(3) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking.

(4) A four-of-a-kind, which is a hand consisting of four cards of the same rank, regardless of suit.

(5) A full house, which is a hand consisting of three-of-a-kind and a pair.

(6) A flush, which is a hand consisting of five cards of the same suit.

(7) A straight, which is a hand consisting of five cards of consecutive rank, regardless of suit.

(8) A three-of-a-kind, which is a hand consisting of three cards of the same rank, regardless of suit.

§ 657a.7. Wagers.

* * * * *

(d) The following wagers may be placed in the game of Crazy 4 Poker:

* * * * *

(5) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player at a Crazy 4 Poker table the option to make an additional Five Card Hand Bonus Wager that the player's five-card Poker hand or the dealer's five-card Poker hand, or both, will contain a flush or better as defined in § 657a.6(d) (relating to Crazy 4 Poker rankings). After placing Ante and Super Bonus Wagers, a player may make the additional Five Card Hand Bonus Wager on the player's hand or the dealer's hand, or both, by using the electronic wagering device designated for that player. Each player shall be responsible for verifying that the player's Five Card Hand Bonus Wager has been accepted.

(6) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player who placed Ante and Super Bonus Wagers the option of placing a Six Card Bonus Wager which shall win if the player's five cards and the additional Six Card Bonus card form a three-of-a-kind or better as described in § 657a.6(e). A Six Card Bonus Wager does not have bearing on any other wagers made by the player.

(e) The certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 657a.8. Procedure for dealing the cards from a manual dealing shoe.

* * * * *

(d) After all wagers have been placed, if any player placed a Six Card Bonus Wager, the dealer shall deal one card, face down, to the area on the layout designated for the placement of the Six Card Bonus card. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who placed the required wagers in accordance with § 657a.7(d)(1) (relating to wagers) and to the dealer until each player and the dealer have five cards.

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§ 657a.9. Procedure for dealing the cards from the hand.

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(b) The dealer shall deal each card by holding the deck of cards in the chosen hand and use the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout. If any player placed a Six Card Bonus Wager, the dealer shall deal one card, face down, to the area on the layout designated for the placement of the Six Card Bonus card. The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who placed the required wagers in accordance with § 657a.7(d)(1) (relating to wagers) and to the dealer until each player and the dealer have five cards.

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§ 657a.10. Procedures for dealing the cards from an automated dealing shoe.

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(b) The dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to the player farthest to the dealer's left who has placed a wager in accordance with § 657a.7(d)(1) (relating to wagers). As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed a wager in accordance with § 657a.7(d)(1). The dealer shall then deliver a stack of five cards face down to the area designated for the placement of the dealer's cards. If any player placed a Six Card Bonus Wager, the dealer shall then remove the next stack of five cards dispensed by the automated dealing shoe and deal the top card of the stack face down to the area of the layout designated for the placement of the Six Card Bonus card then place the remaining cards of the stack in the discard rack without exposing the cards.

* * * * *

§ 657a.11. Procedures for completion of each round of play.

* * * * *

(b) After each player has examined his cards, the dealer shall, beginning with the player farthest to the dealer's left and moving clockwise around the table, ask each player who placed Ante and Super Bonus Wagers if he wishes to forfeit the Ante and Super Bonus Wagers

and end his participation in the round of play or make a Play Wager in an amount equal to the player's Ante Wager. A player who has a pair of aces or better may place a Play Wager in an amount up to three times the player's Ante Wager. If a player:

(1) Has placed Ante, Super Bonus and Queens Up Wagers but does not make a Play Wager, the player shall forfeit all three wagers.

(2) Has placed Ante, Super Bonus and Four or Five-Card Progressive Payout Wagers but does not make a Play Wager, the player shall forfeit all three wagers but may not forfeit the eligibility to receive an Envy Bonus under § 657a.12(d)(5) or (e)(5) (relating to payout odds; Envy Bonus; rate of progression).

(3) Has placed Ante, Super Bonus and Six Card Bonus Wagers but does not make a Play Wager, the player shall forfeit the Ante and Super Bonus Wagers but not forfeit the Six Card Bonus Wager and the player's cards shall remain on the layout until the optional wager is settled in accordance with subsection (g).

(c) After each player who has placed Ante and Super Bonus Wagers has either placed a Play Wager on the designated area of the layout or forfeited his wagers and hand, the dealer shall collect all forfeited wagers and associated cards and place the cards in the discard rack. The dealer shall then reveal the dealer's cards and place the cards so as to form the highest possible ranking four-card Poker hand. After the dealer's cards are turned face up, the dealer shall, beginning with the player farthest to the dealer's right and continuing around the table in a counterclockwise direction, complete the following applicable procedures in succession for each player:

* * * * *

(f) After settling a player's Ante, Play, Super Bonus and Queens Up Wagers, the dealer shall then settle the Five Card Hand Bonus Wager, if offered by the certificate holder, and any Magic Card or Lucky Bonus payouts. A winning Five Card Hand Bonus Wager shall be paid irrespective of whether the player's hand outranks the dealer's hand. If a player has won a Five Card Hand Bonus or any Magic Card or Lucky Bonus payout, the dealer shall:

(1) Verify that the hand is a winning hand.

(2) Have a floormen or above verify any Five Card Hand Bonus payout with odds of 500 for 1 or a payout that is a percentage of the jackpot amount on the progressive meter in accordance with approved internal control procedures submitted under § 465a.2 (relating to internal control systems and audit protocols).

(3) Credit the player's game account for the winning Five Card Hand Bonus Wager or the Magic Card or Lucky Bonus payout in accordance with § 657.12(f). If a player has won a Five Card Hand Bonus payout that is a percentage of the jackpot amount on the progressive meter, the payout may not be paid to the player's game account. If a player has won a payout that is not being paid to the player's game account, the winning hand must remain on the table until the necessary documentation has been completed.

(g) After the Play, Ante, Queens Up and Super Bonus Wagers have been settled, the dealer shall settle the player's Six Card Bonus Wager. The dealer shall reveal

the Six Card Bonus card and combine it with the player's five cards to form the highest ranking Poker hand in accordance with § 657a.6(e) (relating to Crazy 4 Poker rankings). If the player's hand:

(1) Does not contain a three-of-a-kind or better, the dealer shall collect the player's losing Six Card Bonus Wager.

(2) Contains a three-of-a-kind or better, the dealer shall pay the winning Six Card Bonus Wager in accordance with § 657a.12(g).

(h) After all wagers have been settled, the dealer shall remove all remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 657a.12. Payout odds; Envy Bonus; rate of progression.

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(c) The certificate holder shall pay out winning Queens Up Wagers at the odds in one of the following paytables, selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2 (relating to table games Rules Submissions):

* * * * *

(d) If a certificate holder offers the Four-Card Progressive Payout Wager:

(1) The certificate holder shall pay out winning Four-Card Progressive Payout Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

* * * * *

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	<i>Paytable A</i>	<i>Paytable B</i>
Seed/reseed	\$5,000 for 1	\$1,000 for 1
Incrementation rate		
Primary	29%	25%
Reserve	N/A	5%

(4) Winning Four-Card Progressive Payout Hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with § 657a.11(e) (relating to procedures for completion of each round of play).

* * * * *

(e) If a certificate holder offers the Five-Card Progressive Payout Wager:

(1) The certificate holder shall pay out winning Five-Card Progressive Payout Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

Hand	Paytable A	Paytable B	Paytable C	Paytable D
Royal flush	100% of meter	100% mega jackpot	100% mega jackpot	100% mega jackpot
Straight flush	10% of meter	100% major jackpot	100% major jackpot	100% major jackpot
Four-of-a-kind	300 for 1	300 for 1	100% minor jackpot	100% minor jackpot
Full house	50 for 1	50 for 1	50 for 1	50 for 1
Flush	40 for 1	40 for 1	40 for 1	40 for 1
Straight	30 for 1	30 for 1	30 for 1	30 for 1
Three-of-a-kind	9 for 1	9 for 1	10 for 1	9 for 1

(2) A player shall receive the payout for only the highest ranking five-card Poker hand formed.

(3) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

	Paytable A
Seed/reseed	\$10,000 for 1
Incrementation rate	
Primary	21%
Reserve	N/A

	Paytable B	Paytable C	Paytable D
Seed/reseed			
Mega	\$10,000 for 1	\$10,000 for 1	\$10,000 for 1
Major	\$1,000 for 1	\$1,000 for 1	\$1,000 for 1
Minor	N/A	\$250 for 1	\$250 for 1
Incrementation rate			
Mega	11%	9%	10%
Major	10%	7%	8%
Minor	N/A	3%	3%

(4) Winning Five-Card Progressive Payout Hands shall be paid in accordance with the amount on the meter when it is the player's turn to be paid in accordance with § 657a.11(e).

* * * * *

(f) If a certificate holder offers the Five Card Hand Bonus Wager:

* * * * *

(4) The rate of progression (incrementation rate) and the seed and reseed amounts for the meter used for the progressive payout in paragraph (1) must be based upon the amount of the Progressive Payout Wager being offered and must be as follows:

Seed	\$10,000 for 1
Reseed	\$0
Incrementation rate	
Primary	13%
Reserve	8%

(g) A certificate holder shall pay out winning Six Card Bonus Wagers at the odds in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

Hand	Paytable A	Paytable B	Paytable C
Royal flush	1,000 to 1	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1	200 to 1
Four-of-a-kind	50 to 1	50 to 1	100 to 1
Full house	25 to 1	25 to 1	20 to 1
Flush	20 to 1	15 to 1	15 to 1
Straight	10 to 1	10 to 1	9 to 1
Three-of-a-kind	5 to 1	5 to 1	8 to 1

Hand	Paytable D	Paytable E
Six-card royal flush—diamonds		200,000 to 1
Six-card royal flush—hearts, spades or clubs		20,000 to 1
Royal flush	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1
Four-of-a-kind	100 to 1	50 to 1
Full house	20 to 1	20 to 1
Flush	15 to 1	15 to 1
Straight	10 to 1	10 to 1
Three-of-a-kind	7 to 1	5 to 1

CHAPTER 677a. WORLD POKER TOUR HEADS-UP HOLD 'EM

§ 677a.7. Wagers.

* * * * *

(e) The certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 677a.12. Payout odds; payout limitation.

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(f) Notwithstanding the payout odds in subsections (a) and (b), if specified in its Rules Submission form filed in accordance with § 601a.2, the certificate holder may establish an aggregate payout limit per player per round of play which may not be less than \$50,000 or the maximum amount that one patron could win per round when betting the minimum wager, whichever is greater. A maximum payout limit established by the certificate holder must apply only to payouts of Ante, Raise and Odds Wagers placed under subsections (a) and (b) and does not apply to payouts for Bad Beat Bonus, Pocket Bonus or Trips Plus Wagers placed under subsections (c)—(e).

CHAPTER 679a. THREE CARD PRIME

§ 679a.8. Procedures for dealing the cards from a manual dealing shoe.

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(g) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

(h) If specified in its Rules Submission form required under § 601a.2 (relating to table games Rules Submissions), a certificate holder may deal one community card to be used by all players who placed a Pair Bonus Wager authorized under § 679a.7(d)(3) instead of dealing each player who placed a Pair Bonus Wager an additional card as provided in subsection (c). If the certificate holder elects to utilize one Pair Bonus community card, the community card shall be dealt after each player who placed an Ante Wager and the dealer have three cards. The community card shall be dealt to the area on the table layout designated for the placement of the Pair Bonus community card.

§ 679a.9. Procedures for dealing the cards from the hand.

* * * * *

(f) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

(g) If specified in its Rules Submission form required under § 601a.2 (relating to table games Rules Submissions), a certificate holder may deal one community card to be used by all players who placed a Pair Bonus Wager authorized under § 679a.7(d)(3), instead of dealing each player who placed a Pair Bonus Wager an additional card as provided in subsection (b). If the certificate holder elects to utilize one Pair Bonus community card, the community card shall be dealt after each player who placed an Ante Wager and the dealer have three cards. The community card shall be dealt to the area on the table layout designated for the placement of the Pair Bonus community card.

§ 679a.10. Procedures for dealing the cards from an automated dealing shoe.

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(g) Notwithstanding the requirements in subsections (b) and (c), if a certificate holder is utilizing an automated dealing shoe that automatically reshuffles the cards, the dealer may distribute four cards to each player and the dealer provided that as the cards are dispensed and distributed to each player:

(1) The top card of a stack dealt to a player who placed a Pair Bonus Wager shall be moved off the top of the stack and placed face down on the table layout until it is revealed by the dealer in accordance with § 679a.11(d)(2) (relating to procedures for completion of each round of play).

(2) The top card of a stack dealt to a player who did not place a Pair Bonus Wager and to the dealer shall be collected and placed face down in the discard rack.

(h) If specified in its Rules Submission form required under § 601a.2 (relating to table games Rules Submissions), a certificate holder may deal one community card to be used by all players who placed a Pair Bonus Wager authorized under § 679a.7(d)(3), instead of dealing each player who placed a Pair Bonus Wager an additional card as provided in subsection (c). If the certificate holder elects to utilize one Pair Bonus community card, the community card shall be dealt after each player who placed an Ante Wager and the dealer have three cards. The community card shall be dealt to the area on the table layout designated for the placement of the Pair Bonus community card.

§ 679a.11. Procedures for completion of each round of play.

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(d) After settling the player's Ante and Play Wagers, the dealer shall settle any optional wagers as follows:

* * * * *

(2) For the Pair Bonus Wager, if the player's hand:

(i) Does not contain a pair or better, the dealer shall collect the losing Pair Bonus Wager.

(ii) Contains a pair or better, the dealer shall reveal the fourth card dealt to the player or if the certificate holder is utilizing a Pair Bonus community card as provided in § 679a.8(h), § 679a.9(g) or § 679a.10(h), the dealer shall reveal the Pair Bonus community card. If the fourth card dealt to the player or the Pair Bonus community card is:

(A) Not a 2, the dealer shall pay the winning Pair Bonus Wager in accordance with § 679a.12(e).

(B) A 2, the dealer shall pay the winning Pair Bonus Wager in accordance with § 679a.12(f).

* * * * *

§ 679a.12. Payout odds; Bad Beat Bonus.

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(h) Notwithstanding the payout odds in subsections (a) and (b), if specified in its Rules Submission form filed in accordance with § 601a.2, the certificate holder may establish an aggregate payout limit per player per round of play which may not be less than \$50,000 or the maximum amount that one patron could win per round when betting the minimum wager, whichever is greater. A maximum payout limit established by the certificate holder must apply only to payouts of Ante and Play Wagers under subsections (a) and (b) and does not apply to payouts for Bad Beat Bonus, Prime, Pair Bonus or All Six Bonus Wagers under subsections (c)—(g).

CHAPTER 684a. FOUR CARD FRENZY

- Sec.
- 684a.1. Definitions.
- 684a.2. Four Card Frenzy table physical characteristics.
- 684a.3. Cards; number of decks.
- 684a.4. Opening of the table for gaming.
- 684a.5. Shuffle and cut of the cards.
- 684a.6. Four Card Frenzy rankings.
- 684a.7. Wagers.
- 684a.8. Procedures for dealing the cards from a manual dealing shoe.
- 684a.9. Procedures for dealing the cards from the hand.
- 684a.10. Procedures for dealing the cards from an automated dealing shoe.
- 684a.11. Procedures for completion of each round of play.
- 684a.12. Payout odds; payout limitation.
- 684a.13. Irregularities.

§ 684a.1. Definitions.

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

All-Six Bonus Wager—An optional wager a player shall make prior to any cards being dealt to compete against a posted payout table.

Ante Wager—The wager that a player is required to make prior to any cards being dealt to compete against the dealer's hand.

Fold—The withdrawal of a player from a round of play by not making a Raise Wager.

Four Card Bonus Wager—An optional wager a player shall make prior to any cards being dealt to compete against a posted payout table.

Odds Wager—A wager that a player is required to make prior to any cards being dealt to compete against the dealer's hand and a posted payout table.

Prime Wager—An optional wager a player shall make prior to any cards being dealt to compete against a posted payout table.

Raise Wager—An additional wager that a player shall make if the player opts to remain in competition against the dealer.

§ 684a.2. Four Card Frenzy table physical characteristics.

(a) Four Card Frenzy shall be played at a table having betting positions for no more than six players on one side of the table and a place for the dealer on the opposite side of the table.

(b) The layout for a Four Card Frenzy table shall be submitted to the Bureau of Gaming Operations in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

- (1) The name or logo of the certificate holder.
- (2) Three separate betting areas designated for the placement of Ante, Odds and Raise Wagers for each player.
- (3) If the certificate holder offers the optional Prime Wager authorized under § 684a.7(d)(2) (relating to wagers), the Four Card Bonus Wager authorized under § 684a.7(d)(3) or the All-Six Bonus Wager authorized under § 684a.7(d)(4), a separate area designated for the placement of each of the wagers for each player.

(4) Inscriptions that advise patrons of the payout odds for all permissible wagers offered by the certificate holder. If payout odds are not inscribed on the layout, a sign indicating the payout odds for all permissible wagers shall be posted at each Four Card Frenzy table.

(5) If the certificate holder establishes a payout limit per player, per round of play, as authorized under § 684a.12(g) (relating to payout odds; payout limitation), inscriptions that advise patrons of the payout limit. If the payout limit is not inscribed on the layout, a sign identifying the payout limit shall be posted at each Four Card Frenzy table.

(c) Each Four Card Frenzy table must have a drop box and a tip box attached on the same side of the table as, but on opposite sides of, the dealer, as approved by the Bureau of Casino Compliance in accordance with § 601a.10(g). The Bureau of Casino Compliance may approve an alternative location for the tip box when a

card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

(d) Each Four Card Frenzy table must have a discard rack securely attached to the top of the dealer's side of the table.

§ 684a.3. Cards; number of decks.

(a) Except as provided in subsection (b), Four Card Frenzy shall be played with 1 deck of 52 cards that are identical in appearance and 1 cover card.

(b) If an automated card shuffling device is utilized, Four Card Frenzy may be played with 2 decks of 52 cards in accordance with the following requirements:

(1) The cards in each deck must be of the same design. The backs of the cards in one deck must be of a different color than the cards included in the other deck.

(2) One deck of cards shall be shuffled and stored in the automated card shuffling device while the other deck is being used to play the game.

(3) Both decks are continuously alternated in and out of play, with each deck being used for every other round of play.

(4) The cards from only one deck are placed in the discard rack at any given time.

(c) The decks of cards used in Four Card Frenzy shall be changed at least every:

(1) Four hours if the cards are dealt by hand.

(2) Eight hours if the cards are dealt from a manual or automated dealing shoe.

§ 684a.4. Opening of the table for gaming.

(a) After receiving one or more decks of cards at the table, the dealer shall inspect the cards for any defects. The floorperson assigned to the table shall verify the inspection.

(b) After the cards are inspected, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread in horizontal fan shaped columns by deck according to suit and in sequence.

(c) After the first player arriving at the table has been afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a washing of the cards and stacked. Once the cards have been stacked, the cards shall be shuffled in accordance with § 684a.5 (relating to shuffle and cut of the cards).

(d) If an automated card shuffling device is utilized and two decks of cards are received at the table, each deck of cards shall be spread for inspection, mixed, stacked and shuffled in accordance with subsections (a)—(c).

(e) If the decks of cards received at the table are preinspected and preshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), subsections (a)—(d) do not apply.

§ 684a.5. Shuffle and cut of the cards.

(a) Immediately prior to commencement of play, unless the cards were preshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), after each round of

play has been completed or when directed by a floorperson or above, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or automated shuffling device shall place the deck of cards in a single stack. The certificate holder may use an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe.

(b) If an automated card shuffling device is being used, which counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present, and the device reveals that an incorrect number of cards are present, the deck shall be removed from the table.

(c) After the cards have been shuffled and stacked, the dealer shall:

(1) If the cards were shuffled using an automated card shuffling device, deal the cards in accordance with § 684a.8, § 684a.9 or § 684a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe).

(2) If the cards were shuffled manually or were reshuffled, cut the cards in accordance with subsection (d).

(d) If a cut of the cards is required, the dealer shall place a cover card in the stack at least ten cards in from the top of the stack. Once the cover card has been inserted, the dealer shall take all cards above the cover card and the cover card and place them on the bottom of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play.

(e) After the cards have been cut and before any cards have been dealt, a floorperson or above may require the cards to be recut if the floorperson determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game.

(f) If there is no gaming activity at a Four Card Frenzy table which is open for gaming, the cards shall be removed from the dealing shoe and discard rack and spread on the table face down unless a player requests that the cards be spread face up on the table. After the first player arriving at the table is afforded an opportunity to visually inspect the cards, the procedures in § 684a.4(c) (relating to opening of the table for gaming) and this section shall be completed.

(g) A certificate holder may utilize a dealing shoe or other device that automatically reshuffles and counts the cards provided that the device is submitted to the Bureau of Gaming Laboratory Operations and approved in accordance with § 461a.4 (relating to submission for testing and approval) prior to its use in the licensed facility. If a certificate holder is utilizing the approved device, subsections (d)—(f) do not apply.

§ 684a.6. Four Card Frenzy rankings.

(a) The rank of the cards used in Four Card Frenzy, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. Notwithstanding the foregoing, an ace may be used to complete a straight flush or a straight with a 2, 3 and 4 but may not be combined with any other sequence of cards (for example, queen, king, ace and 2). All suits shall be equal in rank.

(b) The permissible Poker hands in the game of Four Card Frenzy, in order of highest to lowest rank, shall be:

(1) A four-of-a-kind, which is a hand consisting of four cards of the same rank with four aces being the highest ranking four-of-a-kind and four 2s being the lowest ranking four-of-a-kind.

(2) A straight flush, which is a hand consisting of four cards of the same suit in consecutive ranking, with an ace, king, queen and jack being the highest ranking straight flush and an ace, 2, 3 and 4 being the lowest ranking straight flush.

(3) A three-of-a-kind, which is a hand consisting of three cards of the same rank, with three aces being the highest ranking three-of-a-kind and three 2s being the lowest ranking three-of-a-kind.

(4) A flush, which is a hand consisting of four cards of the same suit, regardless of rank.

(5) A straight, which is a hand consisting of four cards of more than one suit and of consecutive rank, with an ace, king, queen and jack being the highest ranking straight and an ace, 2, 3 and 4 being the lowest ranking straight.

(6) Two pairs, which is a hand consisting of two sets of two cards of the same rank, with two aces and two kings being the highest ranking two pairs and two 3s and two 2s being the lowest ranking two pair.

(7) A pair, which is a hand consisting of two cards of the same rank, with two aces being the highest ranking pair and two 2s being the lowest ranking pair.

(c) When comparing two Poker hands that are of identical rank under subsection (b), or that contain none of the hands in subsection (b), the hand that contains the highest ranking card under subsection (a), which is not contained in the other hand, shall be considered the higher ranking hand. If the hands are of equal rank after the application of this section, the hands shall be considered a tie.

(d) If a certificate holder offers the Four Card Bonus Wager authorized under § 684a.7(d)(3) (relating to wagers), the hands eligible for a payout shall be:

(1) A four-of-a-kind, which is a hand consisting of four cards of the same rank.

(2) A royal flush, which is a hand consisting of an ace, king, queen and jack of the same suit.

(3) A straight flush, which is a hand consisting of four cards of the same suit in consecutive ranking, other than a royal flush.

(4) A three-of-a-kind, which is a hand consisting of three cards of the same rank.

(5) A flush, which is a hand consisting of four cards of the same suit, regardless of rank.

(6) A straight, which is a hand consisting of four cards of more than one suit and of consecutive rank.

(7) Two pairs, which is a hand consisting of two sets of two cards of the same rank.

(e) If a certificate holder offers the All-Six Bonus Wager authorized under § 684a.7(d)(4), the hands eligible for a payout shall be:

(1) A six-card royal flush, which is a hand consisting of an ace, king, queen, jack, 10 and 9 of the same suit.

(2) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.

(3) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking, other than a royal flush.

(4) A four-of-a-kind, which is a hand consisting of four cards of the same rank, regardless of suit.

(5) A full house, which is a hand consisting of three-of-a-kind and a pair.

(6) A flush, which is a hand consisting of five cards of the same suit.

(7) A straight, which is a hand consisting of five cards of consecutive rank, regardless of suit.

(8) A three-of-a-kind, which is a hand consisting of three cards of the same rank, regardless of suit.

§ 684a.7. Wagers.

(a) Wagers at Four Card Frenzy shall be made by placing value chips, plaques or other Board-approved table game wagering instruments on the appropriate areas of the table layout. Verbal wagers accompanied by cash may not be accepted.

(b) Only players who are seated at a Four Card Frenzy table may wager at the game. Once a player has placed a wager and received cards, that player shall remain seated until the completion of the round of play. If a player leaves the table during a round of play, any wagers made by the player may be considered abandoned and may be treated as losing wagers.

(c) All wagers, except the Raise Wager, shall be placed prior to the dealer announcing "no more bets" in accordance with the dealing procedures in § 684a.8, § 684a.9 or § 684a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from an automated dealing shoe). Except as provided in § 684a.11(b) (relating to procedures for completion of each round of play), a wager may not be made, increased or withdrawn after the dealer has announced "no more bets."

(d) The following wagers may be placed in the game of Four Card Frenzy:

(1) A player may compete solely against the dealer's Four Card Frenzy hand by placing Ante and Odds Wagers in equal amounts, then a Raise Wager in accordance with § 684a.11(b).

(2) If specified in its Rules Submission under § 601a.2 (relating to table games Rules Submissions), a certificate holder may offer to each player at a Four Card Frenzy table the option to make an additional Prime Wager which shall win if at least four of player's five cards are of the same color.

(3) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player at a Four Card Frenzy table the option to make an additional Four Card Bonus Wager, which shall win if the player's four-card hand contains two pair or better as provided in § 684a.6(d) (relating to Four Card Frenzy rankings).

(4) If specified in its Rules Submission under § 601a.2, a certificate holder may offer to each player at a Four Card Frenzy table the option to make an additional All-Six Bonus Wager, which shall win if the player's five cards and the additional All-Six Bonus card forms a three-of-a-kind or better as provided in § 684a.6(e).

(e) A certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a wager in one round of play.

§ 684a.8. Procedures for dealing the cards from a manual dealing shoe.

(a) If a manual dealing shoe is used, the dealing shoe must be located on the table in a location approved by the Bureau of Casino Compliance in accordance with § 601a.10(g) (relating to approval of table game layouts, signage and equipment). Once the procedures required under § 684a.5 (relating to shuffle and cut of the cards) have been completed, the stacked deck of cards shall be placed in the dealing shoe by the dealer or by an automated card shuffling device.

(b) Prior to dealing any cards, the dealer shall announce "no more bets." To deal the cards, the dealer shall remove each card from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and place it on the appropriate area of the layout with the opposite hand.

(c) If a player has placed an All-Six Bonus Wager, the dealer shall deal the first card face down to the area of the layout designated for the All-Six Bonus card. Thereafter, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, the dealer shall deal one card at a time to each player who has placed Ante and Odds Wagers in accordance with § 684a.7(d)(1) (relating to wagers) and to the dealer until each player who placed Ante and Odds Wagers and the dealer have five cards. All cards shall be dealt face down.

(d) After five cards have been dealt to each player and the dealer, the dealer shall remove the stub from the manual dealing shoe and, except as provided in subsection (e), place the stub in the discard rack without exposing the cards.

(e) If an automated card shuffling device that counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present is not being used, the dealer shall count the stub at least once every 5 rounds of play to determine if the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(f) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(g) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

§ 684a.9. Procedures for dealing the cards from the hand.

(a) If the cards are dealt from the dealer's hand, the following requirements shall be observed:

(1) An automated shuffling device shall be used to shuffle the cards.

(2) After the procedures required under § 684a.5 (relating to shuffle and cut of the cards) have been completed, the dealer shall place the stacked deck of cards in either hand. After the dealer has chosen the hand in which to hold the cards, the dealer shall continue to use that hand whenever holding the cards during that round of play. The cards held by the dealer shall be kept over the table inventory container and in front of the dealer at all times.

(3) Prior to dealing any cards, the dealer shall announce “no more bets.”

(b) To deal the cards, the dealer shall hold the deck of cards in the chosen hand and use the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout. If a player has placed an All-Six Bonus Wager, the dealer shall deal the first card face down to the area of the layout designated for the All-Six Bonus card. Thereafter, starting with the player farthest to the dealer’s left and continuing around the table in a clockwise manner, the dealer shall deal one card at a time to each player who has placed Ante and Odds Wagers in accordance with § 684a.7(d)(1) (relating to wagers) and to the dealer until each player who placed Ante and Odds Wagers and the dealer have five cards.

(c) After five cards have been dealt to each player and the dealer, except as provided in subsection (d), the dealer shall place the stub in the discard rack without exposing the cards.

(d) If an automated card shuffling device that counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present is not being used, the dealer shall count the stub at least once every 5 rounds of play to determine if the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(e) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(f) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

§ 684a.10. Procedures for dealing the cards from an automated dealing shoe.

(a) If the cards are dealt from an automated dealing shoe, the following requirements shall be observed:

(1) After the procedures required under § 684a.5 (relating to shuffle and cut of the cards) have been completed, the cards shall be placed in the automated dealing shoe.

(2) Prior to the shoe dispensing any stacks of cards, the dealer shall announce “no more bets.”

(b) The dealer shall deliver the first stack of five cards dispensed by the automated dealing shoe face down to the player farthest to the dealer’s left who has placed Ante and Odds Wagers in accordance with § 684a.7(d)(1) (relating to wagers). As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who have placed Ante and Odds Wagers. The dealer shall then deliver a stack of five cards face down to the area designated for the placement of the dealer’s cards. If any player placed an All-Six Bonus Wager, the dealer shall then remove the next stack of five cards dispensed by the automated dealing shoe and deal the top card of the stack face down to the area of the layout designated for the All-Six Bonus card and place the remaining cards of the stack in the discard rack without exposing the cards.

(c) After all cards have been dispensed and delivered in accordance with subsection (b), the dealer shall remove the stub from the automated dealing shoe and, except as provided in subsection (d), place the cards in the discard rack without exposing the cards.

(d) If an automated card shuffling device that counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present is not being used, the dealer shall count the stub at least once every 5 rounds of play to determine if the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(e) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(f) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

§ 684a.11. Procedures for completion of each round of play.

(a) After the dealing procedures required under § 684a.8, § 684a.9 or § 684a.10 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe) have been completed, each player shall examine his cards subject to the following limitations:

(1) Each player who wagers at Four Card Frenzy shall be responsible for his own hand and no person other than the dealer and the player to whom the cards were dealt may touch the cards of that player.

(2) Each player shall keep his five cards in full view of the dealer at all times.

(b) After each player has examined his cards and formed the best possible four-card hand, the dealer shall, beginning with the player farthest to the dealer’s left and moving clockwise around the table, ask each player who placed Ante and Odds Wagers if he wishes forfeit the Ante and Odds Wagers and end his participation in the round of play or make a Raise Wager. If the player elects to:

(1) Place a Raise Wager, the player’s Raise Wager shall be equal to the player’s Ante Wager if player’s hand is a pair of kings or lower as provided in § 684a.6(b) (relating to Four Card Frenzy rankings). If the player’s hand is a pair of aces or higher, the player’s Raise Wager may be equal to one, two or three times the player’s Ante Wager.

(2) Forfeit his Ante and Odds Wagers by failing to place a Raise Wager, the dealer shall collect the player’s Ante and Odds Wagers and place the player’s cards in the discard rack provided that if a player has placed an optional Four Card Bonus, Prime or All Six-Bonus Wager, the player does not forfeit the optional wagers and the player’s cards shall remain on the layout until the optional wagers are settled in accordance with subsection (d).

(c) After each player has either placed a Raise Wager on the designated area of the layout or forfeited his Ante and Odds Wagers, the dealer shall reveal the dealer’s

cards and place the cards so as to form the highest possible ranking four-card hand. After the dealer's cards are turned face up, the dealer shall, beginning with the player farthest to the dealer's right and continuing around the table in a counterclockwise direction, complete the following applicable procedures in succession for each player:

(1) The dealer shall turn the cards of each player face up on the layout and compare the player's four-card hand to the dealer's four-card hand. The dealer shall then settle the player's required wagers as provided in paragraphs (2)—(4).

(2) For purposes of the Ante Wager:

(i) If the dealer's highest ranking four-card hand is not a king high or better, as described in § 684a.6(b) and (c), the dealer shall return the player's Ante Wager.

(ii) If the dealer's highest ranking four-card hand is a king high or better, and the player's highest ranking four-card hand:

(A) Is greater than or equal to the dealer's hand, the dealer shall pay the winning Ante Wager in accordance with § 684a.12(a) (relating to payout odds; payout limitation).

(B) Is lower than the dealer's hand, the dealer shall collect the player's losing Ante Wager.

(3) For purposes of the Raise Wager:

(i) If the player's highest ranking four-card hand is greater than or equal to the dealer's hand, the dealer shall pay the winning Raise Wager in accordance with § 684a.12(a).

(ii) If the player's highest ranking four-card hand is lower than the dealer's hand, the dealer shall collect the player's losing Raise Wager.

(4) For purposes of the Odds Wager:

(i) If a player's highest ranking four-card hand is a straight or higher, as provided in § 684a.6(b) and the player's hand is:

(A) Greater than or equal to the dealer's hand, the dealer shall pay the winning Odds Wager in accordance with § 684a.12(b).

(B) Lower than the dealer's hand, the dealer shall pay a bad beat payout on the player's Odds Wager in accordance with § 684a.12(c).

(ii) If a player's highest ranking four-card hand is two pair or lower, as provided in § 684a.6(b) and the player's hand is:

(A) Greater than or equal to the dealer's hand, the dealer shall return the player's Odds Wager.

(B) Lower than the dealer's hand, the dealer shall collect the player's losing Odds Wager.

(d) After settling the player's Ante, Odds and Raise Wagers, the dealer shall settle any optional wagers as follows:

(1) For the Prime Wager, if four or more of the player's five cards:

(i) Are not the same color, the dealer shall collect the losing Prime Wager.

(ii) Are of the same color, the dealer shall pay the winning Prime Wager in accordance with § 684a.12(d).

(2) For the Four Card Bonus Wager, if the player's four-card hand:

(i) Does not contain two pair or better, as described in § 684a.6(d), the dealer shall collect the losing Four Card Bonus Wager.

(ii) Contains two pair or better, as described in § 684a.6(d), the dealer shall pay the winning Four Card Bonus Wager in accordance with § 684a.12(e).

(3) For the All-Six Bonus Wager, the dealer shall expose the All-Six Bonus card and combine it with the player's five cards to form the highest ranking six-card hand as provided in § 684a.6(e). If the hand:

(i) Does not contain a three-of-a-kind or better, as described in § 684a.6(e), the dealer shall collect the losing All-Six Bonus Wager.

(ii) Contains a three-of-a-kind or better, as described in § 684a.6(e), the dealer shall pay the winning All-Six Bonus Wager in accordance with § 684a.12(f).

(e) After all wagers of the player have been settled, the dealer shall remove any remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 684a.12. Payout odds; payout limitation.

(a) A certificate holder shall pay winning Ante and Raise Wagers at odds of 1 to 1.

(b) A certificate holder shall pay winning Odds Wagers in accordance with the following payout table:

<i>Hand</i>	<i>Payout</i>
Four aces	200 to 1
Any other four-of-a-kind	30 to 1
Straight flush	15 to 1
Three-of-a-kind	2 to 1
Flush	3 to 2
Straight	1 to 1

(c) A certificate holder shall pay a bad beat payout on the player's Odds Wager in accordance with one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2 (relating to table games Rules Submissions):

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Four-of-a-kind	30 to 1	100 to 1	100 to 1	500 to 1
Straight flush	15 to 1	30 to 1	50 to 1	50 to 1
Three-of-a-kind	2 to 1	4 to 1	4 to 1	5 to 1
Flush	3 to 2	3 to 1	3 to 1	4 to 1
Straight	1 to 1	2 to 1	2 to 1	2 to 1

(d) A certificate holder shall pay out winning Prime Wagers in accordance with one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>
All five of the same color	6 to 1	5 to 1
Four of the same color	1 to 1	1 to 1

(e) A certificate holder shall pay out winning Four Card Bonus Wagers in accordance with one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Four aces	50 to 1	50 to 1	200 to 1	200 to 1
Any other four-of-a-kind	50 to 1	50 to 1	100 to 1	100 to 1
Royal flush	40 to 1	40 to 1	50 to 1	50 to 1
Straight flush	40 to 1	40 to 1	30 to 1	40 to 1
Three aces	8 to 1	7 to 1	20 to 1	20 to 1
Any other three-of-a-kind	8 to 1	7 to 1	8 to 1	7 to 1
Flush	4 to 1	4 to 1	4 to 1	4 to 1
Straight	3 to 1	3 to 1	3 to 1	3 to 1
Two pair—other than two aces and two queens	2 to 1	2 to 1	2 to 1	2 to 1
Two aces and two queens	1 to 1	1 to 1	1 to 1	1 to 1

<i>Hand</i>	<i>Paytable E</i>	<i>Paytable F</i>	<i>Paytable G</i>	<i>Paytable H</i>
Four aces	200 to 1	200 to 1	200 to 1	200 to 1
Any other four-of-a-kind	100 to 1	100 to 1	100 to 1	100 to 1
Royal flush	50 to 1	50 to 1	50 to 1	50 to 1
Straight flush	30 to 1	40 to 1	40 to 1	40 to 1
Three aces	20 to 1	20 to 1	20 to 1	20 to 1
Any other three-of-a-kind	6 to 1	5 to 1	6 to 1	5 to 1
Flush	4 to 1	4 to 1	4 to 1	4 to 1
Straight	3 to 1	3 to 1	3 to 1	3 to 1
Two pair—other than two aces and two queens	2 to 1	2 to 1	2 to 1	2 to 1
Two aces and two queens	1 to 1	1 to 1	1 to 1	1 to 1

(f) A certificate holder shall pay out winning All-Six Bonus Wagers as provided in one of the following payout tables selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>
Royal flush	1,000 to 1	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1	200 to 1
Four-of-a-kind	50 to 1	50 to 1	100 to 1
Full house	25 to 1	25 to 1	20 to 1
Flush	20 to 1	15 to 1	15 to 1
Straight	10 to 1	10 to 1	9 to 1
Three-of-a-kind	5 to 1	5 to 1	8 to 1

<i>Hand</i>	<i>Paytable D</i>	<i>Paytable E</i>
Six-card royal flush—diamonds		200,000 to 1
Six-card royal flush—hearts, spades or clubs		20,000 to 1
Royal flush	1,000 to 1	1,000 to 1
Straight flush	200 to 1	200 to 1
Four-of-a-kind	100 to 1	50 to 1
Full house	20 to 1	20 to 1
Flush	15 to 1	15 to 1

<i>Hand</i>	<i>Paytable D</i>	<i>Paytable E</i>
Straight	10 to 1	10 to 1
Three-of-a-kind	7 to 1	5 to 1

(g) Notwithstanding the payout odds in subsections (a)—(c), if specified in its Rules Submission form filed in accordance with § 601a.2, the certificate holder may establish an aggregate payout limit per player per round of play which may not be less than \$50,000 or the maximum amount that one patron could win per round when betting the minimum wager, whichever is greater. A maximum payout limit established by the certificate holder must apply only to payouts of Ante and Raise Wagers under subsections (a)—(c) and does not apply to payouts for Prime, Four Card Bonus or All-Six Bonus Wagers under subsections (d)—(f).

§ 684a.13. Irregularities.

(a) A card that is found face up in the shoe or the deck while the cards are being dealt may not be used in that round of play and shall be placed in the discard rack. If more than one card is found face up in the shoe or the deck during the dealing of the cards, all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(b) A card drawn in error without its face being exposed shall be used as though it were the next card from the shoe or the deck.

(c) If a player or the dealer is dealt an incorrect number of cards, all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(d) If one or more of the dealer's cards is inadvertently exposed prior to the player's placing their Raise Wagers

in accordance with § 684a.11(b) (relating to procedures for completion of each round of play), all hands shall be void, all Ante, Odds and Raise Wagers shall be returned to the players and the cards shall be reshuffled, provided that if any player placed a Prime, Four Card Bonus or All-Six Bonus Wager, those wagers shall be settled in accordance with § 684a.11(e).

(e) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle or fails to complete a shuffle cycle, the cards shall be reshuffled.

(f) If an automated dealing shoe is being used and the device jams, stops dealing cards or fails to deal all cards during a round of play, the round of play shall be void, all wagers shall be returned to the players and the cards shall be removed from the device and reshuffled with any cards already dealt.

(g) If an automated card shuffling device or automated dealing shoe malfunctions and cannot be used, the automated card shuffling device or automated dealing shoe must be covered or have a sign indicating that the automated card shuffling device or automated dealing shoe is out of order placed on the device before any other method of shuffling or dealing may be utilized at that table.

[Pa.B. Doc. No. 19-1318. Filed for public inspection August 30, 2019, 9:00 a.m.]

PROPOSED RULEMAKING

MILK MARKETING BOARD

[7 PA. CODE CH. 150]

Milk Marketing Fees

The Milk Marketing Board (Board) proposes to amend Chapter 150 (relating to milk marketing fees) by increasing the license fees for milk dealers, subdealers and haulers, and increasing the examination and certificate fees for weigher-samplers and testers.

A. *Effective Date*

This proposed rulemaking will be effective 30 days after final-form publication in the *Pennsylvania Bulletin*. Increases for new applicants will be effective when this proposed rulemaking is effective. Increases for renewal applicants will be effective for license years beginning on or after July 1, 2020. There is no sunset provision.

B. *Statutory Authority*

The Milk Marketing Fee Act (act) (31 P.S. §§ 700k-1—700k-10.1) gives the Board the authority to charge and collect license fees. Sections 700k-3(c), 700k-6, 700k-7 and 700k-8 provide that the Board has the authority to set the fees by regulation.

C. *Purpose and Explanation*

The Board is self-funded, primarily by these fees. The Board has not received any general fund appropriations since the 1996-1997 fiscal year. The fees have not been increased since January 2004. The fees and any other funds received by the Board are paid into the State Treasury and placed in the Milk Marketing Fund (Fund). Despite the Board's careful stewardship, expenses have increased substantially in these 15 years, while income has not. The Fund is being eroded by the resulting deficits. Without this fee increase, the Board's financial viability will become uncertain. Further details are available in the Regulatory Analysis Form for this proposed rulemaking, which is available at www.irrc.state.pa.us or from the contact person designated as follows.

Section 150.3 is proposed to be deleted because the classification transition described in that regulation was implemented and completed by the Board as described in the regulation.

D. *Description of Proposed Amendments*

The Board currently licenses about 42 milk testers and 1,388 milk weigher-samplers. Their licenses are designated in the act and regulations as "certificates." Their annual certificate renewal fees will increase from \$20 to \$25. The examination fee for a new milk tester or weigher-sampler will increase from \$25 to \$30 and the certificate fee from \$20 to \$25.

The Board currently licenses about 184 milk haulers. Their annual license renewal fees will increase from \$30 to \$35. The license application fee for a new milk hauler will also increase from \$30 to \$35.

The Board currently licenses about 163 milk subdealers. Their annual fixed license renewal fees will increase from \$25 to \$50. The fixed license application fee for a new subdealer will still be \$50 but will no longer be prorated based on the time of year the license is issued. Their volume-based additional fee (designated as the

"quart-equivalent fee") will increase 25% to a maximum of \$1,750, and will be calculated on the basis of milk sold, not milk purchased.

The Board currently licenses about 180 milk dealers. Their annual fixed license renewal fees will increase from \$50 to \$100. The annual fixed license application fee for a new dealer will still be \$100 but will be prorated semi-annually instead of quarterly based on the time of year the application is submitted. In addition to the fixed fee, there are fees per 100 pounds of milk. These fees will increase from \$0.045 per hundredweight (cwt) to \$0.060 cwt for controlled products (products for which the Board sets prices), and from \$0.0057 cwt to \$0.0064 cwt for noncontrolled products.

E. *Fiscal and Administrative Impact*

The licensees previously described in section D are the persons and parties affected by this proposed rulemaking.

The milk dealers are projected to pay a combined total of about \$370,000 to \$385,000 per year more than they would under the current fee structure. The milk subdealers are projected to pay a combined total of about \$8,500 per year more than they would under the current fee structure. The milk haulers are projected to pay a combined total of about \$950 per year more than they would under the current fee structure. The milk weigher-samplers are projected to pay a combined total of about \$8,195 per year more than they would have under the current fee structure. The milk testers are projected to pay a combined total of about \$325 per year more than they would have under the current fee structure. These are projected estimates.

These fees are not new fees—they are increases in existing fees. Therefore the administrative impact is not expected to be significant. Subdealers will calculate their fees based on the volume of milk products sold, which is information that is obviously readily available, instead of having their fees calculated on the basis of milk products purchased, and therefore this is not expected to result in a significant administrative impact.

F. *Public Hearing*

A public hearing was held on May 23, 2019, at the Farm Show Complex in Harrisburg, PA. Notice of the hearing was published in the *Pennsylvania Bulletin*, posted on the Board's web site and sent to the Board's network of more than 300 licensees, trade organizations, stores, individuals and media who receive communications from the Board by e-mail or mail. The Board received written communication only from the Pennsylvania Association of Milk Dealers (PAMD), who supported the amendments. At the hearing, the only attendees (other than the Board and Board personnel) were an attorney representing PAMD and an attorney and another person representing the Pennsylvania Association of Dairy Cooperatives (PADC). The PAMD attorney endorsed the letter that had already been sent to the Board. The PADC attorney said there has been no opposition from its members. Tim Moyer, the Secretary of the Board, gave a statement supporting the proposed amendments.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 31, 2019, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory

Review Commission (IRRC) and to the Chairs of the House and Senate Committees on Agriculture and Rural Affairs. 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 this proposed rulemaking within 30 days after 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-form publication of this proposed rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions, support or objections about this proposed rulemaking to Douglas Eberly, Chief Counsel, Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110, or by e-mail to ra-pmmb@pa.gov within 30 days after publication in the *Pennsylvania Bulletin*. Individuals who require this information in a different format may call (717) 787-4194 or (800) 654-5984 which is the Pennsylvania AT&T Relay Service for TDD users.

ROBERT N. BARLEY,
Chairperson

Fiscal Note: 47-19. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 150. MILK MARKETING FEES

GENERAL PROVISIONS

§ 150.3. [Classification of licenses—statement of policy] Reserved.

[It is the policy of the Board to establish a license classification system that reflects the changes occurring in the market conditions and business characteristics of the dairy industry. The Board anticipates implementation of changes in the license classification system that will go into effect during the license year 2001—2002. The Board's proposed changes will eliminate the license classifications of importing retailer, importing distributor, broker, receiving station and subdealer store. In order to reduce the administrative burden of calculating and refunding license fees during the license year to those entities that will not be required to be licensed under the new license classification system, it is the Board's intent to notify those entities currently licensed as an importing retailer, importing distributor, broker, receiving station or subdealer store that they are not required to complete and file a license application for the license year 2001—2002 and any succeeding license years.]

LICENSE FEES OF MILK DEALERS

§ 150.11. Fixed fees.

(a) A new applicant for a milk dealer's license shall pay a fixed fee of \$100 [for a license issued on or after July 1 but before October 1 of the same year or a proportionate fixed fee as follows:] for applications

submitted before January 1 of the license year for which the application is submitted, and \$50 for applications submitted on or after January 1.

[(1) \$75 for a license issued on or after October 1 but before January 1 of the succeeding year.

(2) \$50 for a license issued on or after January 1 but before April 1 of the same year.

(3) \$25 for a license issued on or after April 1 but before July 1 of the same year.]

(b) An applicant for annual renewal of a milk dealer's license shall pay a fixed fee of [\$50] \$100.

§ 150.12. Hundredweight fees.

(a) In addition to the fixed fee imposed under § 150.11 (relating to fixed fees), a milk dealer that was licensed for the entire calendar year preceding license renewal shall pay an annual hundredweight fee as set forth in paragraphs (1) and (2).

(1) For milk for which the Board has fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the calendar year preceding the period for which the license is issued, the fee is [\$.045] \$.060 per hundredweight.

(2) For milk for which the Board has not fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the calendar year preceding the period for which the license is issued, the fee is [\$.0057] \$.0064 per hundredweight.

(b) In addition to the fixed fee imposed under § 150.11, a milk dealer that was not licensed for the entire calendar year preceding license application or renewal shall pay a monthly hundredweight fee as set forth in paragraphs (1) and (2). Monthly payments shall continue until the milk dealer has been licensed for an entire calendar year and for each month thereafter until the next license year begins. Annual payments shall then commence under subsection (a).

(1) For milk for which the Board has fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the preceding month, the fee is [\$.045] \$.060 per hundredweight.

(2) For milk for which the Board has not fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the preceding month, the fee is [\$.0057] \$.0064 per hundredweight.

* * * * *

LICENSE FEES OF MILK SUBDEALERS

§ 150.21. Fixed fees.

(a) A new applicant for a subdealer's license shall pay a fixed fee of \$50 [for a license issued on or after July 1 but before October 1 of the same year or a proportionate fixed fee as follows:]

[(1) \$37.50 for a license issued on or after October 1 but before January 1 of the succeeding year.

(2) \$25 for a license issued on or after January 1 but before April 1 of the same year.

(3) \$12.50 for a license issued on or after April 1 but before July 1 of the same year.]

(b) An applicant for annual renewal of a subdealer's license shall pay a fixed fee of [\$25] \$50.

§ 150.22. Quart-equivalent fee.

(a) In addition to the fixed fee imposed under § 150.21(b) (relating to fixed fees), an applicant for annual renewal of a subdealer's license shall pay an annual quart-equivalent fee calculated by dividing the total quarts of milk [**purchased**] **sold** during the previous calendar year by the number of months in which the subdealer engaged in business. The Board will assess the fee in accordance with the following schedule:

<i>Ave. Qts. [Purchased] Sold</i>	<i>Per Month</i>	<i>Annual Fee</i>
1—29,999		\$ [50] 62.50
30,000—59,999		[100] 125.00
60,000—119,999		[150] 187.50
120,000—149,999		<u>200.00</u>
150,000—199,999		[250] 312.50
200,000—299,999		[300] 375.00
300,000—399,999		[400] 500.00
400,000—599,999		[500] 625.00
600,000—799,999		[800] 1000.00
800,000—999,999		[1200] 1500.00
1,000,000 and over		[1400] 1750.00

(b) As used in subsection (a), "quarts" means the total volume of milk for which the Board sets a [**wholesale**] price expressed in quart equivalents.

LICENSE FEES OF MILK HAULERS

§ 150.51. Fixed fees.

A new applicant for a milk hauler's license and an applicant for annual renewal of a milk hauler's license shall pay a fixed fee of [\$30] \$35.

CERTIFICATION FEES OF MILK TESTERS

§ 150.61. Examination fee.

The fee to take the Board-approved examination for a certificate of proficiency in milk testing is [\$25] \$30, payable when the examination is taken. The examination fee is not refundable and may not be applied toward payment of the fixed fees in § 150.62 (relating to fixed fees for new and renewed certificates).

§ 150.62. Fixed fees for new and renewed certificates.

A new applicant for a milk tester's certificate and an applicant for renewal of a milk tester's certificate shall pay a fee of [\$20] \$25, which shall accompany the milk tester certificate application (available from the Board Office or website).

CERTIFICATION FEES OF MILK WEIGHERS AND SAMPLERS

§ 150.71. Examination fee.

The fee to take the Board-approved examination for a certificate of proficiency in milk weighing and sampling is [\$25] \$30, payable when the examination is taken. The examination fee is not refundable and may not be applied toward payment of the fixed fees in § 150.72 (relating to fixed fees for new and renewed certificates).

§ 150.72. Fixed fees for new and renewed certificates.

A new applicant for a milk weigher and sampler's certificate and an applicant for renewal of a milk weigher

and sampler's certificate shall pay a fee of [\$20] \$25, which shall accompany the milk weigher/sampler certificate application (available from the Board Office or website).

[Pa.B. Doc. No. 19-1319. Filed for public inspection August 30, 2019, 9:00 a.m.]

OFFICE OF ATTORNEY GENERAL

[37 PA. CODE CH. 311]

Unfair Market Trade Practices

The Office of Attorney General (OAG), through its Public Protection Division, proposes to amend 37 Pa. Code by adding Chapter 311 (relating to unfair market trade practices) to read as set forth in Annex A.

A. Effective Date

This proposed rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

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, Pennsylvania Office of Attorney General, Strawberry Square, 14th Floor, Harrisburg, PA 17120, (717) 787-4530. This proposed rulemaking is available on the OAG web site at www.attorneygeneral.gov.

