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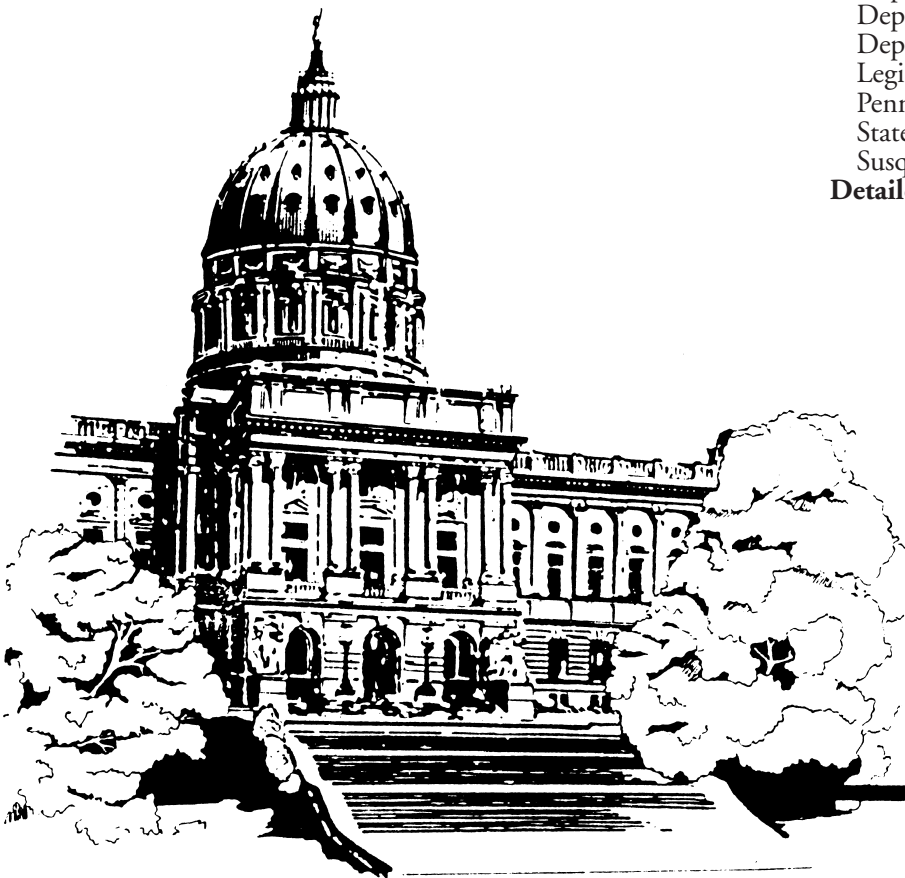
See Part II page 6221
for the State Horse Racing
Commission's Temporary
Regulations Rulemaking

Part I

Agencies in this issue

The Courts
Department of Agriculture
Department of Banking and Securities
Department of Environmental Protection
Department of Human Services
Department of Labor and Industry
Department of Revenue
Department of Transportation
Legislative Reference Bureau
Pennsylvania Public Utility Commission
State Horse Racing Commission
Susquehanna River Basin Commission

Detailed list of contents appears inside.



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

No. 539, October 2019

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CONTENTS

THE COURTS

JUDICIAL SYSTEM GENERAL PROVISIONS

Amendment of Rules 102, 201, 217 and 219 of the Rules of Disciplinary Enforcement; No. 185 disciplinary rules doc.	6063
Promulgation of Consumer Price Index pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4); No. 519 judicial administration doc.	6061
Promulgation of financial regulations pursuant to 42 Pa.C.S. § 3502(a); No. 518 judicial administration doc.	6061

JUVENILE RULES

Order amending Rule 191 of the Pennsylvania Rules of Juvenile Court Procedure; No. 804 Supreme Court rules doc.	6066
--	------

LOCAL COURT RULES

Montgomery County

Adoption of local rule of civil procedure: 1915.11-1* parenting coordination; No. 2019-00001	6085
Adoption of local rule of criminal procedure 520(b)* bail before verdict; No. AD381-19	6086
Amendment of local rule of criminal procedure 117*: coverage: issuing warrants; preliminary arraignment and summary trials; and setting and accepting bail; No. AD382-19	6086

Westmoreland County

Offender supervision fees; No. 3 of 2019.	6087
--	------

PHILADELPHIA RULES

Rescission, amendment and adoption of Philadelphia Court of Common Pleas criminal rules; president judge general court regulation No. 14 of 2019.	6068
--	------