C. Statutory Authority

This proposed rulemaking is proposed under the authority of section 3.1 of the Unfair Trade Practices and Consumer Protection Law (act or UTPCPL) (73 P.S. § 201-3.1), regarding the statutory rulemaking authority of the OAG, and section 506 of The Administrative Code of 1929 (71 P.S. § 186), regarding general rulemaking authority.

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 Proposed Rulemaking

1. Introduction

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 add regulations concerning unfair market trade practices.

2. Policy and Determination

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 2013-2014 session before the Senate Judiciary Committee on June 25, 2013, the OAG heard comments from 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.

In *Anadarko Petroleum Corp. v. Commonwealth*, 206 A.3d 51, 60 (Pa.Cmwlth. 2019), the Commonwealth Court held that “the UTPCPL provides two avenues through which activities can be declared ‘unfair methods of competition’ or ‘unfair or deceptive acts or practices.’ First, the General Assembly may define a given activity as unlawful by statute in Section 2(4) of the Law. Second, the Attorney General, by virtue of Section 3.1 of the Law, may also promulgate definitions of these terms through the administrative rulemaking process. 73 P.S. § 201-3.1.” The Commonwealth Court further held that “the Attorney General has thus far declined to deem [certain anticompetitive conduct] as ‘unfair methods of competition’ or ‘unfair or deceptive acts or practices’ under the UTPCPL through the administrative rulemaking process.” *Id.* at 61.

Through the experience of investigation and litigation, the OAG has identified that residents of this Commonwealth have been disadvantaged by the lack of a clear articulation of Commonwealth law that makes it easy to understand that residents of this Commonwealth can recover regardless of whether they have dealt directly or indirectly with the defendant or defendants for injury resulting from anti-competitive conduct. The OAG has determined that this proposed rulemaking under the act will remedy this unfair vacuum under Commonwealth law.

3. Unfair Market Trade Practices

The OAG has determined that the following general provisions in this proposed rulemaking clarify operative terms of the act consistent with the basic policy choice expressed in section 3 of the act (73 P.S. § 201-3). Proposed § 311.2 (relating to definitions) provides for the definition of “unfair market trade practices,” which, in turn, are defined as “unfair methods of competition and unfair or deceptive acts or practices.” Subclause (i) under “unfair market trade practices” prohibits all contracts, combinations and conspiracies intended to impose resale price maintenance restraints. Subclause (ii) under “unfair market trade practices” prohibits all contracts, combinations and conspiracies between competitors for the purpose of price-fixing. Subclause (iii) under “unfair market trade practices” prohibits all contracts, combinations and conspiracies intended to tie the sale of any article of trade or commerce upon the purchase of another article of trade or commerce. Subclause (v) under “unfair market trade practices” prohibits all contracts, combinations and conspiracies for the purpose of reciprocal dealings.

Subclause (vi) under “unfair market trade practices” prohibits all contracts, combinations and conspiracies to effectuate a group boycott. Subclause (vii) under “unfair market trade practices” prohibits actual monopolization. Subclause (viii) under “unfair market trade practices” prohibits attempted monopolization. Subclause (ix) under “unfair market trade practices” prohibits joint monopolization. Subclause (x) under “unfair market trade practices” prohibits incipient conspiracies to monopolize. For purposes of regulatory intent, an agreement among two or more persons to engage in collective bargaining does not come within the scope of this proposed rulemaking.

The OAG has adopted the following legal discussion of the staff which provides a reasonable basis that proposed

§ 311.3 is consistent with the basic policy choice expressed in section 3 of the act. The Commonwealth’s courts have held that section 5 of the FTCA is virtually the same as section 3 of the act and that the Commonwealth’s 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); *Pirozzi v. Penske Olds-Cadillac-GMC, Inc.*, 605 A.2d 373, 376 (Pa. Super. 1992). The Commonwealth’s 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 Legislature’s basic policy choice in 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.”

In holding that the broad prohibition of section 3 of the act and the catchall is broad and flexible, the Supreme Court of Pennsylvania denied the application of the doctrine of *eiusdem generis* on the enumerated definitions of unfair methods, acts or practices to circumscribe the statutory construction of the catchall and section 3 of the act. The Supreme Court of Pennsylvania held “[s]uch a holding would negative the Legislature’s understanding that ‘Fraud is infinite’ and would allow the broad prohibition of section 3 to be ‘eluded by new schemes which the fertility of man’s invention would contrive.’ See note 42 *supra*. This we will not do.” *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 480, 329 A.2d 812, 827 (1974). In Note 42 incorporated by reference in the holding, the Pennsylvania Supreme Court cites with approval a federal case which held “[f]raud, indeed, in the sense of a court of equity properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.” *Sec. & Exch. Comm’n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 193—94, 84 S.Ct. 275, 284 (1963). This is in accord with the Federal Trade Commission’s (FTC) standard of unfairness. *FTC v. Sperry and Hutchinson Co.*, 405 U.S. 233, 244-45 n. 5 (1972). This standard was applied in *Com. ex rel. Zimmerman v. Nickel*, 26 Pa. D & C 3d 115, 120 (Mercer County C.P. 1983).

The Supreme Court of the United States 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 (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 (1948); and *Ciardi v. F. Hoffman-La Roche, Ltd.*, 762 N.E.2d 303 (Mass. 2002).

The Commonwealth Court held that the OAG’s UTPCPL-based antitrust claim came “within the ambit” of the catch-all. *Anadarko Petroleum Corp.* at 61. The

Commonwealth Court credited the OAG's averments that defendants "deceived and acted unfairly towards private landowners by giving them misleading information, and/or failing to disclose information, regarding the open market's true appetite for subsurface mineral rights leases, as well as whether the terms of the agreed-to leases 'were competitive and fair.'" *Id.* In *Lisa Hunt v. Bayer AG*, Feb. Term 2005, No. 1038 (Phila. Comm. Pl.), the court recognized price-fixing to be a violation of the act. In *re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 64 F. Supp.3d 665 (E.D. Pa. 2014) (*In re Suboxone*), the court held that anticompetitive schemes are redressable under the act. Through cases such as *Anadarko Petroleum Corp.*, *Lisa Hunt* and *In re Suboxone*, the OAG has identified in proposed § 311.2 certain "unfair market trade practices" which are deemed to be 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.

4. Core Definitions of Unfair, Deceptive and Fraudulent Conduct

The OAG has determined that it is reasonable and necessary to codify certain holdings of Commonwealth courts to clarify the general prohibition of the act and the catchall. Proposed § 311.2 provides for the definition of "unfair methods of competition and unfair or deceptive acts or practices." Subclauses (v) and (w) under "unfair methods of competition and unfair or deceptive acts or practices" respectively defines "unfair conduct" and "deceptive conduct" as "unfair methods of competition and unfair or deceptive acts or practices" and thus codify 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 and 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 set forth in the general prohibition provision.

The OAG has adopted the following legal discussion of the staff which provides a reasonable basis that the definition of "unfair methods of competition and unfair or deceptive acts or practices" under proposed § 311.2 is consistent with the basic policy choice expressed in section 3 of the act. The proposed rulemaking necessarily defines the following terms: "unfair conduct," "fraudulent conduct" and "deceptive conduct" to clarify the scope of "unfair methods of competition and unfair or deceptive acts or practices" within the operation of section 3 of the act.

First is "unfair conduct." In *Com. ex rel. Zimmerman v. Nickel*, 26 Pa. D & C 3d 115, 120 (Mercer County C.P. 1983), the court held that "[a]n act or practice need not be deceptive 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 *Nickel* court adopted the unfairness standard: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors

or other businessmen). *Com. ex rel. Zimmerman v. Nickel*, 26 Pa. D & C 3d 115, 120-121 (Mercer County C.P. 1983). Likewise in Federal court construing the act, "an act or practice need not be proven to be deceptive in order to be declared 'unfair'—which necessarily involves consideration of a variety of factors including whether the practice causes substantial injury to consumers or others. *Com. ex rel. Zimmerman v. Nickel*, 26 Pa. D & C 3d 115, 120 (Mercer County C.P. 1983) (citing *FTC v. Sperry and Hutchinson Co.*, 405 U.S. 233, 244-45 n. 5, 92 S.Ct. 898, 31 L.Ed.2d 170 (1972))." *Westfield Grp. v. Campisi*, 2006 WL 328415, at *18 (W.D. Pa. Feb. 10, 2006). The proposed definition for "unfair conduct" is in accord with State and Federal jurisprudence.

Next is "fraudulent conduct." There are sound policy reasons for the Pennsylvania Supreme Court's mandate that the UTPCPL is to be construed liberally. By the 1960's following the 1938 amendment of section 5 of the FTCA which had made unfair or deceptive acts or practices (UDAP) unlawful, it became clear that the FTC needed help from the states to combat UDAP. Compounding the FTC issue, persons with an unequal bargaining position seeking redress for UDAP faced significantly difficult hurdles that limited access to justice under the requirements of proving common law fraud.¹ See 1 Pa.C.S. § 1921(c)(1), (2) and (5) (relating to legislative intent controls). Ultimately, the mischief to be remedied is unfair and deceptive market practices. See 1 Pa.C.S. § 1921(c)(3). To take down the hurdle of common law fraud² and to move beyond the era of caveat emptor, many states like the Commonwealth enacted UDAP statutes to facilitate access to justice in the 1960s and 70s.

"We cannot presume that the Legislature when attempting to control unfair and deceptive practices in the conduct of trade or commerce intended to be strictly bound by common-law formalisms." *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 469-70 (Pa. 1974). The UTPCPL is in a class by itself due its "sui generis nature." *Gabriel v. O'Hara*, 368 Pa. Super. 383, 394, 534 A.2d 488, 494 (Pa. Super. Ct. 1987). "Since the Consumer Protection Law was in relevant part designed to thwart fraud in the statutory sense, it is to be construed liberally to effect its object of preventing unfair or deceptive practices." *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 460 (Pa. 1974). "The Legislature sought by the Consumer Protection Law to benefit the public at large by eradicating, among other things, 'unfair or deceptive' business practices." *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 457 (Pa. 1974). The Pennsylvania Supreme Court then interpreted and defined the catch-all relating to "any other fraudulent conduct" to mean "generally all unfair and deceptive acts or practices in the conduct of trade or commerce." *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 478 (Pa. 1974). "Rather than restricting courts and the enforcing authorities solely to narrowly specified types of unfair and deceptive practices, the Legislature wisely declared unlawful 'any other fraudulent conduct.' This is a common and well-accepted legislative response to the mischief caused by unfair and deceptive market practices." *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 479 (Pa. 1974).

¹ See William A. Lovett, *Louisiana Civil Code of 1808: State Deceptive Trade Practice Legislation*, 46 Tul. L. Rev. 724, 754 n.86 (1972).

² Original per se definition subclauses obviated the need to show materiality, scienter, and intention by the declarant to induce action. *Ihnat v. Pover*, 2003 WL 22319459, at *3 (Pa. Com. Pl. Aug. 4, 2003).

The Supreme Court in footnote 43 pointed to the breadth of section 5 of the FTCA as an example of the scope of what would come within the meaning of the catch-all. *Id.* The OAG finds that “fraudulent conduct” is “unfair conduct” or conduct that has a tendency or capacity to defraud. In this context, conduct need not rise to the level of common law fraud or satisfy all common law fraud requirements to constitute “fraudulent conduct.” Neither the intention to defraud nor actual fraud must be proved; rather it need only be shown that the acts and practices are capable of harming another person in an immoral, unethical, oppressive, unscrupulous or unconscionable way. The goal of the act is to thwart fraud or, in other words, to prevent fraud in its incipiency.

Next is “deceptive conduct.” An act or practice is deceptive if it has a tendency or a capacity to deceive. *Com. ex rel Corbett v. Peoples Benefit Service, Inc.*, 923 A.2d 1230, 1236 (Pa. Commw. Ct. 2007). “Neither the intention to deceive nor actual deception must be proved; rather it need only be shown that the acts and practices are capable of being interpreted in a misleading way.” *Id.* The proposed definition for “deceptive conduct” is in accord with state jurisprudence.

Thus, the OAG finds it necessary for the administration and enforcement of the act to define “unfair conduct,” “fraudulent conduct” and “deceptive conduct,” in line with the OAG’s original arguments to the 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 Supreme Court unambiguously stated, “we 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 Supreme Court has consistently mandated that the act is to be liberally construed to affect 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. Commw. 503, 505-06, 613 A.2d 619, 621 (Pa. Commw. Ct. 1992). In other words, for an act 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. Commw. 503, 505-06, 613 A.2d 619, 621 (Pa. Commw. Ct. 1992).

5. Trade and Commerce

The OAG has determined that it is reasonable and necessary to codify certain holdings of Commonwealth courts to clarify “trade and commerce” within the meaning of the act. Section 311.2 (relating to definitions) defines “trade and commerce” and codifies the holding of the Pennsylvania Supreme Court in *Danganan v. Guardian Prot. Servs.*, 179 A.3d 9, 16 (Pa. Feb. 21, 2018), that the second definition of “trade and commerce” is “an inclusive and broader view of trade and commerce than expressed by the antecedent language.” The Pennsylvania Supreme Court further held that the second definition does not modify or qualify the first definition. *Id.* at 16. As a corollary, the first definition does not circumscribe the second definition. The Commonwealth Court followed

the Supreme Court in holding that “this second clause operates as a catch-all of sorts, enabling “trade” and “commerce” to be defined in terms of common usage[.]” *Anadarko Petroleum Corp.* at 57.

The definition of “trade and commerce” under proposed § 311.2 also codifies the holding in *Com. v. Percudani*, 844 A.2d 35, 48 (Pa. Commw. Ct. 2004), as amended (Apr. 7, 2004), opinion amended on reconsideration, 851 A.2d 987 (Pa. Commw. Ct. 2004), that a buyer-seller relationship is not relevant in the context of the definition for trade and commerce. Except as provided by the single exclusion clearly expressed in Section 3 of the act, there is no class or classes of transactions within the for-profit or nonprofit business sphere that evades the ambit of “trade and commerce” under the act. Further, there is no textual basis under the act that a person must be a seller to be subject to liability under Section 3 of the act. As the Commonwealth Court recently held, “[t]he key phrase here is ‘in the conduct,’ which, when read in the full context of the language used in Section 3 of the UTPCPL, pertains to all ‘[u]nfair methods of competition and unfair or deceptive acts or practices’ connected to UTPCPL-defined “trade” or “commerce,” regardless of who is committing these unlawful acts.” *Anadarko Petroleum Corp.* at 58 (emphasis added).

The OAG has adopted the following legal discussion of the staff which provides a reasonable basis that the “trade and commerce” definition under proposed § 311.2 of the Proposed Rulemaking is consistent with the basic policy choice expressed in Section 3 of the act. This Proposed Rulemaking resolves the longstanding tactic of defendants to confuse and conflate the limited standing provision of the private action with the broad standing provision of the OAG. This dilatory and vexatious strategy only serves to unnecessarily tax the resources of the OAG at the expense of the public. The Supreme Court instructs “[t]here is no indication of an intent to exclude a class or classes of transactions from the ambit of the Consumer Protection Law. When the Legislature deemed it necessary to make an exception from the Law’s scope, it did so in clear language.” *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 457 n.5, 329 A.2d 812, 815 n.5 (1974); *Culbreth v. Lawrence J. Miller, Inc.*, 328 Pa. Super. 374, 382, 477 A.2d 491, 496 (1984) (The Legislature expressly excluded certain businesses from regulation under the act).

The phrase, “which are classes of transactions without regard to any further limitation or specification as to a person” appended after the word, “distribution,” in the definition of “trade and commerce” under proposed § 311.2 is designed to be in accord with and based on the definition of trade and commerce under the act and codify the holdings of *Danganan*, *Monumental Properties and Culbreth*. In *Percudani*, a defendant argued that the Commonwealth failed to allege a buyer-seller relationship. The Commonwealth Court overruled the preliminary objection by illustrating the distinction between an action brought under Section 9.2 of the act (73 P.S. § 201-9.2), which allows for private actions by any person “who purchases or leases goods or services primarily for personal, family or household purposes” and an action pursued by the Commonwealth under section 4 of the act (73 P.S. § 201-4), “which allows it to proceed when it has reason to believe that the Law is being or was violated.” *Com. v. Percudani*, 844 A.2d 35, 48 (Pa. Commw. Ct. 2004).

6. Rebate and Payment of Costs and Restitution

The OAG has adopted the staff recommendation to clarify certain terms in or affecting Section 4.1 of the act. Based on practical experience, the OAG has observed that the payment of rebates does not negate the harm; and, as such, rebates do not constitute a defense to the award of a permanent injunction, payment of costs and restitution, and a civil penalty. Proposed § 311.4 (relating to restraining prohibited acts) provides that the payment of rebates does not moot the remedial purpose of the act to restrain and prevent unfair trade practices and reflects the economic reality that the payment of rebates does not reduce the amount to be restored to a person in interest under section 4.1 of the act. The OAG also finds it necessary for the administration and enforcement of the act to define “person in interest,” “moneys or property, real or personal” as used in section 4.1 of the act (73 P.S. § 201-4.1) and “rebate.” The OAG has determined that it is reasonable and necessary to codify certain holdings of Commonwealth courts to clarify “person in interest” within the meaning of the act. The Supreme Court held in *Commonwealth by Shapiro v. Golden Gate Nat’l Senior Care LLC*, 194 A.3d 1010, 1034 (Pa. 2018) that the term, “person in interest,” is broader than the statutorily-defined term, “person,” and includes the Commonwealth.

7. Direct or Indirect Recovery

The OAG has determined that it is reasonable and necessary to codify certain holdings of Commonwealth courts and holdings of other jurisdictions construing law that is similar to the act to clarify “trade and commerce” further and monetary recovery under the act. The phrase, “including any transaction proposed, initiated or engaged by any person regardless of privity within the market structure” appended at the end of the definition of “trade and commerce” under proposed § 311.2 is designed to be in accord with and based on the definition of trade and commerce under the act and codify the holding of *Commonwealth v. TAP Pharmaceutical Products, Inc.*, 885 A.2d 1127 (Pa. Commw. Ct. 2005) and *Valley Forge Towers South Condominium v. Ron-Ike Foam Insulators*, 574 A.2d 641, 645 (Pa. Super. Ct. 1990), affirmed, 605 A.2d 798 (Pa. 1992).

The OAG has adopted the following legal discussion of the staff which provides a reasonable basis that the phrase, “including any transaction proposed, initiated or engaged by any person regardless of privity within the market structure” appended at the end of the definition of “trade and commerce” under proposed § 311.2 is consistent with the basic policy choice expressed in sections 3 and 9.2 of the act. In *Commonwealth v. TAP Pharmaceutical Products, Inc.*, 885 A.2d 1127 (Pa. Commw. Ct. 2005), the court recognized that purchasers may recover monetarily regardless of whether the defendant or defendants were dealt with directly or indirectly. The Massachusetts Supreme Court relied on their statute’s similarly worded trade and commerce definition to find that indirect recovery is provided by the language: “directly or indirectly affecting the people of this commonwealth.” *Ciardi v. F. Hoffmann-La Roche, Ltd.*, 436 Mass. 53, 58, 762 N.E.2d 303, 308 (2002). New Hampshire and Washington likewise allow for indirect recovery based on the same construction. *LaChance v. U.S. Smokeless Tobacco Co.*, 156 N.H. 88, 96, 931 A.2d 571, 578 (2007); *Blewett v. Abbott Laboratories*, 86 Wash.App. 782, 938 P.2d 842, 846 (1997), rev. denied, 133 Wash.2d 1029, 950 P.2d 475 (1998). Consequently, this Proposed Rulemaking clarifies that indirect recovery is so provided under the act.

8. Civil Penalty

The OAG has adopted the staff recommendation to clarify certain terms in or affecting section 8 of the act. Proposed § 311.7 (relating to civil penalties) recognizes that a payment of a rebate to a victim of the willful use of a method, act or practice declared unlawful by section 3 of this act does not bar an award of a civil penalty. Further, the payment of a rebate does not negate the finding of a willful use of an unlawful method, act or practice.

9. Private Actions

The OAG has adopted the staff recommendation to clarify certain terms in or affecting section 9.2 of the act. Proposed § 311.9 (relating to private actions) provides for the coordination of claims brought by the OAG which are also brought by a private class action to avoid protracted disputes over representation which would unnecessarily tax limited public resources and frustrate the public interest.

This proposed rulemaking clarifies the meaning of the following terms, “ascertainable loss” and “as a result of,” under section 9.2 of the act to comport with the plain language of the provision, the 1996 amendment and the liberal construction mandate. Regarding “ascertainable loss,” under the similarly worded New Jersey private action provision at N.J. Stat. Ann. § 56:8-19, an “ascertainable loss under the CFA is one that is ‘quantifiable or measurable,’ not ‘hypothetical or illusory.’” *D’Agostino v. Maldonado*, 216 N.J. 168, 185, 78 A.3d 527, 537 (2013). Regarding “as a result of,” there is Supreme Court precedent under *Toy v. Metro. Life Ins. Co.*, 593 Pa. 20, 928 A.2d 186 (2007) and *Weinberg v. Sun Co., Inc.*, 565 Pa. 612, 777 A.2d 442 (2001) which construed the term, “as a result of,” to mean or require justifiable reliance. However, these opinions apply to causes of action which accrued prior to the 1996 amendment of the act. See 1996, Dec. 4, P.L. 906 No. 146, § 1, effective in 60 days. The Third Circuit declined to read in the common law fraud reliance requirement in the language, “as a result of” in section 9.2 of the act. “Although it is clear that the loss must follow the purchase of goods or services, the language does not compel the conclusion that the unfair or deceptive conduct must have induced the consumer to make such a purchase.” *In re Smith*, 866 F.2d 576, 583 (3d Cir. 1989). The OAG agrees with the Third Circuit and recognizes the 1996 amendment. This proposed rulemaking clarifies and recognizes the abrogation of these holdings.

The OAG has adopted the following legal discussion of the staff which provides a reasonable basis that proposed § 311.9 is consistent with the basic policy choice expressed in section 9.2 of the act. In ascertaining legislative intent, the “General Assembly intends to favor the public interest as against any private interest.” 1 Pa.C.S. § 1922 (relating to presumptions in ascertaining legislative intent). “It is axiomatic that a statute is never presumed to deprive the state of any prerogative, right or property unless the intention to do so is clearly manifest, either by express terms or necessary implication.” *Hoffman v. City of Pittsburgh*, 365 Pa. 386, 398, 75 A.2d 649, 654 (1950). The OAG determines that the limited right of private action does not empower persons to act as private attorneys general in any class action which would frustrate or otherwise undermine a parens patriae action by the OAG. A Federal court has held that “in the situation where a state attorney general and a private class representative seek to represent the same class members, the parens patriae action is superior to that of a private

class action.” *Com. of Pa. v. Budget Fuel Co., Inc.*, 122 F.R.D. 184, 186 (E.D. Pa. 1988).

10. Subpoena Power

The OAG has adopted the staff recommendation to make certain delegations and clarifications. Proposed § 311.11 (relating to interpretation) delegates certain powers and duties set forth in The Administrative Code of 1929 as supplemented by section 204(d) of the Commonwealth Attorneys Act (CAA) (71 P.S. § 732-204(d)). The OAG has determined that it is reasonable to make certain clarifications introduced by the enactment of the CAA concerning the permissibility of the direct use of documents obtained by an administrative subpoena in the enforcement of the act. Proposed § 311.10 (relating to subpoena power) 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.

The OAG has adopted the following legal discussion of the staff which provides a reasonable basis that proposed § 311.10 is consistent with the basic policy choice expressed in sections 2 and 3.1 of the act. The OAG 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. at 509, 513; *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 CAA, 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 and through the application of the two sources of rulemaking authority invoked in this proposed rulemaking, this proposed rulemaking gives effect to the retained definition which is used nowhere else within 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); *Girard School District v. Pittenger*, 481 Pa. 91, 100 (1978).

11. Interpretation

The OAG has determined that it is reasonable and necessary to codify certain holdings of Commonwealth courts. Proposed § 311.11 provides that the act is to be liberally construed and that the new definitions of what constitutes unlawful conduct enlarges upon existing definitions. This proposed rulemaking codifies the Supreme Court mandate 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). Further, the Supreme Court denied the application of the doctrine of ejusdem generis on the enumerated definitions of unfair methods, acts or practices to circumscribe the statutory construction of the catchall and section 3 of the act. The Pennsylvania Supreme Court held “[s]uch a holding would negative the Legislature’s understanding that ‘Fraud is infinite’ and

would allow the broad prohibition of section 3 to be ‘eluded by new schemes which the fertility of man’s invention would contrive.’ See note 42 supra. This we will not do.” *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 480, 329 A.2d 812, 827 (1974). Because the intent of this proposed rulemaking is to enlarge the definition of what constitutes a method, act or practice in violation of the act, this proposed rulemaking is not to be interpreted to limit what methods, acts or practices may be considered to violate the act.

12. Basic Policy Choice

“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.’” 73 P.S. § 201-3. *Gabriel v. O’Hara*, 368 Pa. Super. 383, 391, 534 A.2d 488, 492 (1987). The operative provision of the act provides the Legislature’s basic policy choice which guides the OAG’s proposed rulemaking. The OAG proposes that Chapter 311 be added to read as set forth in Annex A.

F. Paperwork

Generally, this proposed rulemaking will not increase paperwork and will not create new paperwork requirements. This proposed rulemaking will have a de minimus impact on paperwork for class action representatives purporting to settle and release OAG claims under the act.

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 this unfair trade practices regulation will make the regulation easier to understand by the public and will facilitate compliance.

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. This proposed rulemaking will impose no new costs on the private sector or the general public.

H. Sunset Review

The OAG is not establishing a sunset date for these regulations because they are needed for the OAG to carry out its statutory authority and because the OAG will periodically review these regulations for their effectiveness.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 45.5(a)), on August 21, 2019, 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 this 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.

J. 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. A public hearing occurred on September 11, 2018 under section 3.1 of the act.

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.

JOSH SHAPIRO,
Attorney General

Fiscal Note: 59-10. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)

Annex A

TITLE 37. LAW

PART V. [BUREAU OF CONSUMER PROTECTION]
UNFAIR TRADE PRACTICES

CHAPTER 311. UNFAIR MARKET TRADE
PRACTICES

Sec.	
311.1.	Scope.
311.2.	Definitions.
311.3.	Unlawful acts or practices; exclusions.
311.4.	Restraining prohibited acts.
311.5.	Payment of costs and restitution.
311.6.	Assurances of voluntary compliance.
311.7.	Civil penalties.
311.8.	Forfeiture of franchise or right to do business; appointment of receiver.
311.9.	Private actions.
311.10.	Subpoena power.
311.11.	Interpretation.
311.12.	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 any 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 Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201-1—201-9.3).

§ 311.2. Definitions.

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

1. *Act*—Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201-1—201-9.3).

2. *Advertising*—As used in Section 311.2(24), means any marketing communication which conveys an impression of a purported fact whether expressed, implied, omitted or otherwise concealed, which has a capacity or tendency to deceive or mislead any person or person in interest.

3. *Article of trade or commerce*—any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate.

4. *As a result of*—Cause-in-fact or but-for theory of causation, excluding any requirement under any reliance theory under common law fraud.

5. *Ascertainable loss*—Any loss which is quantifiable but not speculative.

6. *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.

7. *Deceptive conduct*—A method, act or practice which has a capacity or tendency to deceive.

8. *Documentary material*—means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording, wherever situate.

9. *Fraudulent conduct*—means unfair conduct or any other conduct which has a tendency or capacity to defraud.

10. *Internet service provider*—means a person who furnishes a service that enables users to access content, information, electronic mail or other services offered over the Internet, and access to proprietary content, information and other services as part of a package of services offered to consumers.

11. *Market structure*—Of or relating to the interrelationship of sellers and buyers at all levels of distribution of an article of trade or commerce including, but not limited to, manufacturers, suppliers, distributors, wholesalers, retailers and end users.

12. *Marketing communication*—Any communication which includes any promoting, selling or distributing of an article of trade or commerce.

13. *Moneys or property, real or personal*—means something of value including, but not limited to, restitution, disgorgement, attorneys' fees, expert fees, investigation and litigation costs, and court costs.

14. *Person*—means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entities.

15. *Person in interest*—means a person, the Commonwealth, a Commonwealth agency, municipal authority or political subdivision whose right, claim, title or legal share in something was affected by conduct enjoined under the act.

16. *Rebate*—Partial refund of the cost of an article of trade or commerce to incentivize the sale of that article of trade or commerce.

17. *Representing*—As used in Section 311.2(24), means any communication which conveys an impression of a purported fact whether expressed, implied, omitted or otherwise concealed, which has a capacity or tendency to deceive or mislead any person or person in interest.

18. *Sale*—means a transaction that includes selling, buying or engaging in any other similar activity involving any article of trade or commerce.

19. *Tangible document or recording*—The original or any copy of any designated documents, including, but not limited to, writings, drawings, graphs, charts, photographs, electronically created data and other compilations of data.

20. *Trade and commerce*—mean the advertising, offering for sale, sale or distribution, which are classes of transactions without regard to any further limitation or specification as to a person, of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and includes any trade or commerce directly or indirectly affecting the people of this Commonwealth, including any transaction proposed, initiated or engaged by any person regardless of privity within the market structure.

21. *Transaction*—Exchange or transfer of any article of trade or commerce.

22. *Unfair conduct*—A method, act or practice, without necessarily having been previously considered unlawful, which violates public policy as established by any statute, the common law or otherwise within at least the penumbra of any common law, statutory or other established concept of unfairness; which is unscrupulous, oppressive or unconscionable; or which causes substantial injury to a victim.

23. *Unfair market trade practices*—means any one or more of the following:

(i) A contract, combination or conspiracy between two or more persons at different levels of market structure to fix minimum prices for any article of trade or commerce at one or more levels of market structure;

(ii) A contract, combination or conspiracy between two or more persons at the same level of market structure to fix or otherwise stabilize prices for any article of trade or commerce;

(iii) 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 any article of trade or commerce or to allocate customers to whom any article of trade or commerce is, has been or will be marketed;

(iv) A contract, combination or conspiracy between two or more persons to condition or to have the effect of conditioning the sale of one article of trade or commerce upon the purchase of another article of trade or commerce;

(v) A contract, combination or conspiracy between two or more persons where the sale of an article of trade or commerce is conditioned upon the seller's purchase of any other article of trade or commerce produced or performed by the buyer;

(vi) A contract, combination or conspiracy between two or more persons at the same or different level of market structure to persuade or to coerce suppliers or customers to refuse to deal with another person;

(vii) Actual monopolization, in which a person acquires or retains actual monopoly power through competitively unreasonable practices;

(viii) 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;

(ix) Joint monopolization, in which two or more persons conspire to jointly retain or acquire monopoly power, where actual monopoly power is achieved through competitively unreasonable practices; and

(x) 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.

24. *Unfair methods of competition and unfair or deceptive acts or practices*—mean any one or more of the following:

(a) Passing off goods or services as those of another;

(b) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(c) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;

(d) Using deceptive representations or designations of geographic origin in connection with goods or services;

(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(f) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(g) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(h) Disparaging the goods, services or business of another by false or misleading representation of fact;

(i) Advertising goods or services with intent not to sell them as advertised;

(j) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(k) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(l) Promising or offering prior to time of sale to pay, credit or allow to any buyer, any compensation or reward for the procurement of a contract for purchase of goods or services with another or others, or for the referral of the name or names of another or others for the purpose of attempting to procure or procuring a contract of purchase with another person or persons when this payment, credit, compensation or reward is contingent upon the occurrence of an event subsequent to the time of the signing of a contract to purchase;

(m) Promoting or engaging in any plan by which goods or services are sold to a person for a consideration and upon the further consideration that the purchaser secure or attempt to secure one or more persons likewise to join the said plan; each purchaser to be given the right to secure money, goods or services depending upon the number of persons joining the plan. In addition, promoting or engaging in any plan, commonly known as or similar to the so-called "Chain-Letter Plan" or "Pyramid Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any scheme for the disposal or distribution of property, services or anything of value whereby a participant pays valuable consideration, in whole or in part, for an opportunity to receive compensation for introducing or attempting to introduce one or more additional persons to participate in the scheme or for the opportunity to receive compensation when a person introduced by the participant introduces a new participant. As used in this subclause the term "consideration" means an investment of cash or the purchase of goods, other property, training or services, but does not include payments made for sales demonstration equipment and materials for use in mak-

ing sales and not for resale furnished at no profit to any person in the program or to the company or corporation, nor does the term apply to a minimal initial payment of \$25 or less;

(n) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made;

(o) Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;

(p) Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;

(q) Making solicitations for sales of goods or services over the telephone without first clearly, affirmatively and expressly stating:

(A) the identity of the seller;

(B) that the purpose of the call is to sell goods or services;

(C) the nature of the goods or services; and

(D) that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion;

(r) Using a contract, form or any other document related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action;

(s) Soliciting any order for the sale of goods to be ordered by the buyer through the mails or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:

(A) within that time clearly and conspicuously stated in any solicitation; or

(B) if no time is clearly and conspicuously stated, within 30 days after receipt of a properly completed order from the buyer, provided, however, where, at the time the merchandise is ordered, the buyer applies to the seller for credit to pay for the merchandise in whole or in part, the seller shall have 50 days, rather than 30 days, to perform the actions required by this subclause;

(t) Failing to inform the purchaser of a new motor vehicle offered for sale at retail by a motor vehicle dealer of the following:

(A) that any rustproofing of the new motor vehicle offered by the motor vehicle dealer is optional;

(B) that the new motor vehicle has been rustproofed by the manufacturer and the nature and extent, if any, of the manufacturer's warranty which is applicable to that rustproofing;

The requirements of this subclause shall not be applicable and a motor vehicle dealer shall have no duty to inform if the motor vehicle dealer rustproofed a new motor vehicle before offering it for sale to that purchaser, provided that the dealer shall inform the purchaser whenever dealer rustproofing has an effect on any manufacturer's warranty applicable to the vehicle. This subclause shall not apply to any new motor vehicle which has been rustproofed by a motor vehicle dealer prior to the effective date of this subclause.

(u) Unfair market trade practices;

(v) Unfair conduct;

(w) Deceptive conduct; and

(x) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

§ 311.3. Unlawful acts or practices; exclusions.

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. The provisions of this chapter shall not apply to any owner, agent or employee of any radio or television station, or to any owner, publisher, printer, agent or employee of an Internet service provider or a newspaper or other publication, periodical or circular, who, in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published or takes part in the publication of this advertisement.

§ 311.4. Restraining prohibited acts.

Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by § 311.3 (relating to unlawful acts or practices; exclusions) to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against the person to restrain by temporary or permanent injunction the use of the method, act or practice. The payment of a rebate by any person to a person in interest does not act as a bar to the imposition of a temporary or permanent injunction or the award of any form of monetary relief under this chapter.

§ 311.5. Payment of costs and restitution.

Whenever any court issues a permanent injunction to restrain and prevent violations of this act as authorized in § 311.4 (relating to restraining prohibited acts), the court may in its discretion direct that the defendant or defendants restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions to be established by the court.

§ 311.6. Assurances of voluntary compliance.

In the administration of this act, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of this chapter from any person who has engaged or was about to engage in the method, act or practice. This assurance may include a stipulation for voluntary payment by the alleged violator providing for the restitution by the alleged violator to consumers, of money, property or other things received from them in connection with a violation of this act. Any assurance must be in writing and be filed with the court. This assurance of voluntary compliance must not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, under § 311.4 (relating to restraining prohibited acts).

§ 311.7. Civil penalties.

(a) Any person who violates the terms of an injunction issued under § 311.4 (relating to restraining prohibited acts) or any of the terms of an assurance of voluntary compliance duly filed in court under § 311.6 (relating to assurances of voluntary compliance) shall forfeit and pay to the Commonwealth a civil penalty of not more than \$5,000 for each violation. For the purposes of this section

the court issuing an injunction or in which an assurance of voluntary compliance is filed shall retain jurisdiction, and the cause must be continued; and, in these cases, the Attorney General, or the appropriate District Attorney, acting in the name of the Commonwealth, may petition for recovery of civil penalties and any other equitable relief deemed needed or proper.

(b) In any action brought under § 311.4, if the court finds that a person, firm or corporation is willfully using or has willfully used a method, act or practice declared unlawful by § 311.3 (relating to unlawful acts or practices; exclusions), the Attorney General or the appropriate District Attorney, acting in the name of the Commonwealth, may recover, on behalf of the Commonwealth, a civil penalty of not exceeding \$1,000 per violation, which civil penalty shall be in addition to other relief which may be granted under this Chapter. Where the victim of the willful use of a method, act or practice declared unlawful by § 311.3 is 60 years of age or older, the civil penalty shall not exceed \$3,000 per violation, which penalty will be in addition to other relief which may be granted under this Chapter. A payment of a rebate to a victim of the willful use of a method, act or practice declared unlawful by § 311.3 does not bar an award of a civil penalty.

§ 311.8. Forfeiture of franchise or right to do business; appointment of receiver.

Upon petition by the Attorney General, the court having jurisdiction, may, in its discretion, order the dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates the terms of an injunction issued under § 311.4 (relating to restraining prohibited acts). In addition, the court may appoint a receiver of the assets of the company.

§ 311.9. Private actions.

(a) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by § 311.3 (relating to unlawful acts or practices; exclusions), may bring a private action to recover actual damages or \$100, whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than \$100, and may provide this additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

(b) Any permanent injunction, judgment or order of the court made under § 311.4 (relating to restraining prohibited acts) will be prima facie evidence in an action brought under this section that the defendant used or employed acts or practices declared unlawful by § 311.3.

(c) A person may not settle and release any claim under the act as part of a class action in any court of competent jurisdiction without first providing notice to and receiving written consent from the Office of Attorney General.

(d) Except as provided by section 103 of the Commonwealth Attorneys Act (71 P.S. § 732-103), no person has standing to question the authority of the legal representation of the Commonwealth and its citizens where the Office of Attorney General has not granted consent or has transmitted a written revocation of this consent under subsection (c).

§ 311.10. Subpoena power.

(a) The Attorney General shall be authorized to require the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents and files relating to any commercial and trade practices to the extent authorized by section 918 of The Administrative Code of 1929 (71 P.S. § 307-2) as amended by section 204(d) of the Commonwealth Attorneys Act (71 P.S. § 732-204(d)) and conduct private or public hearings; and, for this purpose, the Attorney General or his representative may sign subpoenas, administer oaths or affirmations, examine witnesses and receive evidence during any investigation or public or private hearing. In case of disobedience of any subpoena or the contumacy of any witness appearing before the Attorney General or his representative, the Attorney General or his representative may invoke the aid of the Commonwealth Court or any court of record of the Commonwealth, and this court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents and files relative to the matter in question. Any failure to obey this order of the court may be punished by the court as a contempt thereof.

(b) No documentary material produced pursuant to a demand under this section will, unless otherwise ordered by a court for good cause shown, be produced for inspection or copying by, nor will the contents thereof be disclosed to any person other than the authorized employee of the Attorney General without the consent of the person who produced the material; provided, that under these reasonable terms and conditions as the Attorney General shall prescribe, this documentary material will be available for inspection and copying by the person who produced the material or any duly authorized representative of this person. The Attorney General or any attorney designated by him may use this documentary material or copies thereof as he determines necessary in the enforcement of this act, including presentation before any court; provided, that any material which contains trade secrets or other highly confidential matter will not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing this material.

§ 311.11. Interpretation.

(a) This Chapter will be liberally construed to effectuate its objective of protecting the public of this Commonwealth from fraud and unfair or deceptive business practices.

(b) The catchall provision contained in § 311.2(x) (relating to definitions) of the definition of "Unfair methods of competition and unfair or deceptive acts or practices" will not be restricted by the subsections enumerated before it. Instead, it will be construed as designed to generally cover all unfair or deceptive acts or practices in the conduct of trade or commerce.

§ 311.12. Waiver of rights.

A waiver of this Chapter by any person prior to or at the time of a commission of a violation of § 311.3 (relating to unlawful acts or practices; exclusions) 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 shall be deemed to be a violation of the act.

[Pa.B. Doc. No. 19-1320. Filed for public inspection August 30, 2019, 9:00 a.m.]

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2018-3004578]

Reporting of Intrastate Operating Revenues for Section 510 Assessment Purposes by Jurisdictional Telecommunications Carriers Offering Special Access and Other Similar Jurisdictionally-Mixed Telecommunications Services

The Pennsylvania Public Utility Commission (Commission) on July 11, 2019, adopted a policy statement that is intended to provide guidance regarding the reporting of gross intrastate operating revenues for Section 510 assessment purposes by jurisdictional telecommunications public utilities in Pennsylvania that offer special access or other similar jurisdictionally-mixed telecommunications services but report zero gross intrastate revenues.

Public Meeting held
July 11, 2019

Commissioners Present: Gladys Brown Dutrieuille, Chairperson, statement follows, dissenting; David W. Sweet, Vice Chairperson; Norman J. Kennard; Andrew G. Place, statement follows, dissenting; John F. Coleman, Jr.

Policy Statement Regarding the Reporting of Intrastate Operating Revenues for Section 510 Assessment Purposes by Jurisdictional Telecommunications Carriers Offering Special Access and Other Similar Jurisdictionally-Mixed Telecommunications Services; M-2018-3004578

Final Policy Statement Order

By the Commission:

On November 8, 2018, the Commission issued an Order¹ proposing to amend 52 Pa. Code Chapter 69 of its regulations by adding a Proposed Policy Statement codified at Section 69.3701 to provide guidance to jurisdictional telecommunications public utilities in Pennsylvania that they must report all gross intrastate operating revenues, including on all special access or other similar jurisdictionally-mixed telecommunications services, for Section 510 assessment purposes. Specifically, the Commission proposed that jurisdictional telecommunications carriers that offer special access or other similar jurisdictionally-mixed telecommunications services but report zero gross intrastate revenues on those services due to the Federal Communications Commission's (FCC) ten percent contamination rule (ten percent rule) are obligated, for assessment purposes, to report their de facto gross intrastate operating revenues on such telecommunications services with the Commission on March 31st of each year, as a part of their overall statutory obligation to pay a reasonable share of the costs of administering the Public Utility Code (Code), 66 Pa.C.S. §§ 101—3316.

The Commission requested interested parties to file comments and replies to the Order and the attached Annex A that set forth the Proposed Policy Statement at Section 69.3701. The Order and Annex A were published

¹ See Reporting of Intrastate Operating Revenues for Section 510 Assessment Purposes by Jurisdictional Telecommunications Carriers Offering Special Access and Other Similar Jurisdictionally-Mixed Telecommunications Services, Docket No. M-2018-3004578, Proposed Policy Statement (Order entered November 8, 2018) (Order).

in the *Pennsylvania Bulletin* on March 2, 2019.² Comments and replies were submitted by interested parties.

After reviewing the filed comments and replies thereto, this Order establishes a Final Policy Statement set forth in attached Annex A that amends Chapter 69 of our regulations. The Final Policy Statement provides guidance to all jurisdictional telecommunications services providers that they are legally obligated to report, for assessment purposes, their de facto gross intrastate operating revenues for special access services and other similar jurisdictionally-mixed telecommunications services with the Commission on March 31st of each year in order to recover the reasonable share of the costs of administering the Code.

Background

Pursuant to the Code, the Commission has regulatory authority over all public utilities and certain licensed entities operating and providing service to the public in Pennsylvania. This plenary regulatory authority grants the Commission the authority to impose annual fiscal assessments upon jurisdictional telecommunications carriers in order for the Commission to recover these carriers' "reasonable share" of the costs of administering the Code. See 66 Pa.C.S. § 510. However, over time, the Commission's Fiscal Office and the Bureaus of Technical Utility Services, Investigation & Enforcement, Audits, and Law (Staff) identified some telecommunications carriers certificated as Competitive Access Providers (CAPs) who have reported revenues inconsistently or repeatedly reported zero intrastate revenues. The Commission requested Staff to undertake an inquiry to examine the carriers' claims of zero intrastate revenues.

As part of this inquiry, on September 7, 2018, Staff issued a Secretarial Letter to all carriers who reported zero intrastate revenues setting forth a comprehensive set of inquiries examining the basis for some carriers' claims of zero intrastate revenues. Specifically, Staff sought information necessary to examine the factual bases and analyze the legal theories underlying the carriers' claims of zero reportable intrastate revenue. As their legal basis, a majority of the zero reporters referred to the FCC's ten percent contamination rule (discussed in more detail below) as their rationale and justification for reporting zero intrastate revenues to the Commission.

The Commission issued an Order to establish a Proposed Policy Statement on the reporting of gross intrastate operating revenues for purposes of calculating assessments under 66 Pa.C.S. § 510 by regulated telecommunications carriers in Pennsylvania that offer special access or other services the Commission terms "jurisdictionally-mixed." Specifically, the Order set forth the Commission's determination that pursuant to Section 510 of the Code, 66 Pa.C.S. § 510, jurisdictional providers of special access services or other similar jurisdictionally-mixed telecommunications services have an obligation to report their de facto gross intrastate operating revenues on these telecommunications services, as part of their gross intrastate operating revenues, in order to pay their reasonable share of the costs of administering the Code. Further, in the Order, the Commission determined that the FCC's ten percent contamination rule does not preempt or otherwise preclude jurisdictional carriers from reporting gross intrastate operating revenues on all tele-

² 49 Pa.B. 929 (March 2, 2019).

communications services, including special access or other similar jurisdictionally-mixed telecommunications services.

Attached to the Order in Annex A was a Proposed Policy Statement that amended Chapter 69 of its regulations by adding Section 69.3701. The goal of the proposal was to provide guidance to those jurisdictional carriers who may not be reporting such revenues from special access or other similar jurisdictionally-mixed telecommunications services due to their reliance on the ten percent rule.

The Commission requested interested parties to file comments and replies to the Order and Annex A. Comments were filed by the Broadband Cable Association of Pennsylvania, Inc. (BCAP), the Pennsylvania Telephone Association (PTA), Verizon Companies³ (Verizon), Crown Castle Fiber LLC (Crown Castle), Frontier Communications⁴ (Frontier) and the Pennsylvania Office of Consumer Advocate (OCA). The OCA also filed Reply Comments. The Commission provides a summary of the filed Comments and OCA's Reply Comments.

Comments

a. BCAP

In its Comments, BCAP urges the Commission to withdraw its Proposed Policy Statement for various reasons. In summary fashion, BCAP states that the Commission's policy determination that jurisdictional telecommunications carriers that offer and provide special access or other similar jurisdictionally-mixed telecommunications services are obligated to ascertain and report their de facto gross intrastate revenues from providing these telecommunications services in Pennsylvania and to pay additional intrastate regulatory fees based on such reported revenues would be inconsistent with federal and state law and would pose significant practical hurdles. BCAP Comments at 1-2.

Specifically, BCAP asserts that the Commission's core premise, that the FCC's ten percent contamination rule does not preempt or otherwise preclude carriers' obligations to report their de facto gross intrastate operating revenues from special access or similar services, is based on an incomplete and ultimately inaccurate understanding of federal precedent. Id. at 2. Further, BCAP asserts that the Proposed Policy Statement's central claim that the ten percent rule is "designed to allocate costs only and regulatory authority over ratemaking," and thus does not extend to revenue allocations for purposes of assessing state regulatory fees, does not hold up to scrutiny. Id. (Emphasis in original). BCAP states that the Commission overlooks subsequent FCC precedent extending the ten percent rule to revenue allocation and acknowledging its impact on regulatory fee assessments. Id. at 3.

BCAP states that in its 1997 order establishing the rules governing the federal universal service program, the FCC made clear that the ten percent rule applies to revenue allocation just as it does to cost allocation.⁵ Id. BCAP states that since its determination in 1997, the

³ Verizon Pennsylvania LLC, Verizon North LLC, MCImetro Access Transmissions Corp. and XO Communications Services, LLC.

⁴ Frontier Communications of Breezewood (Utility Code: 310400) Frontier Communications of Pennsylvania (Utility Code: 311250) Frontier Communications of Canton (Utility Code: 310550) Frontier Communications of Lakewood (Utility Code: 311750) Frontier Communications of Oswayo River (Utility Code: 312600) Frontier Communications Commonwealth Telephone Company (Utility Code: 310800) Citizens Telecommunications Company of NY (Utility Code: 310174) Frontier Communications of America (Utility Code: 310376) Frontier Communications CTSI Company (Utility Code: 311095) CTE Telecom d/b/a Commonwealth Long Distance (Utility Code: 311225). Frontier simply filed a letter in support of the comments of PTA.

⁵ See Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776 ¶ 778 (1997 Universal Service Report and Order).

FCC's Form 499-A has required telecommunications providers to allocate these revenues in accordance with the ten percent rule. Id.

Furthermore, BCAP states that the FCC reaffirmed the application of the ten percent rule to revenue allocation in a 2017 order, responding to a series of requests to review determinations made by the Universal Service Administrative Company (USAC) on whether revenues associated with mixed-use special access lines qualify as interstate when assessing contributions to the federal Universal Service Fund (FUSF).⁶ Id. BCAP states that the FCC had rejected the position of certain petitioners who argued that the ten percent rule "does not apply to revenues" but rather only to "cost allocation," which it believes to be the same view espoused by the Commission in its Proposed Policy Statement. Id. at 3-4. BCAP states that the FCC went on to explain that "prior decisions have clearly incorporated the [ten percent rule] into the Commission's framework" for revenue allocation, and that the time for challenging that well-established determination "has long since passed." Id. at 4. Thus, USAC had appropriately applied the ten percent rule to "determine whether private line revenues should be assigned to the interstate jurisdiction."⁷ Id.

BCAP states that last year, the FCC specifically acknowledged that its jurisdictional separations procedures, including the ten percent rule, govern revenue allocations in the regulatory fee context. Id. BCAP states that in a notice of proposed rulemaking on reforms to its jurisdictional separations approach, the FCC explained that states "use separations results to determine the amount of intrastate universal service support and to calculate regulatory fees."⁸ Id. BCAP asserts that by overlooking this explicit and recent acknowledgment by the FCC, as well as the FCC's repeated rulings applying the ten percent rule to revenue allocations, the proposal arrives at an overly narrow understanding of the scope and preemptive effect of the ten percent rule. Id.

Additionally, BCAP states that the Eighth Circuit's decision in *Scott*⁹ does not compel a different conclusion. Id. BCAP asserts that the *Scott* court concluded that the FCC's ten percent rule did not "preclude all state regulation" of special access services, and that performance reporting was entirely distinct from the types of allocation questions addressed by the ten percent rule.¹⁰ Id. at 5. BCAP argues that, by contrast, the Commission's Proposed Policy Statement directly implicates the allocation questions addressed by the ten percent rule. Id. BCAP argues that the *Scott* court specifically recognizes that the ten percent rule applies to the allocation not only of "costs" but also of "revenues, expenses, taxes and reserves between state and interstate jurisdictions."¹¹ Id. BCAP states that this undermines rather than supports the Commission's expressed view of the ten percent rule. Id.

Additionally, BCAP states that the Commission's Proposed Policy Statement also overlooks impediments to its suggested approach under state law. Id. BCAP notes that many special access services and other jurisdictionally-mixed services offered by its members are provided using

⁶ See Federal-State Joint Board on Universal Service, Order, 32 FCC Rcd 2140 (WCB 2017) (2017 Ten Percent Order).

⁷ See 2017 Ten Percent Order ¶ 8 (emphasis added).

⁸ See Jurisdictional Separations and Referral to the Federal-State Joint Board, Further Notice of Proposed Rulemaking, 33 FCC Rcd 7261 ¶ 11 (2018).

⁹ *Qwest Corporation v. Scott*, 380 F.3d 367 (8th Cir. 2004) (*Scott*).

¹⁰ *Scott*, 380 F.3d at 374 (noting that, "when the 10% Order is read as a whole, the Commission's expressed intent to preempt state regulation does not extend to performance measurements and standards").

¹¹ *Scott*, 380 F.3d at 371 (quoting 47 CFR § 36.1(b)).

Internet Protocol (IP) technology.¹² Id. BCAP states that Pennsylvania law prevents the Commission from “enact[ing] or enforc[ing], either directly or indirectly, any law, rule, regulation, standard, order or other provision having the force or effect of law that regulates, or has the effect of regulating, the rates, terms and conditions of VoIP service or IP-enabled service.”¹³ Id. BCAP asserts that this statute makes clear that this prohibition should be construed broadly and contains no such specific carve-out that would justify this expansion of state regulatory fees.¹⁴ Id. at 6.

Lastly, BCAP asserts that as a practical matter BCAP’s members would face significant hurdles in complying with an obligation to ascertain and report “de facto” intrastate revenues attributable to special access, transport, or similar jurisdictionally mixed-use services. Id. BCAP states that the FCC has acknowledged that the best method to verify and ascertain the jurisdictional status of the traffic that traverses a special access private line for purposes of complying with regulatory obligations is through customer certifications.¹⁵ Id. BCAP states that its member companies rely on customer certifications to determine whether a particular special access, transport, or similar line is carrying intrastate or interstate traffic that is above or below the ten percent rule. Id. BCAP asserts that if the Proposed Policy Statement is adopted, its member companies would not be able to ascertain the endpoints of any particular transmission passing over these lines since they do not currently monitor usage on these facilities. Id. at 7. In short, BCAP asserts that its members lack a reliable mechanism to ascertain the “de facto” intrastate revenues attributable to special access or similar services. Id.

b. *Pennsylvania Telephone Association*

In its Comments, the PTA recommends that the Commission wait to implement the Proposed Policy Statement until it has conducted a collaborative process with interested stakeholders to examine the complex issues underlying and implicated by its policy determinations regarding the FCC’s ten percent rule. PTA Comments at 2. The PTA asserts that the convergence of technologies and prevalence of data-based traffic has significantly complicated issues with attempting to determine whether services are intrastate or interstate for jurisdictional purposes. Id. The PTA notes that when a special access circuit is purchased, the customer, not the carrier, makes the inter/intra distinction at the time of sale. Id. Further, the PTA states that carriers do not inspect each data packet to determine jurisdiction. Id. The PTA asserts that to require a carrier to somehow apportion the intrastate pieces of traffic traversing a special access circuit would cause security and privacy issues and this action would violate federal policies and the underlying reason for the ten percent rule. Id.

The PTA states that special access services and other similarly mixed jurisdictional services are overwhelmingly interstate in nature as the FCC has concluded that

¹² 73 Pa.C.S. § 2251.3 (defining “IP-enabled service” as any “service, capability, functionality or application provided using Internet protocol or any successor protocol that enables an end user to send or receive a communication in Internet protocol format or any successor format, regardless of whether the communication is voice, data or video”).

¹³ 73 P.S. § 2251.4. We note that BCAP points out that the prohibition of regulation in Section 2251.4 is expressly limited to the regulation of “rates” and “terms and conditions of VoIP service.” Section 510 assessments do not address end-user rates or terms and conditions of service.

¹⁴ 73 P.S. § 2251.6.

¹⁵ 2017 Ten Percent Order ¶ 3 (citing MTS and WATS Market Structure, Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board, Recommended Decision and Order, 4 FCC Rcd 1352 ¶ 32 (1989) (Ten Percent Rule Recommended Decision)).

broadband Internet access service (BIAS) is considered interstate for regulatory purposes.¹⁶ Id. at 3.

Lastly, the PTA expresses concern that adoption of the Proposed Policy Statement would impose new reporting and record-keeping burdens on its rural local exchange carrier (RLEC) members. Id. at 4. Therefore, the PTA supports a collaborative approach that can facilitate the exchange of information regarding the challenges and potential benefits of the Proposed Policy Statement, such as how to determine which revenues’ services would fall within the ambit of the concept of “de facto gross intrastate operating revenues” and what specific services fall within the ambit of the phrase “or other similar jurisdictionally-mixed telecommunications services.” Id. at 3-4.

c. *Verizon*

In its Comments, Verizon suggests that the Commission should not issue the Proposed Policy Statement and decline to attempt to assess any portion of the revenue from services that are classified as interstate under the ten percent rule. Verizon Comments at 11. Verizon recommends that the Commission should rather explore other alternatives to recover the costs from providers that it determines are expending excessive administrative resources without paying an assessment. Id.

Verizon asserts that the Proposed Policy Statement would result in administrative burden and infeasibility regarding the identification of the portion of the “intrastate” traffic traversing over a private line. Id. at 9-10. In particular, Verizon states in enforcing the ten percent rule,¹⁷ the FCC adopted a process relying on customer certifications and specifically rejected proposals to base the interstate/intrastate classification of mixed-use special access lines on traffic studies or usage-based allocation factors.¹⁸ Id. at 4, 9-10.

Additionally, Verizon asserts that the Proposed Policy Statement would result in double taxation. Id. at 8. Verizon states that the FCC repurposed the jurisdictional separations ten percent rule in its 1997 Universal Service Report and Order¹⁹ so that not only the costs are classified as interstate, but also the revenues generated by the entire line are classified as interstate.²⁰ Id. at 5. Verizon states that since that time, if the special access line carries more than ten percent interstate traffic, providers have been required to report all of the revenue and costs from that line as interstate on FCC Form 499-A and then have been assessed for various federal fees based on that revenue. Id. at 5-6.

Verizon also states that in 2017, the FCC again discussed this issue extensively in an order addressing several requests for review of audit findings related to whether certain revenues associated with specific mixed-use special access lines should be considered interstate for the purpose of assessing contributions to the FUSF.²¹ Id. at 6. Verizon asserts that in the 2017 Ten Percent Audit Order, the FCC stated that “there was sufficient notice for all carriers that the ten percent rule would provide the basis for determining whether a mixed-use special access line would be considered interstate or intrastate in nature for contributions purposes,” and “given that the [FCC] incorporated the ten percent rule

¹⁶ See Restoring Internet Freedom Order, WC Docket No. 17-108, Declaratory Ruling, Order, Report and Order, 33 FCC Rcd 311 (2018) (Restoring Internet Freedom Order); *Mozilla Corp. v. FCC*, No. 18-1051 (D.C. Cir. Feb. 22, 2018).

¹⁷ 47 CFR § 36.154.

¹⁸ MTS and WATS Market Structure, Amendment of Part 36 of the Communications Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, Decision and Order, 4 FCC Rcd 5660, ¶ 4 (1989) (Ten Percent Rule Order).

¹⁹ See 1997 Universal Service First Report and Order.

²⁰ Id. at ¶s 777-78.

²¹ See 2017 Ten Percent Order.

into its contributions requirements in the Universal Service First Report and Order, we conclude that the Commission intended to extend the ten percent rule to contributions without modification.”²² *Id.* at 6-7.

Verizon asserts that attempting to reclassify as intrastate the same revenue that the FCC considers interstate under the ten percent rule would frustrate the FCC’s purpose in funding its own assessment. *Id.* at 9. Therefore, Verizon asserts that the Commission’s policy determination conflicts with federal law and thus it is pre-empted from attempting to assess revenue from special access services that are interstate, since the FCC already assesses those revenues to support its own funds and operations and has ruled that they are interstate revenues for contribution purposes. *Id.* at 9.

Lastly, Verizon suggests that the best solution for the Commission to recover actual costs from telecommunications providers that report zero or de minimis intrastate gross operating revenues is to seek a statutory change to account for time and resources expended by the Commission on issues related to jurisdictional carriers that do not report intrastate revenue. *Id.* at 10. As an example, Verizon notes that in Delaware, telecommunications providers no longer pay an assessment based on a percentage of intrastate revenue, but the state commission has authority to charge providers to recover its costs of specific investigations or proceedings involving that provider. *Id.*

d. *Crown Castle*

In its Comments, Crown Castle asserts that the Commission is seeking to assess as “de facto intrastate operating revenue” the same revenues that are considered interstate revenue by the FCC and could subject it and other similarly situated entities to double assessments of regulatory expenses. Crown Castle Comments at 2. Crown Castle urges the Commission to decline to adopt the Proposed Policy Statement entirely, or, in the alternative, to modify the language in Section 69.3701 so as to clarify that only those entities who currently report zero intrastate operating revenues for jurisdictionally-mixed services and that report no other intrastate operating revenues are subject to report their “de facto intrastate operating revenues” as defined in proposed Section 69.3701. *Id.* at 2-3. Crown Castle also states that, at a minimum, the Commission should initiate a formal collaborative process with Staff and interested parties to clarify the Proposed Policy Statement and address issues associated with the proposed change in reporting requirements for the purpose of establishing assessments. *Id.* at 3. Such a collaborative will avoid uncertainties and unintended consequences. *Id.*

Crown Castle gives the following reasons for these suggestions: 1) the Commission’s Proposed Policy Statement is ambiguous; 2) the Proposed Policy Statement is inconsistent with the plain language of Section 510 of the Public Utility Code; 3) the Proposed Policy Statement is potentially discriminatory because it does not apply to local exchange carriers and unfairly impacts deregulated entities; 4) the Proposed Policy Statement has the potential to violate Section 253 of the Communications Act by effectively prohibiting the provision of wireless services; and 5) the Proposed Policy Statement incorrectly disregards the import of jurisdictional separations principles. *Id.* at 4-5.

In particular, Crown Castle argues that the Order is ambiguous because the requirement of reporting “de facto gross intrastate operating revenues” applies only to tele-

communications entities that otherwise “report zero gross intrastate revenues.”²³ *Id.* at 6. However, Crown Castle states the language in proposed Section 69.3701 is different. *Id.*

Crown Castle asserts that unlike the Order, the language of the Proposed Policy Statement at Section 69.3701 does not appear to limit the reporting of “de facto gross intrastate operating revenues” only to those entities that currently report zero gross intrastate revenues for jurisdictionally-mixed services. *Id.* Instead, it appears to apply this new requirement to all telecommunications public utilities in the Commonwealth that hold a certificate of public convenience (CPC) and provide jurisdictionally mixed-use services. *Id.* at 6-7.

Crown Castle states it is unclear how entities that are reporting intrastate gross operating revenues separate from services other than those jurisdictionally-mixed services that qualify as interstate under the ten percent rule would be treated under Section 510(b)(3)-(4) in light of the broad applicability of proposed Section 69.3701. *Id.* at 7. Crown Castle asserts that the proposed Section 69.3701 appears to potentially discriminate in favor of certain telecommunications entities depending on whether they provide services whose revenues are treated as jurisdictionally-mixed. *Id.* Accordingly, Crown Castle states that the Commission should modify the language of proposed Section 69.3701 to be consistent with the Order and make clear that the section only applies to entities that otherwise report zero gross intrastate operating revenues. *Id.*

Crown Castle further asserts that the language in Section 69.3701 requiring the submission of “traffic studies, tax returns, jurisdictional allocations formulas and factors, books of account, [and] reports” appears to conflict with the definition of “de facto gross intrastate operating revenues” provided in the Section and, therefore, presents further ambiguity and uncertainty. *Id.* Crown Castle notes that proposed Section 69.3701 defines this revenue as “operating revenues that are billed, charged, or otherwise due for all telecommunications services and traffic between points that are both located within the Commonwealth of Pennsylvania.”²⁴ *Id.* at 7-8. Crown Castle states that this language makes it appear that the “de facto” intrastate revenue includes any revenue derived from any services with endpoints within the Commonwealth, without regard for jurisdictional allocation, traffic studies, or similar methods traditionally used in jurisdictional separations analysis.²⁵ *Id.* at 8. Accordingly, Crown Castle states that the reference to matters such as jurisdictional allocation formulas and traffic studies creates uncertainty regarding what is intended. *Id.*

Crown Castle also asserts that the term “de facto gross operating revenues” as defined is also ambiguous and “potentially radically overbroad.” *Id.* Crown Castle notes that proposed Section 69.3701 purports to include “revenues that are billed, charged or otherwise due.”²⁶ *Id.* Crown Castle asserts that this definition is “so broad as to essentially encompass all of its accounts receivable for intrastate services, regardless of whether the revenue is ever actually realized by Crown Castle.” *Id.* Crown Castle notes that neither the Pennsylvania Administrative Code nor the Public Utility Code define the term revenue in related sections, and that Black’s Law Dictionary defines revenue as “income from any and all sources.”²⁷ *Id.* Crown Castle states that it also further defines “income”

²³ Order at 2.

²⁴ See Proposed Annex A, § 69.3701(8); see Final Annex A, § 69.3701(j).

²⁵ See 47 CFR § 36.1, et seq.

²⁶ See Proposed Annex A, § 69.3701(8); see Final Annex A, § 69.3701(j).

²⁷ Revenue, Black’s Law Dictionary (10th ed. 2014).

²² *Id.*

as “money or other form of payment that one receives.”²⁸ Id. Crown Castle asserts that, in the interest of fairness and all other issues aside, the definition of “de facto gross operating revenues” should be revised to only apply to revenues actually received, rather than amounts “charged” or “otherwise due.” Id.

Next, Crown Castle asserts that the Proposed Policy Statement is inconsistent with the Code and the Commission lacks the power to modify Section 510 of the Code. Id. at 9. Crown Castle asserts that proposed Section 69.3701 essentially sua sponte modifies Section 510 of the Code by creating the new category of “de facto” gross operating revenues. Id. Crown Castle asserts that adopting proposed Section 69.3701 constitutes legislative action and would modify the legislative policy and rules contained in Section 510 of the Code. Id. Accordingly, Crown Castle asserts that by implementing the proposed Section 69.3701, the Commission is acting beyond its statutory authority by attempting to unilaterally modify Section 510 of the Code. Id. at 10.

Crown Castle states that it is also concerned that the Proposed Policy Statement is potentially discriminatory to the extent it seeks to impose additional burdens only on certain ill-defined telecommunications entities to the exclusion of others. Id. Crown Castle states that proposed Section 69.3701 attempts to modify Section 510 of the Code’s requirements only as to CAPs and “other telecommunication public utilities holding Commission-issued” Certificates of Public Convenience.²⁹ Id. Crown Castle states that neither the Order nor proposed Section 69.3701 define the term “other telecommunications public utilities” as used therein. Id. Crown Castle asserts that if proposed Section 69.3701 does not include local exchange carriers (LECs)—specifically incumbent local exchange carriers (ILECs)—it is discriminatory because it would allow LECs to report their intrastate revenues as defined by the federal jurisdictional separations process, while avoiding these new reporting requirements. Id. Crown Castle argues that the Commission cannot allow the LECs to continue defining their intrastate revenues under the widely-accepted ten percent rule while explicitly disallowing CAPs from doing the same. Id.

Crown Castle further asserts that the Proposed Policy Statement unfairly impacts deregulated entities like itself in conflict with Section 510(f) of the Code.³⁰ Id. at 11. Crown Castle notes that, unlike the ILECs, deregulated CAPs are subject to “alternative forms of regulation” as defined in the Code.³¹ Id. Crown Castle asserts CAPs, as largely deregulated entities, impose little or in some cases no year-over-year regulatory burdens or costs on the Commission, particularly when compared with regulatory oversight required of ILECs. Id. Crown Castle argues that imposing on deregulated CAPs the same regulatory assessment percentage imposed on highly-regulated ILECs, which by their very nature inflict much higher regulatory costs on the Commission, does not lead to each party paying its reasonable share of the cost of administering this part. Id. Accordingly, Crown Castle asserts that it would be “manifestly unjust—and directly contra to Section 510’s explicitly stated intent—to impose this extra burden on telecommunications entities like Crown Castle whose services are largely deregulated.” Id.

Crown Castle next asserts that the Proposed Policy Statement has the potential to effectively prohibit the

provision of service in violation of 47 U.S.C. § 253. Id. Crown Castle states that the FCC in its Declaratory Ruling³² sought to clarify “the types of fees that run afoul of Congress’s limits in Section 253” of the Communications Act.³³ Id. at 11-12. Crown Castle states that the FCC specifically stated that “fees are only permitted to the extent that they represent a reasonable approximation of the local government’s objectively reasonable costs and are non-discriminatory.”³⁴ Id. Crown Castle further states that in the Declaratory Ruling, the FCC noted that while Section 253(c) only expressly governed fees for use of rights-of-way, the same analysis applies to all fees that affect the deployment of small cell technology because they all “drain limited capital resources that otherwise could be used for deployment.”³⁵ Id.

Crown Castle argues that while the FCC was speaking in the context of Section 253 and its impact on the ability of states and localities to only recoup costs of entry from permissible government fees specific to “deployment,” the Declaratory Ruling endorses the same policy outlined in Section 510(f) of the Code that the government’s fees must reflect the costs caused by the particular entity subject to the fee. Id. at 13.

Lastly, Crown Castle asserts that the Proposed Policy Statement disregards the importance of jurisdictional separations principles and misreads and takes too narrow a view of the federal cases, *Illinois Bell*³⁶ and *Scott*. Id. at 14. Crown Castle argues that the Commission’s reliance on *Illinois Bell* and *Scott* is misplaced as each of those cases involved regulation of services, whereas the present issue involves the appropriate treatment of revenues, an action that falls squarely within the rubric that the jurisdictional separations doctrine is designed to address. Id.

e. Office of Consumer Advocate

In its Comments, the OCA states that it supports the general premise of the Commission’s Proposed Policy Statement. OCA Comments at 2. The OCA agrees that the Commission’s authority to assess intrastate operating revenues for Section 510 assessment purposes has not been preempted by federal law. Id. at 4. Section 510 of the Code provides the legal framework for the Commission to assess the gross intrastate operating revenues of public utilities under the Commission’s jurisdiction to provide funds for the Commission’s annual operating budget.³⁷ Id. at 1.

The OCA cited to *Regency*³⁸ for the proposition that Congress does know how to preempt explicitly or constrain the Commission’s authority to assess the operating revenues of public utilities which provide both interstate and intrastate services. OCA Comments at 5. In *Regency*, the Court was asked to consider whether the Commission’s assessment of a public transportation carrier that claimed its operations were interstate and not subject to Section 510 assessment. Id. It was noted that the federal Unified Carrier Registration Act, 49 U.S.C. § 14504a(a)(3), (c), prohibited state imposition of fees, including assessments, on certain interstate motor carriers as an undue burden on interstate commerce. Id. However, the Court acknowledged that a 2008 amend-

²⁸ In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment by Removing Barriers to Infrastructure Investment, WT Docket 17-70 and In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket 17-84, Declaratory Ruling and Third Report and Order, 83 FR 51867, 51868 (2018) (Declaratory Ruling).

²⁹ Id. at ¶ 3.

³⁰ Id. (emphasis in original).

³¹ Id. at ¶ 54.

³² *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104 (D.C. Cir. 1989) (*Illinois Bell*).

³³ 66 Pa.C.S. § 510 et seq.

³⁴ *Regency Transp. Group, Ltd. v. Pa. P.U.C.*, 44 A.3d 107 (Pa. Cmwlth. 2012) (*Regency*).

²⁸ Income, Id.

²⁹ See Proposed Annex A, § 69.3701(3); see Final Annex A, § 69.3701(d).

³⁰ 66 Pa.C.S. § 510(f) provides in relevant part “it is the intent and purpose of this section that each public utility subject to this part shall advance to the commission its reasonable share of the cost of administering this part.”

³¹ 66 Pa.C.S. § 3015.

ment to the statute permitted states to assess the intrastate operations of interstate carriers, equivalent to assessment of purely intrastate carriers.³⁹ *Id.* Consequently, the OCA agrees with the Commission that the FCC's jurisdictional separations rules do not preempt the Commission or limit the Commission's assessment of gross operating intrastate revenues to those revenues which remain after application of the "10 percent contamination rule." *Id.*

The OCA also proposes some slight modifications to the phrasing and content of proposed Section 69.3701. First, the OCA states that a declaration of the Commission's intent to provide guidance, so that going forward each certificated telecommunications public utility will know to report for assessment purposes its de facto gross intrastate operating revenues, is absent from the proposed Section 69.3701. *Id.* The OCA notes that the Order explains that the proposed Section 69.3701 is designed "to assist these carriers in complying with their statutory obligations to file their Section 510 revenues report and to pay a reasonable share of the Commission's costs of administering the Public Utility Code."⁴⁰ OCA Comments at 5-6.

Next, the OCA states that the proposed Section 69.3701 refers twice to Distributed Antenna Systems (DAS) operators.⁴¹ *Id.* at 6. The OCA recommends that the Commission consider whether these references are necessary and will be informative in many years to come as today's "DAS" may be replaced in the future by some other equipment or technology. *Id.* Also, in several places, the proposed Section 69.3701 refers one or more times to the reporting of "gross intrastate revenues."⁴² *Id.* The OCA recommends that to be consistent with the wording of Section 510 of the Code, the word "operating" be included to read "gross intrastate operating revenues." *Id.*

The OCA notes that proposed Section 69.3701 refers to the FCC's "ten percent contamination rule" in Subparts (5) and (9) but does not provide a citation to either a case or the FCC's Section 36.154 regulation. *Id.* Additionally, Subparts (5) and (9) repeatedly describe the ten percent rule as an "administrative jurisdictional cost allocation rule." *Id.* The OCA recommends that one short summary description of the FCC's ten percent rule and its purpose as a federal cost allocation rule for ratemaking and other purposes, with a citation, would improve the proposed Section 69.3701. *Id.* at 7. Lastly, the OCA suggests a rephrasing of Subpart (9) regarding the lack of preemption to make it more of an affirmative statement, appropriate to a policy statement adopted after public comment and close review of the legal underpinnings of the Commission's Proposed Policy Statement. *Id.*

Reply Comments

The OCA filed Reply Comments in response to the initial comments filed by BCAP, Crown Castle, the PTA (joined by the Frontier Companies), and Verizon. The OCA states that these parties have not shown that the Commission is preempted or legally barred by federal or state law from clarifying that the "gross intrastate operating revenues" concept embodied in Section 510 refers to "de facto gross intrastate operating revenues" for assessment purposes. OCA Reply Comments at 2.

In particular, the OCA states that it disagrees with Crown Castle's contention that the Proposed Policy Statement is unfair and discriminatory. *Id.* The OCA notes

that the Section 510 assessment process, based upon the gross intrastate operating revenues of each public utility, is a fair and reasonable approach. *Id.*

Further, the OCA pushes back on Verizon's and Crown Castle's contention that clarifying that assessable revenues from jurisdictional telecommunications carriers encompasses de facto operating revenues from all telecommunications services without a statutory amendment of Section 510 of the Code exceeds the Commission's legislatively granted powers. *Id.* at 4. The OCA states that the Commission has the authority to clarify what constitutes gross intrastate operating revenues under Section 510(f) of the Code. *Id.*

The OCA notes the PTA's concern that adoption of the Proposed Policy Statement would impose new reporting and record-keeping burdens on its rural local exchange carrier (RLEC) members. *Id.* at 5. However, the OCA states that the Commission has the authority to require ILECs and other jurisdictional telecommunications carriers to provide information in support of their reported gross intrastate operating revenues. *Id.* Nevertheless, the OCA states that even ILECs operating under an amended network modernization plan or Chapter 30 Plan are still subject to certain Commission "filing and audit requirements."⁴³ *Id.*

Discussion

As indicated above, some of the commentators have expressed opposition to the Commission's determinations underpinning the Order and attached Proposed Policy Statement. These commentators suggest that the Commission may not assess the intrastate revenues derived from the provision of special access services and other jurisdictionally mixed-use telecommunications services in order to recover the administrative expenses incurred by the Commission in its administration of the Public Utility Code and, in particular, the expenses incurred by the Commission with respect to telecommunications public utilities. However, we disagree with their positions.

The Public Utility Code demonstrates without question that the General Assembly of the Commonwealth of Pennsylvania has therein expressed its policy to commit the regulation of jurisdictional public utilities to the Commission.⁴⁴ The Code's definition of jurisdictional "public utility" includes those entities that "convey or transmit messages or communications. . . by telephone or telegraph. . . for the public for compensation." See 66 Pa.C.S. § 102(1)(vi). Thus, the Commission has exclusive authority to regulate jurisdictional telecommunications carriers offering intrastate telecommunications services, whether it is on a retail or wholesale basis.⁴⁵

Section 501 of the Code, 66 Pa.C.S. § 501, sets forth the Commission's general police powers to, inter alia, supervise and regulate all jurisdictional public utilities in the Commonwealth. With this plenary authority, the General Assembly granted the Commission the authority to impose annual fiscal assessments upon jurisdictional public utilities in order to cover their "reasonable share" of the costs of administering the Code. See 66 Pa.C.S. § 510. According to Section 510 of the Code, the Commission calculates the amount owed by each public utility based on the utility's yearly gross intrastate operating revenues and the Commission's yearly expenses. *Id.* To

³⁹ 49 U.S.C. § 14504a(c)(2).

⁴⁰ See Proposed Policy Statement Order at 3.

⁴¹ See Proposed Annex A, § 69.3701(4), (5); see Final Annex A, § 69.3701(e), (f).

⁴² See Proposed Annex A, § 69.3701(3), (5), (6), (7); see Final Annex A, § 69.3701(d), (f), (g), (j), (k).

⁴³ 66 Pa.C.S. § 3015(e)(7).

⁴⁴ See generally, *Duquesne Light Company v. Upper St. Clair Township*, 105 A.2d 287 (Pa. 1954).

⁴⁵ The Commission acknowledges that its regulatory reach over Voice-over-Internet Protocol carriers is more circumscribed, including those that may have sought or acceded to Commission certification. However, as even BCAP conceded, that circumscription pertains to regulating rates, terms and conditions of such service. See 66 Pa.C.S. § 102(2)(iv) and 73 P.S. § 2251.1.

that end, the Commission has determined that it has the authority and discretion to apply the requirements of Section 510 of the Code to all jurisdictional telecommunications carriers, including those that offer jurisdictionally mixed-use telecommunications services.

In the Proposed Policy Statement, the Commission provides guidance to all jurisdictional telecommunications providers holding Commission-issued CPCs that may have reported zero gross intrastate revenues in the past in regards to their jurisdictionally mixed-use private lines. For Section 510 assessment purposes, these providers have an obligation to report their “de facto intrastate operating revenue” earned from their jurisdictionally-mixed services, even if traffic traversing the carrier’s access lines would be classified by the FCC as interstate services for other purposes because more than ten percent of the traffic over the access lines is deemed to be interstate.

BCAP, Verizon and Crown Castle all assert that the Commission is misguided in its determination that the FCC’s ten percent rule does not preempt or apply to its annual fiscal assessment framework under Section 510. These commenters claim that all of the revenue the Commission proposes to reclassify as “de facto intrastate operating revenue” is expressly classified as interstate by the FCC and is required to be reported as such for purposes of federal assessments, based on the 1997 Universal Service First Report and Order, the instructions to FCC Form 499-A, and the 2017 Ten Percent Rule Audit Order.

Many telecommunications carriers use their networks and other resources to provide both interstate and intrastate services. Over thirty years ago, in the Ten Percent Rule Order, the FCC established “jurisdictional separations” rules in order to help telecommunications carriers apportion the costs of their regulated services between the interstate or intrastate jurisdictions in a manner that reflects the relative use of their networks to provide interstate or intrastate services.⁴⁶ The Commission acknowledges that under the FCC’s ten percent rule, for federal purposes, if the interstate traffic over a mixed-use access line is claimed to exceed ten percent, the costs of that private line are apportioned to interstate jurisdiction.⁴⁷

The Commission also acknowledges that subsequently the FCC repurposed the ten percent rule in its 1997 Universal Service First Report and Order, so that not only are costs identifiable as interstate in those instances where over ten percent of the traffic carried by a private or WATS line is interstate but also the revenues generated by the entire line are also classified as interstate if the ten percent rule is implicated.⁴⁸ The FCC was under a statutory mandate to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural health care providers.⁴⁹ Since this new universal service mechanism was to be paid for by contributions from telecommunications carriers based on an assessment on their interstate end-user revenues,⁵⁰ the FCC decided to utilize the ten percent rule in order to help telecommunications carriers identify their interstate revenues in order to assist them in calculating their appropriate contributions under the

new universal service framework.⁵¹ Accordingly, the ten percent rule is a jurisdictional separations rule that assists telecommunication carriers to accurately apportion the costs that shall be recovered from all subscribers of the jurisdictionally mixed-use private lines and also to identify the appropriate interstate revenue on that same jurisdictionally mixed-use private line in order to help them calculate their FUSF contributions.

Since then, it should be noted that the ten percent rule has been specifically utilized to assist telecommunications carriers to also identify their interstate revenues from jurisdictionally mixed-use private lines so that they can calculate their contributions, which are a percentage of that interstate end-user revenue, to additional specific federal programs such as the federal Telecommunications Relay Services Fund (TRS) 47 CFR § 64.604(c)(5)(i)—(iii); the administration of the North American Numbering Plan (NANPA) 47 CFR § 52.17; the shared costs of local number portability administration (LNPA) 47 CFR § 52.32; and assessments of Interstate Telecommunications Service Provider (ITSP) regulatory fees 47 U.S.C. § 159(b)(1)(B).

However, the federal jurisdictional separations rule does not create an exemption to 66 Pa.C.S. § 510 for the reporting of intrastate revenue associated with a jurisdictionally mixed-use private line where interstate traffic exceeds ten percent. Even when interstate traffic is claimed to exceed ten percent on a private access line and the ten percent rule is implicated, a jurisdictional telecommunications carrier cannot rely on the federal jurisdictional separations rules as a means to refuse to report its de facto or actual intrastate revenue associated with a jurisdictionally mixed-use access line. Some percentage of the total revenue associated with that particular private line must be de facto intrastate revenue that should be reported as a part of the overall gross intrastate operating revenues set forth in the Section 510 assessment report filed with the Commission’s Fiscal Office if the carrier holds a state CPC.

Moreover, the ten percent contamination rule does not preempt or otherwise preclude the Commission from imposing annual fiscal assessments to cover its costs related to the regulation of state certificated telecommunications public utilities in Pennsylvania. The preemptive effects of the Supremacy Clause⁵² and the restraint of the Commerce Clause⁵³ do not prevent a state regulatory agency from applying a uniform methodology to develop an annual fiscal assessment to recover regulatory costs caused by telecommunications carriers who invoke this Commission’s jurisdiction by applying for, receiving, and subsequently operating under a state-issued CPC.

It is generally accepted that the Supremacy Clause invalidates all state laws that conflict or interfere with an act of Congress. *Rose v. Arkansas State Police*, 479 U.S. 1, 3 (1986). Administrative regulations promulgated pursuant to Congressional authorization have the same preemptive effect as federal statutes. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984). The FCC’s jurisdictional separations rules do not preempt the Commission or limit the Commission’s authority to provide guidance so that the de facto gross operating intrastate revenues from special access revenues deemed interstate after application of the ten percent rule are reported to the Commission’s Fiscal Office for assessment purposes.

Under the Supremacy Clause, federal law may preempt state law in any of three ways. When enacting federal

⁴⁶ Ten Percent Rule Order, 4 FCC Red 5660.

⁴⁷ 47 CFR § 36.154(a).

⁴⁸ See 47 CFR § 36.154(a); see also 1997 Universal Service First Report and Order, 12 FCC Red at 9173, ¶ 778.

⁴⁹ 47 U.S.C. § 254(b)(3).

⁵⁰ 47 U.S.C. § 254(d).

⁵¹ 1997 Universal Service First Report and Order, 12 FCC Red at 9173, ¶ 778.

⁵² See Article VI, Paragraph 2 of the U.S. Constitution.

⁵³ See Article 1, Section 8, Clause 3 of the U.S. Constitution.

law, Congress can explicitly define the extent to which it intends to preempt state law. Or, in the absence of express preemptive language, Congress can indicate an intent to occupy an entire field of regulation and by leaving no room for states to supplement the federal law. Also, federal law can preempt state law when compliance with both state and federal law is impossible or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Michigan Cannery and Freezers Association, Inc. v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461, 469 (1984); *Crisp*, 467 U.S. at 699.

The FCC's jurisdictional separations rules do not expressly preempt the Commission's annual assessment and do not comprehensively govern the field of utility regulation, including state annual fiscal assessments. Indeed, the federal interest in this area cannot be classified as dominant, given the historical right of the states to exercise police power over utilities. Pursuant to the Code, the Commission is an independent administrative agency responsible for regulating jurisdictional telecommunications utilities, including imposing fiscal assessments under Section 510 of the Code to recover the costs of administering the Code. Like the *Scott* court determined, the FCC's expressed intent to preempt state regulation on jurisdictionally-mixed services does not extend to performance measurements and standards. As previously discussed, the ten percent rule has been specifically utilized to assist telecommunications carriers to identify their interstate revenues from jurisdictionally mixed-use private lines so that they can calculate their contributions to various federal programs. Any intent to preempt state regulation is limited to these specific areas and has not extended to the Commission's annual fiscal assessment. Section 510 operates only in an area which Congress has not preempted but, to the contrary, has expressly reserved to state control. Thus, we disagree with BCAP's and other parties' characterizations that our Proposed Policy Statement directly implicates the allocation questions addressed by the ten percent rule.

Similarly, the Commission's Section 510 annual assessment process does not make compliance with the ten percent contamination rule impossible and does not frustrate the purpose and objective of the rule. Proposed Section 69.3701 makes it clear that all jurisdictional telecommunications carriers have an obligation to report this de facto gross revenue to the Commission so that the annual fiscal assessment under Section 510 of the Code can be calculated to capture the costs of administering the Code. The claim by BCAP, Verizon and Crown Castle that the Proposed Policy Statement results in double taxation of the same revenues is erroneous and conflates federal annual regulatory assessments and state fiscal assessments related to recovering the actual costs of administering the Code from all jurisdictional telecommunications carriers providing jurisdictionally mixed-use services.

Additionally, we note that carriers are required to calculate the amount of their contributions to the FUSF based on retail end-user interstate revenue. However, certain carriers only offer interstate telecommunications services on a wholesale basis. As such, we do not find any merit in the argument that seeking to assess de facto intrastate operating revenue would result in double assessments of regulatory expenses of these carriers' interstate revenues.⁵⁴

⁵⁴ 1997 Universal Service Report and Order, 12 FCC Red at 9171, 9206-07 ¶s 772, 843-845.

Section 510 of the Code does not expressly conflict with the FCC's jurisdictional separations rules because the Commission is not seeking to impose an annual assessment on interstate revenue for any purposes for which the FCC assesses interstate revenue. The Commission is not seeking to impose an annual fiscal assessment on interstate revenue or seeking to assess interstate revenues from jurisdictionally mixed-use private lines for the purposes of its state universal service fund or for any of the other purposes the FCC assesses jurisdictionally-mixed revenues implicated by the ten percent rule. There is no conflict between the workings of the FCC's ten percent contamination rule and the authority granted to the Commission under Section 510 to impose annual fiscal assessments to capture the proper costs of administering the Code from jurisdictional telecommunications utilities providing mixed-use telecommunications services. Thus, there is no physical impossibility, and no double taxation, in complying with both the federal and the state regulations.

The Commission concludes that its Section 510 assessment process is not preempted by federal law and that its determination in the Proposed Policy Statement is proper. Crown Castle's assertion that the Proposed Policy Statement disregards the importance of jurisdictional separations principles misreads and takes too narrow a view of the federal cases *Illinois Bell* and *Scott*. These cases stand for the proposition that where it is not possible to separate the interstate and the intrastate components of the FCC regulation involved, the Communications Act sanctions federal regulation of the entire subject matter, which may include preemption of inconsistent state regulation, if necessary, to fulfill a valid federal regulatory objective. Thus, the Communications Act permits FCC preemption of a state's authority over intrastate telephone service when the states' exercise of that authority negates the exercise by the FCC of its own lawful authority over interstate communications.

Notwithstanding, we see no authority for the remarkable proposition that telecommunications carriers who operate under Commission-issued CPCs to provide intrastate service are exempt from the uniform application of reasonable state administrative fees related to their Pennsylvania operations. Carriers who report zero intrastate revenues for mixed-used telecommunications services based on the ten percent contamination rule at 47 CFR § 36.154 cannot have it both ways; a carrier cannot claim state jurisdictional rights and simultaneously disclaim all state jurisdictional responsibilities where such broad preemption claims are not supported. Nor have the comments in opposition to the Proposed Policy Statement justified the position that, of all the various accounting metrics by which the Commission's cost of operations related to telecommunications public utilities can be reasonably allocated (equal shares, relative assets, net income, number of employees, direct hours, annual fees, etc.), the use of gross intrastate operating revenues as the metric is unlawful and unconstitutional.

The commentators opposing the Proposed Policy Statement have not proven or shown that a state commission is violating the Supremacy Clause or the Commerce Clause by imposing a fiscal assessment only on the de facto intrastate revenues associated with a jurisdictionally mixed-use that has interstate traffic that exceeds ten percent and which is deemed interstate revenue for the purposes of the FCC's allocation rules. The ten percent rule is nothing more than a jurisdictional separations procedure designed primarily to identify the appropriate costs and revenues to be allocated between state and interstate jurisdictions. 47 CFR § 36.154(a) and (b). The

ten percent rule exists to assist telecommunication carriers the interstate revenue from a jurisdictionally mixed-use private line so that the carrier can calculate the amount of their contributions based on that interstate revenue that it is required to submit to the FUSF, the interstate telecommunications relay services (TRS), the administration of the NANP, the shared costs of local number portability administration and to the FCC in the form of regulatory fees under 47 U.S.C. § 159(b)(1)(B).⁵⁵ The FCC did not establish the ten percent contamination rule to, by implication, enact a wholesale preemption of state fees associated with licenses to provide intrastate service whether based on flat annual fees, in-state assets, in-state employees or, as with Section 510, based on in-state revenues.

The Commission concludes that preemption cannot be inferred from this overall jurisdictional separations scheme. The FCC's regulations establishing the ten percent rule and the related federal assessments do not limit or impede the state's police power or the Commission's authority under Section 510 to require the reporting of de facto intrastate operating revenue for the purpose of allocating and assessing, on a fair and reasonable basis, the costs incurred by the Commission with respect to telecommunications carriers holding Commission-issued CPCs. Moreover, under Section 510, gross intrastate operating revenue is merely the metric by which the Commission's costs are allocated among telecommunications carriers holding Commission-issued CPCs. It controls neither the nature and scope of regulation associated with services that give rise to such revenues nor the overall amount of the Commission's operating costs.

Accordingly, the Commission issued the Proposed Policy Statement specifically to provide guidance to telecommunications carriers holding Commission-issued CPCs so that, going forward, they would understand the state law obligation to report de facto intrastate revenue associated with jurisdictionally-mixed services for fiscal assessment purposes under Section 510 of the Code. Alternatively, telecommunications carriers that report no revenue from intrastate services for several years may be viewed as no longer providing service to the public for compensation in Pennsylvania and, accordingly, no longer qualified to hold a Commission-issued CPC. In other words, if there are no intrastate transactions from which revenues are derived, these telecommunications carriers should not invoke intrastate jurisdiction or continue to hold intrastate certification that comes with obtaining a Pennsylvania CPC.

Moreover, the commentators opposing the Proposed Policy Statement have failed to present any FCC decision that expressly sets forth that states are precluded from exercising regulatory authority and imposing annual fiscal assessments on the revenue of mixed-use telecommunications services for Section 510 assessment-type purposes as the method to recover the Commission's regulatory costs related to telecommunications public utilities operating in Pennsylvania.

As we previously determined in the Order and now reaffirm after review of the filed comments, the FCC has not expressly preempted state regulation for jurisdictionally mixed-use services and the state action does not frustrate any important federal interest. See *Louisiana PSC*, 476 U.S. at 375; *Diamond Int'l Corp. v. FCC*, 627 F.2d 489, 493 (D.C. Cir. 1980) (permitting state regulation of mixed-use service within FCC's authority); In the Matter of Filing and Review of Open Network Architecture Plans, 4 F.C.C.R. 1 ¶¶ 276, 277 (1988) (deciding to allow continuation of state tariffing of Complementary

Network Services) (Open Network Order). Accordingly, a state commission is no more preempted from imposing an annual fiscal assessment or other form of state fee on a jurisdictional telecommunications public utility to cover the reasonable and allocated operating costs of the state commission than it is from granting a CPC or license to provide jurisdictionally-mixed service with the Commonwealth.

Even in the absence of preemptive legislation, the Commerce Clause bars state regulation that unduly burdens interstate commerce. The Commerce Clause acts as an implied restraint on state regulatory powers, which must give way to the superior authority of Congress to legislate on, or leave unregulated, matters involving interstate commerce. *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden*, 465 U.S. 208, 220 (1984). However, the Commission also determines that imposing fiscal assessments on revenues subject to the ten percent rule is not in violation of the Commerce Clause because the effect the Commission's uniform methodology under 66 Pa.C.S. § 510 is incidental. A fiscal assessment will not detrimentally impact the flow of interstate commerce in light of the legitimate state interest that all jurisdictional telecommunications carriers report gross intrastate operating revenues so as to provide the requisite funds for the Commission's annual operating budget.

Next, Verizon questions whether the Commission may clarify that assessable revenues from telecommunications service are "de facto gross operating revenues" without statutory amendment of Section 510. We disagree with this position and also note that the argument acknowledges state authority to assess revenues as de facto gross intrastate operating revenues.

The Commission has the authority to clarify what constitutes "gross intrastate operating revenues" so that telecommunications public utilities are responsible for covering their reasonable share of costs related to the Commission's administration of the Code. Section 510(f) declares, "[i]t is the intent and purpose of this section that each public utility subject to this part shall advance to the commission its reasonable share of the cost of administering this part." 66 Pa.C.S. § 510(f).

Under Section 501 of the Code, the Commission has the full power and authority to carry out by regulations, orders, or otherwise, the provisions of the Public Utility Code, including Section 510. Section 501 of the Code provides in pertinent part:

(a) *Enforcement of provisions of part.*—In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

(b) *Administrative authority and regulations.*—The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

⁵⁵ See also 47 U.S.C. § 159(a)(2).

(c) *Compliance*.—Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.

66 Pa.C.S. §§ 501(a), (b) and (c).

Clarifying that “de facto gross operating revenues” from jurisdictionally mixed-use services should be reported to the Commission by jurisdictional telecommunications carriers for annual fiscal assessments is squarely within the Commission’s Section 501 general powers “to enforce, execute and carry out” the purpose under Section 510 of the Code. 66 Pa.C.S. § 501(a) and (b).

Furthermore, Section 502 of the Code gives the Commission the authority to initiate appropriate legal proceedings to enforce the statutory provisions of the Code. 66 Pa.C.S. § 502. The plain language of the Code gives the Commission the authority to assess jurisdictional telecommunications carriers providing telecommunications services and the duty to enforce this statutory provision. Thus, the Commission may issue a policy statement that provides guidance to jurisdictional telecommunications that they should report the de facto gross intrastate operating revenue on all revenue from jurisdictionally mixed-use services implicated by the ten percent rule.

The PTA expresses concern that adoption of the Proposed Policy Statement would impose new reporting and record-keeping burdens on its RLEC members. All LECs are subject to Section 510 and to adequately fulfill the purposes of this statutory provision, telecommunications carriers are required to submit all pertinent information and reports necessary for purposes of calculating their annual fiscal assessment. This filing requirement has not been repealed or eliminated. Additionally, Sections 309, 504, and 505 of the Code provide the Commission with the plenary authority to compel the production of information and to require public utilities to furnish such records, documents, and information as may be necessary.

While the Commission acknowledges the streamlined reporting obligations for ILECs, similar to the OCA, we note that pursuant to Section 3015(e)(7), ILECs operating under a Chapter 30 Plan are required to file an annual statement of gross intrastate operating revenues for purposes of calculating assessments for regulatory expense. 66 Pa.C.S. § 3015(e)(7). Also, pursuant to 66 Pa.C.S. § 3017(f)(2), streamlined reporting does not impede the ability of the Commission to request explanation of the report mandated by Section 3015(e)(7). Proposed Section 69.3701(7) only clarifies that supporting information “such as traffic studies, tax returns, jurisdictional allocation formulas and factors, books of accounts, reports, etc.” may be considered when reporting proper gross intrastate revenue for fiscal assessment purposes.⁵⁶ Thus, the Proposed Policy Statement does not subject any jurisdictional telecommunications carriers, including Chapter 30 Plan ILECs, to any new audit and filing requirements. It only describes the possible scope of information which may be necessary to be filed and considered as support for calculating the proper fiscal assessment.

⁵⁶ See Final Annex A, § 69.3701(k).

BCAP, PTA and Verizon all assert that it would be technically infeasible to comply with the obligation to ascertain and report “de facto” intrastate revenues attributable to special access, transport, or similar jurisdictionally mixed-use services. These commenters all state that the FCC has acknowledged that the best method to verify and ascertain the jurisdictional status of the traffic that traverses a special access private line for purposes of complying with regulatory obligations is through customer certifications. This begs the question of how carriers have been able to accurately report what special access revenues in past assessment forms fall under the ten percent rule since they simply rely on customer certifications to determine whether a particular special access, transport, or similar line is carrying intrastate or interstate traffic that is above or below the ten percent rule. Nevertheless, in order to ensure full compliance with the requirements of Section 510 of the Code, the Commission believes it is appropriate and the statutory responsibility of all jurisdictional carriers holding Commission-issued CPCs to file the requisite evidence to ascertain the “de facto” intrastate revenues attributable to jurisdictionally-mixed services.

If a jurisdictional carrier believes that obtaining customer certifications is unduly burdensome, the Commission would be willing to entertain a determination of the point of origination and termination on the carrier’s network, rather than the point of origination and termination of the underlying communication. So that, for example, if a jurisdictional telecommunications carrier provides wireline transport of communications entirely within the state, then the call would be classified as intrastate, regardless of the jurisdiction of the underlying call. If one of those points were located outside of Pennsylvania, then the underlying revenue would be interstate. The routing on the jurisdictional carrier’s network cannot be circuitous or designed to avoid the assessment process set forth in this Policy Statement. If a jurisdictional carrier prefers to explore this type of traffic study, we would consider it upon a request, with underlying support, to do so.

Crown Castle asserts that the Proposed Policy Statement is discriminatory and unfair. This argument is misguided and has no basis whatsoever. Crown Castle refers to itself and other CAPs as “deregulated” as a means to infer that since they are subject, as they claim, to “alternative forms of regulation” as defined in the Public Utility Code the costs to administer the Code as related to them is low. That argument is based upon an erroneous legal interpretation of Chapter 30, however.

There is a difference between a competitive carrier which is certificated and regulated, and a deregulated carrier, which is neither certificated nor regulated. Under Chapter 30, neither Crown Castle individually nor CAPs as a class are deregulated. Consequently, we reject Crown Castle’s argument that the Commission’s policy determination detrimentally impacts them more because we are imposing a uniform regulatory assessment as we do on ILECs that Crown Castle avers without support inflict higher regulatory costs on the Commission.

Under Chapter 30, the “alternative form of regulation” Crown Castle invokes applies only to ILECs (defined as local exchange telecom companies under the act). Under Chapter 30, it is the ILECs, not competitive providers, who were provided statutory authority to convert to a less burdensome alternative form regulation, modifying their regulatory ratemaking construct from the traditionally more highly regulated rate base/rate of return base rate case methodology to a less burdensome alternative form

of ratemaking in exchange for a ubiquitous broadband deployment commitment. Section 3015 of the Code, 66 Pa.C.S. § 3015, relied on by Crown Castle, is not even applicable to Crown Castle. This statutory provision applies only to ILECs. Non-ILECs such as Competitive Local Exchange Carriers (CLECs), CAPs and interexchange carriers (IXCs) are classified as “alternative service providers” that are competitive under Chapter 30 and provide services in competition with ILECs. They certainly are not “deregulated” in any fashion.

Moreover, Crown Castle’s assertion that, as a competitive carrier, it is not a highly regulated entity is of no consequence under Section 510. Section 510 applies to all certificated jurisdictional public utilities and hence, all jurisdictional telecommunications carriers—competitive or otherwise. Section 510 of the Code makes no distinction or exemption for CAPs or any other certificated carriers. Section 510 does not authorize one assessment obligation for certificated jurisdictional carriers that are “highly-regulated” and a different assessment obligation for competitive carriers. All jurisdictional telecommunications carriers holding a Pennsylvania CPC are subject to Section 510.

Moreover, contrary to Crown Castle’s, the Proposed Policy Statement does not effectively prohibit the provision of service in violation of 47 U.S.C. § 253. Rather, it conforms to the criteria set forth in the FCC’s Declaratory Ruling Order regarding regulatory fees in that the fees will be permitted “to the extent that they represent a reasonable approximation of the local government’s objectively reasonable costs and are non-discriminatory.”⁵⁷ The statutory Section 510 assessment process is a reasonable and fair approach as it imposes a fiscal assessment on a jurisdictional telecommunications carrier that is based upon both the direct hours incurred by Commission staff in each utility sector and the particular gross intrastate operating revenues of that public utility. All jurisdictional telecommunications carriers, whether they be ILECs, CLECs, CAPs, or IXCs are classified as a common utility group and all are subject to Section 510’s use of gross intrastate operating revenues as the basis to calculate their individual annual fiscal assessment. This is a fair, equitable and nondiscriminatory to determine fiscal assessment under Section 510 of the Code.

The Commission receives necessary data relating to each public utility’s gross intrastate operating revenue in Pennsylvania from the utilities by way of the assessment report. Based on this submitted data, each certificated telecommunications carrier in the telephone public utility group is allocated and required to advance to the Commission its reasonable share of the cost of administering the Code. 66 Pa.C.S. §§ 510(b) and (f). Thus, Crown Castle’s position that the Proposed Policy Statement somehow disrupts this equitable approach is erroneous and without merit.

Also, Crown Castle argues that the Proposed Policy Statement is unfair because it does not apply to ILECs. This is an erroneous interpretation. The Proposed Policy Statement provides guidance to all jurisdictional telecommunications carriers that they have an obligation to report the de facto and actual intrastate revenue associated with jurisdictionally mixed-use private lines as a part of their total gross intrastate operating revenues reported to the Fiscal Office. If a telecommunications carrier seeks to invoke this Commission’s jurisdiction to provide intrastate services, then it is obliged to report gross revenues received from those services. If no intrastate services are provided and the carrier reports zero

intrastate revenues, its right to a CPC is not clear and, after requisite due process, the carrier may be required to relinquish its CPC. We note, however, that in order to make this abundantly clear, we have removed references to any specific class of certificated providers, such as CAPs, because the policy statement is intended to and will apply with equal force to all jurisdictional telecommunications public utilities.

Additionally, Crown Castle states that the Commission’s Proposed Policy Statement exceeds its legislatively granted powers. However, the Proposed Policy Statement simply provides guidance regarding how jurisdictional telecommunications carriers must report the de facto intrastate revenues on jurisdictionally-mixed telecommunications services as a part of the total gross intrastate operating revenues reported for Section 510 assessment purposes. Specifically, in reporting their total gross intrastate operating revenues in their Section 510 assessment report, jurisdictional telecommunications carriers may not rely on the FCC’s ten percent rule as their basis for not reporting the de facto intrastate revenue on all jurisdictionally-mixed telecommunications services.

It should be noted that the Proposed Policy Statement does not calculate any specific amount for fiscal assessments and takes no individual action against any individual carrier or group of carriers at this time. The Proposed Policy Statement only provides the manner in which the total gross intrastate operating revenues on all jurisdictional telecommunications services, including jurisdictionally-mixed telecommunications services are to be reported in Section 510 assessment reports. After submitting its Section 510 assessment report to the Commission, the fiscal assessment is calculated by the Fiscal Office and must be paid within 30 days of receipt of its notice of assessment. The statutory scheme provides for objections to and adjudication of any contested assessment amount. In particular, Section 510(c) provides that a public utility may file, within 15 days, an objection to the assessment “setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful or invalid.” 66 Pa.C.S. § 510(c). Any such objection will be assigned to the Office of Administrative Law Judge for hearing and decision. Thus, the Proposed Policy Statement does not prohibit a jurisdictional telecommunications carrier from challenging any calculated fiscal assessment that the carrier may deem unsupported or inappropriate. It simply provides guidance on the manner it should report its total intrastate operating revenues.

Lastly, the Commission will adopt certain editorial suggestions of the OCA and others to amend proposed Section 69.3701 to eliminate any ambiguity as to whether the “de facto gross intrastate operating revenues” standard would apply only to a telephone public utility which reported zero intrastate revenues in the prior year or to all telephone public utilities. The Commission will also incorporate a declaration into proposed Section 69.3701 that the policy statement exists to assist these carriers in complying with their statutory obligations to file their Section 510 revenues report and to pay a reasonable share of the Commission’s costs of administering the Public Utility Code. As we have with CAPs, the Commission will eliminate the explicit references to DAS network operators in proposed Section 69.3701(4) and (5). We agree with the OCA that these references are unnecessary because the intent of the policy statement is to

⁵⁷ See Declaratory Ruling.

provide guidance to jurisdictional local exchanges that provide jurisdictionally mixed-use telecommunications services.⁵⁸

The OCA also noted that in several places, proposed Section 69.3701 refers one or more times to the reporting of “gross intrastate revenues.” We agree with the OCA that in order to be consistent with the wording of Section 510 of the Code, we should use the language of the statutory provision and use the word “operating” so the proposed Section 69.3701(3), (5), (6) and (7) will read as “gross intrastate operating revenues.”⁵⁹

We also take the OCA’s editorial suggestion that Subparts (5) and (9) of proposed Section 69.3701 refer to the FCC’s “ten percent contamination rule” without the requisite citation to 47 CFR § 36.154. Additionally, the OCA states that Subparts (5) and (9) of proposed Section 69.3701 are redundant and repetitive in the description of the ten percent rule. The Commission agrees with the OCA that one short summary description of the FCC’s ten percent rule and its purpose as a federal cost allocation rule for ratemaking and other purposes, with a citation, is all that is necessary. Finally, the OCA also suggests that the other part of Subpart (9) regarding the lack of preemption should be rephrased in a more affirmative manner, appropriate to a policy statement adopted after public comment and close review of the legal underpinnings of the Commission’s Proposed Policy Statement.⁶⁰ We agree.