RULES OF CRIMINAL PROCEDURE

Order revising the comments of Rules 900 and 901; No. 514 criminal procedural rules doc.	6064
---	------

RULES OF JUDICIAL ADMINISTRATION

Order adopting Rule 1908 of the Rules of Judicial Administration; No. 520 judicial administration doc.	6061
---	------

EXECUTIVE AND INDEPENDENT AGENCIES

DEPARTMENT OF AGRICULTURE

Notices

Commonwealth Specialty Crop Block Grant Program; 2019-2020 program guidelines	6144
--	------

DEPARTMENT OF BANKING AND SECURITIES

Notices

Actions on applications.	6146
-------------------------------	------

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices

Aggregate Advisory Board; Regulatory, Legislative and Technical Committee meeting	6197
Applications, actions and special notices.	6147
Availability of technical guidance	6197
Oil and Gas Technical Advisory Board meeting rescheduled	6197
Proposed State Implementation Plan revision; second maintenance plan for the Clearfield/Indiana 1997 8-hour ozone nonattainment area; public hearing	6198

DEPARTMENT OF HUMAN SERVICES

Rules and Regulations

Intensive behavioral health services.	6088
--	------

Notices

Inpatient hospitals qualifying for Medical Assistance disproportionate share payments.	6198
Managed Care Assessment Program	6203

DEPARTMENT OF LABOR AND INDUSTRY

Notices

Public comment on the proposed vocational rehabilitation services portion of the Commonwealth's Workforce Innovation and Opportunity Act Combined State Plan for 2020—2024.	6203
--	------

DEPARTMENT OF REVENUE

Notices

Pennsylvania Ghostly Green fast play lottery game 5069; change to game rules; amended notice.	6206
Pennsylvania Pumpkin Patch Payout fast play lottery game 5068; change to game rules; amended notice	6207

DEPARTMENT OF TRANSPORTATION

Notices

Contemplated sale of land no longer needed for transportation purposes	6209
Green Light—Go: Pennsylvania's Municipal Signal Partnership Program; invitation to submit applications.	6209

LEGISLATIVE REFERENCE BUREAU

Notices

Documents filed but not published.	6210
---	------

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Notices

Natural gas service	6210
Service of notice of motor carrier applications.	6211
Service of notice of motor carrier formal complaints.	6211
Universal service and energy conservation plan (USECP) filing schedule and independent evaluation filing schedule.	6213

STATE HORSE RACING COMMISSION

Rules and Regulations

State Horse Racing Commission; temporary regulations (Part II)	6221
---	------

SUSQUEHANNA RIVER BASIN COMMISSION

Notices

Actions taken at September meeting.	6217
--	------

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READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND THE PENNSYLVANIA CODE

Pennsylvania Bulletin

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published weekly. A cumulative subject matter index is published quarterly.

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

The following documents are published in the *Pennsylvania Bulletin*: Governor's Executive Orders; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Pennsylvania Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

Adoption, Amendment or Repeal of Regulations

Generally an agency wishing to adopt, amend or rescind regulations must first publish in the *Pennsylvania Bulletin* a Proposed Rulemaking. There are limited instances when the agency may omit the proposal step; it still must publish the adopted version.

The Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. A Final Rulemaking must be published in the *Pennsylvania Bulletin* before the changes can take effect. If the agency wishes to adopt changes to the Proposed Rulemaking to enlarge the scope, it must repropose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number, a page number and date. Example: Volume 1, *Pennsylvania Bulletin*, page 801, January 9, 1971 (short form: 1 Pa.B. 801 (January 9, 1971)).

Pennsylvania Code

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies, Statewide court rules and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes when they are adopted. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code* § 1.1 (short form: 10 Pa. Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government.

How to Find Rules and Regulations

Search for your area of interest in the *Pennsylvania Code*. The *Pennsylvania Code* is available at www.pacode.com.

Source Notes give the history of regulations. To see if there have been recent changes not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

A chronological table of the history of *Pennsylvania Code* sections may be found at www.legis.state.pa.us/cfdocs/legis/CH/Public/pcde_index.cfm.

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

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Printing Format

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

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

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

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

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

Court Rules in Titles 201—246 of the Pennsylvania Code

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

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

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

Fiscal Notes

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

A fiscal note provides the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the 5 succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the 5 succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; and (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years. In item (8) the recommendation, if any, made by the Secretary of the Budget is published with the fiscal note. "No fiscal impact" means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended. See 4 Pa. Code Chapter 7, Subchapter R (relating to fiscal notes).