Crown Castle states that as defined in proposed Section 69.3701, the term “de facto gross operating revenues” is ambiguous and may potentially be overly broad. Crown Castle suggests that the definition of “de facto gross operating revenues” should be revised to only apply to revenues actually received, rather than amounts charged or otherwise due. We agree with this suggestion.

Lastly, many commentators requested that the Commission establish a collaborative process to examine the complex issues underlying and implicated by the Proposed Policy Statement. Given the clear and unambiguous mandate in the statute that public utilities holding Commission-issued CPC must report their gross intrastate operation revenues and the further guidance provided in this Final Policy Statement, the Commission does not believe that a technical conference or collaborative process is necessary. All telecommunications public utilities holding a Commission-issued CPC are obligated to report gross intrastate operating revenues in a manner which assures each of them pays their reasonable share of the Commission’s costs of administration. We expect each telecommunication public utility to comply with its obligations under state law; *Therefore,*

It Is Ordered That:

1. The Final Policy Statement as set forth in Annex A is adopted.
2. The Law Bureau shall submit this Order and Annex A to the Governor’s Budget Office for review of its fiscal impact.
3. The Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
4. The Final Policy Statement shall become effective upon publication in the *Pennsylvania Bulletin*.

⁵⁸ We acknowledge that the explicit use and reference to “DAS” network operators may be moot no matter the outcome of the current appeal before the Pennsylvania Supreme Court regarding their jurisdictional classification. See generally, *Crown Castle NG East LLC & PA-CLEC LLC, v. Pennsylvania Public Utility Commission*, 2 MAP 2019.

⁵⁹ See Final Annex A, § 69.3701(d), (f), (g), (j), (k).

⁶⁰ See Final Annex A, § 69.3701(i).

5. A copy of this Order, together with Annex A, be served on all jurisdictional telecommunications public utilities and all parties that filed comments under this docket. The Order and Annex A shall also be posted on the Commission’s website.

6. The contact person for this matter is David E. Screven, Assistant Counsel, Law Bureau, (717) 787-2126, dscreven@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: Fiscal Note 57-324 remains valid for the final adoption of the subject regulation.

Statement of Chairperson Gladys Brown Dutrieuille

This case involves a proposed Policy Statement that we issued on November 8, 2018, which provides guidance to telecommunications public utilities with a Certificate of Public Convenience (CPC) on how they are to report revenues for Section 510 assessment purposes. The issue arises because some telecommunications carriers with interstate operations and a CPC report no intrastate revenues and pay no assessments while others may be doing the same thing but report revenues from other operations and pay assessments. Both telecommunications public utilities compete to provide interstate services subject to the Federal Communications Commission (FCC) 10% contamination rule.

The parties disagree on whether the Commission can require telecommunications carriers with interstate operations but no reportable intrastate revenues to pay an intrastate assessment based on their interstate revenues in light of the 10% contamination rule. FCC rules classify as interstate all revenues from those services where a customer certifies that 10% or more of the services are interstate i.e., private line special access. A service in which potentially 90% of the revenues comes from intrastate services becomes interstate and no assessment is paid because no intrastate revenues are reported. This “10 percent contamination rule” arises from federal jurisdictional separations rules governing the allocation of network costs and revenues between the states and the FCC.

Except for the Office of Consumer Advocate, the comments oppose adoption of a “de facto” gross operating revenues solution in which parties will pay an intrastate assessment on up to 90% of the interstate revenues deemed to be intrastate revenues. Two of the parties, PTA and Verizon respectively, urge the Commission to convene a collaborative and to explore ways to recover the costs from providers that utilize administrative resources but pay no assessments. Crown Castle, a Distributed Antenna System (DAS) network provider who is challenging our decision that it is not a jurisdictional public utility in the Supreme Court of Pennsylvania, is concerned about discrimination given the focus on Competitive Access Providers (CAPs) compared to Incumbent Local Exchange Carriers (ILECs), possibly violating Section 253 of federal law, 253 U.S.C. § 253.⁶¹

The legal and factual claims in the majority of comments demonstrate that the scope and operation of this

⁶¹ That concern is particularly troublesome should the Commission’s first action under this Policy Statement pursue revocation limited to only competitive carriers who report no intrastate revenues under the 10% contamination rule while others who do the same thing retain theirs because they pay an assessment on revenues from other operations unrelated to the 10% contamination rule. Compare *Regarding the Reporting of Intrastate Operating Revenues for Section 510 Assessment Purposes by Jurisdictional Telecommunications Carriers Offering Special Access and Other Similar Jurisdictionally-Mixed Telecommunications Services*, Docket No. M-2018-3004578 (Comments of Verizon Communications, Inc. and BCAP) with Appendix A. It is now well-settled that the TA-96 authorized federal regulations of intrastate telecommunications while prohibiting states from erecting barriers to competitive entry. *AT&T v. Iowa Utilities Board*, 525 U.S. 368, 371–373 (1999). Such a selective action would suggest otherwise.

10% rule is complex. Some claim this precludes any state assessment whatsoever because caselaw prohibits state assessments on interstate revenues for state universal service.⁶²

While I support assessments on carriers with a CPC to support Commission operations, I am concerned that we are not considering other approaches and have not chosen to pursue a rulemaking. I am also concerned that the Commission has not taken the PTA's suggestion to convene a collaborative to explore other options and to address the concerns with reliance on the 10% rule.

These are important because federal law permits non-discriminatory and reasonable burdens on interstate commerce. Precedent requires the states to enforce federal law.⁶³ A CPC not only ensures compliance with that obligation but also provides Commission processes to resolve disputes, promote competition, and protect Pennsylvania consumers and companies.⁶⁴ Other federal precedent states that assessments for state universal service and dispute resolution do not violate a federal prohibition on rate regulation or market entry of interstate services.⁶⁵ In the case of mixed jurisdictional services and traffic, the FCC permits use of a "safe harbor" approach allowing the states to assess a fixed portion of revenues for state universal service purposes so long as there is no double counting.⁶⁶ There is no caselaw holding that the ban on assessing interstate revenues for state universal service extends to assessments for government operations.

For these reasons, I am voting no.

GLADYS BROWN DUTRIEUILLE,
Chairperson

Statement of Commissioner Andrew G. Place

Before us is a final recommendation regarding the adoption of a previously proposed Policy Statement.⁶⁷ Under this Policy Statement, telecommunications carriers that are certified by this Commission and operate in Pennsylvania offering jurisdictionally mixed telecommunications services (e.g., mainly private line and special access services), but report zero gross intrastate revenues on those services due to the Federal Communications Commission's (FCC's) ten percent contamination rule, would be obligated, for fiscal assessment purposes, to report their de facto gross intrastate operating revenues and pay an assessed amount of this Commission's costs for administering the Public Utility Code.

The majority of the commenting parties, including such entities as the Pennsylvania Telephone Association (PTA), the Verizon Companies (Verizon), and the Broadband Cable Association of Pennsylvania (BCAPA), have actively opposed the adoption of this Policy Statement. These

comments have raised several serious legal and technical concerns and have strongly recommended against its adoption. I share many of the concerns that these commenting parties have expressed. Assuming that there is a genuine and concrete fiscal assessments issue for both incumbent and competitive telecommunications carriers that do not report operating revenues from special access and private line circuits that have been classified as interstate under the FCC's ten percent contamination rule (or report zero intrastate revenues from such services)—and I am not convinced that there is such an issue—this matter should be further studied and addressed through a collaborative process⁶⁸ or through a legislative solution.⁶⁹ Furthermore, for the reasons that I explain in detail below, any future Commission action in this matter should proceed on the basis of a rulemaking and not a Policy Statement.

A. The Recommended Policy Statement Suffers from Serious Legal and Technical Flaws

The recommended Policy Statement suffers from serious legal and technical flaws. The potential adoption of the Policy Statement will inevitably lead to a conflict with the FCC's applicable jurisdictional separation rules.⁷⁰ This conflict most likely will result in appellate litigation before courts and/or administrative agencies of competent jurisdiction. Most of the comments plainly demonstrate that the FCC's ten percent contamination rule, that affects the interstate classification of special access and private line circuits and services, also affects the corresponding jurisdictional classification, separation and allocation of capital investment, associated fixed investment costs, operational costs, and associated revenues.⁷¹ The relevant interstate classification and jurisdictional allocation of the network facilities, costs, and revenues affected by the ten percent contamination rule are utilized for a variety of purposes. They are not solely utilized for the jurisdictional allocation of revenues for the purpose of ascertaining contribution assessments to the federal and state universal service fund (USF) mechanisms. They are also utilized for the assessment and payment of regulatory fees to appropriate agencies including the FCC and this Commission.

BCAPA explained the evolution of the FCC's ten percent contamination rule and also pointed out that "the FCC specifically acknowledged that its jurisdictional separations procedures, including the ten percent rule, govern revenue allocations in the regulatory fee context."⁷² BCAPA points to the FCC's explanation in a notice of proposed rulemaking that "states 'use separations results to determine the amount of intrastate universal service support and to calculate regulatory fees.'"⁷³ Verizon also states that since the FCC adopted the ten percent contamination rule for special access and private line services, "providers have been required to report as interstate revenue on the FCC Form 499-A their revenue from special access services carrying more than ten percent interstate traffic, and they have been as-

⁶² *Texas Office of Public Utility Counsel, Pennsylvania Public Utility Commission et al. v. FCC*, 183 F.3d 393 (5th Cir. 1999).

⁶³ *Ill. Pub. Telcoms. Ass'n v. FCC*, 410 U.S. App. D.C. 69, 752 F.3d 1018 (2014), cert. denied 135 S. Ct. 1583 (2015).

⁶⁴ See e.g., *AT&T Corporation v. Core Communications, Inc. and the Pennsylvania Public Utility Commission*, Docket Nos. 14-1499 & 14-1664 (November 25, 2015)(Commission enforcement of federal intercarrier compensation rule upheld); *Palmerton Telephone Company v. Pa. PUC*, Docket C-2009-2093336 (March 16, 2010)(CPC provider of interstate services required to compensate an intrastate carrier); *RTCC v. Pa. PUC*, 941 A.2d 751 (Pa. Cmwlth. 2005)(Commission promotion of competition under state and federal law upheld); *Palmerton Telephone Company v. Global NAPS South, Inc.*, Docket No. C-2009-2093336 (March 16, 2010), Letter of Palmerton Telephone (December 23, 2010)(Commission enforcement apprised of interstate carrier with CPC refusal to comply with the Commission's March 2010 Order).

⁶⁵ *Mountain Solutions, Inc. v. State Corporation Commission of Kansas*, 996 F.Supp. 1043 (D. Kan. 1997), aff'd 149 F.3d 1058; *Telesaurus VPC, LLC v. Power*, 623 F.3d 998 (9th Cir. 2010), cert. denied 132 S.Ct. 95.

⁶⁶ In Re: Universal Service Contribution. Docket No. 06-122 Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling (November 10, 2010), para 11. The FCC permits traffic studies for regulatory purposes but those are usually explored in Pennsylvania by a regulation and not by policy statements. See e.g., 52 Pa. Code § 63.71.

⁶⁷ Docket No. M-2018-3004578, Order entered November 8, 2018, 49 Pa.B. 929 (March 2, 2019).

⁶⁸ PTA Comments at 2-3, 6; Crown Castle Comments at 3, 5.

⁶⁹ Verizon Comments at 10.

⁷⁰ 47 CFR § 36.154(a). The FCC originally established its ten percent contamination rule in 1989. BCAPA Comments at 2-3 and n. 6 citing MTS and WATS Market Structure, Amendment of Part 36 of the Communications Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, Decision and Order, 4 FCC Red 5660, 5660-61, ¶¶ 1, 2 (1989).

⁷¹ BCAPA Comments at 3; Verizon Comments at 5. This classification does not obviate this Commission's regulatory oversight and responsibilities that telecommunications network facilities and services within Pennsylvania comply with applicable statutory and regulatory standards involving reliability, adequacy, safety, efficiency, privacy, and reasonableness. See, e.g., 66 Pa.C.S. § 1501.

⁷² BCAPA Comments at 4.

⁷³ BCAPA Comments at 4 and n. 18, citing In re Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, (FCC, Rel. July 18, 2018), Further Notice of Proposed Rulemaking, 33 FCC Red 7261 ¶ 11 (2018); slip op. FCC 18-99 at 5 (emphasis added by BCAPA).

sessed for various federal fees based on that revenue.”⁷⁴ Verizon’s extensive quote from the FCC Form 499-A plainly indicates that these reported interstate revenues are utilized not only for the calculation of federal USF mechanism contribution assessments, but also for funding such programs as the interstate telecommunications relay services (TRS), the shared costs of local number portability administration (LNPA), and the FCC’s own Interstate Telecommunications Service Provider (ITSP) regulatory fees.⁷⁵ The Verizon comments further explains that “the same revenue that the Commission is now seeking to assess as ‘de facto intrastate operating revenue’ is considered interstate revenue for FCC assessment purposes and is subject to being assessed for the ITPS, FUSF [federal USF] and a number of other federal fees.”⁷⁶ Verizon reinforces and explains its position by referencing the FCC Wireline Competition Bureau’s Order of March 10, 2017 regarding the applicability of the ten percent contamination rule for private and special access lines, and the resulting contribution assessments to the federal USF mechanism.⁷⁷ The same FCC WCB Audit Order also includes the following language that is relevant to the “de facto” intrastate revenues fundamental premise that has been advanced in the Policy Statement under consideration:

Mixed-use special access lines are assignable to the interstate jurisdiction if the interstate traffic constitutes more than ten percent of the total traffic and to the intrastate jurisdiction if it constitutes ten percent or less. We find no basis for allowing carriers to *simply presume*, without any evidence or good-faith inquiry, that ten percent or less of the traffic on a mixed-use line is interstate. Stated differently, carriers and their customers must make good faith effort to assign a mixed-use private line because no default presumption of interstate or intrastate jurisdiction exists.

* * * * *

In summary, we find no basis in our rules to conclude that a carrier *may simply presume* that a mixed-use private line is properly *assignable to the intrastate jurisdiction*. The carrier must engage in some kind of good faith query into the jurisdictional nature of the traffic carried on the line. Allowing such a presumption would permit carriers to regularly assign to the state jurisdiction authority, costs *and revenues* associated with private lines carrying more than ten percent interstate traffic, in violation of the plain language of section 36.154 of the Commission’s rules [47 CFR § 36.154] and the Commission’s [FCC’s] longstanding USF rules and policies.

FCC WCB Audit Order, slip op. ¶¶ 11, 21 at 6, 9 (emphasis added, citations omitted).

Thus, in accordance with the FCC WCB Audit Order, the application of the FCC’s ten percent contamination rule on private line and special access circuits and services that are classified as interstate under the rule does not create a presumption that any of the revenues associated with such circuits and services can be treated as intrastate under the “de facto” theory and premise.

Both the BCAPA and Verizon comments explain the inherent conflict between the theory of utilizing and

somehow deriving the “de facto” intrastate revenues that are per se subject to interstate jurisdictional classification because of the FCC’s ten percent contamination rule, and the resulting risks of federal preemption.⁷⁸ The lack of a presumption that any private line and special access revenues that are classified as interstate under the FCC’s ten percent contamination rule can be deemed as intrastate further complicates the actual application of the recommended Policy Statement. I believe that certain comments addressing the practical implementation of the recommended Policy Statement hold merit. The FCC WCB Audit Order directives notwithstanding, the recommended Policy Statement does not contain a practically applicable and adequately defined methodology through which the “de facto” intrastate gross revenues subject to the fiscal assessments by this Commission can be readily identified and quantified. Rather, the recommended Policy Statement provides vague guidance that jurisdictional telecommunications carriers need to make available “supporting information (such as traffic studies, tax returns, jurisdictional allocation formulas and factors, books of account, reports, etc.) on which the carrier bases its revenue determination, so that the [Commission’s] Fiscal Office can ascertain the carrier’s de facto gross intrastate operating revenues and compute an accurate assessment in accordance with the metrics and requirements of Section 510 of the [Public Utility] Code.”

The lack of appropriate definitions—an essential parameter with a recommended Policy Statement that also implicates federal law and jurisdiction—complicates the task of properly identifying and quantifying the targeted “de facto” gross intrastate operating revenues. For example, since several incumbent and competitive telecommunications carriers have already been applying the FCC’s ten percent contamination rule for private lines and special access circuits and services,⁷⁹ the relevant and reportable jurisdictional allocation factors would be “100% interstate.” The recommended Policy Statement does not outline a procedure whereby a private line or special access circuit subject to the FCC’s contamination rule—and the relevant revenues—can somehow be “separated” into “X%” “de facto” intrastate while the “Y%” will still retain its interstate classification. Similarly, the definitions and potential methodological use of “tax returns, . . . books of accounts, reports, etc.,” are also lacking. There can be reliance on traffic studies involving specific private lines and special access circuits or groups thereof—and the FCC WCB Audit Order appears to emphasize “the nature of the traffic” and not simple customer certifications that address the jurisdictional classification of such traffic.⁸⁰ However, as the comments have made clear, telecommunications carriers extensively rely on their respective customer certifications for the jurisdictional classification of private lines and special access circuits and associated revenues that are affected by the FCC’s ten percent contamination rule.⁸¹ However, the recommended Policy Statement does not address the interplay between such customer certifications and the use of actual traffic studies in ascertaining the desired

⁷⁸ Verizon Comments at 8-9; BCAPA Comments at 2-3.

⁷⁹ Verizon Comments at 7.

⁸⁰ “Subsequent discussion of the ten percent rule by the Commission [FCC] also emphasized accurately determining the nature of the traffic, without any reference to a presumption based on certification and, in most cases, without discussion of the certification process at all.” FCC WCB Audit Order, slip op. ¶ 20 at 8. The FCC’s Wireline Competition Bureau further cautioned: “To ensure that customers make *informed certifications*, carriers should provide basic guidance to their customers regarding what constitutes intrastate or interstate traffic. Carriers should specifically make customers aware that *it is the nature of the traffic over the private line that determines its jurisdictional assignment*, not merely the physical endpoints of the facility over which service is delivered.” Id. ¶ 25 at 9 (emphasis added, citation omitted).

⁸¹ BCAPA Comments at 6; Verizon Comments at 9-10.

⁷⁴ Verizon Comments at 5.

⁷⁵ Verizon Comments at 6.

⁷⁶ Verizon Comments at 7.

⁷⁷ Verizon Comments at 6-7 and n. 12 citing In re Federal-State Joint Board on Universal Service et al., CC Docket No. 96-45 et al., (FCC, Acting Chief, Wireline Competition Bureau, Rel. March 30, 2017), Order, 32 FCC Rcd 2140, slip op. DA 17-309, 2017 FCC LEXIS 954 (FCC WCB Audit Order), application for review pending. See also BCAPA Comments at 3-4 and n. 13.

“de facto” intrastate revenues “X%” allocation factor. Verizon also cautions in its comments that “if the Commission expects providers to assume that ninety percent of the traffic is intrastate, that system is certainly subject to challenge as encroaching upon interstate traffic because in reality much less than ninety percent is likely to be intrastate.”⁸²

The recommended Policy Statement also does not contain any preferred reporting form where the requested information can be included and readily discerned by the Commission’s Fiscal Office. This can easily lead to reporting dissimilarities between individual and/or whole categories of telecommunications carriers and the non-uniform application of the recommended Policy Statement. Such reporting dissimilarities can and will lead to disparate regulatory treatment between telecommunications carriers that immediately come under the rubric of the recommended Policy Statement or will attempt to comply in the future. This will also increase the administrative burden on the Commission and its Staff because there will not be an easy and standardized way to cross-check and validate the submitted information and data, i.e., the existing annual financial report formats for telecommunications public utilities do not readily accommodate the data elicited through the recommended Policy Statement in an appropriately disaggregated form.

It is beyond doubt that private lines and special access circuits and services and their revenues that are classified as interstate under the ten percent contamination rule are assessed for FCC regulatory fee purposes.⁸³ Thus, this interstate classification and the corresponding application of jurisdictional separations involves both services and revenues. Under these circumstances and where the boundaries of jurisdictional separations have been prescribed and enforced, violations of such boundaries are not condoned under appropriate judicial review.⁸⁴ Because the legal and technical premises of the “de facto” intrastate revenues theory violate such boundaries, the recommended Policy Statement is unsustainable.

B. *The Recommended Policy Statement Cannot Be Promulgated in Its Present Form*

The recommended Policy Statement on the “de facto” intrastate revenues cannot be promulgated in its present form from a procedural viewpoint. Although the underlying premise and policy of the “de facto” intrastate revenues have been incorporated in the recommended Policy Statement, the immediate and anticipated implementation effects will be akin to those of a substantive, final form rulemaking. However, this agency has not engaged in a substantive rulemaking for the purpose of adopting the “de facto” intrastate revenues premise and policy as a rule. For example, although the proposed Policy Statement was the subject of notice and comment, it was not reviewed by the Independent Regulatory Review Commission (IRRC) since Commission policy statements are not subject to such review. Thus, before proceeding any further there is a need to determine whether the expressed “de facto” intrastate revenues premise constitutes a proper Policy Statement or amounts to an

unpromulgated regulation.⁸⁵ In order to reach this determination, Pennsylvania appellate courts apply the “binding norm” test. Pennsylvania Commonwealth Court decisions generally hold that: “In ascertaining whether an agency has established a binding norm, the reviewing court must consider: (1) the plain language of the provision; (2) the manner in which the agency has implemented the provision; and (3) whether the agency’s discretion is restricted by the provision.”⁸⁶

The plain language review of the recommended Policy Statement and the effects of the “de facto” intrastate revenues policy “taken as a whole, shows the” relevant provisions “to be restrictive, directive, substantive, and thus, more characteristic of a regulation.”⁸⁷ The recommended Policy Statement applies concrete, substantive, and restrictive directives regarding the reporting of the “de facto” intrastate revenues of incumbent and competitive telecommunications carriers derived from private line and special access circuits and services that are classified as interstate under the FCC’s ten percent contamination rule. These directives, in conjunction with other parallel Commission proceedings, are not mere declarations of future interpretative policy, but are and will be applied and enforced in a uniform fashion. Thus, the plain language of the recommended Policy Statement “establishes a standard of conduct with the force of law, and creates a binding norm.”⁸⁸ Furthermore, although the recommended Policy Statement has been promulgated through public notice and comment, because of other concurrent proceedings, its application is almost immediate without proper and advance procedural effectuation. In other words, there are telecommunications carriers that will be immediately affected by the recommended Policy Statement standards of conduct without the Policy Statement being actually in effect (i.e., having undergone requisite review after its adoption and published in the *Pennsylvania Bulletin*). This does not provide sufficient and advance notice to affected telecommunications carriers, especially since this Commission has abided by the application of the FCC’s ten percent contamination rule for a number of decades.

There is no doubt here that the recommended Policy Statement “restricts the agency’s discretionary power and is, thus, more like a regulation than a statement of policy.”⁸⁹ The Commission is concurrently proceeding with the enforcement of the standards of conduct contained in the recommended Policy Statement and will be doing so in the future in a uniform manner among jurisdictional telecommunications carriers. Furthermore, because the recommended Policy Statement will have cross-effects on the systems of accounts that are prescribed by the FCC and may be utilized by jurisdictional telecommunications carriers for network facilities, services and revenues that are classified as interstate under the FCC’s ten percent contamination rule, the recommended Policy Statement may be modifying existing Commission regulations, e.g., 52 Pa. Code § 63.32. Since the recommended Policy Statement establishes a “binding norm,” it is an unpromulgated regulation. Finally, as previously stated, this unpromulgated regulation is in conflict with applicable federal law and regulations.

⁸⁵ *Eastwood Nursing and Rehabilitation Center v. Dept. of Public Welfare*, 910 A.2d 134, 141 (Pa. Cmwlth. 2006) (*Eastwood Nursing*). “In *Pennsylvania Human Relations Commission v. Norristown Area School*, 473 Pa. 334, 374 A.2d 671 (1977), our Supreme Court concluded that the General Assembly did not intend for the agency to have sole discretion in determining when a statement of policy would be settled enough to become a regulation.” *Department of Environmental Resources v. Rushton Mining Co.*, et al., 591 A.2d 1168, 1173 (Pa. Cmwlth. 1991) (*Rushton Mining*).

⁸⁶ *Eastwood Nursing*, 910 A.2d at 144 (citations omitted).

⁸⁷ *Eastwood Nursing*, 910 A.2d at 146.

⁸⁸ *Eastwood Nursing*, 910 A.2d at 146.

⁸⁹ *Eastwood Nursing*, 910 A.2d at 148.

⁸² Verizon Comments at 10.

⁸³ Verizon Comments at 8-9.

⁸⁴ See, e.g., *Texas Office of Public Utility Counsel, et al. v. F.C.C.*, 183 F.3d 393 (5th Cir. 1999) (the FCC “exceeded its jurisdictional authority when it assessed contributions for § 254(h) ‘schools and libraries’ programs based on the combined intrastate and interstate revenues of interstate telecommunications providers and when it asserted its jurisdictional authority to do the same on behalf of high-cost support”).

C. Intrastate and Interstate Operations of Telecommunications Carriers in Pennsylvania

Certified competitive telecommunications carriers in Pennsylvania conduct both intrastate and interstate operations within Pennsylvania consistent with the directives in the Commission's Implementation Orders that facilitate the market entry of such entities in accordance with Pennsylvania law and the letter and the spirit of the federal Telecommunications Act of 1996 (TA-96).⁹⁰ To the extent that the recommended Policy Statement directly or indirectly does or will limit the activities of these carriers to operate in Pennsylvania and offer intrastate or interstate services, this will constitute a clear contravention and modification of the Commission's Implementation Orders when the proposed Policy Statement at issue did not notice nor did it solicit comments in that regard. Such an outcome also ignores the realities and the constantly shifting nature of telecommunications network operations and access services. A private line or special access circuit that currently may be subject to the FCC's ten percent contamination rule and classified as interstate, may have a different jurisdictional allocation in the future depending on the nature of the various types of traffic that it handles. This shift will also change the jurisdictional revenue classification and reporting for the specific telecommunications carrier in question.

For the above-referenced reasons I will be respectfully dissenting from the disposition of this matter.

ANDREW G. PLACE,
Commissioner

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

COMPUTATION OF SECTION 510 ASSESSMENTS FOR JURISDICTIONALLY-MIXED TELECOMMUNICATIONS SERVICES—STATEMENT OF POLICY

§ 69.3701. Computation of Section 510 Annual Fiscal Assessments Related to Revenue from Jurisdictionally-Mixed Telecommunications Services.

(A) This policy statement provides guidance to all jurisdictional telecommunications public utilities in complying with their statutory obligations under section 510 of the Public Utility Code, 66 Pa.C.S. § 510 (relating to assessment for regulatory expenses upon public utilities).

(B) All telecommunications carriers holding Certificates of Public Convenience (CPC) issued under Chapter 11 of the Public Utility Code (Code), 66 Pa.C.S. §§ 1101—1103 (relating to organization of public utilities and beginning of service; enumeration of acts requiring certificate; and procedure to obtain certificates of public convenience), are public utilities subject to the Commission's authority under Section 510 of the Code, 66 Pa.C.S. § 510 to impose annual fiscal assessments upon these carriers to cover their "reasonable share" of the costs of administering the Code.

⁹⁰ In re: Implementation of the Telecommunications Act of 1996, Docket No. M-00960799, Order entered June 3, 1996, 1996 WL 482990; Order on Reconsideration entered September 9, 1996, 26 Pa.B. 4588 (1996), 1996 WL 482990 (collectively Implementation Orders); Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish, or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania, Docket No. M-00960799, Final Order entered May 22, 2014.

(C) Section 510(b) of the Code requires every public utility holding a CPC from the Commission to file, on March 31 of each year, a statement, under oath, showing its gross intrastate operating revenues for the preceding calendar year and to pay to the Commission its proportionate share of the amount assessed to each utility group based on its total gross intrastate operating revenues.

(D) All jurisdictional telecommunications public utilities holding Commission-issued CPCs are obligated by section 510 of the Code to file annual fiscal assessment reports with the Commission reporting their gross intrastate operating revenues and to pay to the Commission their proportionate share of the amount assessed to the telecommunications utility group based on each carrier's total gross intrastate operating revenues.

(E) All jurisdictional telecommunications public utilities holding commission-issued CPCs in Pennsylvania provide jurisdictionally mixed-use telecommunications services.

(F) Some jurisdictional telecommunications public utilities in Pennsylvania that provide jurisdictionally mixed-use telecommunications services have reported zero gross intrastate operating revenues to the Commission for section 510 annual fiscal assessment purposes for their jurisdictionally mixed-use services.

(G) As their legal basis for reporting zero gross intrastate operating revenues related to their jurisdictionally mixed-use services, a majority have referred to the Federal Communications Commission's ten percent contamination rule to justify reporting zero gross intrastate operating revenues to the Commission.

(H) The Federal Communications Commission's ten percent contamination rule is set forth at 47 CFR 36.154 (relating to exchange line cable and wire facilities (C&WF)—Category 1—apportionment procedures) and is an administrative jurisdictional separations rule that states that the costs and revenues of a jurisdictionally mixed-use line are directly assigned to the interstate jurisdiction if the mixed-use services carry interstate traffic in a proportion greater than ten percent.

(I) The Federal Communications Commission's ten percent contamination rule does not preempt or otherwise preclude the obligation of jurisdictional telecommunications public utilities to report to the Commission's fiscal office their de facto gross intrastate operating revenues related to providing jurisdictionally mixed-use telecommunications services, without regard to any intrastate revenues deemed to be interstate pursuant to the ten percent contamination rule.

(J) De facto gross intrastate operating revenues are those gross intrastate operating revenues that are actually received for all telecommunications services and traffic between points that are both located within this Commonwealth, including the traffic traversing a special access circuit that is deemed interstate by the ten percent rule set forth in 47 CFR 36.154.

(K) The jurisdictional telecommunications carriers may submit to the Commission's fiscal office supporting information (such as traffic studies, tax returns, jurisdictional allocation formulas and factors, books of account, reports, etc.) on which the carrier bases its revenue determination, so that the fiscal office can ascertain the carrier's de facto gross intrastate operating revenues and compute an accurate assessment in accordance with the metrics and requirements of section 510 of the Code.

[Pa.B. Doc. No. 19-1321. Filed for public inspection August 30, 2019, 9:00 a.m.]

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 August 20, 2019.

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, Bank Supervision or Credit Union and Trust Supervision (as applicable), 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, for banks (717) 783-8240 and for credit unions and trust companies (717) 783-2253. Photocopies of the nonconfidential portions of the applications may be requested consistent with the Department's Right-to-Know Law Records Request policy.

BANKING INSTITUTIONS

Branch Applications

De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
08-14-2019	Somerset Trust Company Somerset Somerset County	100 Quaker Church Road Perryopolis Fayette County	Filed
08-14-2019	PeoplesBank, A Codorus Valley Company York York County	325 Wesley Drive Mechanicsburg Cumberland County (Limited Service Facility)	Opened
08-16-2019	Wayne Bank Honesdale Wayne County	1130 Wyoming Avenue Exeter Luzerne County	Approved
08-16-2019	PS Bank Wyalusing Bradford County	241 Church Street Montrose Susquehanna County	Approved
08-19-2019	Quaint Oak Bank Southampton Bucks County	117-21 Spring Garden Street Philadelphia Philadelphia County	Filed
08-20-2019	Republic First Bank Philadelphia Philadelphia County	Deptford Center and Almonesson-Westville Roads Deptford Gloucester County, NJ	Approved

Branch Relocations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
08-20-2019	Sharon Bank Darby Delaware County	<i>To:</i> 153 Saxer Avenue Springfield Delaware County <i>From:</i> 5 East Springfield Road Springfield Delaware County	Approved

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

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.

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>
PA0061352 (Sewage)	Delaware Water Gap WWTP 92 Broad Street Delaware Water Gap, PA 18327	Monroe County Delaware Water Gap Borough	Cherry Creek (CWF, MF) (1-E)	Yes

Northcentral Regional Office: Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

<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>
PA0114880 (Sewage)	Church of Jesus Christ Latter Day Saints P.O. Box 750 Clarks Summit, PA 18411-0750	Columbia County North Centre Township	Unnamed Tributary to West Branch Briar Creek (CWF) (5-D)	Yes

Southwest Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0030929 (Sewage)	Torrance St Hospital P.O. Box 111 State Route 1014 Torrance, PA 15779-0111	Westmoreland County Derry Township	Unnamed Tributary of McGee Run (CWF) (18-D)	Yes
PA0032212 (Sewage)	Camp Silver Lake STP 144 Silver Lake Lane Fombell, PA 16123-1230	Beaver County Marion Township	Unnamed Tributary to Connoquenessing Creek (WWF) (20-C)	Yes
PA0216763 (Industrial)	Municipal Authority of the Borough Somerset—Coxes Creek WTP 347 West Union Street Somerset, PA 15501-1543	Somerset County Somerset Township	Unnamed Tributary to West Branch Coxes Creek (WWF) (19-F)	Yes
PA0216038 (Industrial)	Murray American River Towing Alicia Dock Facility 379 Alicia Road East Millsboro, PA 15433	Fayette County Luzerne Township	Monongahela River (WWF) (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>
PA0025283 (Sewage)	Knox Borough STP P.O. Box 366 620 South Main Street Knox, PA 16232	Clarion County Knox Borough	Canoe Creek (HQ-CWF) (17-B)	Yes
PA0103101 (Sewage)	Wesley Woods Christian Ed Center 1001 Fiddlersgreen Road Grand Valley, PA 16420-4429	Warren County Eldred Township	Unnamed Tributary to Caldwell Creek (16-E)	Yes
PA0272736 (Sewage)	Station 4 Firehouse Grille 21800 US Highway 322 Meadville, PA 16335-5236	Crawford County East Fairfield Township	Unnamed Tributary to French Creek (WWF) (16-D)	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.

PA0276243, Sewage, SIC Code 4952, **Diehl Debra**, 3342 Friedens Road, Slatington, PA 18080. Facility Name: 3342 Friedens Road Development. This proposed facility is located in Washington Township, **Lehigh County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated SRSTP sewage.

The receiving stream(s), Unnamed Tributary to Lehigh River (CWF, MF), is located in State Water Plan watershed 2-C and is classified for Cold Water Fishes and Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on an average design flow of .0004 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>			<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
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	1,000

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-826-5472.

The EPA Waiver is in effect.

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

Application No. PA0265934, Concentrated Animal Feeding Operation (CAFO), **David S Morrow (David S Morrow Farm CAFO)**, 237 Briar Lane, Loysville, PA 17047-9154.

David S Morrow has submitted an application for an Individual NPDES permit for a renewal of an CAFO known as David S Morrow Farm CAFO, located in Southwest Madison Township, **Perry County**.

The CAFO is situated near Cisna Run (HQ-CWF, MF) in Watershed 7-A, which is classified for High Quality—Cold Water and Migratory Fish. The CAFO is designed to maintain an animal population of approximately 657.66 animal equivalent units (AEUs) consisting of 4,600 finishing swine, 15 beef cows, and 15 beef calves. Manure is stored in a 200 ft × 80 ft × 5 ft liquid underbarn and a 250 ft × 80 ft × 5 ft liquid underbarn storage. 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 100-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 717-705-4732.

The Environmental Protection Agency (EPA) permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

Application No. PA0260550, Concentrated Animal Feeding Operation (CAFO), **Galen L Nolt (Galen Nolt Farm CAFO)**, 222 Little Britain Church Road, Peach Bottom, PA 17563-9620.

Galen L Nolt submitted an application for an Individual NPDES permit for a renewal of an CAFO known as Galen Nolt Farm CAFO (Westview Farm), located in Fulton Township, **Lancaster County**.

The CAFO is situated near Unnamed Tributary to Conowingo Creek (HQ-CWF, MF) in Watershed 7-K, which is classified for High Quality—Cold Water and Migratory Fish. The CAFO is designed to maintain an animal population of approximately 1,009.82 animal equivalent units (AEUs) consisting of 250 mature cows, 100 heifers, 90 calves, 14,000 poultry layers, and 3,000 finishing swine. Manure is stored in a 100 ft × 250 ft × 6 ft hog barn deep pit with a 6-inch freeboard and a capacity of 842,000 gallons, a 120 ft × 14 ft circular concrete storage with a 2-foot freeboard and a capacity of 1,014,647 gallons, a 120 ft × 55 ft × 6 ft roofed stacking shed with a capacity of 1,188 tons, and a 30 ft × 40 ft × 6 ft shed for separated solids with a capacity of 260 tons. 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 100-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 717-705-4732.

The Environmental Protection Agency (EPA) permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

Application No. PA0246468, Concentrated Animal Feeding Operation (CAFO), **Virgil Gutshall Jr (Beaver Ridge Farm)**, 1400 Fowler Hollow Road, Blain, PA 17006-6260.

Virgil Gutshall Jr has submitted an application for an Individual NPDES permit for a renewal of an CAFO known as Beaver Ridge Farm, located in Jackson Township, **Perry County**.

The CAFO is situated near Unnamed Tributary to Sherman Creek (HQ-CWF, MF) and Unnamed Tributary to Sherman Creek (HQ-CWF) in Watershed 7-A, which is classified for High Quality—Cold Water, High Quality Waters—Cold Water Fishes, and Migratory Fish. The CAFO is designed to maintain an animal population of approximately 437.78 animal equivalent units (AEUs) consisting of 3,000 Grow-Finish Swine and 1 Light Horse. Liquid manure is stored in an 83 ft ×

13 ft round concrete storage and a 60 ft × 13 ft round concrete storage. 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 100-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 717-705-4732.

The Environmental Protection Agency (EPA) permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

Application No. PA0247031, Concentrated Animal Feeding Operation (CAFO), **Keystone Dairy Ventures LLC (Keystone Dairy Venture CAFO)**, 324 Balance Meeting Road, Peach Bottom, PA 17563-9507.

Keystone Dairy Ventures LLC has submitted an application for an Individual NPDES permit for a renewal of an CAFO known as Keystone Dairy Venture CAFO, located in Little Britain Township, **Lancaster County**.

The CAFO is situated near Conowingo Creek (CWF, MF), Little Conowingo Creek (HQ-CWF, MF), and Conowingo Creek (HQ-CWF, MF) in Watershed 7-K, which is classified for Cold Water Fishes, Migratory Fishes, High Quality—Cold Water, and Migratory Fish. The CAFO is designed to maintain an animal population of approximately 1,727.36 animal equivalent units (AEUs) consisting of 825 Holstein cows, 374 Holstein heifers, and 374 Holstein calves. Liquid manure is collected in a 2-stage clay lined storage, a concrete underground manure storage, and a second concrete storage. 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 100-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 717-705-4732.

The Environmental Protection Agency (EPA) permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

III. WQM Industrial Waste and Sewerage Applications 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. 4019401, Sewage, **Bonnieville, Inc.**, 477 Bonnieville Road, Stillwater, PA 17878.

This proposed facility is located in Huntington Township, **Luzerne County**.

Description of Proposed Action/Activity: The application is for the replacement of the wastewater treatment plant (WWTP). The new 0.008 MGD WWTP will be constructed adjacent to the existing WWTP and utilize the existing influent and outfall discharge lines. Components of the new WWTP include: 6,100-gallon equalization tank, one 16,983-gallon steel aeration basin, one 1,667-gallon steel secondary clarifier, one 167-gallon baffled steel chlorine contact tank with a 100-tablet chlorinator, one 83-gallon baffled steel dichlorination tank, one 12,420-gallon aerobic digester and other associated appurtenances.

WQM Permit No. 3919403, Sewage, **Diehl Debra**, 3342 Friedens Road, Slatington, PA 18080.

This proposed facility is located in Washington Township, **Lehigh County**.

Description of Proposed Action/Activity: Construction of a new private residence Small Flow Treatment Facility to replace an existing failing on-lot system.

WQM Permit No. 3919404, Sewage, **Upper Saucon Township Municipal Authority Lehigh County**, 5500 Camp Meeting Road, Center Valley, PA 19034-8401.

This proposed facility is located in Upper Saucon Township, **Lehigh County**.

Description of Proposed Action/Activity: Permit for a new pump station and sewage gravity conveyance system that will be constructed to service the Brinley Court Development. The sewage will be treated at the Muni's existing Wastewater Treatment Plant under PA0053147.

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

WQM Permit No. WQG02111701, Sewage, **Forest Hills Municipal Authority**, 900 Locust Street, Saint Michael, PA 15951.

This proposed facility is located in Adams Township, **Cambria County**.

Description of Proposed Action/Activity: Proposed construction of Pump Station, Force Main, Sanitary Sewers, and Single Residence Grinder Pumps to serve existing residences with on-lot septic systems in the Luther/Salix Airport + Peaceful Valley Road Areas. Treatment to be provided at the existing Forest Hills Municipal Authority STP.

The Pennsylvania Infrastructure Investment Authority (PENNVEST) which administers Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department's review of the Water Quality Management (Part II) Permit has not identified any significant environmental impacts resulting from this proposal.

WQM Permit No. 3083403 A-1, Sewage, **Brave Water & Sewer Authority**, P.O. Box 159, Brave, PA 15316-0159.

This existing facility is located in Wayne Township, **Greene County**.

Description of Proposed Action/Activity: Installation of proposed dechlorination manhole, approximately 50 lineal feet of upstream and downstream effluent piping, and associated appurtenances.

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>
PAD150131	Rouse/Chamberlin, LTD 500 Exton Commons Exton, PA 19341	Chester	Willistown Township	George Smedley Run Hillside Run HQ-TF-MF
PAD510051	City of Philadelphia Streets Department 1401 JFK Boulevard Room 730 Municipal Services, Sanitation Division Philadelphia, PA 19102	Philadelphia	City of Philadelphia	Lower Schuylkill River WWF-MF

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Northampton County Conservation District, 14 Gracedale Ave., Greystone Building, Nazareth, PA 18064-9211.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD480097	Marc Kranson Kranson & Youwakum Properties 523 Walnut St Allentown, PA 18101	Northampton	Moore Twp	Monocacy Creek (HQ-CWF, MF)

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Phillips, Section Chief, 717.705.4802.

<i>Permit #</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD440001	Lerch RV 70 Commerce Drive Milroy, PA 17063	Mifflin	Armagh Township	Laurel Creek (HQ-CWF)

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570.327.3574.

Tioga County Conservation District: 50 Plaza Lane, Wellsboro, PA 16901, (570) 724-1801, X 3.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD590008	Airosmith Development, Inc. 2723 Route 6 Gaines, PA 16921	Tioga	Gaines Twp	Lick Run— Pine Creek HQ-CWF
PAD590009	Jason Ward 1045 Joe Hill Rd Roaring Branch, PA 17765	Tioga	Union Twp	Mill Creek HQ-CWF

STATE CONSERVATION COMMISSION

PROPOSED NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NPDES PERMITS FOR CAFOs

This notice provides information about agricultural operations that have submitted nutrient management plans (NMPs) for approval under 3 Pa.C.S. Chapter 5 and that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent (NOIs) for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92a. This notice is provided in accordance with 25 Pa. Code Chapter 92a and 40 CFR Part 122, implementing The Clean Streams Law and the Federal Clean Water Act.

Based upon preliminary reviews, the State Conservation Commission (SCC) or County Conservation Districts (CCD) working under a delegation agreement with the SCC have completed an administrative review of NMPs described. These

NMPs are published as proposed plans for comment prior to taking final actions. The NMPs are available for review at the CCD office for the county where the agricultural operation is located. A list of CCD office locations is available at <http://www.nacdnet.org/about/districts/directory/pa.phtml> or can be obtained from the SCC at the office address listed or by calling (717) 787-8821.

Persons wishing to comment on an NMP are invited to submit a statement outlining their comments on the plan to the CCD, with a copy to the SCC for each NMP, within 30 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the NMPs. Comments should include the name, address and telephone number of the writer and a concise statement to inform the SCC of the exact basis of the comments and the relevant facts upon which they are based. Comments should be sent to the SCC, Agriculture Building, Room 310, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons with a disability who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information should contact the SCC through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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>
We Kings Farm 6028 Guitner Road Greencastle, PA 17225	Franklin	212.3	599.87	Poultry	NA	Renewal
Scattered Acres Farms 229 Tyson School Road Catawissa, PA 17820	Columbia	2,672.4	781.59	Broiler Chickens, Finishing Swine	NA	Renewal
Noah Light 568 Shirksville Rd. Jonestown, PA 17038	Lebanon	0	260.88	Pullets	N/A	Renewal
Smith Station Acres 1871 Smith Station Rd Spring Grove, PA 17362	York	57	636.34	Poultry, Swine	NA	Renewal
Miller's Poultry LLC Curtis Miller 345 Church Road East Berlin, PA 17316	Adams	9.9	416.13	Poultry	NA	New
Michael Long Sr 2116 Yordys Bridge Road Annville, PA 17003	Lebanon	415.8	878.66	Swine Poultry	NA	Renewal
Tim Goss Goss Family Farms 123 Decatur Rd. McClure, PA 17841	Mifflin	322	1,197.74	Swine	NA	Renewal
Craig Finkbiner 2452 Free Spring Church Road McAlisterville, PA 17049	Juniata	632.7	984.90	Swine & Beef	NA	Renewal
Mailing address: Milton Rotz 1015 Heritage Avenue Shippensburg, PA 17257	Adams	19.6	406	Dairy	NA	Renewal
Operation address: 125 Oak Hill Road Biglerville, PA 17307						
Arlin Weaver 201 Bullshead Road Newville, PA 17241	Cumberland	472.38	686.67	Swine/Beef	NA	Renewal
Arlin Wadel 301 McCulloch Road Shippensburg, PA 17257	Cumberland	276.29	346.4	Layers/Sheep	NA	Renewal

<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>
Barry Good 1695 Rake Road Mohrsville, PA 19541	Berks	269.67	314	Layers	N/A	Renewal
Marlin Martin Heidelberg Pig Family Farm 425 N Market Street Myerstown, PA 17067	Lebanon	40.1	455.00	Swine	EV (Farm 2)	R

PUBLIC WATER SUPPLY (PWS) PERMITS

Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17), the following parties have applied for PWS permits to construct or substantially modify public water systems.

Persons wishing to comment on permit applications are invited to submit statements to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding an application. A comment should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board. The permit application and related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability that require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Application No. 4019508, Public Water Supply.

Applicant	Aqua Pennsylvania, Inc. 1 Aqua Way White Haven, PA 18661
[Township or Borough]	Hazle Township
Responsible Official	Luzerne
Type of Facility	Public Water Supply

Consulting Engineer	Mr. Peter Lusardi, PE GHD Inc. 1240 N Mountain Rd Harrisburg, PA 17110
Application Received Date	7/30/2019
Description of Action	Application proposes the construction of a new source of supply, Well No. 8, as a replacement well with all necessary treatment and the abandonment of Well No. 2.

Application No. 1319503, Public Water Supply.

Applicant	Blue Heron Homeowners Association P.O. Box 687 Moscow, PA 18444
Municipality	Kidder Township
County	Carbon
Type of Facility	Public Water Supply
Consulting Engineer	Russell D. Scott IV, PE RKR Hess, a Division of UTRS, Inc. 112 North Courtland Street East Stroudsburg, PA 18301
Application Received Date	August 5, 2019
Description of Application	The applicant is proposing to install a treatment system for corrosion control utilizing an ortho-polyphosphate blend and chemical feed system to abate elevated levels of lead.

Application No. 5419504, Public Water Supply.

Applicant	Tower City Borough Authority 219 East Colliery Avenue Tower City, PA 17980
[Township or Borough]	Tower City Borough Schuylkill County
Responsible Official	Robery Shuey, Authority Chairman Tower City Borough Authority 219 East Colliery Avenue Tower City, PA 17980
Type of Facility	PWS

Consulting Engineer Max Stoner, PE
 Glace Associates, Inc.
 3705 Trindle Road
 Camp Hill, PA 17011
 (717) 731-1579

Application Received Date 08/14/2019

Description of Action Construction of a new booster pump station and 350,000-gallon stainless steel tank.

Northwest Region: Safe Drinking Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Permit No. 6119502, Public Water Supply.

Applicant **General Authority of City of Franklin**

Township or Borough City of Franklin
 County **Venango County**

Responsible Official Timothy Dunkle

Type of Facility Public Water Supply

Consulting Engineer Renae Kakabar
 The EADS Group
 227 Franklin Street
 Johnstown, PA 15901

Application Received Date July 31, 2019

Description of Action Modifications to Phosphate Feed system process

Permit No. 6119502, Public Water Supply.

Applicant **Barkeyville Municipal Authority**

Township or Borough Barkeyville Borough
 County **Venango County**

Responsible Official James Coursen

Type of Facility Public Water Supply

Consulting Engineer Matthew Arena
 Herbert, Rowland & Grubic
 200 West Kensinger Drive
 Cranberry Township, PA 16066

Application Received Date July 30, 2019

Description of Action Modification to disinfection system

Permit No. 8875-W-T1-MA4, Public Water Supply.

Applicant **Erie City Water Authority**

Township or Borough City of Erie
 County **Erie County**

Responsible Official Craig Palmer

Type of Facility Public Water Supply

Consulting Engineer Jason Saylor
 Utility Service Co.
 1230 Peachtree Street NE
 Ste 1100
 Atlanta, GA 30309

Application Received Date August 8, 2019

Description of Action Interior and Exterior Renovation and Mixer Installation to Johnston Reservoir

Central Office: Bureau Director, Safe Drinking Water, P.O. Box 8467, Harrisburg, PA 17105-8467.

Permit No. 9996624, Public Water Supply.

Applicant **Southern Beverage Packers Inc.**

[Township or Borough] Appling, Georgia

Responsible Official David Byrd, President

Type of Facility Out-of-State Bottled Water System

Application Received Date August 14, 20198

Description of Action Applicant requesting Department approval to sell a bottled water product in Pennsylvania under the brand name: Springtime Artesian Water and Springtime Alkaline Water.

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:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

PECO Norristown MGP Site, 358 East Washington Street, Borough of Norristown, **Montgomery County**. Michael S. Welsh, PE, Welsh Environmental, Inc., 131 Clearview Drive, Downingtown, PA 19335 on behalf of Kimberly Huntley, T. Lowe Enterprise, GP, LLC, P.O. Box 645, Southeastern, PA 19399 submitted a Notice of Intent to Remediate. The site has been found to be contaminated with polycyclic aromatic hydrocarbons which have contaminated soils and groundwater on the site. The proposed future use of the property will be residential. The Notice of Intent to Remediate was published in the *Times Herald* on June 14, 2019.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Applications deemed administratively complete 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 Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

Permit No. 100934, Blue Ridge Landfill, 1660 Orchard Road, Scotland, PA 17254.

An application for a permit renewal was submitted by Blue Ridge Landfill Company of Waste Connections Inc. for continued operation of their municipal waste landfill located in Greene Township, **Franklin County**. The current permit expires May 2, 2020. This application was deemed administratively complete by the Southcentral Regional Office on August 8, 2019. The Department will accept comments from the general public recommending revisions to, and approval or denial of, the application during the entire time the Department is reviewing the permit application.

Comments concerning the application should be directed to Mr. John Oren, Permits Chief, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200. Persons interested in obtaining more information about this permit application may contact the

Southcentral Regional Office 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.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2507.

35-00038A: Lockheed Martin Corporation (459 Kennedy Drive, Archbald, PA 18403-1527) for the modification to their existing in line vapor cleaning machine at their facility located in Archbald Borough, **Lackawanna County**.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

21-03132A: Generations Tribute Center & Crematory (1303 Bridge Street, New Cumberland, PA 17070) for the construction of a human crematory located in New Cumberland Borough, **Cumberland County**. The unit will be a Matthews Environmental IE43-PPI (Power Pak I) multiple-chamber crematory. The emissions from the proposed crematory in this project will not exceed the following limits: 1.76 tpy of CO, 2.11 tpy of NO_x, 1.60 tpy of PM, and less than 1 tpy of VOC, SO_x and HAPs. The Department of Environmental Protection's (DEP's) review of the information submitted by the company indicates that the air contamination sources will comply with all regulatory requirements, including monitoring, record-keeping, and reporting requirements, and pertaining to air contamination sources and the emission of air contaminants including the best available technology requirement (BAT) of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, DEP proposes to issue a plan approval for the proposed construction. The facility is a State-Only facility. If DEP determines that the sources are constructed and operated in compliance with the plan approval conditions and the specifications of the application for plan approval, an initial operating permit application addressing the inclusion of the plan approval may be submitted for the facility per 25 Pa. Code § 127.12b.