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List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2019.

4 Pa. Code (Administration)

Adopted Rules

1	438
5	438, 5102
6	593, 3467, 4933, 5105
7a	1993, 4937
601	1297
602	1297
603	1297
604	1297
605	1297
606	1297
607	1297

Statements of Policy

1	3749
9	381, 844, 927, 2349, 2719, 3900, 5705
58	1792

7 Pa. Code (Agriculture)

Adopted Rules

59a	3897
171	6221
173	6221
175	6221
177	6221
179	6221
181	6221
183	6221
185	6221
187	6221
189	6221
191	6221
193	6221
195	6221
197	6221
199	6221
201	6221
203	6221
205	6221
301	6221
303	6221
305	6221
307	6221
401	6221
403	6221
405	6221
407	6221

Proposed Rules

143	3606, 5455
150	4991

22 Pa. Code (Education)

Proposed Rules

235	1905
711	4817

25 Pa. Code (Environmental Protection)

Adopted Rules

77	2491
----	------

Proposed Rules

91	1518, 1665
92a	1518, 1665
93	1367
121	1146, 1777
123	3482
127	1146, 1777
806	5456

28 Pa. Code (Health and Safety)

Proposed Rules

27	2605
----	------

31 Pa. Code (Insurance)

Adopted Rules

146a	4109
------	------

34 Pa. Code (Labor and Industry)

Adopted Rules

401	3077, 3732
403	3077
405	3077

Proposed Rules

91	1657, 1791
93	1657, 1791
95	1657, 1791
111	1661

37 Pa. Code (Law)

Proposed Rules

311	4993
-----	------

40 Pa. Code (Liquor)

Proposed Rules

5	1029, 3733
---	------------

49 Pa. Code (Professional and Vocational Standards)

Adopted Rules

21	3891
27	3210
43b	5572

Proposed Rules

21	458
23	922
33	1396

52 Pa. Code (Public Utilities)

Adopted Rules

29	455
56	2815

Proposed Rules

73	5702
----	------

Statements of Policy

69	466, 929, 3083, 4819, 5003
----	----------------------------

55 Pa. Code (Human Services)

Adopted Rules

51 5777
 1153 5943
 1155 6088
 2380 5777
 2390 5777
 5200 5943
 5240 6088
 6100 5777
 6200 5777
 6400 5777
 6500 5777

58 Pa. Code (Recreation)

Adopted Rules

65 3215
 75 1323, 5450
 79 5450
 111 4950
 133 1362
 135 1363
 139 2500
 141 2506, 2507, 4950, 4951, 4953
 147 1364, 4955
 617a 4956
 625a 4956
 637a 4956
 639a 4956
 641a 4956
 643a 4956
 647a 4956
 653a 4956
 655a 4956
 657a 4956
 677a 4956
 679a 4956
 682a 2227
 683a 2227
 684a 4956
 830 1024

Proposed Rules

65 5213, 5214
 111 1152
 119 5215
 139 1390
 141 1386, 1388, 2611, 2612, 2614
 147 2616
 686a 3609
 687a 3609
 688a 3609

61 Pa. Code (Revenue)

Proposed Rules

876 2242

67 Pa. Code (Transportation)

Adopted Rules

171a 2001

70 Pa. Code (Weights, Measures and Standards)

Proposed Rules

110 3313

101 Pa. Code (General Assembly)

Statements of Policy

701 1154

201 Pa. Code (Rules of Judicial Administration)

Adopted Rules

7 2911, 3469
 19 6061

Proposed Rules

1 4809
 40 4002
 51 1645

204 Pa. Code (Judicial System General Provisions)

Adopted Rules

29 1997, 3469, 6061
 71 705, 824
 81 824, 2209, 4940
 83 824, 915, 1020, 1772, 2209, 6063
 85 5552
 87 5552
 89 443, 2217, 5552
 91 5552
 93 443, 2215, 2216, 5552
 95 5552
 213 4544, 5422
 303 5110
 305 5410
 307 5206

Proposed Rules

71 5700
 81 4941
 83 4542
 213 3298
 303 2103
 305 3718
 307 2103

210 Pa. Code (Appellate Procedure)

Adopted Rules

1 1335
 5 1510
 9 3597, 3867
 17 832
 19 3597, 3867
 65 2218

Proposed Rules

1 825
 3 10
 9 2712
 19 825
 21 825
 35 602

225 Pa. Code (Rules of Evidence)

Proposed Rules

Article I 3873
 Article IV 2218
 Article IX 165, 1336, 3876

231 Pa. Code (Rules of Civil Procedure)

Adopted Rules

200 169
 1000 608, 3305
 1900 1342
 1910 170
 1915 3058
 1920 3059
 2000 608
 2250 608