67-05107B: Crown Cork & Seal USA, Inc. (1650 Broadway, Hanover, PA 17331) for the installation of a new two-piece food can line and RTO control device at the food can manufacturing plant in Penn Township, **York County**. The food can line includes a wash line/dryer and

two-piece LSM/bake oven and is controlled by a regenerative thermal oxidizer and baghouse. The potential to emit of the proposed installation, after control, is calculated to be 5.36 tpy HAP, 2.79 tpy MIBK, 33.14 tpy VOC, 1.80 tpy PM, 14.08 tpy NO_x, 0.09 tpy SO_x, and 11.42 tpy CO. The Department of Environmental Protection's (DEP's) review of the information submitted by the company indicates that the air contamination sources will comply with all regulatory requirements, including monitoring, record-keeping, and reporting requirements, and pertaining to air contamination sources and the emission of air contaminants including the best available technology requirement (BAT) of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, DEP proposes to issue a plan approval for the proposed construction. The facility is a State-Only facility. If DEP determines that the sources are constructed and operated in compliance with the plan approval conditions and the specifications of the application for plan approval, the plan approval may be incorporated into an Operating Permit pursuant to the provisions of 25 Pa. Code Chapter 127.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104.

Contact: Edward Wiener, Chief—Telephone: 215-685-9426.

The City of Philadelphia, Air Management Services (AMS) intends to issue a Plan Approval for installation of air pollution sources at the following facility:

IP19-000428: Norwood Fontbonne Academy (8891 Germantown Ave., Philadelphia, PA 19118) for the installation of boilers and air handling units at a private school, in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include one (1) boiler firing No. 2 fuel oil rated 0.794 MMBtu/hr, two (2) boilers firing natural gas rated 0.990 MMBtu/hr and 0.266 MMBtu/hr, two (2) boilers firing natural gas as primary fuel and No. 2 fuel oil during periods of natural gas curtailment each rated 2.056 MMBtu/hr, and four (4) air handling units firing natural gas each rated 0.270 MMBtu/hr. The potential emission from the installation are as follows: (1) 4.073 tons per year (tpy) of Nitrogen Oxides (NO_x), (2) 2.45 tpy of Carbon Monoxide (CO), (3) 0.383 tpy of Particulate Matter (PM), and (4) 0.161 tpy of Volatile Organic Compound (VOC). The plan approval will contain operating, monitoring, recordkeeping, and reporting requirements to ensure operation within all applicable requirements.

The plan approval will be issued under the 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, comments, or request a public hearing on the previously listed plan approval must submit the protest, comments or request for a public hearing 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 plan approval 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.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) 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.

46-00032: SPS Technologies, LLC (301 Highland Avenue, Jenkintown, PA 19046) located in Abington Township, **Montgomery County**. This action is a renewal of the Title V Operating Permit, the current permit expired on July 31, 2018. As a result of the potential emissions of VOCs, the facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments, and is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. This facility is an area source for HAP emissions. The renewal contains 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, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

67-05033: Gichner Systems Group, Inc. (P.O. Box 481, 490 East Locust Street, Dallastown, PA 17313-0481), to issue a Significant Permit Modification to the facility's Title V operating permit for Dallastown Plant located in York Township, **York County**. This permit modification is to incorporate 25 Pa. Code § 129.52d for surface coating operation, to include a compliance schedule, and to make the related changes to Group SG01 in order to streamline with § 129.52d. The facility's potential and actual emissions are not estimated to change from the Significant Permit Modification. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions for Sources derived from 25 Pa. Code §§ 123, 127, and 129 for restrictions, monitoring, recordkeeping, and reporting. The surface coating is subject to 40 CFR 63, Subpart MMMM—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products, and the engines are subject to 40 CFR 63 Subpart ZZZZ requirements.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

09-00114: BDJ Metal Products LLC (330 Progress Drive, Telford, PA 18969), located in Hilltown Township, **Bucks County**, for a renewal of State Only (Natural Minor) Operating Permit No. 09-00114. The facility's main sources of air contaminant emissions are electric induction furnaces, No. 2 fuel oil-fired crucible furnaces, and various operations for producing metal castings at the facility. The facility operates several dust collectors to

control particulate matter (PM) emissions from each of these sources or operations except the crucible furnaces. No changes have occurred at the facility since the State Only Operating Permit ("SOOP") was last renewed. The renewed SOOP will continue to include monitoring, recordkeeping, reporting, and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

15-00146: Wallquest, Inc. (465 Devon Park Drive, Wayne, PA 19087) for the operation of four (4) rotogravure printing presses, one (1) custom string press, four (4) rotary proof presses, and a flat screen printing area in Tredyffrin Township, **Chester County**. The permit is for a non-Title V, Synthetic Minor facility. This action is a second renewal of the State Only Operating Permit. The permit was initially issued on 1-14-2015 and expires on 1-13-2020. The permit will include monitoring, recordkeeping, reporting, and work practice standards designed to keep the facility operating within all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2507.

35-00053: Metkote Laminated Products, Inc. (1151 Union Street, Taylor, PA 18517-1614). The Department intends to issue a renewal State-Only Natural Minor Permit for their facility located in Taylor Borough, **Lackawanna County**. Metkote laminates clear and colored vinyl to thin metal sheets for roof edge drip and other metal products. The sources are considered a minor emission source of nitrogen oxide (NO_x), sulfur oxides (SO_x), carbon monoxide (CO), total suspended particulate (TSP) and VOC's. The proposed permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

48-00078: Chrin Brothers, Inc. (635 Industrial Drive, Easton, PA 18042-7339). The Department intends to issue a renewal State-Only Synthetic Minor Permit for the Chrin Brothers Inc./Island Park Quarry located in Williams Township, **Northampton County**. This plant operates a 250 ton per hour rock crushing plant with primary and secondary crushers, associated screens and conveyors, haul roads, and water spray (wet suppression) system. The sources are considered a minor emission source of nitrogen oxide (NO_x), sulfur oxides (SO_x), carbon monoxide (CO), total suspended particulate (TSP) and VOC's. The proposed permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

28-03045: Dominion Energy Transmission, Inc. (925 White Oaks Blvd., Bridgeport, WV 26330-6919), to issue a Significant Permit Modification to the facility's State only operating permit for Chambersburg Compressor Station located in Hamilton Township, **Franklin County**. This permit modification is to incorporate plan approval No. 28-03045A, for construction of natural gas

fired Source ID 105, Solar Mars 90 Gas Turbine 3, to update the startup and shutdown emissions, to include a new source Fugitive Emissions, and to include NSPS Subpart OOOOa—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015, and other changes in accordance with the application. The facility's Potential to Emit are NO_x 87.9 tpy, CO 77.5 tpy, VOC 15.8 tpy, HAPs 1.3 tpy, SO_x 3.9, and 17.4 tons of PM₁₀/PM_{2.5}. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions for Sources derived from 25 Pa. Code §§ 123 and 127 for restrictions, monitoring, recordkeeping, and reporting. Two Solar Taurus 60 Gas Turbines 1 and 2 (Source IDs 103 and 104) are subject to 40 CFR 60 Subpart GG. The Solar Mars 90 Gas Turbine is subject to 40 CFR 60 Subpart KKKK. The emergency generator engine is subject to 40 CFR 63 Subpart ZZZZ.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

49-00047: Furman Foods, Inc. (770 Cannery Road, P.O. Box 500, Northumberland, PA 17857-8615); the Department intends to issue a renewal State Only (Synthetic Minor) permit for their Northumberland Cannery facility in Point Township, **Northumberland County**. The facility is currently operating under State Only Permit No. 49-00047 issued on July 13, 2018. There were two (2) changes to the facility-wide source operations since the previous permit was issued. The biogas engine (Source ID C-201/C201) is deactivated. The existing enclosed flare (ID C202), previously used as a backup, is now used as controls for the digester gas. The temporary boiler (Source ID 039) was removed. Facility-wide Potential to Emit calculations for nitrogen oxides (NO_x, expressed as NO₂), carbon monoxide (CO), volatile organic compounds (VOCs), sulfur dioxide (SO₂), PM₁₀ & PM_{2.5}, and hazardous air pollutants (HAPs) are, as follows: NO_x: 90 tons per year (tpy); CO: 66.4 tpy; VOC: 16.6 tpy; SO₂: 66.8 tpy; PM₁₀ & PM_{2.5}: 15.5 tpy; HAP: 0.4 tpy. The anaerobic digester (Source ID P201) and the enclosed flare are subject to the Department's Best Available Technology (BAT) requirements. Two of the three (3) boilers at the facility fire natural gas primarily and are to be operated as gas-fired boilers to comply with the NESHAP standard for boilers at area source of HAP emissions, as codified in 40 CFR Part 63 Subpart JJJJJ. The other boiler is fired on No. 2 fuel oil and is subject to work practice standards in Subpart JJJJJ. Based on the information provided in the permit renewal application submittal, all applicable air quality regulatory requirements pertaining to the air contaminant sources located at this facility have been incorporated into the renewal permit, including testing, monitoring, recordkeeping, reporting and work practice conditions to verify compliance with the applicable requirements. The applicable requirements were derived from 25 Pa. Code Article III, 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.

59-00012: Dairy Farmers of America, Inc. (72 Milk Plant Road, Middlebury Center, PA 16935) to issue a renewal State Only Operating Permit for their Middlebury facility located in Middlebury Township, **Tioga County**. The facility's main sources include a natural gas fired boiler and a natural gas fired powder milk dryer. The facility has potential emissions of 15.02 tons per year of nitrogen oxides, 5.74 tons per year of carbon monoxide, 0.47 ton per year of sulfur oxides, 1.23 ton per year of particulate matter, 4.27 tons per year of volatile organic compounds, and 0.17 ton per year of total hazardous air pollutants (HAPs). The potential emissions for all criteria pollutants remained almost same at the facility. No emission or equipment changes are being proposed by this action. The emission limits and work practice standards along with testing, monitoring, recordkeeping 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 Title 25 Pa. Code Chapters 121–145, as well as 40 CFR Parts 60, 63 and 98. 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.

65-00101: Max Environmental Technologies, Inc. (233 Max Lane, Yukon, PA 15698) Natural Minor Operating Permit is for a facility that processes inorganic hazardous waste and residual waste for treatment and disposal and is located in South Huntingdon Township, **Westmoreland County**. In accordance with 25 Pa. Code §§ 127.424 and 127.425, the Department of Environmental Protection (DEP) has received an application and is providing notice that it intends to issue an Air Quality Operating Permit for the previously-mentioned facility. Sources of emissions consist of a solid waste solidification and stabilization process (mixing pits), a 16-acre residual waste landfill, paved roadways, and unpaved roadways, in addition to a few miscellaneous sources such as storage tanks. The facility is required to conduct daily surveys of the site while operating to ensure compliance with fugitive and malodor emission requirements and maintain records of those surveys. The facility-wide potential-to-emit is 41 TPY PM; 15 TPY PM₁₀; 15 TPY PM_{2.5}; and less than 0.001 TPY total HAP and 0.001 TPY single HAP (Lead). The air quality permit includes operation requirements, monitoring requirements, and recordkeeping requirements for the site.

Those who wish to provide the Department with additional written information that they believe should be considered prior to the issuance of the State-Only Operating Permit may submit the information to Tom Joseph, Facilities Permit Chief, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. Written comments must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Operating Permit (65-00101) and concise statements regarding the relevancy of the information or objections to issuance of the Operating Permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to Bradley Spayd, Air Quality Engineering Specialist, at the previously listed address.

All comments must be received prior to the close of business 30 days after the date of this publication.

The application, DEP's Review Memorandum, and the proposed permit are available for public review during normal business hours at DEP's Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. A file review can be scheduled through the DEP's website at <https://www.dep.pa.gov/Citizens/PublicRecords/Pages/Informal-File-Review.aspx>.

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.

30121301 and NPDES No. PA0236195. Consol Pennsylvania Coal Company LLC, (1000 Consol Energy Drive, Canonsburg, PA 15423). To renew the permit for the Harvey Mine in Richhill Township, **Greene County** and related NPDES Permit. No additional discharges. The application was considered administratively complete on August 15, 2019. Application received: June 20, 2019.

30841320 and NPDES No. PA0213861. Dana Mining Company of Pennsylvania, LLC, (966 Crafts Run Road, Maidsville, WV 26541). To renew the permit for the Dooley Run Mine in Dunkard Township, **Greene County** and related NPDES Permit. No additional discharges. The application was considered administratively complete on August 14, 2019. Application received: August 6, 2019.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 56890102 and NPDES No. PA0598372. Svonavec, Inc., 2555 New Centerville Road, Rockwood, PA 15557, permit renewal for reclamation only of a bituminous surface and auger mine in Lower Turkeyfoot Township, **Somerset County**, affecting 92.5 acres. Receiving streams: unnamed tributaries to/and Casselman River, classified for the following use: warm water fishes. The first downstream potable water supply intake from the point of discharge is Ohiopyle Borough Municipal Waterworks Youghiogheny River SWW. Application received: August 5, 2019.

Permit No. 56130102 and NPDES No. PA0269336. Elk Resources, Inc., 3030 Pounds Road, West Lebanon, PA 15783, permit renewal for reclamation only of a bituminous surface and auger mine in Shade Township, **Somerset County**, affecting 370.0 acres. Receiving streams: unnamed tributary to/and Miller Run, unnamed tributary to Dark Shade Creek, classified for the following use: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: August 13, 2019.

Noncoal Applications Received

Effluent Limits—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

Table 2

Parameter	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.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

14180401 and NPDES PA0220248. Graymont (PA) Inc. (375 Graymont Road, Bellefonte, PA 16823). Commencement, operation, and restoration of Large Noncoal Industrial Minerals Underground Mining Permit located in Spring Township, **Centre County** affecting 470.0 acres. Receiving stream: Logan Branch classified for the following use(s): CWF, MF. There are no potable water supply intakes within 10 miles downstream. Application received: May 30, 2019.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 6576SM1A2C10 and NPDES No. PA0119229. Eureka Stone Quarry, Inc. (P.O. Box 249, Chalfont, PA 18914), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Hamilton Township, **Monroe County** affecting 226.7 acres, classified for the following uses: high-quality cold water fishes and migratory fishes. Application received: August 5, 2019.

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:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
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

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.

NPDES No. PA0236381 (Mining Permit No. 30743704), Duquesne Light Company (1800 Seymour Street, S Loft, Pittsburgh, PA 15233). A revision to the NPDES and mining activity permit for the Warwick No. 2 Coal Refuse Disposal Area in Monongahela Township, **Greene County** a revision to add a new stormwater discharge point 001. Surface Acres Affected: 145.0. Receiving stream: Sandy Run, classified for the following use: WWF. Monongahela River Watershed TMDL. The application was considered administratively complete on January 23, 2017. Application received: June 7, 2016.

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 facility location of the non-discharge alternatives is:

Facility Identification:

New outfall 001

New Facility:

X Yes No

Outfall 001 discharges to: Sandy Run

The proposed effluent limits for *Outfall 001* (Lat: 39° 48' 40" Long: 79° 55' 32") are:

Parameter	Minimum	30-Day Average	Daily Maximum	Instant. Maximum
Flow (mgd)	-	-	-	Report
Iron (mg/l)	-	1.5	3.0	3.8
Suspended Solids (mg/l)	-	35	70	90
Manganese (mg/l)	-	2	4	5
Aluminum (mg/l)	-	0.75	0.75	0.75
Sulfate (mg/l)	-	-	-	Report
Total Dissolved Solids (mg/l)	-	2,000	4,000	-
Chloride (mg/l)	-	-	-	Report
pH (s.u.)	6	-	-	9
Alkalinity, Total as CaCO ₃ (mg/l)	-	-	-	Report
Acidity, Total as CaCO ₃ (mg/l)	-	-	-	Report
Alkalinity, Net (mg/l)	0	-	-	-

EPA waiver is not in effect.

NPDES No. PA0214507 (Mining Permit No. 32901603), Tipple Four J, Inc. (P.O. Box 435, Seward, PA 15954). A renewal to the NPDES and mining activity permit for the Tipple Four J in Armstrong Township, **Indiana County**. Surface Acres Affected 5.7. Receiving stream: Crooked Creek, classified for the following use: WWF. Crooked Creek TMDL. The application was considered administratively complete on June 28, 2017. Application received: November 1, 2016.

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.

Outfall 001 discharges to: Crooked Creek

The proposed effluent limits for Outfall 001 (Lat: 40° 39' 22.5" Long: -79° 16' 57.2") are:

Parameter	Minimum	30-Day Average	Daily Maximum	Instant. Maximum
Flow (mgd)				Report
Iron (mg/l)		1.5	3.0	3.8
Suspended Solids (mg/l)		35	70	90
Manganese (mg/l)		2.0	4.0	5.0
Aluminum (mg/l)		0.75	0.75	0.75
Sulfate (mg/l)	-	-	-	Report
Total Dissolved Solids (mg/l)	-	-	-	Report
pH (s.u.)	6.0			9.0
Alkalinity, Total as CaCO ₃ (mg/l)	-	-	-	Report
Acidity, Total as CaCO ₃ (mg/l)	-	-	-	Report
Alkalinity, Net (mg/l)	0.0	-	-	-

EPA waiver is not in effect.

New Stanton District Office: P.O. Box 133, 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

NPDES No. PA0252271 (Mining Permit No. 03120103), Neiswonger Construction, Inc., 17592 Route 322, Strattanville, PA 16258, NPDES permit renewal at a surface coal mine being renewed for reclamation only in Sugarcreek Township, **Armstrong County** affecting 99.5 acres. Receiving stream(s): UNTs to Buffalo Creek classified for the following use: HQ-TSF. Application received: December 13, 2018.

The following stormwater outfall discharges to UNT D to Buffalo Creek:

Outfall No.	New Outfall (Y/N)	Type
001	N	Stormwater Outfall

The proposed all weather effluent limits for the previously listed outfall are as follows:

Outfall: 001 Parameter	30-Day Average	Daily Maximum	Instant. Maximum
Total Iron (mg/l)	2.8	5.6	7.0
Total Manganese (mg/l)	1.0	2.0	2.5
Total Aluminum (mg/l)	0.75	1.5	1.9
Total Suspended Solids (mg/l)	35	70	90

Sulfates (mg/L) Monitor & Report

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times.

Alkalinity must exceed acidity 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

Southeast Region: Waterways and Wetlands Program, 2 East Main Street, Norristown, PA 19401, Telephone 484.250.5160.

E46-1181. Clemens Food Group, 2700 Clemens Road, P.O. Box 902, Hatfield, PA 19440-0902, Hatfield Township, **Montgomery County**, ACOE Philadelphia District.

To construct and maintain a 308,000-square-foot building and the parking area for 442 vehicles, which will require to relocate about 679 feet of intermittent stream

channel to Skippack Creek (TSF, MF) associated with the new meat processing activities and the improvements to the existing facility.

The site is located at about 1,000 feet southeast of Derstine Road and Clemens Road (Telford, PA, USGS Quadrangle Latitude: 40.271643; Longitude: -75.324270) in Hatfield Township, Montgomery County.

EA2301219-002. Anthony Maccioca, 841 Bryn Mawr Ave, Radnor Township, **Delaware County**, ACOE Philadelphia District.

Submitted a Waiver 16 Restoration Plan and Environmental Assessment for the deconstruction of a portion of existing of stream bank protection on neighbor's property. Approximately 25 linear feet of Foxes Run (CWF/MF) will be restored. The existing wall was installed without a permit and on neighbor's property. Area will be restored to original contours and vegetation. (Lansdowne Quadrangle -39.997881, -75.372977.)

E46-1187. Upper Merion Area School District, 435 Crossfield Road, King of Prussia, PA 19406-2363, Upper Merion Township, **Montgomery County**, ACOE Philadelphia District.

To construct and maintain a new high school facility on the existing high school site within the floodway/floodplain of the Crow Creek (WWF-MF), associated with the Additions and Renovations Project of the school. The project will include the following activities:

1. Replace the existing culvert 72-inch RCP to 42 feet long, 14 feet wide x 5 feet high Conspan Arch.
2. Replace the existing 72-RCP pipe, about 152 feet to open channel, size about 3-foot bottom, about 60-foot top width, and 15-foot depth.
3. Replace the existing 72-inch RCP pipe, about 595 feet.
4. Construct an outfall structure at the end.
5. Small portion of access driveway at the rear of the building.

The site is located at about 500 feet northeast of Thomas Drive and Crossfield Road (Valley Forge, PA, USGS Quadrangle Latitude: 40.095866; Longitude: -75.381116) in Upper Merion Township, Montgomery County.

EA46012-024. Cheltenham Township, 8230 Old York Road, Cheltenham Township, **Montgomery County**, ACOE Philadelphia District.

The applicant proposes to install a new green stormwater infrastructure by naturalizing 225 linear feet of a concrete lined channel and direct stormwater flows through a 25,000-square-foot constructed wetland and install a 170-foot stream buffer downstream of the constructed wetland. Approximately 235 linear feet of stream will be impacted from the project. A new channel will be restored within the constructed wetland. Project is located at 15 Church Road, Elkins Park, Cheltenham Township, Montgomery County. (Frankford Quadrangle 40.069938; -75.101306.)

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.

E4002119-009. Pa Department of Transportation, Eng District 4-0, 55 Keystone Industrial Drive, Dunmore, PA 18512, Conyngham Borough, **Luzerne County**, Army Corps of Engineers, Baltimore District.

To remove the existing structure and to construct and maintain a single-span prestressed concrete bridge having a width of 33 l.f. and an underclearance of 6.6' carrying S.R. 3034 over Little Nescopeck Creek (HQ-CWF, MF). The project also includes de minimus impacts to PEM wetlands of 0.01 acre.

The project is located along S.R. 3034 Sect 351 Seg 351, Off 1556 (Conyngham, PA Quadrangle, Latitude: 40° 59' 40.5" N; Longitude: -76° 3' 13.8"W) in Conyngham Borough, Luzerne County.

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ed Muzic, Section Chief, 717.705.4802.

E3603219-005: Robert Gruber, 48 S Market Street, Elizabethtown, PA 17022 in West Donegal Township, **Lancaster County**, U.S. Army Corps of Engineers Baltimore District.

To 1.) place and maintain fill in a palustrine open water pond impacting 0.17 acre of the pond; 2.) place and maintain fill in palustrine emergent wetlands for a roadway, a 24-inch storm pipe and public water and sewer utilities permanently impacting 0.09 acre of wetlands; 3.) construct and maintain a 24.0-inch 135.0-foot long culvert and roadway fill crossing of a UNT to Conoy Creek (TSF, MF); 4.) to construct and maintain an 18.0-inch 50.0-foot long culvert and roadway fill crossing of a UNT to Conoy Creek (TSF, MF) all for the purpose of expanding an existing residential subdivision. The project is located immediately north of the intersection of West Ridge Road and Southwoods Drive (Latitude: 40° 7' 17.3321"N; Longitude: 76° 37' 20.8922"W) in West Donegal Township, Lancaster County. To compensate for wetland impacts, 0.22 acre of onsite wetland creation is proposed.

E0103219-001: David B. & Jeanne G. Lutz, 11 Custer Drive, East Berlin, PA 17316 in Reading Township, **Adams County**, U.S. Army Corps of Engineers Baltimore District.

To construct and maintain a 16.0-foot by 38.0-foot expansion to an existing boat dock/boathouse (30.0-foot by 38.0-foot) at a residence property on Lake Meade (WWF, MF). The project site is located in Reading Township, Adams County, Pennsylvania (Latitude: (39.9815), Longitude: (-77.0424)). The project will provide 608 square feet of permanent impacts to Lake Meade and the immediate shoreline. The project is located on Custer Drive, off of Lake Meade Road, approximately 9.0-miles SE of the PA-94/US-15 interchange. No wetlands will be impacted by this project.

E3603219-009: The Dutra Group, 2350 Kerner Boulevard, San Rafael, CA, in Fulton Township, **Lancaster County**, U.S. Army Corps of Engineers Baltimore District.

To temporarily place and maintain approximately 500 cubic yards of dredged sediment in the floodway of the Susquehanna River (WWF, MF), temporarily impacting 2,700 square feet of floodway for the purpose of supporting a dredging operation in the Conowingo Dam pool. The project is located along Peach Bottom Road (Latitude: 39.7505°N; Longitude: 76.2272°W) in Fulton Township, Lancaster County. No wetlands will be impacted by this project.

Southwest Region: Waterways and Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

E02052-1813, Bridgeville Borough, 425 Bower Hill Road, Bridgeville, PA 15017, Bridgeville Borough, **Allegheny County**; Pittsburgh ACOE District.

The applicant proposes to:

1. Excavate and remove approximately 15,000 cubic yards of earthen materials within 2.3 acres of the floodway and along 515 LF of McLaughlin Run (WWF).
2. Remove existing 2 ft wide and 130 ft long retaining wall along McLaughlin Run.
3. Construct and maintain a debris deflector in McLaughlin Run.

For the purpose of constructing the McLaughlin Park Flood Mitigation Project. The project site is located approximately 800 ft North-East of the intersection between Coolidge Street and McLaughlin Run Road (Bridgeville, PA USGS topographic quadrangle; N: 40°, 21', 14.8177"; W: -81°, 5', 58.214"; Sub-basin 20F; USACE Pittsburgh District), in Bridgeville Borough, Allegheny County.

EA2605-010, Western Pennsylvania Conservancy, 1067 Philadelphia Street, Suite 101, Indiana, PA 15701, **Fayette County**; Pittsburgh ACOE District.

The applicant proposes to:

Construct and maintain a new passive acid mine drainage (AMD) system, consisting of a series of limestone channels and limestone ponds, an anoxic limestone drain and an aerobic wetland with a spillway discharge, for the purpose of replacing an existing, failing, passive AMD system, to reduce the amount of metals and acidity discharging into Glade Run (HQ-CWF). The project will permanently impact 0.74 acre of wetland. This includes 0.51 acre PEM and 0.23 acre of PEM/PFO.

The project site is located approximately 0.7 mile from the intersection of Bryner Road with Kentuck Road (Fort Necessity and South Connellsville, PA USGS topographic quadrangle; N: 39°, 52', 15.5553"; W: -79°, 34', 4.1985"; Sub-basin 19D; USACE Pittsburgh District), in Stewart Township, Fayette County.

District Oil & Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA 17701.

E5929-092: UGI Texas Creek, LLC, One Meridian Boulevard, Suite 2C01, Wyomissing, PA 19610, Liberty and Union Township, **Tioga County**, ACOE Baltimore District.

To construct, operate, and maintain:

- 1) An 8 inch diameter natural gas pipeline impacting 5 linear feet of an unnamed tributary to Salt Spring Run (HQ-CWF) and 10 linear feet of Salt Spring Run (HQ-CWF) via horizontal direction drill (Liberty, PA Quadrangle 41° 34' 23"N, 77° 00' 44"W);
- 2) A temporary timber mat and an 8 inch diameter natural gas pipeline via horizontal direction drill impacting 18 linear feet of an unnamed tributary to Salt Spring Run (HQ-CWF) (Liberty, PA Quadrangle 41° 34' 23"N, 77° 00' 41"W);
- 3) A temporary timber mat and an 8 inch diameter natural gas pipeline impacting 60 linear feet of an unnamed tributary to Salt Spring Run (HQ-CWF) (Liberty, PA Quadrangle 41° 34' 23"N, 77° 00' 37"W).

The project will result in 93 linear feet of temporary stream impacts all for the purpose of installing a natural gas pipeline for Marcellus well development in Liberty and Union Township, Tioga County.

E5729-094: Chief Oil and Gas, LLC, 6051 Wallace Road Ext., Suite 300, Wexford, PA 15090 Elkland Township, **Sullivan County**, USACE Baltimore District.

To construct, operate, and maintain:

1. A permanent access road impacting 5,139 square feet of an exceptional value palustrine forested (EV-PFO) wetland (Shunk, PA Quadrangle 41° 33' 33"N, 76° 40' 37"W);
2. A permanent access road impacting 15,953 square feet of an exceptional value palustrine forested (EV-PFO) wetland (Shunk, PA Quadrangle 41° 33' 33"N, 76° 40' 37"W).

The project will result in approximately 21,092 square feet (0.48 acre) of permanent wetland impacts. The application is a result of violations found on site which were previous unpermitted by the operator in Elkland Township, Sullivan County for a well pad access road. Along with onsite restoration of 14,468 square feet (0.33 acre) of wetland, the permittee will provide 28,489 square feet (0.65 acre) of forested wetland creation on site.

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—691.1001) 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 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, P.O. 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.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed No.)	EPA Waived Y/N?
PA0065471 (Stormwater)	Behr Process Corporation— Allentown Facility 7529 Morris Court Allentown, PA 18106	Lehigh County Upper Macungie Township	Iron Run (HQ-CWF, MF) (2-C)	Yes

Southwest Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed No.)	EPA Waived Y/N?
PA0001775 (Sewage)	McFadden Machine Co. Inc. 160 Hill Road Blairsville, PA 15717-5917	Indiana County Black Lick Township	Unnamed Tributary to Muddy Run (CWF) (18-D)	Yes

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N?
PA0102652 (Sewage)	Countryside MHP 27777 Franklin Road Suite 200 Southfield, MI 48034-8205	Erie County McKean Township	Unnamed Tributary to Elk Creek (CWF, MF) (15-A)	Yes
PA0238911 (Industrial)	Titusville Dairy Products 217 S Washington Street Titusville, PA 16354-1660	Crawford County Titusville City	Municipal storm sewers draining to Oil Creek (CWF) (16-E)	Yes

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions.

Northcentral Regional Office: Regional Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

NPDES Permit No. PA0233030, Sewage, SIC Code 4952, **South Creek Township Bradford County**, P.O. Box 60, Gillett, PA 16925-0060.

This proposed facility is located in South Creek Township, **Bradford County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated sewage to an Unnamed Tributary of Seely Run (CWF-MF).

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES Permit No. PA0272167, Sewage, SIC Code 8800, **Ljubomir & Michelle Barbir**, 4862 Hogback Road, Hermitage, PA 16148.

This proposed facility is located in Hermitage City, **Mercer County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated sewage.

Central Office: Environmental Program Manager, Bureau of Clean Water, P.O. Box 8774, Harrisburg, 17105-8774, Telephone: 717.787.5017.

NPDES Permit No. PA0270831, Industrial, SIC Code 0782, **PA Game Comm**, 2001 Elmerton Avenue, Harrisburg, PA 17110.

Description of Proposed Action: Issuance for a new NPDES permit for a new discharge associated with the application of pesticides for aquatic plant control in State Game Lands throughout Pennsylvania.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law.

Northcentral Regional Office: Regional Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

WQM Permit No. 0819401, Sewage, SIC Code 4952, **South Creek Township Bradford County**, P.O. Box 60, Gillett, PA 16925-0060.

This proposed facility is located in South Creek Township, **Bradford County**.

Description of Proposed Action/Activity: Construction and operation of a small flow treatment facility (SFTF) to serve Gillette Dollar General.

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

WQM Permit No. 6319406, Sewage, **Peters Creek Sanitary Authority**, 3502 Lincoln Avenue, Finleyville, PA 15332.

This proposed facility is in Nottingham Twp., **Washington Co.**

Description of Proposed Action/Activity: Gravity sewer system for development at Castlewood Fields.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 4319405, Sewage, **Ljubomir & Michelle Barbir**, 4862 Hogback Road, Hermitage, PA 16148.

This proposed facility is located in Hermitage City, **Mercer County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

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 following MS4s instead of NPDES permit coverage.

Southcentral Regional Office: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200. Phone: 717.705.4707.

<i>NPDES Waiver No.</i>	<i>Applicant Name & Address</i>	<i>Municipality, County</i>	<i>Receiving Water(s)/Use(s)</i>
PAG133550	Dauphin Borough Dauphin County P.O. Box 487 Dauphin, PA 17018-0487	Dauphin Borough Dauphin	Susquehanna River (WWF, MF) and Stony Creek (CWF, MF)/ WWF, CWF, and MF
PAG133519 A-1	Lower Alsace Township Berks County 1200 Carsonia Avenue Reading, PA 19606-1005	Lower Alsace Township Berks	Antietam Creek (CWF, MF) and Unnamed Stream (CWF, MF)/ CWF and MF

The following waiver applications have been approved for a 5-year period. The Department is issuing waivers for the following MS4s instead of NPDES permit coverage.

Southwest Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

<i>NPDES Waiver No.</i>	<i>Applicant Name & Address</i>	<i>Municipality, County</i>	<i>Receiving Water(s)/Use(s)</i>
PAG136373	Kilbuck Township 343 Eicher Road Pittsburgh, PA 15237-1012	Kilbuck Township Allegheny	Unnamed Tributaries to Ohio River Spruce Run (TSF)

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions.

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Lehigh County Conservation District, 4184 Dorney Park Road, Suite 105, Allentown, PA 18401.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD390079	Robyn Realty Co. 3906 Mountain View Dr Danielsville, PA 18038	Lehigh	Lowhill Township	UNT to Jordan Creek (HQ-CWF, MF)
PAD390130	Jaindl Land Company 3150 Coffeetown Rd. Orefield, PA 18069	Lehigh County	Upper Macungie Township	Little Lehigh Creek (HQ-CWF, MF)
PAD390133	County of Lehigh, Bureau of Parks & Recreation 17 S. 7th St. Allentown, PA 18101-2400	Lehigh County	South Whitehall Township	Cedar Creek (HQ-CWF, MF)

Monroe County Conservation District, 8050 Running Valley Road, Stroudsburg, PA 18347.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD450078	Mt. Nebo Apartments, LLC 117 Pipher Ln. Stroudsburg, PA 18360	Monroe	Middle Smithfield Township	Pond Creek, HQ-CWF, MF Marshalls Creek, HQ CWF, MF Wetlands Tributary to Marshalls Creek, EV
PAD450091	Abraham @ Trapasso Enterprises, LLC 3329 Mountain View Drive Tannersville, PA 18372	Monroe County	Pocono Township	Swiftwater Creek, (HQ-CWF)

Northampton County Conservation District, 14 Gracedale Ave., Greystone Building, Nazareth, PA 18064-9211.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD480080	Donald L. Keeney General Contractors Inc. c/o Mr. Donald Kenney 3114 Bath Pike Nazareth, PA 18064	Northampton	Borough of Bath	Monocacy Creek (HQ-CWF, MF)
PAD480044	Stone Creek Development Corporation c/o Mr. Charles Tuskes 4511 Falmer Drive Bethlehem, PA 18020	Northampton	Upper Nazareth Township	Monocacy Creek (HQ-CWF, MF)
PAD480085	City of Bethlehem c/o Mr. Matt Dörner 10 East Church Street Bethlehem, PA 18018-6028	Northampton	City of Bethlehem	Monocacy Creek (HQ-CWF, MF)

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Nathan Phillips, Section Chief, Telephone 717.705.4802.

<i>Permit #</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD210029 Issued	SAIA Motor Freight Line, LLC 11465 Johns Parkway Suite 330 Johns Creek, GA 30097	Cumberland	Middlesex Township	Letort Spring Run (HQ-CWF)
PAD670032 Issued	York County School of Technology 2179 South Queen Street York, PA 17402	York	York Township	Tributary 08071 Mill Creek (CWF)

<i>Permit #</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD500006 Issued	Trout Brothers Farm, LLC 508 Red Rock Road Loysville, PA 17047	Perry	Jackson Township	UNT Shermans Creek (HQ-CWF) Shermans Creek (HQ-CWF)
PAD670030 Issued	Kurtz School, LLC 5511 Norrisville Road White Hall, MD 21161	York	Hopewell Township	UNT Leibs Creek (HW-CWF) EV Wetlands

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD300007	Contura Pennsylvania Land, LLC P.O. Box 1020 Waynesburg, PA 15370-2330	Greene County	Center Township; Jackson Township	Garner Run (HQ-WWF); House Run (HQ-WWF)

Northwest Region: Waterways & Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Indiana County Conservation District, 350 North 4th Street, Indiana, PA 15701, 724-471-4751.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD320003	PTV 1033 LLC 400 Penn Center Boulevard Suite 1000 Pittsburgh, PA 15235	Indiana	Montgomery Township	Painters Run HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits.

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types.

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges from Small Flow Treatment Facilities
PAG-5	General Permit for Discharges from Petroleum Product Contaminated Groundwater Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharges from Hydrostatic Testing of Tanks and Pipelines
PAG-11	General Permit for Discharges from Aquatic Animal Production Facilities
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)
PAG-14	(To Be Announced)
PAG-15	General Permit for Discharges from the Application of Pesticides

*General Permit Type—PAG-02**Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.*

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Media Borough Delaware County	PAC230119	County of Delaware 201 West Front Street Media, PA 19063	Unnamed Tributary to Ridley Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Concord Township Chester Heights Borough Delaware County	PAC230099	Stephen B. Conrad 61 Smithbridge Road Glen Mills, PA 19342	Unnamed Tributary to West Branch of Chester Creek TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Trainer Borough Delaware County	PAC230105	Trainer Borough 824 Main Street Trainer, PA 19061	Unnamed tributary to Marcus Hook Creek WWF-MF Marcus Hook Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Towamencin Township Montgomery County	PAC460382	North Penn School District 401 East Hancock Street Lansdale, PA 19446-3960	Unnamed Tributary to Towamencin Creek TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Lower Providence Township Montgomery County	PAC460353	Audubon Land Development 2620 Egypt Road Norristown, PA 19403	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.**Lackawanna County Conservation District, 1038 Montdale Road, Scott Township, PA 18447.*

<i>NPDES</i>				<i>Receiving Water/Use</i>
<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	
PAC350072	Vandling Properties LP 407 Main St Forest City, PA 18421	Lackawanna	Fell Twp Vandling Boro	UNT to Lackawanna River (CWF, MF)

Lehigh County Conservation District, 4184 Dorney Park Road, Suite 105, Allentown, PA 18401.

<i>NPDES</i>				<i>Receiving Water/Use</i>
<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	
PAC390096	TG Development Company Inc 3312 7th St Whitehall, PA 18052	Lehigh	Upper Saucon Twp	Laurel Run (CWF, MF)
PAC390094	Shirley A Schneck 5426 Rt 873 Schnecksville, PA 18078	Lehigh	N Whitehall Twp	Coplay Creek (CWF, MF)

Luzerne Conservation District, 325 Smiths Pond Road, Shavertown, PA 18708.

<i>NPDES</i>				<i>Receiving Water/Use</i>
<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	
PAC400130	Earth Conservancy Michael Dziak 101 S Main St Ashley, PA 18706	Luzerne	Hanover Twp	Espy Run (CWF, MF)
PAC400135	Hazleton Creek Properties LLC Matthew Neely 282 S Church St Hazleton, PA 18201	Luzerne	Hazleton City	Cranberry Creek (CWF, MF)

NOTICES

5043

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAC400111	UE Mundy St LP Anthony Salgado 210 Rt 4 E Paramus, NJ 07652	Luzerne	Wilkes-Barre Twp	Mill Creek (CWF, MF)
PAC400129	Service Electric Cablevision Inc. 380 Maplewood Dr Hazle Twp, PA 18202	Luzerne	Hazle Twp	Black Creek (CWF, MF)

Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Phillips, Section Chief, 717.705.4802.

*Facility Location:
Municipality &
County*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
PAC050036	Tram Bar Co-Packing, LLC 116 Union Avenue Altoona, PA 16602	UNT Dunning Creek (WWF-MF)	Bedford County Conservation District 702 West Pitt Street Suite 4 Bedford, PA 15522 814.623.7900, ext. 4
PAC070057	S&A Custom Built Homes, Inc. 2121 Old Gatesburg Road State College, PA 16803	Little Juniata River (TSF)	Blair County Conservation District 1407 Blair Street Hollidaysburg, PA 16648 814.696.0877, ext. 5
PAC220182	Musser Home Builders, Inc. 395 Gettysburg Street Dillsburg, PA 17019	Fishing Creek (WWF)	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 717.921.8100
PAC360436	Benuel Lapp 152 Black Horse Road Paradise, PA 17562	Big Beaver Creek (TSF, MF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
PAC360367	Houston Run Properties, LLC 1324 Main Street East Earl, PA 17519	Houston Run (CWF, MF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
PAC360408	Cocalico Christian Brotherhood 199 East Church Street Stevens, PA 17578	UNT Muddy Creek (WWF, MF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
PAC380125	LINLO Properties XIV, LLC 150 Corporate Center Drive Suite 100 Camp Hill, PA 17011	Snitz Creek (TSF, MF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275

*Facility Location:
Municipality &
County*

<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>
South Londonderry Township Lebanon County Issued	PAC380131	Flight Path One, LLC P.O Box 163 Annville, PA 17003	Killinger Creek (TSF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
Jackson Township Lebanon County Issued	PAC380126	Amos Esh 2091 Camp Swatara Road Myerstown, PA 17067	UNT Little Swatara Creek (CWF-MF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
North Lebanon Township Lebanon County Issued	PAC380128	Landmark Homes at Sweet Briar 1737 West Main Street Ephrata, PA 17522	UNT Brandywine Creek (TSF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
East Hanover Township Lebanon County Issued	PAC380102	Fort Indiantown Gap FTIG, Building S047 Annville, AP 17003	UNT Vesle Run (MF-WWF) UNT Indiantown Run (MF-WWF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
North Lebanon Township Lebanon County Issued	PAC380127	Randall Nolt 58 Nolt Lane Lebanon, PA 17046	UNT Little Swatara Creek (WWF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

*Facility Location &
Municipality*

<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>
College Twp Centre Cnty	PAC140088 RENEWAL Previously PAG02001408012R(1)	The Village at Canterbury LP 2121 Old Gatesburg Rd State College, PA 16803	UNT to Spring Creek CWF	Centre County Conservation District 414 Holmes Ave Ste 4 Bellefonte, PA 16823 (814) 355-6817
Ferguson Twp Centre Cnty	PAC140089 RENEWAL Previously PAG02001414011	S&A Custom Built Homes, Inc. 2121 Old Gatesburg Rd State College, PA 16803	UNT Big Hollow Drainageway CWF	Centre County Conservation District 414 Holmes Ave Ste 4 Bellefonte, PA 16823 (814) 355-6817
Potter Twp, Centre Cnty	PAC140090 RENEWAL Previously PAG02001410017R	Old Fort Limited Partnership— Old Fort Road Management, LLC 2121 Old Gatesburg Rd State College, PA 16803	UNT to Penns Creek CWF	Centre County Conservation District 414 Holmes Ave Ste 4 Bellefonte, PA 16823 (814) 355-6817
Sandy Twp, Clearfield Cnty	PAC170027	City of DuBois 16 W. Scribner Ave DuBois, PA	Slab Run CWF	Clearfield County Conservation District 511 Spruce St Ste 6 Clearfield, PA 16830 (814) 765-2629

Northwest Region: Waterways & Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
North Buffalo Township Armstrong County	PAC030021	West Hills Area Water Pollution Control Authority 257 Linde Road Kittanning, PA 16201	Allegheny River WWF	Armstrong County Conservation District 120 S Grant Avenue Suite 2 Kittanning, PA 16201 724-548-3425
Summit Township Erie County	PAC250052 Renewal and Major Amendment	Hannibal Property Management 8100 Hawthorne Drive Erie, PA 16509	Walnut Creek CWF; MF	Erie County Conservation District 1927 Wager Road Erie, PA 16509 814-825-6403
Millcreek Township Erie County	PAC250071	Erie International Airport 441 West 12th Street Erie, PA 16505	UNT Lake Erie CWF	Erie County Conservation District 1927 Wager Road Erie, PA 16509 814-825-6403
Jackson Township Butler County	PAC100163	Sippel Development 174 Tomlinson Drive Zelienople, PA 16063	Likens Run WWF	Butler County Conservation District 120 Hollywood Drive Suite 201 Butler, PA 16001 724-284-5270
Springhill Township Fayette County	PAC680027	Bureau of Abandoned Mine Reclamation Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119	Cheat River (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>
Williamsport City Lycoming County	PAG034863	M-I LLC 4600 J. Barry Court Suite 200 Canonsburg, PA 15317-5854	Unnamed Tributary to West Branch Susquehanna River (WWF, MF)—10-A	DEP Northcentral Regional Office Clean Water Program 208 W Third Street Suite 101 Williamsport, PA 17701-6448 570.327.3636
Franklin Township Greene County	PAG036262	Central Cab Co. 155 Industry Road Waynesburg, PA 15370	Coal Lick Run (WWF) and Unnamed Tributary to South Fork Tenmile Creek (WWF)—19-B	DEP Southwest Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000

*General Permit Type—PAG-13**Facility Location:
Municipality &
County**Permit No.**Applicant Name & Address**Receiving
Water/Use**Contact Office &
Phone No.*

Muhlenberg
Township
Berks County

PAG133522

Muhlenberg Township
Berks County
210 George Street
Reading, PA 19605-3164

Schuylkill River
(WWF, MF),
Unnamed Tributary
to Schuylkill River
(WWF, MF), and
Laurel Run
(WWF, MF)—3-C

DEP Southcentral
Regional Office
Clean Water Program
909 Elmerton Avenue
Harrisburg, PA
17110-8200
717.705.4800

East Donegal
Township
Lancaster County

PAG133612

East Donegal Township
Lancaster County
190 Rock Point Road
Marietta, PA 17547

Unnamed Tributary
to Donegal Creek
(CWF, MF),
Little Chiques Creek
(TSF, MF),
Unnamed Tributary
to Susquehanna
River
(WWF, MF),
Unnamed Tributary
of Donegal Creek
(CWF, MF), and
Dugan Run
(WWF, MF)—7-G

DEP Southcentral
Regional Office
Clean Water Program
909 Elmerton Avenue
Harrisburg, PA
17110-8200
717.705.4800

West Hempfield
Township
Lancaster County

PAG133536

West Hempfield Township
Lancaster County
3401 Marietta Avenue
Lancaster, PA 17601

Strickler Run
(WWF, MF),
Chiques Creek
(WWF, MF),
Unnamed Tributary
to Susquehanna
River
(WWF, MF),
Unnamed Tributary
to West Branch
Little Conestoga
Creek
(TSF, MF), Unnamed
Tributary to
Strickler Run
(WWF, MF),
Unnamed Tributary
of Swarr Run
(CWF, MF), and
Shawnee Run
(WWF, MF)—7-J and
7-G

DEP Southcentral
Regional Office
Clean Water Program
909 Elmerton Avenue
Harrisburg, PA
17110-8200
717.705.4800

**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>
Dry Run Farm, LP 18104 Stone Bridge Road Spring Run, PA 17262	Franklin	14.4	328.19	Swine	NA	Approved
Oak Spring Farms 272 Middle Road Centre Hall, PA 16828	Centre	1,949.5	1,499.32	Dairy	NA	Approved
Bivouac Sow Farm 15197 Great Cove Road McConnellsburg, PA 17233	Fulton	224	3,271.50	Swine Sow/ Gilt	NA	Approved
Schrack Farms Resources 860 West Valley Road Loganton, PA 17747	Clinton	2,210.1	2,339.75	Dairy, various small animal groups	HQ	Approved
Scott Kiskaddon S&J Farms LLC 6470 Park Rd Orrstown, PA 17244	Franklin	396.3	670.81	Poultry & Beef	N/A	Approved
Kulp Family Dairy LLC 1691 Millerstown Rd Martinsburg, PA 16662	Blair, Bedford	2,577.9	4,606.6	Dairy	Clover Creek— HQ Yellow Creek— HQ Middle Run—HQ	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, P.O. 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 (35 P.S. §§ 721.1—721.17).

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Permit No. 4019501MA, Construction Permit, Public Water Supply.

Applicant	Pennsylvania American Water Company 852 Wesley Drive Mechanicsburg, PA 17055
Municipality	Conyngham Township
County	Luzerne
Type of Facility	Public Water Supply
Consulting Engineer	Jeremy A. Nelson, P.E. Pennsylvania American Water Company 2699 Stafford Avenue Scranton, PA 18505
Permit to Construct Issued	July 24, 2019

Description of Action Approval of a new sodium hypochlorite chemical feed system at the Mocanaqua Storage Tank which serves the village of Mocanaqua. The tank is situated at the southern end of the Ceasetown public water supply system and re-chlorination of the treated water will ensure chlorine residuals are above the minimum required level of 0.2 mg/L.

Permit No. 3390091, Operation Permit, Public Water Supply.

Applicant **A MHP, LLC**
5557 Roberts Road
Schnecksville, PA 18078

Municipality North Whitehall Township
County **Lehigh**

Type of Facility Woodside Mobile Home Park
Public Water Supply

Consulting Engineer n/a; Permit Transfer
Permit Transfer Issued August 5, 2019

Permit No. 5419503MA, Public Water Supply.

Applicant **Schuylkill County Municipal Authority**
221 South Centre Street
Pottsville, PA 17901

[Borough or Township] Butler Township
County **Schuylkill**

Type of Facility PWS

Consulting Engineer Trisha L.K. Graves, P.E.
Gannett Fleming, Inc.
P.O. Box 67100
Harrisburg, PA 17106

Permit to Construct Issued August 15, 2019

Permit No. 3390090, Operations Permit, Public Water Supply.

Applicant **MHC Green Acres LP**
Equity Lifestyle Properties
8785 Turkey Ridge Road
Breinigsville, PA 18031-2042

[Borough or Township] Upper Macungie Township
County **Lehigh**

Type of Facility PWS

Consulting Engineer MR John R Poff, PE
Light-Heigel & Associates Inc.
430 E Main St
Palmyra, PA 17078

Permit to Operate Issued August 15, 2019

Permit No. 3390077, Operations Permit, Public Water Supply.

Applicant **Upper Saucon Township**
5500 Camp Meeting Rd.
Center Valley, PA 18034

[Borough or Township] Upper Saucon Township
County **Lehigh**

Type of Facility PWS

Consulting Engineer Mr J Bradley Youst, PE
Hanover Engineering
252 Brodhead Rd
Suite 100
Bethlehem, PA 18017-8944

Permit to Operate Issued July 24, 2019

Permit. 2359008, Public Water Supply.

Applicant **PA American Water**
(Edella Road Pump Station)
800 W. Hershey Park Drive
Hershey, PA 17033

[Township or Borough] South Abington Township
Lackawanna County

Responsible Official Mr. David Kaufman
Vice President, Engineering

Type of Facility Public Water Supply

Consulting Engineer Mr. Richard C. Dudek, PE
PA American Water Company
2699 Stafford Avenue
Scranton, PA 18505

Operation Permit Issued 08/12/2019

Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 6719504, Public Water Supply.

Applicant **Codorus Church of the Brethren**

Municipality Springfield Township
County **York**

Responsible Official Thomas R. Brant
Chair of Property Team
1129 Dunkard Valley Road
Dallastown, PA 17313

Type of Facility Addition of nitrate removal treatment, softening, and pH stabilization.

Consulting Engineer Charles A. Kehew II, P.E.
James R. Holley & Associates, Inc.
18 South George Street
York, PA 17401

Permit to Construct Issued 8/14/2019

Permit No. 0619512 MA, Minor Amendment, Public Water Supply.

Applicant **Reading Area Water Authority**

Municipality Ontelaunee Township
County **Berks**

Responsible Official Kim Mazur
Operations Manager
1801 Kutztown Road
Reading, PA 19604

Type of Facility Redesign of the new south siphon chamber at the existing treatment plant.

Consulting Engineer Robert B. Weinzapfel, P.E.
Spotts Stevens and McCoy
1047 North Park Road
Reading, PA 19610

Permit to Construct 8/15/2019
Issued

Operation Permit No. 2818503 issued to: **Chambersburg Borough (PWS ID No. 7280005)**, Greene Township, **Franklin County** on 8/14/2019 for facilities approved under Construction Permit No. 2818503.

Operation Permit No. 2819505 MA issued to: **Shippenburg Borough Authority (PWS ID No. 7210043)**, Lurgan Township, **Franklin County** on 8/14/2019 for facilities submitted under Application No. 2819505 MA.

Northwest Region: Safe Drinking Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Operation Permit issued to **Bradford City Water Authority, PWSID No. 6420014**, Bradford Township, **McKean County**. Permit Number 4292501-MA6 issued August 13, 2019 for the operation of the PAX tank mixer in the "Airport" tank. This permit is issued in response to an operation inspection conducted by the Department of Environmental Protection personnel on July 3, 2019.

Permit No. 6218501, Public Water Supply.