6060

Proposed Rules

5 444
100 4809
200 274, 3885
1915 2714, 3469, 3880
1930 2714
I 4809

234 Pa. Code (Rules of Criminal Procedure)

Adopted Rules

4 190, 1118
9 6064

Proposed Rules

1 3306
2 1357, 1510
4 833, 1122, 3306
5 197, 833, 1357
10 197

237 Pa. Code (Juvenile Rules)

Adopted Rules

1 208, 610, 1142, 1512, 6066
3 916
5 208, 610, 916
11 208, 610

Proposed Rules

1 1897
2 1898

5 2474
6 2474
13 3887

246 Pa. Code (Minor Court Civil Rules)

Adopted Rules

400 4003

Proposed Rules

200 1900, 4809
300 1900
400 1900
500 1900
1200 1772

249 Pa. Code (Philadelphia Rules)

Unclassified 1514, 1648, 1998, 2477, 6068

252 Pa. Code (Allegheny County Rules)

Unclassified 2220, 2221, 4548

255 Pa. Code (Local Court Rules)

Unclassified 12, 13, 14, 214, 215, 216, 274, 380, 445, 446,
453, 616, 619, 706, 707, 838, 917, 918, 919, 920, 1020,
1021, 1022, 1360, 1515, 1517, 1653, 1774, 2221, 2226,
2342, 2346, 2347, 2348, 2488, 2489, 2603, 2604, 2716,
2717, 2718, 2912, 3311, 3475, 3476, 3480, 3603, 3729,
3730, 4006, 4105, 4107, 4943, 4948, 5210, 5211, 5276,
5444, 5448, 6085, 6086, 6087

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 19]

Order Adopting Rule 1908 of the Rules of Judicial Administration; No. 520 Judicial Administration Doc.

Order

Per Curiam

And Now, this 3rd day of October, 2019, it is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1908 of the Pennsylvania Rules of Judicial Administration is adopted in the form as follows.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the rule herein is required in the interest of justice and efficient administration.

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

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 19. MISCELLANEOUS ADMINISTRATIVE PROVISIONS

FILLING OF VACANCIES

Rule 1908. Filling of vacancies.

When a court of common pleas is filling a vacancy to an elected office under a statutory duty, the following procedures shall apply:

(a) The Court shall receive applications from any interested candidates for the position pursuant to a deadline established by the court.

(b) The names of all candidates under consideration and any written application materials submitted by any candidate are public information and shall be made available to any member of the public upon request. The following items included in any written application materials shall not be publicly released: the candidate's Social Security number; the candidate's home address, personal telephone number, and personal email address; and information pertaining to the name, home address, or date of birth of children under 17 years of age.

(c) Selection shall be by a vote of the commissioned judges of the court, including the president judge. In the event of a tie vote, the president judge will cast the deciding vote.

[Pa.B. Doc. No. 19-1543. Filed for public inspection October 18, 2019, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

[204 PA. CODE CH. 29]

Promulgation of Consumer Price Index Pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4); No. 519 Judicial Administration Doc.

Order

Per Curiam

And Now, this 1st day of October, 2019, *It Is Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for calendar year 2018 as required by Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

§ 29.401a. Consumer Price Index—costs and fines.

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for calendar year 2018 as required by Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended). See, No. 519 Judicial Administration Docket.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U.S. City Average, for calendar year 2018 was 1.9% percent. (*See*, U.S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, March 4, 2019.)

[Pa.B. Doc. No. 19-1544. Filed for public inspection October 18, 2019, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

[204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 518 Judicial Administration Doc.

Order

Per Curiam And Now, this 1st day of October, 2019, *It Is Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the

Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the following Financial Regulations. The costs outlined in the Financial Regulations are effective as of January 1, 2020. To the extent that notice of proposed rule-making may be required by Pa.R.J.A. No. 103, the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration.

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

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

§ 29.401. Scope.

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized by Administrative Order, the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, and clerks of courts of all courts of common pleas, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including magisterial district judges, and judges and staff of all divisions of the Philadelphia Municipal Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under 42 Pa.C.S. § 3502(a) of the Judicial Code, the following regulations are adopted to implement Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

§ 29.402. 42 Pa.C.S. § 1725.1. Costs.

(a) *Civil cases.*—In calendar year 2020, the costs to be charged by magisterial district judges in every civil case, except as otherwise provided in this section, shall be as follows:

(1) Actions involving \$500 or less	\$55.00
(2) Actions involving more than \$500 but not more than \$2,000	\$73.00
(3) Actions involving more than \$2,000 but not more than \$4,000	\$91.50
(4) Actions involving between \$4,001 and \$12,000	\$137.00
(5) Landlord-tenant actions involving \$2,000 or less	\$82.00
(6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000	\$100.50
(7) Landlord-tenant actions involving more than \$4,000 but not more than \$12,000	\$137.00
(8) Order of execution	\$41.00
(9) Objection to levy	\$18.50
(10) Reinstatement of complaint	\$9.50
(11) Entering Transcript on Appeal or Certiorari	\$5.00

Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.

(a.1) *Custody cases.*—In calendar year 2020, the cost (in addition to the cost provided by general rule) to be charged by the court of common pleas shall be as follows:

(1) Custody cases, except as provided in section 1725(c)(2)(v)..... \$8.50

(b) *Criminal cases.*—In calendar year 2020, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

(1) Summary conviction, except motor vehicle cases	\$52.00
(2) Summary conviction, motor vehicle cases, other than paragraph (3)	\$41.00
(3) Summary conviction, motor vehicle cases, hearing demanded	\$50.00
(4) Misdemeanor	\$59.50
(5) Felony	\$68.50

Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.

(c) *Unclassified costs or charges.*—In calendar year 2020, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

(1) Entering transcript of judgment from another member of the minor judiciary	\$9.50
(2) Marrying each couple, making record thereof, and certificate to the parties	\$46.00
(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse)	\$18.50
(4) Issuing a search warrant (except as provided in subsection (d))	\$18.50
(5) Any other issuance not otherwise provided in this subsection	\$18.50

§ 29.403. 42 Pa.C.S. § 3571.

In calendar year 2020, Commonwealth portion of fines, etc.

* * * * *

(c) *Costs in magisterial district judge proceedings.*

(2) Amounts payable to the Commonwealth:

(i) Summary conviction, except motor vehicle cases	\$18.20
(ii) Summary conviction, motor vehicle cases other than subparagraph (iii)	\$18.20
(iii) Summary conviction, motor vehicle cases, hearing demanded	\$18.20
(iv) Misdemeanor	\$23.80
(v) Felony	\$36.50
(vi) Assumpsit or trespass involving:	
(A) \$500 or less	\$22.90
(B) More than \$500 but not more than \$2,000	\$36.50

(C) More than \$2,000 but not more than \$4,000 \$54.90
 (D) Between \$4,001 and \$12,000..... \$91.35
 (vii) Landlord-tenant proceeding involving:
 (A) \$2,000 or less \$36.40
 (B) More than \$2,000 but not more than \$4,000 \$45.65
 (C) More than \$4,000 but not more than \$12,000 \$63.95
 (viii) Objection to levy \$9.25
 (ix) Order of execution \$27.30
 (x) Issuing a search warrant (except as provided in section 1725.1(d) (relating to costs)).. \$12.95
 (xi) Order of possession \$15.00
 (xii) Custody cases (except as provided in section 1725(c)(2)(v)) \$6.80

[Pa.B. Doc. No. 19-1545. Filed for public inspection October 18, 2019, 9:00 a.m.]

**Title 204—JUDICIAL SYSTEM
 GENERAL PROVISIONS**

**PART V. PROFESSIONAL ETHICS AND CONDUCT
 [204 PA. CODE CH. 83]**

**Amendment of Rules 102, 201, 217 and 219 of the
 Rules of Disciplinary Enforcement; No. 185 Disciplinary Rules Doc.**

Order

Per Curiam

And Now, this 2nd day of October, 2019, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania; the proposal having been submitted without publication in the interests of justice and efficient administration pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 102, 201, 217 and 219 of the Pennsylvania Rules of Disciplinary Enforcement are 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 B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter A. PRELIMINARY PROVISIONS

Rule 102. Definitions.