Applicant **West Sheffield Water Association**
Township or Borough Sheffield Township
County **Warren County**
Type of Facility Public Water Supply
Consulting Engineer Travis J. Long
JHA Company
466 South Main Street
Montrose, PA 18801
Permit to Construct August 15, 2019
Issued

WATER ALLOCATIONS

Actions taken on applications received under the Act of June 24, 1939 (P.L. 842, No. 365) (35 P.S. §§ 631–641) relating to the Acquisition of Rights to Divert Waters of the Commonwealth.

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

WA13-1000, Water Allocation, **Beaver Meadows Borough**, 100 East Broad Street, Beaver Meadows, PA 18216, **Carbon County**. This permit grants the right to purchase up to 90,000 gallons per day from the Hazleton City Authority.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted Under the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535, as amended, 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>
Franklin Township	150 Century Lane Dillsburg, PA 17019	York

Plan Description: Approval of a revision to the official plan of Franklin Township, York County. The project is known as Teresa Caldwell. The plan provides for small flow treatment facility (SFTF) proposal to replace a malfunctioning on-lot disposal system serving and existing single-family residential dwelling on 0.46 acre. Total estimated sewage flows are 400 gpd, and there will be a proposed discharge to an un-named tributary of the North Brank of the Bermudian Creek. The proposed development is located 303 Capital Hill Road in Franklin Township, York County. The Department's review of the plan revision has not identified any significant impacts resulting from this proposal. The DEP Code Number for this planning module is A3-67923-310-3s and the APS Id is 993628. Any permits must be obtained in the name of the property owner.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Oneida Township	P.O. Box 406 Huntingdon, PA 16652	Huntingdon

Plan Description: Approval of a revision to the official plan of Oneida Township, Huntingdon County. The project is known as Gina Hess Property. The plan provides for the installation of a small flow treatment facility with a discharge to a drainage ditch tributary to Murray Run, a High Quality stream, to replace a failing on-lot sewage disposal system for a single-family dwelling on a 0.55-acre lot. The property is located at the intersection of Standing Stone Road and Murry Run Road. The Department's review of the plan revision has not identified any significant impacts resulting from this proposal. The DEP Code Number for this planning module is A3-31928-054-3s and the APS Id is 992862. Any permits must be obtained in the name of the property owner.

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:

Southeast Region: Environmental Cleanup & Brownfields Program Manager, 2 East Main Street, Norristown, PA 19401.

Kowloon Cleaners, 270 Main Street, Lower Salford Township, **Montgomery County**. Jeremy W. Bolyn, Environmental Maintenance, 1420 East Mermaid Lane, Glenside, PA 19038 on behalf of Sui Cheong Lui, Kowloon Cleaners, 270 Main Street, Harleysville, PA 19438 submitted a Final Report concerning remediation of site groundwater contaminated with tetrachloroethene, trichloroethene and cis-1,2 dichloroethene. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Werthman Residence, 93 Upland Road, Middletown Township, **Bucks County**. Richard D. Trimpi, Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 on behalf of Bonnie Caraisco, State Farm Insurance, P.O. Box 106169, Atlanta, GA 30348-6169 submitted a Final Report concerning remediation of site soil and groundwater contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Nabisco, 12000 Roosevelt Boulevard, City of Philadelphia, **Philadelphia County**. Richard Lake, Geo-Technology Associated, Inc., 14 World's Fair Drive, Somerset, NJ 08873 on behalf of Michael Cooley, Provo Good MCB Byberry, LP, 795 East Lancaster Avenue, Suite 200, Villanova, PA 19085 submitted a Remedial Investigation Report/Cleanup Plan concerning remediation of site soil and groundwater contaminated with arsenic and PAHs. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Trappe Center Property—Sonny Cleaners, 130 Main Street, Unit 108, Trappe Borough, **Montgomery County**. Terence A. O'Reilly, PG, TriState Environmental Management Service, Inc., 368 Dunksferry Road, Bensalem PA 19020 on behalf of Arne Anderson, Trappe Center, LP, 1055 Westlakes Drive, Suite 170, Berwyn, PA 19312 submitted a Remedial Investigation Report/Risk Assessment Report/Final Report concerning remediation of site groundwater and contaminated with PCE, TCE, cis-1,2, DCE and vinyl chloride. The report is intended to document remediation of the site to meet the Site-Specific Standard.

580 East Lancaster Avenue, 580 East Lancaster Avenue, Easttown Township, **Chester County**. Michael S. Welsh, Welsh Environmental, Inc., 131 Clearview Drive, Downingtown, PA 19335 on behalf of David Della Porta, Berwyn Owner, LLC, 775 Lancaster Avenue, Suite 210, Villanova, PA 19075 submitted a Remedial Investiga-

tion Report concerning remediation of site soil and groundwater contaminated with petroleum hydrocarbons and chlorobenzene. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Limekiln Golf Club, 1176 Limekiln Pike, Horsham Township, **Montgomery County**. Michael Potts, Terraphase Engineering, Inc., 100 Canal Pointe Boulevard, Suite 108, Princeton, NJ 08540 on behalf of Ken Griffin, Envision/Matrix Limekiln, LLC, Forsgate CN 4000, Cranbury, NJ 08512 submitted a Risk Assessment Report/Remedial Investigation Report/Final Report concerning remediation of site soil contaminated with inorganics. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Indigo Investments Property, 1001 Kimberton Road, West Pikeland Township, **Chester County**. Andrew Basehoar, PG, TTI Environmental, 1253 North Church Street, Moorestown, NJ 08057 on behalf of Mary Kay Parsek, Indigo Investment Servicing, LLC, 5838 East Naples Plaza, Long Beach, CA 90803 submitted a Final Report concerning remediation of site soil and groundwater contaminated with heating oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

1900 West Allegheny Avenue, 1900 West Allegheny Avenue, City of Philadelphia, **Philadelphia County**. Angelo Fatiga, Pennoni Associates, Inc., 1900 Market Street, Philadelphia, PA 19103 on behalf of R. Max Kent, New Courtland Apartments at Allegheny, 6950 Germantown Avenue, Philadelphia, PA 19119 submitted a Final Report concerning remediation of site soil and groundwater contaminated with PAHs and metals. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Superior Industries, Ltd, 701 Wheatland Street, Phoenixville Borough, **Chester County**. Brittany L Potter, Center Point Tank Services, Inc., 536 East Benjamin Franklin Highway, Douglasville, PA 19518 on behalf of Thomas A. Marabiel, Jr, Superior Industries, Ltd, 701 Wheatland Street, P.O. Box 547, Phoenixville, PA 19460 submitted a Final Report concerning remediation of site soil and groundwater contaminated with benzene, naphthalene and phenanthrene. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Estate of Nicholas Abbonizio, 2528 Haverford Road, Haverford Township, **Delaware County**. Richard S. Werner, PG, Environmental Consulting, Inc., 2002 Renaissance Boulevard, Suite 110, King of Prussia, PA 19406 on behalf of Francesca Abbonizio, The Estate of Nicholas Abbonizio, 848 Conner Road, West Chester, PA 19380 submitted a Cleanup Plan/Remedial Investigation Report concerning remediation of site soil and groundwater contaminated with unleaded gasoline and diesel fuel. The report is intended to document remediation of the site to meet the Site-Specific 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:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

100 Barren Hill Road, 100 Barren Hill Road, Whitmarsh Township, **Montgomery County**. David Farrington, Brickhouse Environmental, 515 South Franklin Street, West Chester, PA 19382 on behalf of Phillip Zuzelo, 100 BRH, LLC, P.O. Box 450, Conshohocken, PA 19248 submitted a Risk Assessment Report/Final Report concerning the remediation of site soil and groundwater contaminated with PAHs and chlorinated solvents. The Report was approved by the Department on July 9, 2019.

Medical Products Laboratories, Inc., 9990 Global Road, City of Philadelphia, **Philadelphia County**. Terry Harris, Boucher & James, Inc., 1456 Ferry Road, Building 500, Doylestown, PA 18901 submitted a Risk Assessment Report/Remedial Investigation Report/Cleanup Plan

concerning the remediation of site groundwater contaminated with fuel oil. The Report was approved by the Department on July 8, 2019.

Custom Particle Reduction Inc., 5189 Stump Road, Plumstead Township, **Bucks County**. Jaclyn Baron, UHL & Associates, Inc., 278 North Union Street, P.O. Box 375, Lambertville, NJ 08530 on behalf of Dennis K. Rice, Custom Particle Reduction, Inc., 5189 Stump Road, P.O. Box 479, Plumsteadville, PA 18949 submitted a Final Report concerning the remediation of site groundwater contaminated with other organics. The Report was approved by the Department on July 10, 2019.

318 Boro Road, 318 Boro Road, Upper Darby Township, **Chester County**. Michael Napolitan, Taylor GeoServices, 38 Bishop Hollow Road, Newtown Square, PA 190793 on behalf of Barnett Daley, 2512 Selwyn Drive, Broomall, PA 19008 submitted a Cleanup Plan/Final Report concerning the remediation of site groundwater and soil contaminated with arsenic, lead, manganese, cobalt, cadmium, beryllium and vinyl chloride. The Report was approved by the Department on July 9, 2019.

Dutton Mill Properties LLC, 308 Dutton Mill Road, Middletown Township, **Delaware County**. Paul Martino, Pennoni Associates, Inc., 1900 Market Street, Suite 300, Philadelphia, PA 19103 on behalf of Herbert T. Sweeney III, Dutton Mill Properties, 308 Dutton Mill Road, Middletown, PA 19015 submitted a Cleanup Plan/Remedial Investigation Report concerning the remediation of site soil contaminated with organics, metals, and PAHs. The Report was approved by the Department on July 2, 2019.

Lockheed Martin Corporation, 230 Mall Boulevard, Upper Merion Township, **Montgomery County**. Mark Eschbacher, H&K Group, Inc., 2052 Lucon Road, Skipack, PA 19474 on behalf of Tom Green, Lockheed Martin Corporation c/o LMC Properties, Inc., 100 South Charles Street, Suite 10, Baltimore, MD 21201 submitted a Cleanup Plan/Final Report concerning the remediation of site groundwater contaminated with tetrachloroethylene. The Report was disapproved by the Department on June 28, 2019.

1301-1331 North 8th Street/1328-1330 North Perth Street, 1301-1331 North 8th Street/1328-1330 North Perth Street, City of Philadelphia, **Philadelphia County**. Richard S. Werner, Environmental Consulting, Inc., 2002 Renaissance Boulevard, Suite 110, King of Prussia, PA 19406 on behalf of Janet Stearns, Project H.O.M.E., 1845 North 23rd Street, Philadelphia, PA 19121 submitted a Final Report concerning the remediation of site soil and groundwater contaminated with PAHs, metal, and VOCs. The Final Report demonstrated attainment of the site-specific standard and was approved by the Department on June 28, 2019.

Dauphin House, 1412-1426 West Dauphin Street, City of Philadelphia, **Philadelphia County**. Bridget Shadler, August Mack Environmental Inc., 941 Wheatland Avenue, Suite 202, Lancaster, PA 17603 on behalf of Herbert Reid, 1400 Dauphin Associates, LLC, 1910 Spring Garden Street, Suite 1, Philadelphia, PA 19132 submitted a Cleanup Plan concerning the remediation of site soil contaminated with PAHs. The Report was approved by the Department on June 27, 2019.

Wawa, 1401 Forty Foot Road, Towamencin Township, **Montgomery County**. Paul Martino, Pennoni Associates, Inc., 1900 Market Street, Suite 300, Philadelphia, PA 19103 on behalf of Thomas Verrichia, Towamencin Summeytown Pike, LLC, 329 South Main Street, Suite B,

Doylestown, PA 18901 submitted a Final Report concerning the remediation of site groundwater contaminated with gasoline additive MTBE. The Final Report demonstrated attainment of the background standard and was approved by the Department on June 21, 2019.

**REGULATED MEDICAL AND
CHEMOTHERAPEUTIC WASTE TRANSPORTER
LICENSES**

Actions on applications for Regulated Medical and Chemotherapeutic Waste Transporter License received under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. §§ 6018.101—6018.1003) and Act 93 of June 28, 1988 (P.L. 525, No. 93) and regulations to transport regulated medical and chemotherapeutic waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170.

Renewal Applications Received

Hamilton Pet Meadow, Inc., 1500 Klockner Rd, Hamilton, NJ 08619. License No. PA-HC 0227. Effective Aug 15, 2019.

Transporter License Reissued

Hamilton Pet Meadow, Inc., 1500 Klockner Rd, Hamilton, NJ 08619. License No. PA-HC 0227. Effective Aug 15, 2019.

**HAZARDOUS WASTE TREATMENT, STORAGE &
DISPOSAL FACILITIES**

Permits issued, suspended, expired, denied, revoked, reinstated or returned under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. §§ 6018.101—6018.1003) and Regulations to Operate a Hazardous Waste Treatment, Storage or Disposal Facility.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Envirite of Pennsylvania, Inc., Permit Number PAD010154045, 730 Vogelsong Avenue, York, PA 17404.

The Department of Environmental Protection has issued a Class 1 Permit Modification for RCRA Part B Permit Number PAD010154045 that approves Envirite of Pennsylvania's Form X—Radiation Protection Plan. The facility is located in the City of York, **York County**. The Class 1 Permit Modification was issued on August 19, 2019.

**OPERATE WASTE PROCESSING OR DISPOSAL
AREA OR SITE**

Permit Issued under the Solid Waste Management Act of July 7, 1980, P.L. 380, 35 P.S. §§ 6018.101—6018.1003, the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904) and Regulations to Operate a Solid Waste Processing or Disposal Area or Site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Telephone 412-442-4000.

Permit ID No. 101534. Laurel Highlands Landfill, 260 Laurel Ridge Road, Johnstown, PA 15909. Permit authorizing a major modification to construct and operate a 4,075,000-gallon aerated leachate pretreatment im-

poundment at an existing municipal waste landfill in Jackson Township, **Cambria County** was issued in the Regional Office on August 12, 2019.

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.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Program Manager, 570-327-3648.

GP5-08-318A: Appalachia Midstream Services, LLC (Park Pace Corporate Center 2, 2000 Commerce Drive, Pittsburgh, PA 15275) was issued on July 30, 2019, an authorization for continued operation of the Liberty Compressor Station in Towanda Township, **Bradford County**, and for installation of thermal oxidizers on the existing dehydrators at the facility, pursuant to the PA DEP Air Quality Bureau's "General Plan Approval and/or General Operating Permit-BAQ-GPA/GP-5-Natural Gas Compression Stations, Processing Plants, and Transmission Stations."

Plan Approvals Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-0027G: Janssen Research & Development, LLC (1400 McKean Road, Springhouse, PA 19477) On August 14, 2019, for the replacement of the selective catalytic reduction (SCR) system (Source ID C116 in Title V Operating Permit [TVOP] No. 46-00027), including urea injection system, controls, and catalyst, for an existing 1,500-ekW emergency generator set (Source ID 116) with a new SCR system (Source ID C116A), at its existing pharmaceutical research and development facility located in Lower Gwynedd Township, **Montgomery County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

08-00009A: Tennessee Gas Pipeline Company LLC (1001 Louisiana Street, Houston, TX 77002): was issued on August 2, 2019, an extension to temporary operating period for an additional 180 days to permit continued operation of their Solar Titan 130 Gas Turbine (Source ID P201) pending completion of the compliance evaluation. The source is located in Wyalusing Township, **Bradford County**. The plan approval has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Ed Orris, P.E., New Source Review Chief—Telephone: 412-442-4168.

65-00990C: Tenaska Pennsylvania Partners, LLC (14302 FNB Parkway, Omaha, NE 68154) to update the source inventory and allow continued temporary operation of the Tenaska Westmoreland Generating Station in South Huntingdon Township, **Westmoreland County**. The new expiration date is February 28, 2020.

26-00535B: Dynegy Fayette II, LLC (100 Energy Drive, Masontown, PA 15461) plan approval extension effective August 28, 2019, with expiration on February 28, 2020, to extend the period of temporary operation of the modified combustion gas turbines (“CGT”) at Fayette Energy Center located in Masontown Borough, **Fayette County**.

63-00999A: EQM Poseidon Midstream, LLC (2200 Energy Drive, Canonsburg, PA 15317) plan approval extension effective September 28, 2019, with expiration on March 28, 2020, to extend the period for installation of five compressor engines, two tri ethylene glycol dehydrators, four produced water tanks, three low pressure pig receivers, one high pressure pig launcher, miscellaneous lubrication oil tanks, and piping components in natural gas service at Blue Moon Compressor Station located in West Pike Run Township, **Washington County**. Temporary operation of five compressor engines, two tri ethylene glycol dehydrators, four produced water tanks, miscellaneous lubrication oil tanks, and piping components in natural gas service previously authorized under GP5-63-00999A is also extended.

PA-11-00356C: Equitrans LP (2200 Energy Drive, Canonsburg, PA 15317) plan approval extension effective August 28, 2019, with expiration on February 28, 2020, to issue Title V Operating Permit by the Department for their Rager Mountain Laurel Ridge Station located in Jackson Township, **Cambria County**.

PA-11-00356E: Equitrans LP (2200 Energy Drive, Canonsburg, PA 15317) plan approval extension effective August 28, 2019, with expiration on February 28, 2020, to facilitate the shake-down of sources and controls at their Laurel Ridge/Rager Mountain Compressor Station located in Jackson Township, **Cambria County**.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) 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.

46-00037: Global Advanced Metals USA, Inc. (650 County Line Road, Boyertown, PA) On August 19, 2019, for renewal of the Title V Operating Permit and the renewal of the Plantwide Applicability Limit (PAL) which expired on May 28, 2019 in Douglass Township, **Montgomery County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2507.

48-00005: Hercules Cement Co. LP, Stockertown Facility (501 Hercules Drive, Stockertown, PA 18083-7009). On August 14, 2019, the Department issued a

renewal Title V Operating Permit for the operation of the Portland cement manufacturing facility in Stockertown Borough, **Northampton County**. The facility is considered a major stationary source subject to Title V Operating Permit requirements of the Clean Air Act Amendments as adopted by the Commonwealth under 25 Pa. Code, Chapter 127, Subchapter G.

The main sources at this facility consist of two (2) Preheater Kiln Systems, two (2) Clinker Cooler Systems, Finishing Mills, and Boilers. The sources are controlled by baghouses. These sources have the potential to emit major quantities of regulated pollutants above Title V emission thresholds.

On April 23, 2016, the Pennsylvania Department of Environmental Protection (PADEP) published 25 Pa. Code §§ 129.96—129.100, Additional RACT Requirements for Major Sources of NO_x and VOC, also known as Reasonably Available Control Technology (RACT) 2. Hercules Cement Company qualifies as a major source of NO_x emissions because facility-wide potential NO_x emissions are above the RACT 2 major source threshold (i.e., 100 tons per year). As a result, the NO_x-emitting operations at the facility will be subject to the provisions of the RACT 2 rule. The NO_x emitting sources at the facility are Source ID # 102 and # 122, the Kiln Systems. The Presumptive RACT 2 requirements are included in the TV operating permit.

The Title V Operating Permit includes emission restrictions, work practice standards and testing, monitoring, recordkeeping, and reporting requirements to ensure compliance with all applicable Federal and State air quality regulations.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Thomas Joseph, P.E., Facilities Permitting Chief—Telephone: 412-442-4336.

TVOP-03-00027: GenOn Northeast Management Company (313 Keystone Drive, Shelocta, PA 15774). On August 13, 2019, the Department, as a result of a Permit Modification, issued a modified Title V Operating Permit that incorporates the requirements of RACT II (25 Pa. Code §§ 129.96—129.100). The facility is a coal-fired electrical power plant. The Keystone Generating Station is located in Plumcreek Township, **Armstrong County**.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) 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.

15-00112: MH Devon Park, LLC, (466 Devon Park Drive, Wayne, PA 19087) On August 14, 2019, for the renewal of a Natural Minor Operating Permit for the operation of two 16.8 MMBtu/hr Boilers and two emergency generators leased to Charles River Labs in Tredyffrin Township, **Chester County**.

Southcentral Region: Air Quality Program, 909 Elmer-ton Avenue, Harrisburg, PA 17110.

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

67-03145: Weldon Solutions (425 East Berlin Road, York, PA 17408-8810) on August 14, 2019, for the machinery and equipment manufacturing facility located in West Manchester Township, **York County**. The State-only permit was renewed.

34-03003: Empire Kosher Poultry, Inc. (247 Empire Drive, Mifflintown, PA 17059-7746) on August 14, 2019, for the poultry processing facility located in Walker Township, **Juniata County**. The State-only permit was renewed.

36-03116: Cargill Cocoa & Chocolate, Inc. (200 Chocolate Avenue, Mount Joy, PA 17552-2000) on August 14, 2019, for the chocolate manufacturing facility located in Mount Joy Borough, **Lancaster 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.

11-00508: Hindman Funeral Homes & Crematory (146 Chandler Avenue, Johnstown, PA 15906) On August 13, 2019, the Department issued a natural minor State Only Operating Permit for the operation of a crematory located in Lower Yoder Township, **Cambria County**. The facility operates one Mathews International-Cremation Division model IE43-PPII human crematory incinerator with a maximum cremation rate of 150 lbs/hr and one Mathews International-Cremation Division model IE43-PPJr animal crematory incinerator with a maximum cremation rate of 75 lbs/hr. The facility is subject to the applicable requirements of 25 Pa. Code, Article III, Chapters 121—145. The operating permit includes emission limitations, monitoring, work practice, reporting, and recordkeeping requirements for the facility.

Philadelphia: Air Management Services, 321 University Avenue, Philadelphia, PA 19104-4543, Contact: Edward Wiener, Chief, Source Registration at 215-685-9476.

OP18-000021: PECO Main Office Building (2301 Market St., Philadelphia, PA 19103) on August 14, 2019, was issued a State Only (Natural Minor) permit renewal for the operation of air emission sources at an office building for an electric servicing company in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources are three (3) emergency generators each rated 1,073 HP firing diesel fuel, one (1) emergency generator rated 536.4 HP firing diesel fuel, one (1) fire pump rated 208 HP firing diesel fuel, one (1) gasoline dispensing facility with two dispensers and less than 10,000 gallons maximum monthly throughput of regular gasoline, and two gasoline storage tanks with tank storage capacity of 8,000 gallons and 6,000 gallons of regular gasoline.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

47-00014: United States Gypsum Company (86 PPL Road, Danville, PA 17821) was issued a Title V permit revision on August 1, 2019, for a change to the maximum differential pressure limit for the ID C115 fabric collector

at their Washingtonville Plant facility. This facility is located in Derry Township, **Montour 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.

30831303 and NPDES No. PA0013511. Cumberland Contura, LLC (158 Portal Road, P.O. Box 1020, Waynesburg, PA 15370). To revise the permit for the Cumberland Mine in Whiteley and Center Townships, **Greene County** and related NPDES Permit to revise the previously permitted No. 11 Airshaft Facility Passive Ventilation System to a fan ventilation system. No additional discharges. The application was considered administratively complete on March 5, 2019. Application received: November 13, 2018. Permit issued: August 12, 2019.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 56813006 and NPDES No. PA0125466. PBS Coals, Inc., 1576 Stoystown Road, P.O. Box 260, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface mine in Stonycreek Township, **Somerset County**, affecting 285.9 acres. Receiving streams: unnamed tributary to/and Clear Run; unnamed tributary to/and Boone Run, classified for the following use: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: October 17, 2018. Permit Issued: August 13, 2019.

New Stanton District Office: P.O. Box 133, 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

03060103 and NPDES Permit No. PA0250911. Bedrock Mines LP (111 Freeport Rd., Pittsburgh, PA 15215). Permit renewal issued for reclamation only to an existing bituminous surface mine, located in Burrell Township, **Armstrong County**, affecting 75.3 acres. Receiving streams: Unnamed Tributaries to Crooked Creek. Application received: December 31, 2018. Renewal permit issued: August 16, 2019.

03120102 and NPDES Permit No. PA0252212. Rosebud Mining Company (301 Market St., Kittanning, PA 16201). Permit renewal issued for continued mining of an existing bituminous surface mine, located in Madison Township, **Armstrong County**, affecting 69.5 acres. Re-

ceiving streams: unnamed tributaries to the Allegheny River. Allegheny Power is the potable water intake within 10 miles downstream from the point of discharge. Application received: January 25, 2018. Renewal permit issued: August 16, 2019.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 54980201R4. A/C Fuels, Company (2929 Allen Parkway, Suite 2200, Houston, TX 77019), renewal for reclamation activities only of an anthracite coal refuse reprocessing operation in Kline, Banks and Hazle Townships, **Schuylkill, Carbon and Luzerne Counties** affecting 197.5 acres, receiving stream: Catawissa Creek. Application received: May 11, 2018. Renewal issued: August 13, 2019.

Permit No. 40030202R3. Pioneer Equipment Rentals, Inc. (645 Laurel Run Road, Bear Creek Township, PA 18702), renewal of an existing anthracite coal refuse reprocessing operation in Duryea and Hughestown Boroughs, **Luzerne County** affecting 150.0 acres, receiving streams: Lackawanna and Susquehanna Rivers. Application received: August 27, 2018. Renewal issued: August 13, 2019.

Permit No. PAM114051R. Pioneer Equipment Rentals, Inc. (645 Laurel Run Road, Bear Creek Township, PA 18702), renew coverage under the General NPDES Permit for Stormwater Discharges Associated with Mining Activities (BMP GP-104) on Surface Mining Permit No. 40030202 in Duryea and Hughestown Boroughs, **Luzerne County**, receiving streams: Lackawanna and Susquehanna Rivers. Application received: August 27, 2018. Renewal issued: August 13, 2019.

Permit No. 5498012R4. Tuscarora Mines & Minerals Corp. (P.O. Box 131, Tuscarora, PA 17982), renewal of an existing anthracite surface mine operation in Blythe Township, **Schuylkill County** affecting 144.6 acres, receiving stream: Silver Creek. Application received: August 22, 2018. Renewal issued: August 16, 2019.

Permit No. 5498012C4. Tuscarora Mines & Minerals Corp. (P.O. Box 131, Tuscarora, PA 17982), correction to update the post-mining land use of an existing anthracite surface mine operation in Blythe Township, **Schuylkill County** affecting 144.6 acres, receiving stream: Silver Creek. Application received: August 22, 2018. Correction issued: August 16, 2019.

Permit No. PAM113043R. Tuscarora Mines & Minerals Corp. (P.O. Box 131, Tuscarora, PA 17982), renew coverage under the General NPDES Permit for Stormwater Discharges Associated with Mining Activities (BMP GP-104) on Surface Mining Permit No. 54980102 in Blythe Township, **Schuylkill County**, receiving stream: Silver Creek. Application received: August 22, 2018. Renewal issued: August 16, 2019.

Noncoal Permits Issued

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 50192801. Kirby W. Kitner Excavating, 7214 Spring Road, New Bloomfield, PA 17068, commencement, operation, and restoration of a small noncoal (industrial minerals) operation in Centre Township, **Perry County**, affecting 5.0 acres, receiving stream: unnamed tributary to Little Juniata Creek. Application received: March 7, 2019. Permit Issued: August 14, 2019.

PAM419002-GP104. Kirby W. Kitner Excavating, 7214 Spring Road, New Bloomfield, PA 17068. General

NPDES Permit for stormwater discharges associated with mining activities on Noncoal Permit No. 50192801 located in Centre Township, **Perry County**. Receiving stream: unnamed tributary to Little Juniata Creek, classified for the following uses: cold water fishes, migratory fishes. There are no potable water supply intakes within 10 miles downstream. Notice of Intent for Coverage received: March 7, 2019. Coverage Approved: August 14, 2019.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

08182801. Meshoppen Stone, Inc. (P.O. Box 127, Meshoppen, PA 18630). Commencement, operation and restoration of a small noncoal industrial minerals surface mine permit (flagstone/bluestone) in Tuscarora Township, **Bradford County** affecting 5.0 acres. Receiving stream(s): Little Tuscarora Creek classified for the following use(s): CWF, MF. There are no potable water supply intakes within 10 miles downstream. Application received: December 17, 2018. Permit Issued: August 8, 2019.

PAM219001. Meshoppen Stone, Inc. (P.O. Box 127, Meshoppen, PA 18630). Coverage under the General NPDES Permit for Stormwater Discharges Associated with Mining Activities (BMP GP-104) on Noncoal Permit No. 08182801 in Tuscarora Township, **Bradford County**. Receiving stream(s): Little Tuscarora Creek classified for the following use(s): CWF, MF. There are no potable water supply intakes within 10 miles downstream. Notice of Intent for Coverage received: December 17, 2018. Permit issued: August 8, 2019.

New Stanton District Office: P.O. Box 133, 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

65930601 and NPDES Permit No. PA0278378. Hoover Stone Quarry, LLC (3497 Route 981, Saltsburg, PA 15681). NPDES renewal application for continued mining to an existing large noncoal surface mine, located in Loyalhanna Township, **Westmoreland County**, affecting 77.4 acres. Receiving streams: unnamed tributary to Conemaugh River, classified for the following use: WWF. Saltsburg Water Authority is the potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: April 30, 2019. Renewal issued: August 15, 2019.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. PAM114035R. George D. Larock (101 Church Road, Sugarloaf, PA 18249), renewal of General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 40142801 in Black Creek Township, **Luzerne County**, receiving stream: no discharge to Barnes Run Watershed. Application received: March 20, 2019. Renewal issued: August 13, 2019.

Permit No. 58190803 and NPDES Permit No. PA0225835. Susan L. English (16435 State Route 167, Montrose, PA 18801), commencement, operation and restoration of a quarry operation and NPDES Permit for discharge of treated mine drainage in Silver Lake Township, **Susquehanna County** affecting 5.0 acres, receiving stream: unnamed tributary to Fall Brook. Application received: February 19, 2019. Permit issued: August 14, 2019.

Permit No. 6575SM1C and NPDES Permit No. PA0225941. Pocono Industries, Inc. (506 Hickory Valley Road, Stroudsburg, PA 18360), correction to an existing quarry operation to include an NPDES Permit for

discharge of treated mine drainage from a quarry in Hamilton Township, **Monroe County** affecting 42.2 acres, receiving stream: McMichael Creek. Application received: July 20, 2018. Permit issued: August 14, 2019.

Permit No. 06070301C2 and NPDES Permit No. PA0224588. Glen-Gery Corporation (1166 Spring Street, P.O. Box 7001, Reading, PA 19610), renewal of NPDES Permit for discharge of treated mine drainage in Perry Township, **Berks County**, receiving stream: unnamed tributary to Schuylkill River. Application received: October 16, 2018. Renewal issued: August 14, 2019.

Permit No. PAM113089R. Meshoppen Stone, Inc. (P.O. Box 127, Meshoppen, PA 18630), renewal of General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 66110301 in Mehoopany and Windham Townships, **Wyoming County**, receiving stream: Little Mehoopany Creek. Application received: May 3, 2019. Renewal issued: August 14, 2019.

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

New Stanton District Office: P.O. Box 133, 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

02194105. Wampum Hardware Company (636 Paden Road, New Galilee, PA 16141). Blasting activity permit for the construction of the Trumbull Sewer Line, located in South Fayette Township, **Allegheny County** with an expiration date of December 31, 2019. Blasting permit issued: August 12, 2019.

30194104. Wampum Hardware Company (636 Paden Road, New Galilee, PA 16141). Blasting activity permit for the construction of the Hoffman EQT Pad, located in Perry Township, **Greene County** with an expiration date of December 31, 2019. Blasting permit issued: August 14, 2019.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 40194114. Maine Drilling & Blasting, Inc. (P.O. Box 1140, Gardiner, ME 04345), construction blasting for South Valley Parkway in Hanover Township, **Luzerne County** with an expiration date of August 9, 2020. Permit issued: August 15, 2019.

Permit No. 67194112. Maine Drilling & Blasting, Inc. (P.O. Box 1140, Gardiner, ME 04345), construction blasting for Eagles View in Manchester Township, **York County** with an expiration date of August 9, 2020. Permit issued: August 15, 2019.

Permit No. 58194107. Meshoppen Blasting, Inc. (P.O. Box 127, Meshoppen, PA 18630), construction blasting for Repsol Warner W Pad and Access Road in Rush Township, **Susquehanna County** with an expiration date of August 13, 2020. Permit issued: August 19, 2019.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department has taken the following actions on previously received permit applications, requests for Envi-

ronmental 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, P.O. 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

Northeast Regional Office, Waterways and Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.

E4002219-004. Gregory Fellerman, 409 Lakeside Drive, Harveys Lake, PA 18612. Harveys Lake Borough, **Luzerne County**, Army Corps of Engineers Baltimore District.

This application is to remove an existing pile-supported boathouse and surrounding dock structure and to construct and maintain a pile-supported dock/boathouse with 2,922 square feet of structure encroaching into the normal pool elevation of Harveys Lake (HQ-CWF). The project is located at 2497 Lakeside Drive (S.R. 415) (Harveys Lake, PA Quadrangle, Latitude: 41° 21' 46.95"; Longitude: -76° 2' 10.3487") in Harveys Lake Borough, Luzerne County. Subbasin 5B.

E5202219-001. Craig Williams, 838 Route 6, Shohola, PA 18458. Dingman Township, **Pike County**, Army Corps of Engineers Philadelphia District.

To fill a de minimis area of wetlands equal to 0.049 acre and install a 16-foot long, 42" HDPE culvert with an R-4 rip rap outlet in a UNT to Twin Lakes Creek within the Twin Lakes Creek (HQ-CWF, MF) watershed for the purpose of constructing a permanent access road.

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E59-540. Seneca Resources Company, LLC, 51 Zents Boulevard, Brookville, PA 15825. Baldwin Run Roadway Improvements in Delmar Township, **Tioga County**, ACOE Baltimore District (Keeneyville, PA Quadrangles N: 41° 47' 44" W: -77° 18' 11").

Seneca has proposed a roadway improvement project to approximately 3.6 miles (19,000 LF) of Baldwin Run Road and approximately 635 LF of new construction (Butler Access Road). Seneca applied for a Standard—Joint Permit to construct, operate, and maintain a two (2) new-permanent stream crossing over Baldwin Run Road in

Delmar Township, Tioga County. The work involves the construction of a new "T" intersection with a new stream crossing with a single-span precast concrete rigid frame culvert 97' x 32' wide. Additionally, the replacement of an existing 48" HDPE with pre-fabricated plate arch culvert 54' x 10' wide.

A total of nineteen (19) permanent and three (3) temporary stream impacts are proposed to Baldwin Run and UNTs (HQ-CWF). Project watercourse impacts shall include and be limited to a total of 2,033 LF (6,791 SF) of permanent stream impacts and 216 LF (2,363 SF) of temporary stream impacts.

A total of seven (7) permanent and one (1) temporary wetland impacts are proposed. Project wetland impacts shall include and be limited to a total of 2,126 SF (0.0488 ac) of permanent wetland impacts and 84 square feet (0.0019 acre) of temporary wetland impacts,

A total of two (2) permanent and three (3) temporary floodway impacts are proposed to Baldwin Run and UNTs. Project floodway impacts shall include and be limited to a total of 7,826 SF (0.1797 ac) of permanent floodway impacts and 8,355 SF (0.1918 ac) of temporary floodway impacts.

Stream Impact Table:

<i>Impact # Station</i>	<i>Resource Name</i>	<i>Munic.</i>	<i>Activity</i>	<i>Chapter 93</i>	<i>Listed Trout</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Lat. Long.</i>
1 15+83 to 16+39	JPA-0 Baldwin Run STR-170926- 1415	Delmar	Obstruct. Removal	HQ-CWF	Class A Wild			12	12	41.795896° 77.305181°
2 & 4 15+50	JPA 1-1 & JPA 1-3 Baldwin Run STR-170926- 1415	Delmar	New Bridge	HQ-CWF	Class A Wild	69	430	94	1,359	41.795711° 77.303317°
10 & 12 425+50	JPA 8-1 & JPA 8-3 Baldwin Run STR-170926- 1415	Delmar	New Culvert	HQ-CWF	Class A Wild	57	729	86	334	41.814313° 77.340658°
15 414+56 to 415+11	JPA 9-1 Baldwin Run STR-170926- 1415	Delmar	Retaining Wall	HQ-CWF	Class A Wild	90	1,204			41.813671° 77.336819°
20 309+85 to 313+55	Waiver 6 UNT Baldwin Run STR-170927- 1128	Delmar	New Culvert	HQ-CWF	Class A Wild			379	569	41.797083° 77.309856°
21 314+20 to 314+95	Waiver 2 UNT Baldwin Run STR-170928- 0926	Delmar	New Culvert	HQ-CWF	Class A Wild			124	372	41.797714° 77.310994°
22 316+40 to 322+70	Waiver 6 UNT Baldwin Run STR-170928- 1632	Delmar	New Culvert	HQ-CWF	Class A Wild			663	1,161	41.798614° 77.312425°

<i>Impact # Station</i>	<i>Resource Name</i>	<i>Munic.</i>	<i>Activity</i>	<i>Chapter 93</i>	<i>Listed Trout</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Lat. Long.</i>
23 324+90 to 324+99	Waiver 2 UNT Baldwin Run STR-170927- 1010	Delmar	New Culvert	HQ-CWF	Class A Wild			26	234	41.800001° 77.313328°
24 326+40 to 326+70	Waiver 2 UNT Baldwin Run STR-170927- 0940	Delmar	New Culvert	HQ-CWF	Class A Wild			52	108	41.800431° 77.313589°
25 326+70 to 327+80	Waiver 2 UNT Baldwin Run STR-170927- 1532	Delmar	New Culvert	HQ-CWF	Class A Wild			101	202	41.800583° 77.313708°
26 356+20 to 356+26	Waiver 2 UNT Baldwin Run STR-170928- 0815	Delmar	New Culvert	HQ-CWF	Class A Wild			139	765	41.807483° 77.318567°
27 361+35 to 361+40	Waiver 2 UNT Baldwin Run STR-170926+ 1541	Delmar	New Culvert	HQ-CWF	Class A Wild			4	4	41.808619° 77.319669°
28 379+15 to 379+20	Waiver 2 UNT Baldwin Run STR-170926- 1328	Delmar	New Culvert	HQ-CWF	Class A Wild			14	42	41.811164° 77.325169°
29 399+33 to 399+40	Waiver 2 UNT Baldwin Run STR-170926- 0954	Delmar	New Culvert	HQ-CWF	Class A Wild			5	20	41.813772° 77.331339°
30 403+30 to 403+85	Waiver 2 UNT Baldwin Run STR-170926- 0937	Delmar	New Culvert	HQ-CWF	Class A Wild			52	780	41.813458° 77.332836°
31 405+12 to 405+14	Waiver 2 UNT Baldwin Run STR-170926- 0914	Delmar	New Culvert	HQ-CWF	Class A Wild			23	23	41.813467° 77.333394°
32 409+85 to 411+30	Waiver 2 UNT Baldwin Run STR-170927- 1352	Delmar	New Culvert	HQ-CWF	Class A Wild			197	591	41.813447° 77.335156°
33 411+24 to 411+30	Waiver 2 UNT Baldwin Run STR-170927- 1346	Delmar	New Culvert	HQ-CWF	Class A Wild			11	22	41.813478° 77.335634°
34 411+60 to 411+65	Waiver 2 UNT Baldwin Run STR-170927- 1341	Delmar	New Culvert	HQ-CWF	Class A Wild			11	33	41.813500° 77.335769°

<i>Impact # Station</i>	<i>Resource Name</i>	<i>Munic.</i>	<i>Activity</i>	<i>Chapter 93</i>	<i>Listed Trout</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Lat. Long.</i>
35 459+95 to 460+25	Waiver 2 UNT Baldwin Run STR-170926- 1415	Delmar	New Culvert	HQ-CWF	Class A Wild			40	160	41.818942° 77.350031°
<i>TOTAL</i>						216	2,363	2,033	6,791	

<i>TOTAL STREAM IMPACTS:</i>	216	2,363	192	1,705	
<i>TOTAL WAIVER 2 IMPACTS:</i>			799	3,356	
<i>TOTAL WAIVER 6 IMPACTS:</i>			1,042	1,730	

Wetland Impact Table:

<i>Impact # Station</i>	<i>Resource Name</i>	<i>Munic.</i>	<i>Activity</i>	<i>Cowardin Class</i>	<i>Listed Trout</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Lat. Long.</i>
6 355+40 to 355+65	JPA-3 W-170928- 0815	Delmar	Cut	PEM; EV	Class A Wild			12	71	41.807280° 77.318452°
7 399+28 to 399+40	JPA-4 W-170926- 0952	Delmar	Fill	PEM; EV	Class A Wild			23	36	41.813809° 77.331325°
8 409+70 to 409+94	JPA-6 W-170926- 0830	Delmar	Fill	PFO; EV	Class A Wild			33	3	41.813504° 77.335071°
9 424+30 to 424+60	JPA-7 W-170925- 1319	Delmar	Fill	PEM; EV	Class A Wild			23	56	41.814169° 77.340374°
14 425+33 to 425+61	JPA-8 W-170925- 1201	Delmar	Cut	PEM; EV	Class A Wild	34	84			41.814243° 77.340652°
17 312+76 to 312+99	JPA-10 W-170928- 0940	Delmar	Fill	PEM; EV	Class A Wild			20	100	41.797467° 77.310719°
18 323+85 to 324+75	JPA-11 W-170927- 1541	Delmar	Fill	PEM; EV	Class A Wild			92	797	41.797467° 77.310719°
19 325+25 to 326+41	JPA-12 W-170927- 1541	Delmar	Fill	PEM; EV	Class A Wild			132	1,063	41.800031° 77.313517°
<i>TOTAL WETLAND IMPACTS</i>						34	84	628	5,972	

<i>PEM</i>	34	84	595	5,696	
<i>PSS</i>	0	0	0	0	
<i>PFO</i>	0	0	33	3	

Floodway Impact Table:

<i>Impact # Station</i>	<i>Resource Name</i>	<i>Munic.</i>	<i>Activity</i>	<i>Listed Trout</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Lat. Long.</i>
3 & 5 15+50	JPA 1-2 & JPA 1-4 Baldwin Run STR-170926- 1415	Delmar	New Bridge	Class A Wild	73	1,557	106	3,128	41.795711° 77.303317°

<i>Impact # Station</i>	<i>Resource Name</i>	<i>Munic.</i>	<i>Activity</i>	<i>Listed Trout</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Lat. Long.</i>
11 & 13 425+50	JPA 8-2 & JPA 8-4 Baldwin Run STR-170926- 1415	Delmar	New Culvert	Class A Wild	57	3,325	86	4,698	41.814313° 77.340658°
16 414+56 to 415+11	JPA 9-2 Baldwin Run STR-170926- 1415	Delmar	Retaining Wall	Class A Wild	100	3,473			41.813671° 77.336819°
<i>TOTAL</i>					230	8,355	192	7,826	

District Oil and Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA 17701.

E5929-084: Eclipse Resources—PA, LP, 2121 Old Gatesburg Road, State College, PA 16803 Clymer and Westfield Township, **Tioga County**, ACOE Baltimore District.

To construct, operate, and maintain:

1) a temporary road crossing using timber mats and a 24 inch diameter natural gas pipeline impacting 1,186 square feet of a palustrine emergent (PEM) wetland, 399 square feet of a palustrine forested (PFO) wetland, and 61 linear feet of an unnamed tributary to Crance Brook (CWF) (Potter Brook, PA Quadrangle 41° 53' 16"N, 77° 33' 09"W);

2) a temporary road crossing using timber mats and a 24 inch diameter natural gas pipeline impacting 599 square feet of a palustrine emergent (PEM) wetland (Potter Brook, PA Quadrangle 41° 53' 16"N, 77° 33' 09"W);

3) a temporary road crossing using timber mats and a 24 inch diameter natural gas pipeline impacting 986 square feet of a palustrine emergent (PEM) wetland (Potter Brook, PA Quadrangle 41° 53' 13"N, 77° 33' 13"W);

4) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 401 square feet of a palustrine emergent (PEM) wetland (Potter Brook, PA Quadrangle 41° 53' 13"N, 77° 33' 38"W);

5) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 1,583 square feet of a palustrine emergent (PEM) wetland (Potter Brook, PA Quadrangle 41° 53' 13"N, 77° 33' 42"W);

6) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 63 linear feet of Crance Brook (CWF), 68 linear feet of an unnamed tributary to Crance Brook (CWF) and 22 linear feet of another unnamed tributary to Crance Brook (CWF) (Potter Brook, PA Quadrangle 41° 53' 13"N, 77° 33' 45"W);

7) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 1,099 square feet of a palustrine emergent (PEM) wetland (Potter Brook, PA Quadrangle 41° 53' 13"N, 77° 33' 48"W);

8) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 785 square feet of a palustrine emergent (PEM) wetland, 35 linear feet of an unnamed tributary to Crance Brook (CWF) and 76 linear feet of another unnamed tributary to Crance Brook (CWF) (Potter Brook, PA Quadrangle 41° 53' 15"N, 77° 34' 09"W);

9) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 120 square feet of a palustrine emergent (PEM) wetland (Potter Brook, PA Quadrangle 41° 53' 12"N, 77° 34' 15"W);

10) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 446 square feet of a palustrine emergent (PEM) wetland and 68 linear feet of an unnamed tributary to Potter Brook (HQ-CWF) (Potter Brook, PA Quadrangle 41° 52' 59"N, 77° 34' 46"W);

11) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 589 square feet of a palustrine emergent (PEM) wetland (Potter Brook, PA Quadrangle 41° 52' 59"N, 77° 34' 48"W);

12) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 1,235 square feet of a palustrine emergent (PEM) wetland and 59 linear feet of an unnamed tributary to Potter Brook (HQ-CWF) and 56 linear feet of another unnamed tributary to Potter Brook (HQ-CWF) (Potter Brook, PA Quadrangle 41° 52' 56"N, 77° 34' 50"W);

13) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 977 square feet of a palustrine emergent (PEM) wetland (Potter Brook, PA Quadrangle 41° 52' 43"N, 77° 35' 06"W);

14) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 79 linear feet of an unnamed tributary to Potter Brook (HQ-CWF) (Sabinsville, PA Quadrangle 41° 52' 08"N, 77° 35' 46"W);

15) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 1,031 square feet of a palustrine emergent (PEM) wetland (Sabinsville, PA Quadrangle 41° 52' 02"N, 77° 35' 51"W);

16) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 964 square feet of a palustrine emergent (PEM) wetland (Sabinsville, PA Quadrangle 41° 51' 54"N, 77° 35' 57"W);

17) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 9,611 square feet of a palustrine emergent (PEM) wetland (Sabinsville, PA Quadrangle 41° 51' 49"N, 77° 35' 58"W);

18) a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 76 linear feet of an unnamed tributary to Potter Brook (HQ-CWF) (Sabinsville, PA Quadrangle 41° 51' 22"N, 77° 36' 23"W).

The project will result in 628 linear feet of temporary stream impacts, 399 square feet (0.01 acre) of permanent wetland impacts, and 21,612 square feet (0.50 acre) of temporary wetland impacts, all for the purpose of installing and maintaining a waterline and natural gas pipeline in Clymer and Westfield Township, Tioga County.

E5329-019: Eclipse Resources—PA, LP, 2121 Old Gatesburg Road, State College, PA 16803 Hector Township, **Potter County**, ACOE Baltimore District.

To construct, operate, and maintain a temporary road crossing using timber mats, a 24 inch diameter natural gas pipeline and a 24 inch diameter waterline impacting 2,995 square feet of an exceptional value palustrine emergent (PEM) wetland (Sabinsville, PA Quadrangle 41° 51' 15"N, 77°36'52"W).

The project will result in 2,995 square feet (0.07 acre) of temporary wetland impacts for the purpose of installing and maintaining a waterline and natural gas pipeline in Hector Township, Potter 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, P.O. 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-3 # ESC076518004-00

Applicant Name Huntley & Huntley Energy Exploration, LLC

Contact Person Brian Dillemath

Address 501 Technology Drive, Suite 1200

City, State, Zip Canonsburg, PA 15317

County Westmoreland

Township(s) Upper Burrell

Receiving Stream(s) and Classification(s) UNTs to Pine Run (WWF)

Eastern Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

ESCGP-3 # ESG294119017-00

Applicant Name Range Resources—Appalachia, LLC

Contact Person Karl Matz

Address 3000 Town Center Blvd.

City, State, Zip Canonsburg, PA 15317-5839

County Lycoming

Township(s) Cummings Twp.

Receiving Stream(s) and Classification(s) UNT to Ramsey Run (EV), Tarklin Run (EV)

Secondary Receiving Waters: First Fork Larrys Creek (EV) and Ramsey Run (HQ-CWF)

ESCGP-3 # ESG295819007-00

Applicant Name Cabot Oil and Gas Corporation

Contact Person Kenneth Marcum

Address 2000 Park Lane, Suite 300

City, State, Zip Pittsburgh, PA 15275

County Susquehanna

Township(s) Bridgewater Twp.

Receiving Stream(s) and Classification(s) UNT to Meshoppen Creek (CWF, MF)

Secondary Receiving Water: Meshoppen Creek (CWF, MF)

ESCGP-3 # ESG295919009-00

Applicant Name UGI Texas Creek, LLC

Contact Person Amber Holly

Address One Meridian Boulevard, Suite 2C01

City, State, Zip Wyomissing, PA 19610

County Tioga

Township(s) Liberty Twp.

Receiving Stream(s) and Classification(s) French Lick Run (EV), Salt Spring Run (EV)

Secondary Receiving Water: Roaring Branch (EV)

CORRECTIVE ACTION UNDER ACT 32, 1989

PREAMBLE 2

The following plans and reports were submitted under the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).

Provisions of 25 Pa. Code Chapter 245 Subchapter D, Administration of the Storage Tank and Spill Prevention Program, require the Department of Environmental Protection (DEP) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A remedial action plan is submitted to summarize the site characterization, document the design and construction details for the remedial action, and describe how the remedial action will attain the selected remediation standard. The remedial action plan also provides results of studies performed and data collected to support the remedial action and a description of postremediation care requirements. A remedial action completion report is submitted to document

cleanup of a release of a regulated substance at a site to the selected remediation standard. A remedial action completion 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 non-residential 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.

For further information concerning plans or reports, please contact the Environmental Cleanup Program Manager in the DEP 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 listed. TDD users may telephone the DEP through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup & Brownfields Program Manager, 2 East Main Street, Norristown, PA 19401.

Springfield Fuels 67367, 23-23937, 5300 N. Springfield Rd., Upper Darby Township, **Delaware County**. Keith Valley Environmental, Inc., P.O. Box 5376, Deptford, NJ 08096, on behalf of Ramoco Marketing Group, LLC, P.O. Box 2218, Princeton, NJ 08543-2218, submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with unleaded gasoline. The report is intended to document remediation of the site to meet nonresidential site specific standards.

Bristol Food Mart, 09-01310, 1839 Bristol Pike, Bristol Township, **Bucks County**. Superior Tank and Energy Co. LLC, 6401 Radcliffe Street, Bristol, PA 19007, on behalf of HenryNgo, 1839 Bristol Pike, Croydon, PA 19021 submitted a Site Characterization report 310(b) concerning remediation of soil contaminated with leaded and unleaded gasoline. The report is intended to document remediation of the site to meet residential Statewide health standards.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Sunoco 0601-0458, Storage Tank Facility ID # 29-61427, 9648 Old 126, Warfordsburg, PA 17267, Brush Creek Township, **Fulton County**, Groundwater & Environmental Services, Inc., 301 Commerce Park Drive, Cranberry Township, PA 16066 on behalf of Evergreen Resources Management Operations, 2 Righter Parkway, Suite 120, Wilmington, DE 19803, submitted a Remedial Action Completion Report concerning remediation of groundwater contaminated with petroleum constituents. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Sunoco 0003-7077, Storage Tank Facility ID # 36-60264, 1750 Oregon Pike, Lancaster, PA 17601, Lancaster City, **Lancaster County**, Murry and Cresswell Environmental, Inc., 1679 Horseshoe Pike, Glenmoore, PA 17343 on behalf of Evergreen Resources Group, LLC, 2 Righters Parkway, Suite 120, Wilmington, DE 19803, submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with petroleum constituents. The report is intended to

document remediation of the site to meet the Site-Specific Standard and the Statewide Health Standard.

Rock's Service Center, Storage Tank Facility ID # 28-22056, 11189 Buchanan Trail East, Waynesboro, 17268, Washington Township, **Franklin County**, Letterle & Associates, Inc., 2022 Axemann Road, Suite 201, Bellefonte, PA 16823 on behalf of Sharon Rock, 13749 Lower Edgemont Road, Waynesboro, PA 17268, submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with petroleum constituents. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Speedway 6763, Storage Tank Facility ID # 22-22668, 6821 Paxton Street, Harrisburg, PA 17111, Swatara Township, **Dauphin County**, EMS Environmental, Inc., 4550 Bath Pike, Bethlehem, PA 18017 on behalf of Speedway, LLC, 500 Speedway Drive, Enon, OH 45323, submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with petroleum constituents. The report is intended to document remediation of the site to meet the Statewide Health Standard.