* * * * *

Administrative suspension—Status of an attorney, after Court order, who: failed to pay the annual fee and/or file

the form required by subdivisions (a) and (d) of Enforcement Rule 219; was reported to the Court by the Pennsylvania Continuing Legal Education Board under Rule 111(b), Pa.R.C.L.E., for having failed to satisfy the requirements of the Pennsylvania Rules for Continuing Legal Education; failed to pay any expenses taxed pursuant to Enforcement Rule 208(g); or failed to meet the requirements for maintaining a limited law license as a Limited In-House Corporate Counsel, a foreign legal consultant, an attorney participant in defender [and] or legal services programs [pursuant to Pa.B.A.R. 311, or], a military attorney, or attorney spouse of an active-duty service member.

Attorney—Includes any person subject to these rules.

“Attorney participant in defender or legal services programs.” An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 311 (relating to limited admission of participants in defender or legal services programs).

Attorney Registration Office—The administrative division of the Disciplinary Board which governs the annual registration of every attorney admitted to, or engaging in, the practice of law in this Commonwealth, with the exception of attorneys admitted to practice pro hac vice under Pa.B.A.R. 301.

“Attorney spouse of an active-duty service member.” An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 304 (relating to limited admission of spouses of active-duty members of the United States Uniformed Services).

Board—The Disciplinary Board of the Supreme Court of Pennsylvania.

* * * * *

“Legal Counsel.” Counsel to the Board and Special Counsel.

“Limited In-House Corporate Counsel.” An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 302 (relating to limited admission of in-house corporate counsel).

Military attorney—An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys).

Petitioner-attorney—Includes any person subject to these rules who has filed a petition for reinstatement to the practice of law.

Practice of law—Includes the provision of legal services as a foreign legal consultant [or], military attorney, [or] attorney spouse of an active-duty service member, attorney participant in defender or legal services programs, or pursuant to a Limited In-House Corporate Counsel License.

* * * * *

Subchapter B. MISCONDUCT

Rule 201. Jurisdiction.

(a) The exclusive disciplinary jurisdiction of the Supreme Court and the Board under these rules extends to:

(1) Any attorney admitted to practice law in this Commonwealth.

Official Note: The jurisdiction of the Board under this paragraph includes jurisdiction over a foreign legal consultant, military attorney, attorney spouse of an active-duty service member, attorney participant in defender or legal services programs, or a person holding a Limited In-House Corporate Counsel License. See the definitions of “attorney,” “practice of law” and “respondent-attorney” in Rule 102.

* * * * *

Rule 217. Formerly admitted attorneys.

* * * * *

(h) Within ten days after the effective date of an order of disbarment or suspension for a period longer than one year, the formerly admitted attorney shall surrender to the Board the certificate issued by the Attorney Registration Office under Rule 219(e) (relating to annual registration of attorneys) for the current year, along with any certificate of good standing issued under Pennsylvania Bar Admission Rule 201(d) (relating to certification of good standing), certificate of admission issued under Pennsylvania Bar Admission Rule 231(d)(3) (relating to action by Prothonotary), certificate of licensure issued under Pennsylvania Bar Admission Rule 341(e)(3) (relating to motion for licensure), Limited In-House Corporate Counsel License issued under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license) [or], limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys), limited certificate of admission issued under Pennsylvania Bar Admission Rule 304 (relating to limited admission of attorney spouses of active-duty service members), or limited certificate of admission issued under Pennsylvania Bar Admission Rule 311 (relating to attorney participants in defender or legal services programs). The Board may destroy the annual certificate issued under Rule 219(e), but shall retain any other documents surrendered under this subdivision and shall return those documents to the formerly admitted attorney in the event that he or she is subsequently reinstated.

* * * * *

Rule 219. Annual registration of attorneys.

* * * * *

(d) On or before July 1 of each year, all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures:

(1) The form shall set forth:

(i) The date on which the attorney was admitted to practice, licensed as a foreign legal consultant, granted limited admission as an attorney participant in defender [and] or legal services programs [pursuant to Pa.B.A.R. 311, or], issued a Limited-In-House Corporate Counsel License, or granted limited admission as an attorney spouse of an active-duty service member, and a list of all courts (except courts of this Commonwealth) and jurisdictions in which the person has ever been licensed to practice law, with the current status thereof.

* * * * *

(4) Upon original admission to the bar of this Commonwealth, licensure as a Foreign Legal Consultant, issuance of a Limited In-House Corporate Counsel License, [or] limited admission as an attorney participant in defender [and] or legal services programs [pursuant to Pa.B.A.R. 311], or limited admission as an attorney spouse of an active-duty service member, a person shall concurrently file a form under this subdivision for the current assessment year, but no annual fee shall be payable for the assessment year in which originally admitted or licensed.

* * * * *

[Pa.B. Doc. No. 19-1546. Filed for public inspection October 18, 2019, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 9]

Order Revising the Comments of Rules 900 and 901; No. 514 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 1st day of October, 2019, upon the recommendation of the Criminal Procedural Rules Committee; the proposal not having been published before adoption in the interests of justice and efficient administration, and a Final Report to be published with this Order:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Comments to Pennsylvania Rules of Criminal Procedure 900 and 901 are revised, in the following form.

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

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS**

Rule 900. Scope; Notice In Death Penalty Cases.

(A) The rules in Chapter 9 apply to capital and noncapital cases under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541—9546, as amended by Act 1995-32 (SS1).

(B) *Notice in Death Penalty Cases*

In all death penalty cases upon the Supreme Court’s affirmance of the judgment of a death sentence, the Prothonotary shall include in the mailing required by Pa.R.A.P. 2521 (Entry of Judgment or Other Order) the following information concerning the Post Conviction Relief Act and the procedures under Chapter 9 of the Rules of Criminal Procedure. “Parties” as used in Pa.R.A.P. 2521 shall include the defendant, the defendant’s counsel, and the attorney for the Commonwealth for the purposes of this rule.

(1) A petition for post-conviction collateral relief must be filed within one year of the date the judgment becomes final, except as otherwise provided by statute.

(2) As provided in 42 Pa.C.S. § 9545(b)(3), a judgment becomes final at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.

(3) (a) If the defendant fails to file a petition within the one-year time limit, the action may be barred. *See* 42 Pa.C.S. § 9545(b).

(b) Any issues that could have been raised in the post-conviction proceeding, but were not, may be waived. *See* 42 Pa.C.S. § 9544(b).

(4) Pursuant to Rule 904 (Appointment of Counsel; *in Forma Pauperis*), the trial judge will appoint new counsel for the purpose of post-conviction collateral review, unless:

(a) the defendant has elected to proceed *pro se* or waive post-conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent, and voluntary;

(b) the defendant requests continued representation by original trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent, and voluntary waiver of a claim that counsel was ineffective; or

(c) the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.

Comment

The 1995 amendments to the Post Conviction Relief Act specifically provide that, "except as specifically provided otherwise, all provisions of this subchapter shall apply to capital and noncapital cases." *See* 42 Pa.C.S. § 9542.

See Rule 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition) concerning requests for, and length of, stays of execution in death penalty cases.

[Under the 1995 amendments to the PCRA, a petition for post-conviction relief, including second and subsequent petitions, must be filed "within one year of the date the judgment becomes final," 42 Pa.C.S. § 9545(b)(1), unless one of the statutory exceptions applies, see 42 Pa.C.S. § 9545(b)(1)(i)—(iii). Any petition invoking one of these exceptions must be filed within 60 days of the date the claim could have been presented. *See* 42 Pa.C.S. § 9545(b)(2).] For time limits for filing a petition for post-conviction relief and any exceptions, see 42 Pa.C.S. § 9545(b).

See Rule 904 for the procedures for the appointment of counsel.

Pursuant to paragraph (B), the Supreme Court's Prothonotary must include with the mailing required by Rule of Appellate Procedure 2521 (Entry of Judgment or Other Order) the information set forth in paragraph (B)(1)—(4). Rule 2521 requires, *inter alia*, on the date a judgment or order is entered, that the prothonotary is to send to all parties by first class mail a copy of any opinion, or judgment, or order.

Official Note: Rule 1500 adopted August 11, 1997, effective immediately; Comment revised July 23, 1999, effective September 1, 1999; renumbered Rule 900 and amended March 1, 2000, effective April 1, 2001; amended March 26, 2002, effective July 1, 2002[.]; **Comment revised October 1, 2019, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 adoption of Rule 1500 published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Final Report explaining the July 23, 1999 Comment revision concerning stays published with the Court's Order at 29 Pa.B. 4167 (August 7, 1999).

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

Final Report explaining the March 26, 2002 amendments providing for notice in death penalty cases published with the Court's Order at 32 Pa.B. 1841 (April 13, 2002).

Final Report explaining the October 1, 2019 Comment revision concerning time limitation for raising exceptions to filing restrictions published with the Court's Order at 49 Pa.B. 6066 (October 19, 2019).

Rule 901. Initiation of Post-Conviction Collateral Proceedings.

(A) A petition for post-conviction collateral relief shall be filed within one year of the date the judgment becomes final, except as otherwise provided by statute.