CORRECTIVE ACTION UNDER ACT 32, 1989

PREAMBLE 3

The DEP has taken action on the following plans and reports under the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).

Provisions of 25 Pa. Code Chapter 245 Subchapter D, Administration of the Storage Tank and Spill Prevention Program, require the Department of Environmental Protection (DEP) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports.

A remedial action plan is submitted to summarize the site characterization, document the design and construction details for the remedial action, and describe how the remedial action will attain the selected remediation standard. The remedial action plan also provides results of studies performed and data collected to support the remedial action and a description of postremediation care requirements. A remedial action completion report is submitted to document cleanup of a release of a regulated substance at a site to the selected remediation standard. A remedial action completion 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 non-residential 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.

The DEP may approve or disapprove plans and reports submitted. This notice provides the DEP's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, please contact the Environmental Cleanup Program Manager in the DEP Regional Office under which the notice of the plan or report appears. If information concerning a report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the DEP through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The DEP has received the following plans and reports:

Southeast Region: Environmental Cleanup & Brownfields Program Manager, 2 East Main Street, Norristown, PA 19401.

Red Leaf Development & Investment Associates, Inc., 51-43605, 6562 Haverford Avenue, City of Philadelphia, **Philadelphia County**. Langon Engineering and Environmental Serves, P.O. Box 1569, Warrington, PA 18976, on behalf of Red Leaf Development & Investment Associates, Inc., P.O. Box 10655, Towson, MD 21285, submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with petroleum products. The Remedial Action Completion Report was acceptable to meet non-residential Statewide health and site specific Standards and was approved by the Department on August 14, 2019.

Getty 69218, 51-12152, 8005 Ogontz Ave., **City of Philadelphia**. Envirotrac Ltd., 3070 Bristol Pike, Building 1, Suite 221, Bensalem, PA 19020, on behalf of LUKOIL North America, LLC, 302 Harper Drive, Suite 303, Moorestown, NJ 08057 submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with petroleum products. The Remedial Plan Report was acceptable to meet Statewide health and site specific standards and was approved by the Department on May 22, 2019.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Kwik Fill S 151, Storage Tank Facility ID # 05-22444, 8739 Lincoln Highway, Bedford, PA 15522, Bedford Township, **Bedford County**, Mountain Research, LLC, 825 25th Street, Altoona, PA 16601 on behalf of United Refining Company, P.O. Box 780, Warren, PA 16365, submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with petroleum constituents. The report is intended to document remediation of the site to meet the Statewide Health Standard. The Remedial Action Plan was acceptable to meet the standards and was approved by the Department on August 13, 2019.

Carlisle Car & Truck Service, Storage Tank Primary Facility ID # 21-63686, 1257 Holly Pike (Pa Route 34), Carlisle, PA 17013, Carlisle Borough, **Cumberland County**, Converse Consultants, 2738 West College Avenue, State College, PA 16801, on behalf of Highlands' Tire and Service, 1257 Holly Pike, Carlisle, PA 17013 submitted a Remedial Action Completion Report concerning remediation of groundwater contaminated with petroleum constituents. The report is intended to document remediation of the site to meet the Site-Specific Standard. The Remedial Action Completion Report demonstrated attainment of the Site-Specific Standard for Groundwater and was approved by the Department on August 14, 2019.

Speedway 6738, Storage Tank Primary Facility ID # 22-15491, 5575 Allentown Blvd., Harrisburg, PA 17112, Lower Paxton Township, **Dauphin County**, EMS Environmental, Inc., 4550 Bath Pike, Bethlehem, PA 18017-9010, on behalf of Speedway LLC, 500 Speedway Drive, Enon, OH 45323, submitted a Remedial Action Completion Report concerning remediation groundwater contaminated with Unleaded Gasoline constituents. The Remedial Action Completion Report demonstrated attainment of the Residential Used Aquifer Statewide Health Standard and was approved by the Department on August 15, 2019.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Green Meadows Golf Course, Storage Tank Facility ID # 37-91077, 193 Green Meadows Lane, Washington Township, **Lawrence County**. R.A.R. Engineering, Inc., 1135 Butler Avenue, New Castle, PA 16101, on behalf of Green Meadows Association, 193 Green Meadows Lane, Volant, PA 16156, submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with benzene, toluene, ethylbenzene, naphthalene, cumene, total xylenes, 1,2,4-trimethylbenzene, 1,3,4-trimethylbenzene, and methyl tert-butyl ether. The Remedial Action Plan was acceptable to meet the Statewide Health Standard and was approved by DEP on August 15, 2019.

Meadow Brook Dairy, Storage Tank Primary Facility ID # 25-22253, 2365 Buffalo Road, City of Erie, **Erie County**. Antea USA, Inc., 565 Allegheny Avenue, Suite 100, Oakmont, PA 15139, on behalf of Dean Foods Company, 2711 Haskell Avenue, Suite 3400, Dallas, TX 75204, submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with benzene, ethylbenzene, cumene, methyl tertiary butyl ether (MTBE), naphthalene, toluene, 1,2,4-trimethylbenzene, and 1,3,5-trimethylbenzene. The Remedial Action Plan was acceptable to meet the Statewide Health Standard and was approved by DEP on August 15, 2019.

Transue's Gulf, Storage Tank Primary Facility ID # 03-01495, 421 Butler Road, East Franklin Township, **Armstrong County**. Flynn Environmental, 5640 Whipple Avenue NW, North Canton, OH 44720, on behalf of Bradigan's, Incorporated, P.O. Box 995, Kittanning, PA 16201, submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with benzene, ethylbenzene, cumene, methyl tertiary butyl ether (MTBE), naphthalene, toluene, and xylenes. The Remedial Action Plan was acceptable to meet the Site-Specific Standard and the Remedial Action Completion Report demonstrated attainment of the Site-Specific Standard and was approved by DEP on August 19, 2019.

Dick's Service Center, Storage Tank Facility ID # 62-21834, 3 North Main Street, Youngsville Borough, **Warren County**. DMS Environmental Services, LLC, 103 South Spring Street, Bellefonte, PA 16823, on behalf of Ed's Property Maintenance, 1449 Ferry Street, Easton, PA 18042 submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with Benzene, Toluene, Ethylbenzene, Xylenes, Cumene, Naphthalene, MTBE, 1,2,4 Trimethylbenzene, 1,3,5 Trimethylbenzene. The Remedial Action Plan was acceptable to meet the Statewide Health Standard and was approved by DEP on August 19, 2019.

SPECIAL NOTICES

AIR QUALITY

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Program Manager, 570-327-3648.

Approval of a revision to the Reasonably Available Control Technology (RACT II) plan for **Truck Accessories Group, LLC** located in Milton Borough, **Northumberland County**.

In accordance with 25 Pa. Code §§ 129.96—129.100, the Pennsylvania Department of Environmental Protec-

tion has made a preliminary determination to approve a revised RACT II plan and an amendment to the State Implementation Plan (SIP) for the Milton Plant owned and operated by Truck Accessories Group, LLC in Milton Borough, Northumberland 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 (49-00020) for the facility. The relevant RACT II requirements will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to Pennsylvania'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 this includes the provisions of the Department's presumptive Reasonably Available Control Technology (RACT II) requirements in accordance with 25 Pa. Code § 129.97, as they apply to existing sources at this 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	RACT II Requirement
Source P201— Painting & Cleanup Operations	VOC emission limitation of 85.00 tons per 12-consecutive month period; throughput limits of 21,500 gallons of basecoat and 7,773 gallons of clearcoat in any 12 consecutive month period; all coatings applied using HVLP spray systems.

Public hearing. A public hearing will be held if requested by September 30, 2019, to accept oral comments on the proposed operating permit revision and the proposed SIP revision. The hearing will be held, if requested, on October 16, 2019, at 10:00 AM at the DEP Northcentral 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, please contact Megan Lehman at 570-327-3659. The last day to pre-register to speak at a hearing, if one is held, will be September 30, 2019.

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 this web site 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 one 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 (3) copies of a written statement and exhibits within 10 days thereafter to Muhammad Q. Zaman, Environmental Program Manager, Pennsylvania Department of Environmental Protec-

tion, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701.

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, Pennsylvania Department of Environmental Protection, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. A 30-day comment period from August 31, 2019, 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 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.

All pertinent documents are available for public review between 8 a.m. and 4 p.m. at the DEP Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by calling the Department at 570-327-0550.

[Pa.B. Doc. No. 19-1323. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Availability of Technical Guidance

Technical guidance documents (TGD) are available on the Department of Environmental Protection's (Department) web site at www.elibrary.dep.state.pa.us. The "Technical Guidance Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final TGDs are posted. The "Technical Guidance Draft Documents" heading is the link to the Department's draft TGDs.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download TGDs. When this option is not available, persons can order a paper copy of any of the Department's draft or final TGDs by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to TGDs

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number are listed with each document.

Draft Technical Guidance: Substantive Revision

DEP ID: 385-2207-001. **Title:** Pennsylvania Sewage Facilities Act Program Guidance; Site Suitability and Alternatives Analysis Guidelines for New Land Development Proposing Onlot Sewage Disposal. **Description:** The act of July 20, 2017 (P.L. 321, No. 26) (Act 26) amended the Pennsylvania Sewage Facilities Act (Act 537) (35 P.S.

§§ 750.1—750.20a) to allow alternate onlot systems to satisfy sewage planning requirements in the establishment of new lots. Act 26 became effective on September 18, 2017. The Department considers a wide range of available onlot sewage system technologies, including emerging technologies, in the Act 537 new land development planning process. The ability to develop land and create new lots is contingent upon the applicability of given onlot sewage system technology to particular site conditions and upon the assurance and availability of adequate operation and maintenance support mechanisms. The existing regulations do not allow for the consideration of alternate systems to establish new lots. The purpose of this guidance is to provide a systematic approach to site suitability determinations and sewage facilities alternatives analysis for the long-term use of onlot sewage systems. This draft guidance clarifies how to incorporate alternate onlot sewage disposal technologies into the Act 537 new land development planning process described in 25 Pa. Code Chapter 71 (relating to administration of Sewage Facilities Planning Program). This guidance covers the onlot sewage planning process in general, not just planning for alternate systems. The guidance was originally published as draft at 48 Pa.B. 1476 (March 10, 2018). After receiving and considering public comments, the guidance was substantially revised. Highlights of the major changes include: updated formatting to improve readability; addition of definitions and an acronym list; removal of the sewage management requirement schedule; removal of the term “marginal conditions” and addition of an explanation as to how sites are now either suitable or unsuitable for onlot sewage systems; and dividing the planning process into five steps for new land development proposing onlot sewage systems.

Written Comments: Interested persons may submit written comments on this draft TGD through Monday, September 30, 2019. Comments submitted by facsimile will not be accepted. All comments, including comments submitted by e-mail, must include the commentator’s name and address. Commentators are encouraged to submit comments using the Department’s online eComment tool at www.ahs.dep.pa.gov/eComment or by e-mail to ecomment@pa.gov. Written comments can also be submitted to the Technical Guidance Coordinator, Department of Environmental Protection, Policy Office, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2063.

Contact: Questions regarding this TGD can be directed to Brian Schlauderaff at bschlauder@pa.gov or (717) 772-5620.

Effective Date: Upon publication as final in the *Pennsylvania Bulletin*.

PATRICK McDONNELL,
Secretary

[Pa.B. Doc. No. 19-1324. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Proposed State Implementation Plan Revision for Regional Haze; Best Available Retrofit Technology; Public Hearings

The Department of Environmental Protection (Department) is proposing to submit a State Implementation

Plan (SIP) revision to the United States Environmental Protection Agency (EPA) to update to the Commonwealth’s best available retrofit technology (BART) determinations. This proposed SIP revision is being submitted to satisfy the visibility and regional haze provisions of sections 169A and 169B of the Federal Clean Air Act (CAA) (42 U.S.C.A. §§ 7491 and 7492) and the Federal Regional Haze Rule in 40 CFR 51.308 (relating to regional haze program requirements).

The Regional Haze Rule requires the Commonwealth to address regional haze in each mandatory Class I Federal area located outside this Commonwealth which may be affected by emissions from within this Commonwealth with the goal of restoring natural visibility conditions in those areas by 2064. A state’s regional haze implementation plan must demonstrate reasonable progress toward achieving natural visibility conditions to Class I Federal areas. The Regional Haze Rule further requires that SIPs address emission limitations and compliance schedules for BART-eligible sources to demonstrate emission reductions and visibility improvement. The EPA issued “Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations” at 70 FR 39104 (July 6, 2005) for states to consult when conducting their regional haze BART analyses.

The Commonwealth’s “Revision to the State Implementation Plan for Regional Haze” (2010 Regional Haze SIP revision) received limited approval by the EPA (see 77 FR 41279 (July 13, 2012)), which the agency amended (see 77 FR 48061 (on August 13, 2012)). The EPA then reissued limited approval (see 79 FR 24340 (April 30, 2014)), which included approval of the Department’s BART analyses. The EPA’s limited approval was challenged in *National Parks Conservation Ass’n et al. v. United States Environmental Protection Agency*, 803 F.3d 151 (3d. Cir. 2015).

This proposed SIP revision addresses that case. Specifically, the Court partially vacated the EPA’s April 30, 2014 reissuance of its limited approval of the Commonwealth’s 2010 Regional Haze SIP revision to the extent that the EPA approved the Commonwealth’s source-specific BART analyses. 803 F.3d at 167. The Court concluded that the EPA arbitrarily approved the Commonwealth’s SIP given what it characterized as multiple flaws in the Commonwealth’s BART analyses. The Court wrote that the EPA did not provide a sufficient explanation as to why it overlooked these problems and approved the Commonwealth’s SIP revision. The Court remanded this matter to the EPA and required the agency to demonstrate its work.

The Department is concurrently sending a letter to the EPA requesting a withdrawal of the BART determinations in sections 8.5 and 8.6 of the Commonwealth’s 2010 Regional Haze SIP revision, as well as the Department’s BART review memos in Appendix J of the Commonwealth’s 2010 Regional Haze SIP revision.

Although the Department is requesting the withdrawal of the BART determinations and the accompanying memos included in the Commonwealth’s 2010 Regional Haze SIP revision, the permit conditions and consent decrees for these sources remain effective and enforceable and continue to yield the same emission reductions. Many sources within this Commonwealth have committed to install, and have installed, controls through several mechanisms, including Federally enforceable permits, and State and Federal consent agreements. In addition to the control measures detailed in the Commonwealth’s 2010 Regional Haze SIP revision, additional regulations have been adopted and actions have been taken by the Depart-

ment that will reduce visibility impairing pollutants in Class I Federal areas. Also, several large electric generating units have announced plans to shut down, deactivate sources or curtail emissions by adding dual-fire capacity or converting to natural gas, which will lead to additional significant reductions in sulfur dioxide emissions. While these changes are not discussed in detail in this SIP revision, they are the focus of Pennsylvania's Regional Haze 5-Year Progress Report, which is being sent to the EPA as a separate SIP revision.

The Regional Haze Rule requires states to consult with the Federal Land Managers (FLMs) at least 60 days prior to the scheduled public hearing on the proposed Regional Haze SIP revision. Section 169A(d) of the CAA requires states to include a summary of the conclusions and recommendations of the FLMs in the notice to the public. The following FLMs provided comments to the Department: the United States National Park Service and the United States Department of Agriculture's Forest Service. The United States Department of Interior's Fish and Wildlife Service did not submit any comments. A summary of the comments submitted by the FLMs, and the Department's responses, is available in Appendix E of the proposed Regional Haze SIP revision.

This proposed SIP revision and appendices are available on the Department's web site at <http://www.ahs.dep.pa.gov/eComment>.

The Department will provide the opportunity for three public hearings to receive comments on this proposed SIP revision as follows:

- October 2, 2019, at 10 a.m. at the Department's Southwest Regional Office, Waterfront Conference Room A, 400 Waterfront Drive, Pittsburgh, PA.
- October 3, 2019, at 10 a.m. at the Department's Rachel Carson State Office Building, 12th Floor Conference Room, 400 Market Street, Harrisburg, PA.
- October 3, 2019, at 1 p.m. at the Department's Southeast Regional Office, Delaware River Conference Room, 2 East Main Street, Norristown, PA.

Persons wishing to present testimony should contact Amanda Rodriguez, P.O. Box 8468, Harrisburg, PA 17105, (717) 787-9702 or amarodrigu@pa.gov to reserve a time. Witnesses will be limited to 10 minutes and should provide two written copies of their comments.

If by noon on Monday, September 30, 2019, no person has expressed an interest in testifying at the hearing, the hearing will be cancelled. The Department will provide public notice on the Bureau of Air Quality webpage at <http://www.dep.pa.gov/Business/Air/BAQ/Pages/default.aspx> if the hearing is cancelled. Persons may also contact Amanda Rodriguez at amarodrigu@pa.gov or (717) 787-9702 to find out if the hearing is cancelled.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact Amanda Rodriguez at the previously listed information. TDD users may contact the Pennsylvania AT&T Relay Service at (800) 654-5984 or (800) 654-5988 (voice users) to discuss how the Department can best accommodate their needs.

The Department must receive comments no later than October 3, 2019. Commentators are encouraged to submit comments using the Department's online eComment tool at www.ahs.dep.pa.gov/eComment or by e-mail to ecomment@pa.gov. Written comments can be mailed to the Policy Office, Department of Environmental Protection, Rachel

Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2063. Use "Regional Haze BART" as the subject line in written communication.

PATRICK McDONNELL,
Secretary

[Pa.B. Doc. No. 19-1325. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Storage Tank Advisory Committee Meeting Cancellation

The September 10, 2019, meeting of the Storage Tank Advisory Committee (Committee) is cancelled. The next scheduled Committee meeting is Wednesday, December 4, 2019, at 10 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning the December meeting can be directed to Kris A. Shiffer at kshiffer@pa.gov or (717) 772-5809. The agenda and meeting materials will be available through the Public Participation tab on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Advisory Committees," then "Cleanup and Brownfields Advisory Committees," then "Storage Tank Advisory Committee").

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Department at (717) 772-5809 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) to discuss how the Department may accommodate their needs.

PATRICK McDONNELL,
Secretary

[Pa.B. Doc. No. 19-1326. Filed for public inspection August 30, 2019, 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(j) (relating to prevention, control and surveillance of tuberculosis (TB)):

Dr. Arthur Clifton McKinley Health Center
133 Laurelbrooke Drive
Brookville, PA 15825
FAC ID # 421402

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.67(j) (relating to electric requirements for existing and new construction):

Rochester Manor
174 Virginia Avenue
Rochester, PA 15074
FAC ID # 180902

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,
Secretary

[Pa.B. Doc. No. 19-1327. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Diamond Mine Fast Play Game 5065

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 803.11 (relating to powers and duties of the Secretary of Revenue), the Secretary of Revenue hereby provides public notice of the rules for the following lottery game:

1. *Name*: The name of the lottery game is Pennsylvania Diamond Mine (hereinafter “Diamond Mine”). The game number is PA-5065.

2. *Definitions*:

(a) *Authorized retailer or retailer*: A person who is properly licensed by the Lottery pursuant to 61 Pa. Code §§ 805.1—805.17.

(b) *Bar code*: The symbology on the ticket containing certain encrypted validation and accounting data used for identifying winning and losing tickets.

(c) *Game ticket*: A bearer instrument produced through a Lottery Terminal that is the player’s record of a play for a Fast Play lottery game and sold by an authorized retailer containing the play and validation data as published in this game notice.

(d) *Lottery Central Computer System*: The computer gaming system on which all Fast Play plays are recorded.

(e) *Lottery terminal*: A device authorized by the Lottery to function in an interactive mode with the Lottery Central Computer System for the purpose of issuing plays, executing Quick Pick selections, and entering, receiving, and processing lottery transactions, including making purchases, validating plays, transmitting reports, and performing inventory functions.

(f) *Play*: A chance to participate in a particular Fast Play lottery game.

(g) *Play area*: The area on a ticket which contains one or more play symbols.

(h) *Play symbol*: A number, letter, symbol, image or other character found in the play area which is used to determine whether a player wins a prize.

(i) *Prize*: A non-monetary item, money, or experience that can be won as specified in section 6 (relating to prizes available to be won and determination of prize winners) of this game notice.

(j) *PRIZE LEGEND*: The area on the ticket that shows a player the corresponding prize that can be won by matching different winning scenarios.

(k) *PROGRESSIVE TOP PRIZE*: The top prize available for this game that begins with a minimum prize amount that grows at a pre-determined rate every time a ticket is purchased, and then resets to the minimum prize amount whenever a top prize winning ticket is sold.

(l) *WINNING NUMBERS*: The numbers, letters, symbols or other characters found in the play area that, when matched against the play symbols in the “YOUR NUMBERS” area, determine whether a player wins a prize.

(m) *Winning ticket*: A game ticket which has been validated and qualifies for a prize.

(n) *YOUR NUMBERS*: The numbers, letters, symbols or other characters found in the main play area that, when matched against the play symbols in the “WINNING NUMBERS” area or the “PRIZE LEGEND,” determine whether a player wins a prize.

3. *Price*: The price of a Diamond Mine ticket is \$20.

4. *Description of Diamond Mine lottery game*:

(a) Diamond Mine lottery game is an instant win game printed from a Lottery Terminal. With the exception of the “PROGRESSIVE TOP PRIZE” amount, all prizes are predetermined, and the player does not have the ability to select his or her own play symbols. Diamond Mine tickets may be purchased from an authorized retailer or at a Lottery self-service terminal that sells terminal-based Lottery game tickets. Tickets purchased from an authorized retailer shall be printed on-demand at the time of purchase and may not be preprinted by the retailer.

(b) Diamond Mine has two ways to win a prize. A bet slip is not used to play this game:

(1) *Key Number Match*: Diamond Mine is played by matching the play symbols located in the “YOUR NUMBERS” area to the play symbols located in the “WINNING NUMBERS” area. A player correctly matching a “YOUR NUMBERS” play symbol to a “WINNING NUMBERS” play symbol wins the prize shown under the matching “YOUR NUMBERS” play symbol.

(2) *Match 3*: Diamond Mine is also played by matching like symbols in the play area. A player matching three like symbols in this manner will win the corresponding prize in the “PRIZE LEGEND.”

(c) Players can win the prize identified in section 6 (relating to prizes available to be won and determination of prize winners).

(d) A Diamond Mine game ticket cannot be canceled or voided once printed by the Lottery Terminal, even if printed in error.

(e) To purchase a ticket at an authorized retailer, a player must remit the purchase price to the retailer and verbally request a Diamond Mine game ticket. The ticket shall be the only valid proof of the bet placed and the only valid receipt for claiming a prize.

(f) To purchase a ticket at a Pennsylvania Lottery self-service terminal, the player must insert into the self-service terminal a dollar amount equal to the total purchase price of a Diamond Mine game ticket and select Diamond Mine option on the Lottery self-service terminal. The ticket shall be the only valid proof of the bet placed and the only valid receipt for claiming a prize.

5. *Diamond Mine ticket characteristics:*

(a) A Diamond Mine ticket shall contain a play area, the cost of the play, the date of sale, and a bar code.

(b) *Play Symbols:* Each Diamond Mine ticket play area will contain a "WINNING NUMBERS" area and a "YOUR NUMBERS" area. The play symbols 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 (THRNTN), 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 (THIRT), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN), and 40 (FORT). The play symbols 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 (THRNTN), 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 (THIRT), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN), and 40 (FORT). The play symbols used to play the Match 3 style game in conjunction with the "PRIZE LEGEND" are: Pick Axe symbol, Diamond symbol, and a Cart symbol.

(c) *Prize Symbols:* The prize symbols and their captions located in the play area are: \$20⁰⁰ (TWENTY), \$30⁰⁰ (THIRTY), \$40⁰⁰ (FORTY), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$10,000 (TEN THO) and PROGRESSIVE (TOP PRIZE). The prize symbols located in the "PRIZE LEGEND" are: \$20, \$50, and \$100.

(d) *Prizes:* The prizes that can be won in this game are: \$20, \$30, \$40, \$50, \$100, \$200, \$500, \$1,000, \$10,000 and the "PROGRESSIVE TOP PRIZE." The "PROGRESSIVE TOP PRIZE" amount starts at \$200,000 and increases by \$3.50 every time a Diamond Mine ticket is purchased. When a "PROGRESSIVE TOP PRIZE" winning ticket is sold, the "PROGRESSIVE TOP PRIZE" resets to \$200,000. A player can win up to 10 times on a ticket.

(e) *Approximate number of tickets available for the game:* Approximately 4,800,000 tickets will be available for sale for the Diamond Mine lottery game.

6. *Prizes available to be won and determination of prize winners:*

(a) All Diamond Mine prize payments will be made as one-time, lump-sum cash payments.

(b) A winning Diamond Mine ticket is entitled to the highest prize won by the winning combinations in both "GAMES," as described below, on each game ticket.

(c) *Determination of prize winners for Key Number Match:*

(1) 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 PROGRESSIVE (TOP PRIZE) appears in the "Prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of a "PROGRESSIVE TOP PRIZE." The amount won under this paragraph is the amount of the "PROGRESSIVE TOP PRIZE," determined by the Lottery Central Computer System, as of the time the winning ticket was purchased. The amount won will be a minimum of \$200,000.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(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 \$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.

(8) 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 \$30⁰⁰ (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.

(9) 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.

(d) *Determination of Prize Winners for Match 3:*

(1) Holders of tickets upon which three Cart symbols appear in the play area, on a single ticket, shall be entitled to a prize of \$100.

(2) Holders of tickets upon which three Diamond symbols appear in the play area, on a single ticket, shall be entitled to a prize of \$50.

(3) Holders of tickets upon which three Pick Axe symbols appear in the play area, on a single ticket, shall be entitled to a prize of \$20.

7. *Number and description of prizes and approximate chances of winning.* The following table sets forth the approximate number of winners, amounts of prizes, and approximate chances of winning:

<i>When Any Of YOUR NUMBERS Match Any WINNING NUMBER, Win Prize Shown Under The Matching Number. Win With:</i>	<i>When You Find Three Like Symbols In The Play Area, Win Corresponding Prize Shown In The PRIZE LEGEND. Win With:</i>	<i>Win:</i>	<i>Approximate Chances Of Winning Of 1 In:</i>	<i>Approximate No. Of Winners Per 4,800,000 Tickets:</i>
	\$20 w/ 3 PICK AXE SYMBOLS	\$20	12.5	384,000
\$20		\$20	14.29	336,000
\$30		\$30	16.95	283,200
\$20 × 2		\$40	62.5	76,800
\$20	\$20 w/ 3 PICK AXE SYMBOLS	\$40	27.78	172,800
\$40		\$40	100	48,000
\$30 + \$20		\$50	227.27	21,120
\$30	\$20 w/ 3 PICK AXE SYMBOLS	\$50	66.67	72,000
	\$50 w/ 3 DIAMOND SYMBOLS	\$50	50	96,000
\$50		\$50	100	48,000
\$20 × 5		\$100	2,400	2,000
\$40 × 2	\$20 w/ 3 PICK AXE SYMBOLS	\$100	2,400	2,000
\$50 × 2		\$100	2,400	2,000
(\$20 × 2) + \$40	\$20 w/ 3 PICK AXE SYMBOLS	\$100	2,400	2,000
(\$40 × 2) + \$20		\$100	2,400	2,000
(\$30 × 2) + (\$20 × 2)		\$100	2,400	2,000
\$30 + \$20	\$50 w/ 3 DIAMOND SYMBOLS	\$100	2,400	2,000
\$30	(\$50 w/ 3 DIAMOND SYMBOLS) + (\$20 w/ 3 PICK AXE SYMBOLS)	\$100	2,000	2,400
\$50	\$50 w/ 3 DIAMOND SYMBOLS	\$100	2,000	2,400
	\$100 w/ 3 CART SYMBOLS	\$100	2,400	2,000
\$100		\$100	2,400	2,000
\$50 × 2	\$100 w/ 3 CART SYMBOLS	\$200	6,000	800
\$50 × 4		\$200	6,000	800
\$100 × 2		\$200	6,000	800

<i>When Any Of YOUR NUMBERS Match Any WINNING NUMBER, Win Prize Shown Under The Matching Number. Win With:</i>	<i>When You Find Three Like Symbols In The Play Area, Win Corresponding Prize Shown In The PRIZE LEGEND. Win With:</i>	<i>Win:</i>	<i>Approximate Chances Of Winning Are 1 In:</i>	<i>Approximate No. Of Winners Per 4,800,000 Tickets:</i>
(\$20 × 4) + \$100	\$20 w/ 3 PICK AXE SYMBOLS	\$200	6,000	800
(\$30 × 2) + \$20	(\$100 w/ 3 CART SYMBOLS) + (\$20 w/ 3 PICK AXE SYMBOLS)	\$200	6,000	800
(\$40 × 2) + \$50	(\$50 w/ 3 DIAMOND SYMBOLS) + (\$20 w/ 3 PICK AXE SYMBOLS)	\$200	6,000	800
(\$40 × 3) + (\$20 × 3)	\$20 w/ 3 PICK AXE SYMBOLS	\$200	6,000	800
\$100 + \$50	\$50 w/ 3 DIAMOND SYMBOLS	\$200	4,000	1,200
\$100 + \$50 + \$30	\$20 w/ 3 PICK AXE SYMBOLS	\$200	4,000	1,200
\$100	\$100 w/ 3 CART SYMBOLS	\$200	4,000	1,200
\$200		\$200	6,000	800
\$100 × 5		\$500	24,000	200
\$200 × 2	\$100 w/ 3 CART SYMBOLS	\$500	24,000	200
(\$100 × 3) + \$200		\$500	24,000	200
(\$100 × 4) + \$50	\$50 w/ 3 DIAMOND SYMBOLS	\$500	24,000	200
(\$100 × 2) + (\$50 × 3)	(\$100 w/ 3 CART SYMBOLS) + (\$50 w/ 3 DIAMOND SYMBOLS)	\$500	24,000	200
(\$200 × 2) + (\$40 × 2)	\$20 w/ 3 PICK AXE SYMBOLS	\$500	24,000	200
(\$30 × 3) + (\$20 × 2) + \$200 + \$100	(\$50 w/ 3 DIAMOND SYMBOLS) + (\$20 w/ 3 PICK AXE SYMBOLS)	\$500	24,000	200
\$500		\$500	24,000	200
\$500 × 2		\$1,000	120,000	40
(\$100 × 3) + \$500 + \$50	(\$100 w/ 3 CART SYMBOLS) + (\$50 w/ 3 DIAMOND SYMBOLS)	\$1,000	120,000	40
(\$100 × 2) + \$500 + \$200 + \$30 + \$20	\$50 w/ 3 DIAMOND SYMBOLS	\$1,000	120,000	40
(\$200 × 4) + (\$40 × 2)	(\$100 w/ 3 CART SYMBOLS) + (\$20 w/ 3 PICK AXE SYMBOLS)	\$1,000	120,000	40

<i>When Any Of YOUR NUMBERS Match Any WINNING NUMBER, Win Prize Shown Under The Matching Number. Win With:</i>	<i>When You Find Three Like Symbols In The Play Area, Win Corresponding Prize Shown In The PRIZE LEGEND. Win With:</i>	<i>Win:</i>	<i>Approximate Chances Of Winning Are 1 In:</i>	<i>Approximate No. Of Winners Per 4,800,000 Tickets:</i>
(\$200 × 2) + (\$100 × 5) + \$30	(\$50 w/ 3 DIAMOND SYMBOLS) + (\$20 w/ 3 PICK AXE SYMBOLS)	\$1,000	120,000	40
\$1,000		\$1,000	120,000	40
\$10,000		\$10,000	160,000	30
PROGRESSIVE TOP PRIZE		\$200,000*	320,000	15

*PROGRESSIVE TOP PRIZE: The minimum value of the PROGRESSIVE TOP PRIZE is \$200,000. The PROGRESSIVE TOP PRIZE increases by \$3.50 every time a ticket is purchased, and resets to \$200,000 whenever a top prize winning ticket is sold.

Prizes, including top prizes, are subject to availability at the time of purchase.

8. *Ticket responsibility:*

(a) A Fast Play lottery game ticket is a bearer document deemed to be owned by the person holding the game ticket, except that if a name is contained on the back of the game ticket, the person so named will, for all purposes, be considered the owner of the game ticket.

(b) The holder of a Fast Play lottery game ticket has the sole responsibility for checking the accuracy and condition of the data printed on the game ticket.

(c) The Commonwealth shall not be responsible for a lost or stolen Fast Play lottery game ticket, or for a Fast Play ticket redeemed by a player in error.

9. *Ticket validation and requirements:*

(a) *Valid Fast Play lottery game tickets:* To be a valid Fast Play lottery game ticket, the presented game ticket must meet the following requirements.

(1) The game ticket's bar code shall be present in its entirety.

(2) The game ticket must be intact.

(3) The game ticket may not be mutilated, altered, reconstituted or tampered with.

(4) The game ticket may not be counterfeit or a duplicate of a winning ticket.

(5) The game ticket must have been validly issued.

(6) The game ticket data shall have been recorded on the Lottery Central Computer System and the game ticket data shall match the computer record in every respect.

(7) The game ticket must not be defectively printed or printed or produced in error such that it cannot be processed or validated by the Lottery.

(8) The game ticket must pass other confidential security checks of the Lottery.

(b) *Invalid or defective game tickets:* A game ticket not passing the validation requirements in subsection (a) will be considered invalid and no payment will be made on account of any play recorded thereon. The determination of the Secretary in this regard is final.

10. *Procedures for claiming and payment of prizes:*

(a) A prize may be claimed through an authorized retailer or the Lottery, as provided in this section. A prize must be claimed within 1 year of the sale date of the Fast Play lottery game ticket.

(b) An authorized retailer is authorized to pay prizes of \$2,500 or less. The holder of a game ticket evidencing a winning play representing a prize of \$2,500 or less may be paid by a participating authorized retailer if a proper validation pay ticket was issued by the retailer's Lottery Terminal.

(c) The holder of a game ticket evidencing a winning play representing a prize in excess of \$2,500 may present the game ticket to an authorized retailer, Lottery District Office, or Lottery Headquarters.

(d) The holder of a game ticket evidencing a winning play shall present the ticket, in person, to an authorized retailer, Lottery Headquarters or a Lottery District Office. The retailer or the Lottery will issue payment if:

(1) The game ticket is scanned and the play is validated through the Lottery Terminal or the Lottery Central Computer System;

(2) A claim form is properly and fully completed;

(3) The identification of the claimant is confirmed; and

(4) The winning ticket has not expired, pursuant to this section or section 12 (relating to unclaimed prizes).

(e) The Commonwealth shall not be responsible for a winning play paid in error by an authorized retailer.

(f) In the event a prize described in these rules is not available, the Lottery may either provide a substitute prize, determined by the Secretary to have an equivalent value to the prize won, or make a cash payment to the winner, in an amount determined by the Secretary to have an equivalent value to the prize won.

11. *Funding for prizes:* Moneys will be drawn from the State Lottery Fund, to the extent necessary, to fund the payment of prizes under this section. If this lottery game is terminated for any cause, prize moneys remaining undistributed will remain in the State Lottery Fund and used for purposes otherwise provided for by law.

12. *Unclaimed prizes:* Unclaimed prize money on winning Fast Play lottery game tickets will be retained by

the Secretary for payment to the persons entitled thereto for 1 year from the sale date of the Fast Play lottery game ticket. If no claim is made within 1 year from the sale date of the Fast Play lottery game ticket, the right of a ticket holder to claim the prize represented by that ticket, if any, shall expire.

13. *Purchase and prize restrictions:* A Fast Play lottery game ticket may not be purchased by, and a prize may not be paid, to an officer or employee of the Lottery, Lottery professional services contractors or subcontractors, or to a spouse, child, brother, sister or parent residing in the same household of an officer, employee, contractor or subcontractor who is involved in the production, distribution or operation of systems for the validation or accounting of Fast Play games.

14. *“PROGRESSIVE TOP PRIZE” restrictions:*

(a) An amount of \$3.50 from the sale of each Diamond Mine ticket will be accumulated in the “PROGRESSIVE TOP PRIZE” pool.

(b) *Prize amount:* The amount of the “PROGRESSIVE TOP PRIZE” at the time a ticket is purchased can only be verified through the Lottery’s Central Computer System. Any advertisement or any materials describing the amount of the “PROGRESSIVE TOP PRIZE” are only valid as of the time they are posted. If any discrepancy exists between this notice and any material describing or advertising Diamond Mine game, this notice and the data contained in the Lottery’s Central Computer System shall govern.

(c) The “PROGRESSIVE TOP PRIZE” and all other prizes are subject to availability at the time of purchase. The Lottery is not responsible for prizes that are not awarded due to technical issues. In the event of a “PROGRESSIVE TOP PRIZE” being reset without the actual sale of a “PROGRESSIVE TOP PRIZE” winning ticket, all prize money that had accumulated into the “PROGRESSIVE TOP PRIZE” pool (i.e. \$3.50 from the sale of each ticket) shall be awarded as part of the next “PROGRESSIVE TOP PRIZE” won.

15. *Governing law:*

(a) By purchasing a ticket, the purchaser agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), this notice, instructions, conditions and final decisions of the Secretary, and procedures established by the Secretary for the conduct of the Fast Play Diamond Mine lottery game.

(b) Decisions made by the Secretary, including the declaration of prizes and the payment thereof, in interpretation of this notice are final and binding on players and persons making a claim in respect thereof.

16. *Retailer compensation:*

(a) Authorized retailers may be entitled to compensation as determined by the Lottery.

(b) No authorized retailer or employee of an authorized retailer shall request, demand, or accept gratuities or any compensation other than as provided in subsection (a) in exchange for the performance of duties authorized pursuant to the Lottery retailer’s license without the Lottery’s prior written authorization.

17. *Retailer incentive programs:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell Pennsylvania Fast Play Diamond Mine lottery game tickets.

18. *Retailer bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania Fast

Play 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 Fast Play game ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery Fast Play game ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

19. *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 Diamond Mine or through normal communications methods.

20. *Applicability:* This notice applies only to the Diamond Mine lottery game announced in this notice.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 19-1328. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Nifty 50s Fast Play Game 5066

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 803.11 (relating to powers and duties of the Secretary of Revenue), the Secretary of Revenue hereby provides public notice of the rules for the following lottery game:

1. *Name:* The name of the lottery game is Pennsylvania Nifty 50s (hereinafter “Nifty 50s”). The game number is PA-5066.

2. *Definitions:*

(a) *Authorized retailer or retailer:* A person who is properly licensed by the Lottery pursuant to 61 Pa. Code §§ 805.1—805.17.

(b) *Bar code:* The symbology on the ticket containing certain encrypted validation and accounting data used for identifying winning and losing tickets.

(c) *Game ticket:* A bearer instrument produced through a Lottery Terminal that is the player’s record of a play for a Fast Play lottery game and sold by an authorized retailer containing the play and validation data as published in this game notice.

(d) *Lottery Central Computer System:* The computer gaming system on which all Fast Play plays are recorded.

(e) *Lottery terminal*: A device authorized by the Lottery to function in an interactive mode with the Lottery Central Computer System for the purpose of issuing plays, executing Quick Pick selections, and entering, receiving, and processing lottery transactions, including making purchases, validating plays, and transmitting reports, and performing inventory functions.

(f) *Play*: A chance to participate in a particular Fast Play lottery game.

(g) *Play area*: The area on a ticket which contains one or more play symbols.

(h) *Play symbol*: A number, letter, symbol, image or other character found in the play area which is used to determine whether a player wins a prize.

(i) *Prize*: A non-monetary item, money, or experience that can be won as specified in section 6 (relating to prizes available to be won and determination of prize winners) of this game notice.

(j) *WINNING NUMBERS*: The numbers, letters, symbols or other characters found in the play area that, when matched against the play symbols in the "YOUR NUMBERS" area, determine whether a player wins a prize.

(k) *Winning ticket*: A game ticket which has been validated and qualifies for a prize.

(l) *YOUR NUMBERS*: The numbers, letters, symbols or other characters found in the main play area that, when matched against the play symbols in the "WINNING NUMBERS" area, determine whether a player wins a prize.

3. *Price*: The price of a Nifty 50s ticket is \$2.

4. *Description of the Nifty 50s lottery game*:

(a) The Nifty 50s lottery game is an instant win game printed from a Lottery Terminal. All prizes are predetermined, and the player does not have the ability to select his or her own play symbols. Nifty 50s tickets may be purchased from an authorized retailer or at a Lottery self-service terminal that sells terminal-based Lottery game tickets. Tickets purchased from an authorized retailer shall be printed on-demand at the time of purchase and may not be preprinted by the retailer.

(b) Nifty 50s is played by matching the play symbols located in the "WINNING NUMBERS" area to the play symbols located in the "YOUR NUMBERS" area. A player matching play symbols in this manner will win the prize shown under the matching "YOUR NUMBERS" play symbol. A bet slip is not used to play this game.

(c) Players can win the prize identified in section 6 (relating to prizes available to be won and determination of prize winners).

(d) A Nifty 50s game ticket cannot be canceled or voided once printed by the Lottery Terminal, even if printed in error.

(e) To purchase a ticket at an authorized retailer, a player must remit the purchase price to the retailer and verbally request a Nifty 50s game ticket. The ticket shall be the only valid proof of the bet placed and the only valid receipt for claiming a prize.

(f) To purchase a ticket at a Pennsylvania Lottery self-service terminal, the player must insert into the self-service terminal a dollar amount equal to the total purchase price of a Nifty 50s game ticket and select the Nifty 50s option on the Lottery self-service terminal. The ticket shall be the only valid proof of the bet placed and the only valid receipt for claiming a prize.

5. *Nifty 50s ticket characteristics*:

(a) A Nifty 50s ticket shall contain a play area, the cost of the play, the date of sale, and a bar code.

(b) *Play Symbols*: Each Nifty 50s ticket play area will contain a "WINNING NUMBERS" area and a "YOUR NUMBERS" area. The play symbols located in the "WINNING NUMBERS" and the "YOUR NUMBERS" areas 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 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), and 30 (THIRT).

(c) *Prize Symbols*: The prize symbols and their captions located in the play area are: \$2⁰⁰ (TWO DOL), \$4⁰⁰ (FOR DOL), \$5⁰⁰ (FIV DOL), \$10⁰⁰ (TEN DOL), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$500 (FIV HUN), and \$5,000 (FIV THO).

(d) *Prizes*: The prizes that can be won in this game are: \$2, \$4, \$5, \$10, \$50, \$100, \$500, and \$5,000. A player can win up to 9 times on a ticket.

(e) *Approximate number of tickets available for the game*: Approximately 2,400,000 tickets will be available for sale for the Nifty 50s lottery game.

6. *Prizes available to be won and determination of prize winners*:

(a) All Nifty 50s prize payments will be made as one-time, lump-sum cash payments.

(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 \$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.

(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 \$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 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.

(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 \$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.

(f) 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.

(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 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.

(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 \$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.

(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 \$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.

7. *Number and description of prizes and approximate chances of winning:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate chances 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 Chances Of Winning Are 1 In:</i>	<i>Approximate No. Of Winners Per 2,400,000 Tickets:</i>
\$2	\$2	7.41	324,000
\$2 × 2	\$4	200	12,000
\$4	\$4	200	12,000
\$5	\$5	18.18	132,000
\$2 × 5	\$10	2,000	1,200
\$5 × 2	\$10	2,000	1,200
(\$4 × 2) + \$2	\$10	2,000	1,200
\$10	\$10	1,000	2,400
\$10 × 5	\$50	1,000	2,400
(\$10 × 2) + (\$5 × 4) + (\$4 × 2) + \$2	\$50	666.67	3,600
(\$10 × 3) + (\$5 × 2) + (\$4 × 2) + \$2	\$50	1,000	2,400
\$50	\$50	100	24,000
\$50 × 2	\$100	40,000	60
(\$10 × 3) + (\$5 × 4) + \$50	\$100	60,000	40
(\$10 × 4) + (\$5 × 2) + \$50	\$100	60,000	40
\$100	\$100	120,000	20
(\$100 × 3) + (\$50 × 4)	\$500	240,000	10
(\$100 × 4) + (\$50 × 2)	\$500	240,000	10
\$500	\$500	240,000	10
\$5,000	\$5,000	240,000	10

Prizes, including top prizes, are subject to availability at the time of purchase.

8. *Ticket responsibility:*

(a) A Fast Play lottery game ticket is a bearer document deemed to be owned by the person holding the game ticket, except that if a name is contained on the back of the game ticket, the person so named will, for all purposes, be considered the owner of the game ticket.

(b) The holder of a Fast Play lottery game ticket has the sole responsibility for checking the accuracy and condition of the data printed on the game ticket.

(c) The Commonwealth shall not be responsible for a lost or stolen Fast Play lottery game ticket, or for a Fast Play ticket redeemed by a player in error.

9. *Ticket validation and requirements:*

(a) *Valid Fast Play lottery game tickets.* To be a valid Fast Play lottery game ticket, the presented game ticket must meet the following requirements:

(1) The game ticket's bar code shall be present in its entirety.

(2) The game ticket must be intact.

(3) The game ticket may not be mutilated, altered, reconstituted or tampered with.

(4) The game ticket may not be counterfeit or a duplicate of a winning ticket.

(5) The game ticket must have been validly issued.

(6) The game ticket data shall have been recorded on the Lottery Central Computer System and the game ticket data shall match the computer record in every respect.

(7) The game ticket must not be defectively printed or printed or produced in error such that it cannot be processed or validated by the Lottery.

(8) The game ticket must pass other confidential security checks of the Lottery.

(b) *Invalid or defective game tickets:* A game ticket not passing the validation requirements in subsection (a) will be considered invalid and no payment will be made on account of any play recorded thereon. The determination of the Secretary in this regard is final.

10. *Procedures for claiming and payment of prizes:*

(a) A prize may be claimed through an authorized retailer or the Lottery, as provided in this section. A prize must be claimed within 1 year of the sale date of the Fast Play lottery game ticket.

(b) An authorized retailer is authorized to pay prizes of \$2,500 or less. The holder of a game ticket evidencing a winning play representing a prize of \$2,500 or less may be paid by a participating authorized retailer if a proper validation pay ticket was issued by the retailer's Lottery Terminal.

(c) The holder of a game ticket evidencing a winning play representing a prize in excess of \$2,500 may present the game ticket to an authorized retailer, Lottery District Office, or Lottery Headquarters.

(d) The holder of a game ticket evidencing a winning play shall present the ticket, in person, to an authorized retailer, Lottery Headquarters or a Lottery District Office. The retailer or the Lottery will issue payment if:

(1) The game ticket is scanned and the play is validated through the Lottery Terminal or the Lottery Central Computer System;

(2) A claim form is properly and fully completed;

(3) The identification of the claimant is confirmed; and

(4) The winning ticket has not expired, pursuant to this section or section 12 (relating to unclaimed prizes).

(e) The Commonwealth shall not be responsible for a winning play paid in error by an authorized retailer.

(f) In the event a prize described in these rules is not available, the Lottery may either provide a substitute prize, determined by the Secretary to have an equivalent value to the prize won, or make a cash payment to the winner, in an amount determined by the Secretary to have an equivalent value to the prize won.

11. *Funding for prizes:* Moneys will be drawn from the State Lottery Fund, to the extent necessary, to fund the payment of prizes under this section. If this lottery game is terminated for any cause, prize moneys remaining undistributed will remain in the State Lottery Fund and used for purposes otherwise provided for by law.

12. *Unclaimed prizes:* Unclaimed prize money on winning Fast Play lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto for 1 year from the sale date of the Fast Play lottery game ticket. If no claim is made within 1 year from the sale date of the Fast Play lottery game ticket, the right of a ticket holder to claim the prize represented by that ticket, if any, shall expire.

13. *Purchase and prize restrictions:* A Fast Play lottery game ticket may not be purchased by, and a prize may not be paid, to an officer or employee of the Lottery, Lottery professional services contractors or subcontractors, or to a spouse, child, brother, sister or parent residing in the same household of an officer, employee, contractor or subcontractor who is involved in the production, distribution or operation of systems for the validation or accounting of Fast Play games.

14. *Governing law:*

(a) By purchasing a ticket, the purchaser agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), this notice, instructions, conditions and final decisions of the Secretary, and procedures established by the Secretary for the conduct of the Fast Play Nifty 50s lottery game.

(b) Decisions made by the Secretary, including the declaration of prizes and the payment thereof, in interpretation of this notice are final and binding on players and persons making a claim in respect thereof.

15. *Retailer compensation:*

(a) Authorized retailers may be entitled to compensation as determined by the Lottery.

(b) No authorized retailer or employee of an authorized retailer shall request, demand, or accept gratuities or any compensation other than as provided in subsection (a) in exchange for the performance of duties authorized pursuant to the Lottery retailer's license without the Lottery's prior written authorization.

16. *Retailer incentive programs:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell Pennsylvania Fast Play Nifty 50s lottery game tickets.

17. *Retailer bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania Fast Play 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 Fast Play game ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery Fast Play game ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

18. *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 Nifty 50s or through normal communications methods.

19. *Applicability:* This notice applies only to the Nifty 50s lottery game announced in this notice.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 19-1329. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF REVENUE

Terminal-Based Lottery Game Sales through iLottery

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314), under Title 4, Amusements (4 Pa.C.S. §§ 501—505), and 61 Pa. Code Chapter 876 (relating to iLottery games—temporary regulations), the Secretary of

Revenue hereby provides public notice of the establishment of specific rules related to terminal-based lottery games sold through the iLottery system, the Lottery's web sites and the Lottery's Official Mobile Application:

1. *Purpose:* This notice shall provide notice of the specific rules governing the play of all terminal-based lottery games through the Pennsylvania Lottery's iLottery system, web sites at www.palottery.com and www.PAilottery.com, and the Pennsylvania Lottery's Official Mobile Application. Terminal-based lottery games are operated under 61 Pa. Code §§ 871.1—871.22 (relating to Powerball), 61 Pa. Code §§ 875.1—875.17 (relating to terminal-based lottery games) and notices published in the *Pennsylvania Bulletin* for each terminal-based lottery game, as applicable. Except as set forth in this notice, each terminal-based lottery game shall be operated and governed as set forth in 61 Pa. Code §§ 871.1—871.22, 875.1—875.17 or the notices published in the *Pennsylvania Bulletin*, as applicable.

2. *Definitions:* Unless provided for in this section, the words and terms, when used in this notice, have the meanings ascribed to them under 61 Pa. Code §§ 871.1—871.22 (relating to Powerball), 61 Pa. Code §§ 875.1—875.17 (relating to terminal-based lottery games) and 61 Pa. Code § 876.2 (relating to definitions), unless the context clearly indicates otherwise.

(a) *Registered play:* The method by which a ticketless transaction is specifically linked to a registered iLottery player's lottery account through a unique identifier that confers ownership of the ticketless transaction to the specific lottery account used to purchase the play, chance or share.

(b) *Ticketless transaction:* The purchase of a play, chance or share through the iLottery system, the Lottery's web sites or the Lottery's Official Mobile Application that does not result in the player receiving a physical, bearer instrument that confers ownership through possession of the instrument.

3. *Eligibility requirements:* To be eligible to participate in iLottery and purchase plays, chances or shares for terminal-based lottery games, a person must meet all of the following requirements:

(a) A person must become a registered iLottery player by establishing a lottery account with the Lottery through the Pennsylvania Lottery's iLottery web site at <http://www.PAilottery.com> or by downloading the Pennsylvania Lottery's Official Mobile Application.

(b) A registered iLottery player must be 18 years of age or older.

(c) A registered iLottery player must be located within the physical boundaries of the Commonwealth of Pennsylvania to purchase a play, chance or share.

(d) A registered iLottery player must agree to the terms and conditions for registration and participation in iLottery.

(e) A registered iLottery player shall abide by all other requirements of 4 Pa.C.S. §§ 501—505 and any regulations, rules and notices promulgated thereunder.

4. *Operation of terminal-based lottery games and procedures for purchasing a play, chance or share:*

(a) Terminal-based lottery games provide registered iLottery players with the opportunity to win one prize, per play, chance or share.

(b) Terminal-based lottery games are games of chance, the outcomes of which are determined by a random number generator or through the conduct of a live drawing.

(c) To purchase a play, chance or share, registered iLottery players must have a valid and active lottery account as referenced in section 3(a) (relating to eligibility requirements).

(d) Registered iLottery players must fund the player's lottery account with money from an approved payment provider, as further detailed at www.PAilottery.com or through the iLottery section in the Pennsylvania Lottery's Official Mobile Application.

(e) Registered iLottery players may purchase a play, chance or share using the player's own money or by using bonus or promotional money provided to the registered iLottery player by the Lottery at the Lottery's discretion, which is deposited into the registered iLottery player's lottery account.

(f) To purchase a play, chance or share for a specific terminal-based lottery game, the registered iLottery player must select the game to play by clicking on the game image and following the prompts displayed on the subsequent webpages. Prompts will be displayed for age verification, the number of plays to select, the number of consecutive drawings to select, whether to apply any add-ons such as Power Play®, Megaplier, Wild Ball, and the like, the numbers to select or whether to utilize the quick pick option.

(g) To complete a purchase, the registered iLottery player must elect to authorize the purchase at the price indicated, by selecting the "Buy Now" button. At that time, money will be drawn from the registered iLottery player's lottery account.

(h) Upon a successful purchase, the registered iLottery player will be presented with information related to the purchase, including the drawing date or dates for which the play, chance or share was purchased, the number selections, the number of consecutive drawings selected, whether an add-on was selected and the total amount of the purchase.

(i) A registered iLottery player may view any plays, chances or shares purchased in the registered iLottery player's lottery account details on the iLottery web site. Prior to a drawing being held on the plays, chances or shares purchased, the webpage will display the purchase date, the numbers played, whether an add-on was selected, the draw date or dates for the play, chance or share purchased and the total cost of the wager. After a drawing has been held, the webpage will indicate the same information, plus any prize won on the play, chance or share.

5. *Procedures for claiming and payment of prizes:*

(a) After purchasing a play, chance or share for a specific terminal-based lottery game, the registered iLottery player must check the player's lottery account details after the drawing date or dates for the play, chance or share purchased, to reveal whether a prize is awarded.

(b) All terminal-based lottery game transactions conducted through the iLottery system are ticketless transactions that provide a registered play, chance or share to a registered iLottery player's lottery account. All plays, chances or shares purchased through the iLottery system, the Lottery's web sites or the Lottery's Official Mobile Application shall be registered plays, chances or shares

that are linked to the purchasing, registered iLottery player's lottery account through a secure, encrypted validation method that will allow a prize to be credited to only the purchasing, registered iLottery player's lottery account.

(c) Prizes under \$1,000,000 won by playing terminal-based lottery games through the iLottery system, the Lottery's web sites or the Lottery's Official Mobile Application will be deposited into the registered iLottery player's lottery account and may be withdrawn from the player's lottery account at the player's discretion and as further detailed in the iLottery terms and conditions.

(d) With respect to prizes of \$1,000,000 and greater, won by playing terminal-based lottery games through the iLottery system, the registered iLottery player must appear, in person, at the Pennsylvania Lottery Headquarters to validate the win and present proof of identity to claim the prize.

(e) The Lottery will report taxable events to the relevant taxing authorities based on established statutory thresholds and registered iLottery players will be provided tax statements according to Lottery procedures.

(f) State and Federal withholding taxes, as further provided in section 7 (relating to withholding), will be automatically deducted from prizes meeting established statutory thresholds and shall be remitted to the appropriate taxing authorities as required by law.

(g) Statutorily required offsets under 23 Pa.C.S. § 4308 and 72 P.S. § 215 shall be automatically deducted from prizes meeting statutory thresholds and shall be paid to the relevant agencies as required by law.

6. *Unclaimed prizes:* If a terminal-based lottery game prize is unclaimed for any reason, the prize money from a winning play, chance or share will be retained by the Secretary for payment to the person entitled thereto for a period of 1 year from the date on which a terminal-based lottery game prize is won. If no claim is made within 1 year of the date on which a prize is won, the right of a player to claim the prize, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

7. *Withholding:* State and Federal withholding taxes will be withheld by the Lottery for prize payments in amounts required in accordance with applicable provisions of law.

8. *Purchase and prize restrictions:*

(a) A play, chance or share may not be purchased by, and a prize will not be paid to, any individual failing to meet any of the requirements of section 3 (relating to eligibility requirements).

(b) A play, chance or share may not be purchased by, and a prize will not be paid to, an officer or employee of the Lottery, Lottery and iLottery professional services contractors or subcontractors who are directly involved in the operation of the Lottery and iLottery and the provision of Lottery and iLottery related services, or to a spouse, child, brother, sister or parent residing in the same household of the officer, employee, contractor or subcontractor.

(c) During any period of self-exclusion as provided for under 61 Pa. Code § 876.16, no self-excluded registered iLottery player shall purchase plays, chances or shares, deposit or withdraw funds from the registered iLottery player's lottery account or otherwise participate in iLottery and iLottery promotions prior to the conclusion of the self-exclusion period.

(d) A registered iLottery player may be prohibited from purchasing plays, chances or shares, depositing or withdrawing money from the registered iLottery player's lottery account or otherwise participating in iLottery and iLottery promotions subject to any responsible gambling limits as set forth in the iLottery terms and conditions and as selected by the registered iLottery player, including deposit limits, spend limits, time-related limits or lottery account access limits.

9. *Governing law:* By registering to participate in iLottery, the registered iLottery player agrees to comply with and abide by Federal and State laws, the iLottery regulations, applicable game rules, the terms and conditions for registration and participation in iLottery, other rules and policies as set forth by the Lottery and final decisions of the Secretary.

10. *Termination of the game:* The termination of specific terminal-based lottery games or the removal of terminal-based lottery game sales through the iLottery system will be communicated through the Pennsylvania Lottery's web site.

11. *Applicability:*

(a) This notice applies only to terminal-based lottery games as offered by the Lottery for sale through the iLottery system, the Lottery's web sites and the Lottery's Official Mobile Applications.

(b) Terminal-based lottery games are available through Lottery retailers and the conduct of the games as sold by Lottery retailers shall be governed by 61 Pa. Code §§ 871.1—871.22, 875.1—875.17 and the terminal-based lottery game notices published in the *Pennsylvania Bulletin*, as applicable.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 19-1330. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF STATE

Election for the Office of Judge of the Court of Common Pleas of Northampton County

On August 19, 2019, the Acting Secretary of the Commonwealth (Acting Secretary) received written notice that Judge F.P. Kimberly McFadden has revoked her declaration of candidacy for retention as a judge of the Court of Common Pleas of Northampton County. Under the Constitution and laws of the Commonwealth, an election for the judicial office held by Judge McFadden will occur as part of the municipal election to be held November 5, 2019.

In the municipal election, the electors of Northampton County will elect two judges of the Court of Common Pleas of Northampton County. Each elector will be entitled to vote for up to two candidates, with the two candidates receiving the largest number of valid votes being elected.

In the municipal primary held May 21, 2019, the electors of the Democratic Party and the Republican Party each nominated the same candidate for the office of judge of the Court of Common Pleas of Northampton County. By law, each of the certified Statewide political parties of the Commonwealth—the Democratic Party and the Republican Party—will be permitted to nominate one

additional candidate for the Court of Common Pleas of Northampton County by submitting to the Acting Secretary, no later than September 16, 2019, a nomination certificate in the form prescribed by law and prepared in accordance with the applicable rules of the political party. See 25 P.S. §§ 2938.3; 2953; and 2954. Political bodies will be permitted to nominate a candidate by filing with the Acting Secretary, no later than September 16, 2019, nomination papers prepared and submitted in accordance with the requirements of the Pennsylvania Election Code. Id.

Additional information is available on the Department of State's publicly accessible web site at www.dos.pa.gov.

KATHY BOOCKVAR,
Acting Secretary

[Pa.B. Doc. No. 19-1331. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Medical Advisory Board Meeting

The Medical Advisory Board (Board) will meet on Friday, September 20, 2019. The meeting will begin at 10 a.m. at the Riverfront Office Center, Transportation University, 1101 South Front Street, Harrisburg, PA. Chairperson Kara N. Templeton will preside. The meeting is open to the public.

Members of the public interested in addressing the Board with a concern relating to medical regulations must contact Angelia Gillis at (717) 783-4534 by Friday, September 13, 2019. These concerns will be discussed during "Items from the Floor" on the agenda, which will open at 12:15 p.m.

The meeting location is accessible to persons with disabilities. Persons with special needs or requiring special aids are also requested to contact Angelia Gillis at (717) 783-4534 prior to the meeting so that disability needs may be accommodated.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 19-1332. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Receipt of Applications for Funding under the Section 5310 Program for Fiscal Year 2019-2020

The Department of Transportation, Bureau of Public Transportation, under the authority in section 5310 of the Federal Transit Act (49 U.S.C.A. § 5310), gives notice that it will receive applications for the State-administered Section 5310 Program (Program). The application will open on Tuesday, September 3, 2019, and is due by the close of business on Friday, September 20, 2019. The application can be found at <https://sportal.dot.pa.gov/Planning/AppReg/BPT-5310/Pages/default.aspx>.

Under the Program, private nonprofit organizations and designated public bodies may apply for Federal capital assistance to pay up to 80% of the purchase cost of new wheelchair accessible small transit vehicles used to provide transportation services for senior citizens and persons with disabilities who cannot be reasonably accommodated by existing transportation providers.

Additional information can be obtained by contacting John Levitsky, Bureau of Public Transportation, (717) 787-1206, jlevitsky@pa.gov.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 19-1333. Filed for public inspection August 30, 2019, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

State Transportation Commission Meeting

The State Transportation Commission (Commission) will hold a meeting on Thursday, September 19, 2019, from 10 a.m. to 12 p.m. at the Hampton Inn Leighton—Jim Thorpe, 877 Interchange Road, Leighton, PA. For more information, contact the Commission, (717) 787-2913, RA-PennDOTSTC@pa.gov.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 19-1334. Filed for public inspection August 30, 2019, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Meeting Scheduled

The Health Care Cost Containment Council (Council) has scheduled the following meeting by conference call: Thursday, September 5, 2019—Council meeting at 10 a.m.

The meeting by conference call will be held at 225 Market Street, Suite 400, Harrisburg, PA 17101. The public is invited to attend. Persons who need accommodation due to a disability and wish to attend should contact René Greenawalt at (717) 232-6787 at least 24 hours in advance so that arrangements can be made.

JOE MARTIN,
Executive Director

[Pa.B. Doc. No. 19-1335. Filed for public inspection August 30, 2019, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Action Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10 a.m., Thursday, August 15, 2019, and announced the following:

Actions Taken—Regulations Approved:

Bureau of Professional and Occupational Affairs # 16A-60: Expungement; Fees (amends 49 Pa. Code Chapter 43b)

Department of Human Services # 14-546: Intensive Behavioral Health Services (amends 55 Pa. Code Chapters 1155 and 5240)

Approval Order

Public Meeting Held
August 15, 2019

Commissioners Voting: George D. Bedwick, Chairperson; John F. Mizner, Esq., Vice Chairperson; W. Russell Faber; Murray Ufberg, Esq.; Dennis A. Watson, Esq.

*Bureau of Professional and Occupational Affairs
Expungement; Fees
Regulation No. 16A-60 (# 3220)*

On October 25, 2018, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Bureau of Professional and Occupational Affairs (BPOA). This rulemaking amends 49 Pa. Code Chapter 43b. The proposed regulation was published in the November 10, 2018 *Pennsylvania Bulletin* with a public comment period ending on December 10, 2018. The final-form regulation was submitted to the Commission on July 9, 2019.

This rulemaking requires the Commissioner of BPOA to expunge certain disciplinary records, upon application and payment of all costs associated with expungement by a licensee, provided various criteria are met.

We have determined this regulation is consistent with the statutory authority of BPOA (63 P.S. § 2205(a)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting Held
August 15, 2019

Commissioners Voting: George D. Bedwick, Chairperson; John F. Mizner, Esq., Vice Chairperson; W. Russell Faber; Murray Ufberg, Esq.; Dennis A. Watson, Esq.

*Department of Human Services
Intensive Behavioral Health Services
Regulation No. 14-546 (# 3209)*

On July 18, 2018, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Human Services (Department). This rulemaking amends 55 Pa. Code Chapters 1155 and 5240. The proposed regulation was published in the August 4, 2018 *Pennsylvania Bulletin* with a public comment period ending on September 4, 2018. The final-form regulation was submitted to the Commission on July 12, 2019.

This regulation adds Chapter 5240 to codify licensing standards and program requirements for participation in the Medical Assistance (MA) Program, and adds Chapter 1155 to codify MA payment conditions for agencies that deliver intensive behavioral health services to children, youth and young adults with mental, emotional and behavioral health needs.

We have determined this regulation is consistent with the statutory authority of the Department (62 P.S. §§ 201(2) and 1021 and 50 P.S. § 4201(2)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

GEORGE D. BEDWICK,
Chairperson

[Pa.B. Doc. No. 19-1336. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

Capital Advantage Assurance Company (CABC-132041593); Individual PPO—Transitional Filing

Capital Advantage Assurance Company submitted a rate filing to increase the premium rates for its Individual PPO Non-Grandfathered Plans. The filing proposes a rate increase of 14.5% and will affect approximately 3,112 members. The proposed rate increase will generate an annualized revenue of approximately \$1.5 million and will be effective January 1, 2020.

Unless formal administrative action is taken prior to November 14, 2019, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Rashmi Mathur, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, rmathur@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1337. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

Highmark Inc. (HGHM-132020129); Grandfathered Individual CompleteCare Program

Highmark Inc. submitted a rate filing to change the premium rates for its Grandfathered Individual CompleteCare Program. The filing proposes a rate in-

crease of 11.3% and will affect approximately 2,078 members. The proposed rate increase will generate an annualized revenue of approximately \$1.73 million and will be effective January 1, 2020.

Unless formal administrative action is taken prior to November 14, 2019, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov (click on the "Consumers" tab, then under "Resources," select "Product Notices").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, csandersjo@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1338. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

Pennsylvania Compensation Rating Bureau; Filing for Rate and Rule Manual Revisions

On August 2, 2019, the Insurance Department received from the Pennsylvania Compensation Rating Bureau (Bureau) a filing that proposes revisions to the Bureau's underwriting guide for classifications 676—Sheet Metal Installation and 454—Sheet Metal Products Fabrication, N.O.C. Shop Only.

Currently, assignment to Classification 676 applies to payroll for employers engaged in both the shop fabrication and installation of sheet metal products.

The filing is proposing to restructure Classification 676 to separate the payroll for shop manufacturing and installation of sheet metal products. The payroll for shop manufacturing will now be assigned to code 454 and the payroll for installation will continue to be assigned to 676. The payroll reassigned to Classification 454 represents a rating value decrease of 45.1% based on the currently approved Bureau loss costs. The currently approved loss cost for Classification 454 is \$1.90 and the currently approved loss cost for Classification 676 is \$3.46.

The filing is available for review on the Bureau's web site at www.pcrb.com in the "Filings" section. It is designated as Bureau Filing No. 300.

Interested parties are invited to submit written comments, suggestions or objections to Dennis Sloand, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, desloand@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1339. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

Pennsylvania Compensation Rating Bureau; Filing for Rate and Rule Manual Revisions

On August 2, 2019, the Insurance Department received from the Pennsylvania Compensation Rating Bureau (Bureau) a filing proposing revisions to the underwriting guide and classification section of the Bureau's rate and rule manual. The filing includes the following proposed changes:

- Bifurcate executive officers of unincorporated associations from other executive officers to clarify that executive officers of unincorporated associations cannot elect to be excluded from workers compensation benefits.
- Revisions to the descriptions of 14 different classifications for clarification purposes.
- Revisions to the underwriting guide to include eight new entries, changes to seven existing entries, and the elimination of four entries.
- The addition of classification codes 970 (Athletic Team—Contact Sports—Professional or Semiprofessional) and 991 (Athletic Team—Noncontact Sports—Professional or Semiprofessional) to the Employment Contractor—Temporary Staffing cross reference chart.
- Revisions to the exceptions listed after the Employment Contractor—Temporary Staffing cross reference chart for clarification purposes.

The filing is available for review on the Bureau's web site at www.pcrb.com in the "Filings" section. It is designated as Bureau Filing No. 301.

Interested parties are invited to submit written comments, suggestions or objections to Dennis J. Sloand, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, desloand@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1340. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

Pennsylvania Compensation Rating Bureau; Filing for Rate and Rule Manual Revisions

On August 5, 2019, the Insurance Department received from the Pennsylvania Compensation Rating Bureau (Bureau) a filing that proposes revisions to designated auditable payrolls for certain employment classifications.

This filing proposes revisions to the following audited payrolls:

- Corporate officer minimum from \$1,025 to \$1,049 per week.
- Corporate officer maximum from \$2,550 to \$5,250 per week.
- Taxicab drivers from \$51,250 to \$52,450 per year.
- Auxiliary or special school police from \$5,150 to \$5,250 per year.

- Musicians or entertainers maximum from \$1,025 to \$1,049 per week.

- Professional and semiprofessional athletic teams maximum from \$210,000 to \$220,000 per year for each player, coach, manager and official.

The filing is available for review on the Bureau's web site at www.pcrb.com in the "Filings" section. It is designated as Bureau Filing No. 303.

Interested parties are invited to submit written comments, suggestions or objections to Dennis Sloand, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, desloand@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1341. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insured has requested a hearing as authorized by the act of June 17, 1998 (P.L. 464, No. 68) (Act 68) in connection with the termination of the insured's automobile insurance policy. The hearing will be held in accordance with the requirements of Act 68; 2 Pa.C.S. §§ 501—508, 561—588 and 701—704 (relating to Administrative Agency Law); 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). This administrative hearing will be held as follows. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearing will be held at Strawbridge & Clothier, Fairmount Hearing Room # 4129, 801 Market Street, Philadelphia, PA 19107.

Appeal of Sameerah Richards; Garrison Property and Casualty Insurance Company; File No. 19-115-234890; Doc. No. P19-04-025; October 17, 2019, 10 a.m.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Joseph Korman, (717) 787-4429, jkorman@pa.gov.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1342. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (act) (40 P.S. § 1171.8) in connection with the termination of the insureds' homeowners policy. The hearings will be held in accordance with the requirements of the act; 2 Pa.C.S. §§ 501—508, 561—588 and 701—704 (relating to Administrative Agency Law); 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). These administrative hearings will be held as follows. Failure by the appellants to appear at the scheduled hearings may result in dismissal with prejudice.

The hearings will be held at Strawbridge & Clothier, Fairmount Hearing Room # 4129, 801 Market Street, Philadelphia, PA 19107.

Appeal of Kevin and Theresa Wirtshafter; Philadelphia Contributionship Insurance Company; File No. 19-178-237201; Doc. No. P19-06-006; October 17, 2019, 11 a.m.

Appeal of Martin S. Pollock; Liberty Mutual Insurance Company; File No. 19-176-235283; Doc. No. P19-05-006; October 17, 2019, 1 p.m.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearings and require an auxiliary aid, service or other accommodation to participate in the hearings should contact Joseph Korman, (717) 787-4429, jkorman@pa.gov.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1343. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

UPMC Health Benefits Inc.; Rate Increase Filing for Individual Transitional Major Medical Policies (UPMC-132037709)

UPMC Health Benefits Inc. is requesting permission to increase the premium 1.86% on 450 of their individual transitional major medical contracts. The increase will become effective January 1, 2020.

Unless formal administrative action is taken prior to November 14, 2019, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov (hover the cursor over the "Consumers" tab, then select "Other Health Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1344. Filed for public inspection August 30, 2019, 9:00 a.m.]

INSURANCE DEPARTMENT

UPMC Health Benefits Inc.; Rate Increase Filing for Individual Transitional Major Medical Policies (UPMC-132054262)

UPMC Health Benefits Inc. is requesting permission to increase the premium 1.86% on 1,269 of their individual transitional major medical contracts. The increase will become effective January 1, 2020.

Unless formal administrative action is taken prior to November 14, 2019, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov (hover the cursor over the "Consumers" tab, then select "Other Health Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,
Insurance Commissioner

[Pa.B. Doc. No. 19-1345. Filed for public inspection August 30, 2019, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Cancellation of Certificates of Public Convenience for Telecommunication Public Utilities; Failure to Operate or File Annual Revenue Report

Public Meeting held
July 11, 2019

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; David W. Sweet, Vice Chairperson; Norman J. Kennard; Andrew G. Place; John F. Coleman, Jr.

Cancellation of Certificates of Public Convenience for Telecommunication Public Utilities; Failure to Operate or File Annual Revenue Report; M-2019-3011090

Tentative Order

By the Commission: The Public Utility Code requires that by March 31 of each year, every public utility must file a

report detailing its gross intrastate operating revenue for the preceding calendar year. 66 Pa.C.S. § 510(b). Gross intrastate operating revenue includes both retail and wholesale revenue derived from providing public utility service to the public for compensation in Pennsylvania. Under the assessment process and allocation formula established by the General Assembly, the public utility's annual revenue report is essential for the Commission to fund its operations and to properly allocate assessment costs among the regulated utility community. Id. Additionally, all public utilities, including telecommunications public utilities, are required to operate continuously and without unreasonable interruptions of service. 66 Pa.C.S. § 1501.

The Commission's Bureau of Administration has undertaken a review of its records to determine whether various utilities are in compliance with their operating and reporting requirements. That review has revealed that a significant number of telecommunications public utilities have repeatedly failed to file the required annual revenue report demonstrating service to the public in Pennsylvania in violation of Section 510(b). 66 Pa.C.S. § 510(b). Specifically, the telecommunications public utilities listed in the Appendix, attached hereto, have failed to file the annual revenue report required by Section 510(b) for each of the last three calendar years and have consequently failed to establish any public utility operations in Pennsylvania for that same period of time.

Each telecommunications public utility holding a Commission-issued Certificate of Public Convenience (CPC) is assessed based on its gross intrastate operating revenues and is obligated to pay for the reasonable costs attributable to the regulation of all telecommunications public utilities. 66 Pa.C.S. § 510(f). Under the Section 510 assessment process established by the General Assembly, gross intrastate operating revenues is a key metric by which the Commission's costs of operations are allocated among public utilities holding a Commission-issued CPC. 66 Pa.C.S. § 510(b). By repeatedly failing to file the required annual revenue report, the telecommunication public utilities listed in the Appendix have violated Section 510(b) of the Code and failed to establish that they are operating continuously in Pennsylvania. Moreover, a carrier that repeatedly fails to file an annual report to demonstrate its intrastate operating revenues indicates that it is either not providing or no longer providing jurisdictional public utility service in Pennsylvania and, therefore, a CPC for that entity is no longer "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103(a).

Under the circumstances, we tentatively conclude that the telecommunications public utilities listed in the Appendix are not in compliance with the reporting requirements of 66 Pa.C.S. § 510(b) nor are they in compliance with the operational requirements of 66 Pa.C.S. § 1501. As such, it is appropriate to initiate the process for cancelling the telecommunications public utilities' CPCs listed in the Appendix as being in the public interest; *Therefore,*

It Is Ordered:

1. That cancellation of the Certificates of Public Convenience of each telecommunications public utility listed in the Appendix for the provision of intrastate service in Pennsylvania is hereby tentatively approved as being in the public interest.

2. That cancellation of these Certificates of Public Convenience shall not affect whatever interstate operating authority, interconnection rights or other privileges or obligations these telecommunications public utilities may have under federal law, regulations, tariffs or orders.

3. That the Secretary serve a copy of this Tentative Order upon the Commission's Bureau of Investigation & Enforcement, the Bureau of Technical Utility Services, the Bureau of Administration, Department of Revenue—Bureau of Corporation Taxes, and all telecommunications public utilities listed in the Appendix. The Tentative Order shall be filed at each telecommunications public utility's application docket number.

4. That the Law Bureau shall publish a copy of this Tentative Order in the *Pennsylvania Bulletin*.

5. That telecommunications public utilities listed in the Appendix, to the extent they challenge cancellation of their Certificates of Public Convenience, must file comments within 20 days after publication of this Tentative Order in the *Pennsylvania Bulletin*. Comments shall be sent to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120.

6. Alternatively, the telecommunications public utilities listed in the Appendix may file Section 510(b) revenue

reports for calendar years 2016, 2017 and 2018, within 20 days after publication in the *Pennsylvania Bulletin*, to reflect gross intrastate operating revenues derived from Pennsylvania operations. The reports shall be sent to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120.

7. That absent the timely filing of comments challenging cancellation of a telecommunications public utility's Certificates of Public Convenience, or the timely filing of revised Section 510(b) revenue reports, the Law Bureau shall prepare a Final Order for entry by the Secretary cancelling the telecommunications public utility's Certificate of Public Convenience.

8. That upon entry of the Final Order described in Ordering Paragraph No. 7 above, the Certificate of Public Convenience of each non-compliant telecommunications public utility shall be cancelled, and each non-compliant telecommunications public utility listed in the Appendix will be stricken from all active utility lists maintained by the Commission's Bureau of Technical Utility Services and the Fiscal & Assessments Section of the Bureau of Administration.

ROSEMARY CHIAVETTA,
Secretary

Appendix

Carriers Not Reporting Revenue for 3 or More Years

<i>Utility Code</i>	<i>Company Name</i>	<i>Application Docket</i>
310121	Telecare, Inc.	A-310121
310527	Association Administrators, Inc.	A-310527
310543	Net one International, Inc.	A-310543
310715	Public Interest Network Svcs, Inc.	A-310715
310794	Airnex Communications, Inc.	A-310794
310856	Miracle Communications, Inc.	A-310856
310995	PulseNet, Inc.	A-310995
3110239	iNetworks Group, Inc.	A-2008-2049121, A-2009-2115228, A-2009-2115231
311087	PAClec Corporation	A-311087
311118	321 Communications, Inc.	A-2009-2109275
311161	Gold Line Telemanagement, Inc.	A-311161
311184	Telenational Communications, Inc.	A-311184
311209	NECC Telecom, Inc.	A-311209
311227	Teledias Communications, Inc.	A-311227
3112769	CCI Network Services, LLC	A-2010-2201625
311304	Independent Telecom Systems, Inc.	A-311304
311318	Advanced Tel, Inc.	A-311318
311323	Crowe Consulting, Inc.	A-311323
311373	Salsgiver Telecom, Inc.	A-311373, A-311373F0002
311418	Yestel USA, Inc.	A-311418
311440	Pulse Telecom, Inc.	A-311440
311448	Cheap2Dial Telephone	A-311448
3115665	Freedom Telecom Services, LLC	A-2013-2358095

<i>Utility Code</i>	<i>Company Name</i>	<i>Application Docket</i>
3117176	Vitcom, LLC	A-2014-2458175, A-2014-2458213, A-2014-2458214

[Pa.B. Doc. No. 19-1346. Filed for public inspection August 30, 2019, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Cancellation of Certificates of Public Convenience for Telecommunications Public Utilities; Report- ing Zero Intrastate Operating Revenue

Public Meeting held
July 11, 2019

Commissioners Present: Gladys Brown Dutrieuille, Chair-
person; David W. Sweet, Vice Chairperson; Norman J.
Kennard; Andrew G. Place; John F. Coleman, Jr.

*Cancellation of Certificates of Public Convenience for
Telecommunications Public Utilities; Reporting Zero
Intrastate Operating Revenue; M-2019-3010251*

Tentative Order

By the Commission:

The Public Utility Code (Code) requires that by March 31 of each year, every public utility must file a report detailing its gross intrastate operating revenue for the preceding calendar year. 66 Pa.C.S. § 510(b). Gross intrastate operating revenue includes both retail and wholesale revenue derived from providing public utility service to the public for compensation in Pennsylvania. Under the assessment process and allocation formula established by the General Assembly, the public utility's annual revenue report is essential for the Commission to fund its operations and to properly allocate assessment costs among the regulated utility community. *Id.* Additionally, all public utilities, including telecommunications public utilities, are required to operate continuously and without unreasonable interruptions of service. 66 Pa.C.S. § 1501.

The Commission's Bureau of Administration has undertaken a review of its records to determine whether various utilities are complying with their operating and reporting requirements. According to that review, a significant number of telecommunications public utilities have reported zero gross intrastate operating revenue on the annual revenue reports required by Section 510(b) of the Code. Specifically, the telecommunications public utilities listed in Appendix A have filed the annual revenue report required by Section 510(b) but have reported zero gross intrastate operating revenue for the last three calendar years. Also, as shown on the annual revenue reports attached as Appendix B, each of these zero gross intrastate revenue reports was filed under oath by a representative of the public utility, under which each utility authorized the release of its state tax records to the Commission in accordance with Sections 505 and 506 of the Code so that Commission can verify the accuracy of the financial information supplied.

Each telecommunications public utility holding a Commission-issued certificate of public convenience (CPC) is assessed based on its gross intrastate operating revenues and is obligated to pay for the reasonable costs attributable to the regulation of all telecommunications

public utilities. 66 Pa.C.S. § 510(f). Under the Section 510 assessment process, gross intrastate operating revenues is a key metric by which the Commission's costs of operations are allocated among public utilities holding a Commission-issued CPC. 66 Pa.C.S. § 510(b). By repeatedly reporting zero intrastate operating revenue, the telecommunications public utilities listed in Appendix A have failed to pay for the reasonable costs attributable to their regulation by the Commission and have failed to establish that they are operating continuously in Pennsylvania.

Section 1102 of the Code specifies that a CPC is required prior to beginning to "offer, render, furnish or supply" service "*within this Commonwealth.*" 66 Pa.C.S. § 1102(a)(1) (emphasis added). Moreover, to obtain a CPC as a public utility in Pennsylvania, an entity must offer its service to the public for compensation. 66 Pa.C.S. §§ 102(1)(i), (ii), (iv)—(vii). Thus, it follows that all certificated public utilities must have intrastate revenues, demonstrating intrastate service to the public for compensation in Pennsylvania, to qualify for public utility status in Pennsylvania.

Pursuant to Section 1103(a) of the Code, the Commission may grant a CPC to provide public utility status and service authority in Pennsylvania "*only if* the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103(a) (emphasis added). As such, if the Commission's records indicate that the entity holding a CPC has never or is no longer providing public utility service to the public for compensation in Pennsylvania, the CPC may be cancelled.

A public utility holding a CPC that has reported zero gross intrastate revenues for several years indicates that it is no longer providing jurisdictional public utility service in Pennsylvania for compensation. Therefore, a CPC for that entity is no longer necessary or proper for the service, accommodation, convenience, or safety of the public under Section 1103(a) of the Code.

Since 1996 with the implementation of the Telecommunications Act of 1996 (TA-96), this Commission has facilitated the entry of competitive carriers in Pennsylvania. However, having facilitated their entry does not mean that we have relinquished our regulatory authority and oversight where it remains necessary. In the intervening years, we have acted to ensure that those CPCs we issued remain used in the provision of jurisdictional public utility services. For example, we previously determined that telecommunications public utilities in Pennsylvania must begin providing service to customers within one year of receiving certification from the Commission.¹ This proceeding is a responsible continuation of our prior efforts to ensure the proper use of CPCs in Pennsylvania.

¹ Final Order Regarding the Commission's Plan to Implement a One-Year Timeframe for Inactive Telecommunication Carriers to Provide Service on an Annual Basis within the Commonwealth of Pennsylvania, Docket No. M-2011-2273119 (Order entered July 19, 2012).

Under these circumstances, we tentatively conclude that the telecommunications public utilities listed in Appendix A that have reported zero gross intrastate operating revenues for three or more years are deemed to be no longer providing public utility service for compensation in Pennsylvania and, consequently, are no longer entitled to hold a Commission-issued CPC. As such, it is appropriate to initiate the process via a tentative order for cancelling the relevant telecommunications public utilities' CPCs as being in the public interest.

The Commission previously issued a proposed policy statement at Docket No. M-2018-3004578 intended to provide guidance on intrastate revenue reporting to those telecommunications public utilities in Pennsylvania who provide services over facilities that carry both interstate and intrastate traffic and who report zero intrastate revenues. As part of the policy statement, the Commission proposed to address the ten percent contamination rule established by the Federal Communications Commission (FCC). This rule is an administrative rule for certain jurisdictional cost and revenue separations and allocations² that many of the zero reporters have referenced as their rationale and justification for reporting zero intrastate operating revenues to the Commission.³ In a nutshell, the rule specifies that if ten percent or more of the traffic on a mixed-use line is interstate, then all of the traffic for that line is considered interstate.

To the extent that any of the telecommunications public utilities listed in Appendix A are providing only interstate services under the ten percent contamination rule, we tentatively conclude that these carriers do not have a valid legal basis to retain their existing CPCs in Pennsylvania. Unless demonstrated otherwise, as providers of only interstate services, they fall under the exclusive jurisdiction of the FCC under Section 152(a) of the Communications Act, 47 U.S.C. § 152(a).

Interstate services also fall outside of the Commission's jurisdiction under Section 104 of the Code, 66 Pa.C.S. § 104, which precludes the Commission from regulating interstate services, absent congressional authorization to do so. Here, there is no such congressional authorization. Neither the Communications Act of 1934 (Act) nor TA-96 confers jurisdiction to the Commission to certificate carriers providing only interstate services. Rather, Section 152(a) of the Act expressly preserves the FCC's exclusive jurisdiction over interstate services. And, while TA-96 provides state utility commissions with parallel jurisdiction in certain areas, jurisdiction to certificate carriers providing only interstate services is not one of those areas.⁴ The Commission's certification powers are governed exclusively by the Code, and nothing under state or federal law specifically authorizes the Commission to

² The ten percent contamination allocates the costs associated with a jurisdictional-mixed or mixed-use line between the interstate and intrastate jurisdictions in order to calculate the assessment of various federal fees for the federal universal service fund, interstate telecommunications relay services, the administration of the North American Numbering Plan, and the shared costs of local number portability administration. Under the rule, the cost of a mixed-use line is directly assigned to the interstate jurisdiction only if the line carries interstate traffic in a proportion greater than ten percent. See In the Matter of MTS and WATS Mkt. Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Bd., 4 FCC Rcd 5660, ¶¶ 2, 6-7 (1989); see also 47 CFR § 36.154(a)-(b).

³ The Commission's Fiscal Office, the Bureaus of Technical Utility Services, Investigation & Enforcement, and Audits, and the Law Bureau (Staff) identified some telecommunications carriers certificated as Competitive Access Providers in Pennsylvania who reported revenues inconsistently or repeatedly reported zero intrastate revenues. Accordingly, the Commission requested Staff to undertake an inquiry to examine the carriers' claims of zero intrastate revenues. As part of this inquiry, on September 7, 2018, Staff issued to all carriers who reported zero intrastate revenues a Secretarial Letter setting forth a comprehensive set of inquiries examining the basis for some carriers' claims of zero intrastate revenues.

⁴ Two examples of parallel jurisdiction under TA-96 include jurisdiction over interconnection agreements under Sections 251 and 252, 47 U.S.C. §§ 251 and 252, and jurisdiction over Eligible Telecommunications Carrier designations under Section 214, 47 U.S.C. § 214.

issue a CPC to a telecommunications carrier that fails to prove, after notice and opportunity to be heard, that it does provide intrastate service.

Also, we tentatively conclude that failing to certificate a provider of only interstate services is not a competitive barrier to entry in violation of federal law. Under Section 253 of TA-96, "[n]o State or local statute or regulation... may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). We do not believe that failing to certificate a provider of only interstate services is a competitive barrier to entry. Such an outcome would not prohibit or have the effect of prohibiting providers from operating in Pennsylvania. Rather, these providers would be able to operate free from Commission oversight and regulation.

Moreover, Section 253(b) of TA-96 explicitly preserves state authority to impose competitively neutral requirements that are necessary, inter alia, to "safeguard the rights of consumers" and to "protect the public safety and welfare." We note that the Commission in its order on market entry procedures implementing TA-96 specifically rejected the argument that Section 253(a) preempted our certification requirements. Rather, the Commission viewed the certification requirements, which would include the requirement that a CPC holder provide an intrastate service to the public for compensation in Pennsylvania, as necessary to safeguard consumers from potentially irresponsible carriers. We further note that our uniform methodology to develop the annual fiscal assessment process is essential to properly allocating assessment costs among the regulated utility community and to funding the Commission's operations and thus, is entirely consistent with the preservation of state authority to protect the public safety and welfare.

It is appropriate to initiate the process via a tentative order to cancel the CPCs of the telecommunications public utilities listed in Appendix A who have reported zero gross intrastate operating revenue for the last three calendar years. To the extent that a telecommunications public utility on the list challenges the cancellation of its CPC, the public utility must file comments within 20 days after publication of a Tentative Order in the *Pennsylvania Bulletin*. In accordance with due process, any such challenges may be referred to the Commission's Bureau of Investigation and Enforcement for investigation and for whatever further action may be warranted.

Alternatively, the telecommunications public utilities listed in Appendix A may file revised Section 510(b) revenue reports for calendar years 2016, 2017 and 2018, within 20 days after publication in the *Pennsylvania Bulletin*, to reflect their gross intrastate operating revenues derived from Pennsylvania operations. Carriers should include all supporting information (such as traffic studies, tax returns, jurisdictional allocation formulas and factors, books of account, reports, etc.) on which the carriers base their revenue determinations.

Absent the timely filing of comments challenging cancellation of a telecommunications public utility's CPC or the timely filing of revised Section 510(b) revenue reports, the Law Bureau shall prepare a Final Order for entry by the Secretary cancelling the relevant telecommunications public utility's CPC. However, the cancellation of any of these CPCs shall not affect whatever interstate operating authority, interconnection rights or other privileges or obligations these telecommunications public utilities may have under federal law, regulations, tariffs or orders; *Therefore,*

It Is Ordered That:

1. The telecommunications public utilities listed in Appendix A that have reported zero gross intrastate operating revenues for three or more years are tentatively deemed to be no longer providing public utility service for compensation in Pennsylvania and, consequently, are no longer entitled to hold a Commission-issued Certificate of Public Convenience. As such, it is appropriate to tentatively cancel the Certificates of Public Convenience of the relevant telecommunications public utilities as being in the public interest.

2. The Secretary serve a copy of the Tentative Order upon the Commission's Bureau of Investigation & Enforcement, the Bureau of Technical Utility Services, the Bureau of Administration, Department of Revenue—Bureau of Corporation Taxes, and all telecommunications public utilities listed in Appendix A. The Tentative Order shall be filed at each telecommunications public utility's application docket number.

3. The Law Bureau shall publish a copy of the Tentative Order in the *Pennsylvania Bulletin*.

4. The telecommunications public utilities listed in Appendix A, to the extent they challenge cancellation of their Certificates of Public Convenience, must file comments within 20 days after publication of this Tentative Order in the *Pennsylvania Bulletin*. Comments shall be sent to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120. In accordance with due process, any such chal-

lenges may be referred to the Commission's Bureau of Investigation and Enforcement for investigation and for whatever further action may be warranted.

5. Alternatively, the telecommunications public utilities listed in Appendix A may file revised Section 510(b) revenue reports for calendar years 2016, 2017 and 2018, within 20 days after publication in the *Pennsylvania Bulletin*, to reflect gross intrastate operating revenues derived from Pennsylvania operations. The revised reports shall be sent to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120.

6. Absent the timely filing of comments challenging cancellation of a telecommunications public utility's Certificates of Public Convenience or the timely filing of a revised Section 510(b) revenue report, the Law Bureau shall prepare a Final Order for entry by the Secretary cancelling the telecommunications public utility's Certificate of Public Convenience.

7. Upon entry of the Final Order described in Ordering Paragraph No. 6 above, the Certificate of Public Convenience of the relevant telecommunications public utility shall be cancelled, and the telecommunications public utility will be stricken from all active utility lists maintained by the Commission's Bureau of Technical Utility Services and the Fiscal & Assessments Section of the Bureau of Administration.

ROSEMARY CHIAVETTA,
Secretary

Appendix A**Carriers Reporting Zero Revenue for 3 or More Years**

<i>Utility Code</i>	<i>Company Name</i>	<i>Application Docket</i>
310303	SNET America, Inc.	A-310303
311022	TelMex USA, LLC	A-311022
311028	Encompass Communications, LLC	A-311028
311192	WDT World Discount Telecomm	A-311192
311332	ABS-CBN Telecom N America, Inc.	A-311332
311397	Blue Ridge Digital Phone Co.	A-311397
311413	Windstream KDL, Inc.	A-311413
311428	Norstar Telecommunications, LLC	A-311428
3110327	Business Automation Technologies	A-2008-2054592
3110580	ATC Outdoor DAS, LLC	A-2008-2072972
3110581	One Source Networks CLEC, LLC	A-2008-2073167
3110677	Dollar Phone Enterprise, Inc.	A-2008-2080477
3111184	NexGen Networks Corp.	A-2009-2112793
3113014	Mobilitie, LLC	A-2010-2216831
3113844	Fairpoint Business Services, LLC	A-2011-2259342
3113846	Voda Networks, Inc.	A-2011-2259803
3114607	PEG Bandwidth PA, LLC	A-2012-2301870
3115379	United Federal Data of PA, LLC	A-2012-2340487
3115456	Certain Communications Corp.	A-2013-2346419
3115703	365 Wireless, LLC	A-2013-2403433, A-2013-2402435
3116309	RCLEC, Inc.	A-2014-2403433, A-2014-2403435

<i>Utility Code</i>	<i>Company Name</i>	<i>Application Docket</i>
3116349	Constructure Technologies, LLC	A-2014-2406886, A-2014-2406887
3116719	Charter Fiberlink Pennsylvania, LLC	A-2014-2433541, A-2014-2433545, A-2014-2433546, A-2014-2433547
3118045	American Cell, LLC	A-2015-2502822
3118329	Cross River Fiber, LLC	A-2015-2517360
3118661	Vesta Solutions, Inc.	A-2016-2537383
3118721	Mobilitie Management, LLC	A-2016-2569449
3118756	eNetworks, LLC	A-2016-2543402
3119096	Tenny Journal Communications, Inc.	A-2016-2562453
3119203	Synergem Technologies, Inc.	A-2016-2567694

Appendix B

Please refer to the address below to view the reports contained in Appendix B.

http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=M-2019-3010251

[Pa.B. Doc. No. 19-1347. Filed for public inspection August 30, 2019, 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 (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. Protests may only be filed if there is evidence that the applicant lacks fitness. Protests based on endangering or impairing operations of an existing carrier will not be honored. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120, with a copy served on the applicant by September 16, 2019. 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-2019-3010535. Top Hat Luxury Service, LLC (810 Richmond Street, Scranton, Lackawanna County, PA 18509) persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in Lackawanna and Luzerne Counties, to points in Pennsylvania and return. *Attorneys:* Judith D. Cassel/Bryce R. Beard, 100 North 10th Street, Harrisburg, PA 17101.

A-2019-3011831. Java Transportation, LLC (223 Coal Hill Road, Greenville, Mercer County, PA 16125) persons, in paratransit service, from points in Mercer County, to points in Pennsylvania, and return.

A-2019-3011898. Wilfred H. Muskens, t/a Coventry England Classic Transportation Co. (3502 Gloucester Street, Lancaster, Lancaster County, PA 17601) persons, in limousine service, from points in the Counties of Berks, Chester, Dauphin, Delaware, Lancaster, Lebanon, Montgomery and York, to points in Pennsylvania, and return; excluding areas under the jurisdiction of the Philadelphia Parking Authority.

A-2019-3011957. Queen Transportation & Consulting, LLC (1020 West Allen Street, Allentown, Lehigh County, PA 18102) for the right to begin to transport, as a common carrier, by motor vehicles, persons in paratransit service, between points in Lancaster County.

A-2019-3012019. Bethlehem Star Transportation, LLC (1020 West Allen Street, Allentown, Lehigh County, PA 18102) for the right to begin to transport, as a common carrier, by motor vehicles, persons in paratransit service, between points in Lehigh County and Northampton County.

Application of the following for approval to *begin operating as a broker for transportation of persons as described under the application.*

A-2019-3011581. Michele Taylor, t/a Taylor-Made Tours (P.O. Box 570, Sewickley, Allegheny County, PA 15143) for a brokerage license evidencing the Commission's approval of the right and privilege to operate as a broker, to arrange for the transportation of persons between points in Pennsylvania.

Application of the following for approval to *begin operating as a broker for transportation of household goods in use as described under the application.*

A-2019-3012191. Stephan's Moving, LLC (429 Park Street, Apartment 2, York, York County, PA 17401) for the right to begin to arrange the transportation of household goods in use, between points in Pennsylvania.

Application of the following for the approval of the right and privilege to *discontinue/abandon* operating as *common carriers* by motor vehicle and for cancellation of the certificate of public convenience as described under the application.

A-2019-3012048. Erie Transportation Services, Inc., t/a Erie Yellow Cab (2501 West 12th Street, # 369, Erie, Erie County, PA 16505) discontinuance of service and cancellation of its certificate, to transport, as a common carrier, by motor vehicle, persons upon call or demand in the County of Erie. *Attorney:* Karen O. Moury, Esquire, 213 Market Street, 8th Floor, Harrisburg, PA 17101.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 19-1348. Filed for public inspection August 30, 2019, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Service of Notice of Motor Carrier Formal Complaints

Formal complaints have been issued by the Pennsylvania Public Utility Commission. Answers must be filed in accordance with 52 Pa. Code (relating to public utilities). Answers are due September 16, 2019, and must be made with the Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120, with a copy to the First Deputy Chief Prosecutor, Pennsylvania Public Utility Commission.

Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. Secrets Limousine Service, LLC; Docket No. C-2019-3011261

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That all authority issued to Secrets Limousine Service, LLC, (respondent) is under suspension effective June 20, 2019 for failure to maintain evidence of insurance on file with this Commission.
2. That respondent maintains a principal place of business at 902 Skippack Pike, Blue Bell, PA 19422.
3. That respondent was issued a Certificate of Public Convenience by this Commission on September 05, 2007, at A-00122969.
4. That respondent has failed to maintain evidence of Liability insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$500.00 and cancellation of the Certificate of Public Convenience.
5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66

Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of \$500.00 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at A-00122969 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars (\$500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 7/2/2019

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility
Services
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of the evidence of insurance from your insurer, and upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

**Pennsylvania Public Utility Commission; Bureau of
Investigation and Enforcement v. JDK Logistics,
LLC; Docket No. C-2019-3011376**

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That all authority issued to JDK Logistics, LLC, (respondent) is under suspension effective June 25, 2019 for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at 125 Arbor Trail Drive, McKees Rocks, PA 15136.

3. That respondent was issued a Certificate of Public Convenience by this Commission on January 09, 2019, at A-8921520.

4. That respondent has failed to maintain evidence of Liability and Cargo insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$500.00 and cancellation of the Certificate of Public Convenience.

5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of \$500.00 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at A-8921520 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars (\$500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 7/9/2019

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and En-
forcement

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise

all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility Commission
 400 North Street
 Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
 Pennsylvania Public Utility Commission
 Bureau of Investigation and Enforcement
 400 North Street
 Harrisburg, PA 17120

Or, emailed to Mr. Swindler at: RA-PCCmpltResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility
 Services
 Pennsylvania Public Utility Commission
 400 North Street
 Harrisburg, PA 17120

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility Commission
 400 North Street
 Harrisburg, PA 17120

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of the evidence of insurance from your insurer, and upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. Spaulding Sole Savers, LLC; Docket No. C-2019-3011897

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That all authority issued to Spaulding Sole Savers, LLC, (respondent) is under suspension effective July 22, 2019 for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at 231 Gary Avenue, Lebanon, PA 17046.

3. That respondent was issued a Certificate of Public Convenience by this Commission on April 09, 2019, at A-6421676.

4. That respondent has failed to maintain evidence of Liability insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$500.00 and cancellation of the Certificate of Public Convenience.

5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of \$500.00 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at A-6421676 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars (\$500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
 David W. Loucks, Chief
 Motor Carrier Enforcement
 Bureau of Investigation and Enforcement
 400 North Street
 Harrisburg, PA 17120

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement, hereby state

that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 8/1/2019

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of the evidence of insurance from your insurer, and upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. First Class Coach, Inc.; Docket No. C-2019-3011964

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That all authority issued to First Class Coach, Inc., (respondent) is under suspension effective July 25, 2019 for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at 301 Heights Lane # 42C, Feasterville, PA 19053.

3. That respondent was issued a Certificate of Public Convenience by this Commission on August 02, 2012, at A-6414286.

4. That respondent has failed to maintain evidence of Bond insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$500.00 and cancellation of the Certificate of Public Convenience.

5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of \$500.00 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the

Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at A-6414286 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars (\$500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 8/6/2019

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regula-

tions and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility
Services
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of the evidence of insurance from your insurer, and upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. R & S Travel and Tours, Inc.; Docket No. C-2019-3012099

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That all authority issued to R & S Travel and Tours, Inc., (respondent) is under suspension effective July 30, 2019 for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at 6356 Algard Street, Philadelphia, PA 19135.

3. That respondent was issued a Certificate of Public Convenience by this Commission on November 09, 2018, at A-6421541.

4. That respondent has failed to maintain evidence of Liability insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$500.00 and cancellation of the Certificate of Public Convenience.

5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of \$500.00 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at A-6421541 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars (\$500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 8/9/2019

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If

your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of the evidence of insurance from your insurer, and upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 19-1349. Filed for public inspection August 30, 2019, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Transfer by Sale of Stock

A-2019-3012241. Veolia Energy Philadelphia, Inc., Thermal North America, Inc., Veolia Energy North America Holdings, Inc. and AIP Project Franklin Bidco, Inc. Joint application of Veolia Energy Philadelphia, Inc., Thermal North America, Inc., Veolia Energy North America Holdings, Inc. and AIP Project Franklin Bidco, Inc. for approval to transfer controlling interest in Veolia Energy Philadelphia, Inc. by the sale of all of the stock of Thermal North America, Inc. to AIP Project Franklin Bidco, Inc.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before September 16, 2019. Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.pa.gov and at the applicant's business address.

Applicants: Veolia Energy Philadelphia, Inc.; Thermal North America, Inc.; Veolia Energy North America Holdings, Inc.; AIP Project Franklin Bidco, Inc.

Through and By Counsel: Barnett Satinsky, Esquire, Beth L. Weisser, Esquire, Maura L. Burke, Esquire, Fox Rothschild LLP, 2000 Market Street, 20th Floor, Philadelphia, PA 19103-3222; David B. MacGregor, Esquire, Post & Schell, PC, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, PA 19103-2808; Garrett P. Lent, Esquire, Post & Schell, PC, 17 North Second Street, 12th Floor, Harrisburg, PA 17101-1601

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 19-1350. Filed for public inspection August 30, 2019, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

Bureau of Professional and Occupational Affairs v. Marvin J. Little; Case No. 18-60-02608

On March 29, 2018, Marvin J. Little, license No. MV149067L, last known of Pottstown, Montgomery County, was suspended under the Order of the Court of Common Pleas of Montgomery County dated March 12, 2018, which the court issued under 23 Pa.C.S. § 4355 (relating to denial or suspension of licenses). The suspension is effective immediately.

Individuals may obtain a copy of the order by writing to Cynthia K. Montgomery, Deputy Chief Counsel, State Board of Vehicle Manufacturers, Dealers and Salespersons, P.O. Box 69523, Harrisburg, PA 17106-9523.

DAN G. MURPHY, III,
Chairperson

[Pa.B. Doc. No. 19-1351. Filed for public inspection August 30, 2019, 9:00 a.m.]

STATE ETHICS COMMISSION

Public Meeting

Under 65 Pa.C.S. §§ 1101—1113 (relating to Public Official and Employee Ethics Act) (act) the State Ethics Commission (Commission) is required to hold at least two public hearings each year to seek input from persons and organizations who represent any individual subject to the provisions of the act and from other interested parties.

The Commission will conduct a public meeting in the Dietro Room at The Inn at Leola Village, 38 Deborah Drive, Leola, PA 17540, on September 26, 2019, beginning at 9 a.m. for purposes of receiving input and for the conduct of other Commission business. Public officials, public employees, organizations and members of the general public may attend.

Persons seeking to testify or present any statement, information or other comments in relation to the act, the regulations of the Commission or agency operations should contact Heather Mulhollan at (717) 783-1610 or (800) 932-0936. Written copies of any statement should be provided at the time of the meeting.

ROBERT P. CARUSO,
Executive Director

[Pa.B. Doc. No. 19-1352. Filed for public inspection August 30, 2019, 9:00 a.m.]

THADDEUS STEVENS COLLEGE OF TECHNOLOGY

Request for Bids

Thaddeus Stevens College of Technology is soliciting bids for water penetration of windows—install ground protection, roof and mechanical equipment protection, and install window protection. Bid documents can be obtained from Carrie Harmon, Thaddeus Stevens College, 750 East King Street, Lancaster, PA 17602, (717) 299-7787, harmon@stevenscollege.edu.

DR. WILLIAM E. GRISCOM,
President

[Pa.B. Doc. No. 19-1353. Filed for public inspection August 30, 2019, 9:00 a.m.]