(B) A proceeding for post-conviction collateral relief shall be initiated by filing a petition and 3 copies with the clerk of the court in which the defendant was convicted and sentenced. The petition shall be verified by the defendant.

Comment

The rules in Chapter 9 govern proceedings to obtain relief authorized by the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 *et seq.* (hereinafter PCRA).

By statute, a court may not entertain a request for any form of relief in anticipation of the filing of a petition for post-conviction collateral relief. *See* 42 Pa.C.S. § 9545(a). For stays of execution, see 42 Pa.C.S. § 9545(c) and Rule 909(A).

The petition for post-conviction relief under these rules is not intended to be a substitute for or a limitation on the availability of appeal or a post-sentence motion. *See* Pa.Rs.Crim.P. 720 and 811. Rather, the Chapter 9 Rules are intended to require that, in a single proceeding, the defendant must raise and the judge must dispose of all grounds for relief available after conviction and exhaustion of the appellate process, either by affirmation or by the failure to take a timely appeal.

Except as provided in Rule 902(E)(2) for death penalty cases, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. *See* Rule 902(E)(1), which implements 42 Pa.C.S. § 9545(d)(2).

As used in the Chapter 9 Rules, "petition for post-conviction collateral relief" and "petition" are intended to include an amended petition filed pursuant to Rule 905, except where the context indicates otherwise.

[Under the 1995 amendments to the PCRA, a petition for post-conviction relief, including second and subsequent petitions, must be filed “within one year of the date the judgment becomes final,” 42 Pa.C.S. § 9545(b)(1), unless one of the statutory exceptions applies, see 42 Pa.C.S. § 9545(b)(1)(i)—(iii). Any petition invoking one of these exceptions must be filed within 60 days of the date the claim could have been presented. See 42 Pa.C.S. § 9545(b)(2).] **For time limits for filing a petition for post-conviction relief and any exceptions, see 42 Pa.C.S. § 9545(b).**

The 1995 amendments to the PCRA apply to petitions filed on or after January 16, 1996. A petitioner whose judgment has become final on or before the effective date of the Act is deemed to have filed a timely petition under the Act if the first petition is filed within one year of the effective date of the Act. See Section 3 of Act 1995-32 (SS1).

For the purposes of the PCRA, a judgment becomes final at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review. See 42 Pa.C.S. § 9545(b)(3).

Official Note: Previous Rule 1501 adopted January 24, 1968, effective August 1, 1968; amended November 25, 1968, effective February 3, 1969; amended February 15, 1974, effective immediately; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded November 9, 1984, effective January 2, 1985. Former Rule 1501 adopted November 9, 1984, effective January 2, 1985; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rule 902. Present Rule 1501 adopted February 1, 1989, effective July 1, 1989; amended March 22, 1993, effective January 1, 1994; amended August 11, 1997, effective immediately; Comment revised July 23, 1999, effective September 1, 1999; renumbered Rule 901 and amended March 1, 2000, effective April 1, 2001; Comment revised June 4, 2004, effective November 1, 2004; **Comment revised October 1, 2019, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the March 22, 1993 amendments published with the Court’s Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the August 11, 1997 amendments published with the Court’s Order at 27 Pa.B. 4305 (August 23, 1997).

Final Report explaining the July 23, 1999 Comment revision concerning stays published with the Court’s Order at 29 Pa.B. 4167 (August 7, 1999).

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

Final Report explaining the October 1, 2019 Comment revision concerning time limitation for raising exceptions to filing restrictions published with the Court’s Order at 49 Pa.B. 6066 (October 19, 2019).

FINAL REPORT¹

Revision of the Comments to Pa.Rs.Crim.P. 900 and 901

Petitions Invoking Exceptions to the Time Limitations of the PCRA

On October 1, 2019, effective immediately, upon the recommendation of the Criminal Procedural Rules Committee, the Court revised the Comments to Rule 900 (Scope; Notice in Death Penalty Cases) and Rule 901 (Initiation Of Post-Conviction Collateral Proceedings) to reflect changes in the Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 9541 *et seq.*, regarding the timing for raising exceptions to the Act’s one-year limitation for filing the petition.

This rule change is a technical correction to the Comments to Rule 900 and 901. The Post Conviction Relief Act provides that petitions for post-conviction relief must be filed within one year of the date that the judgment becomes final but also provides for exceptions to this time limitation. See 42 Pa.C.S. § 9545(b)(1). The time limit for raising these exceptions is contained in 42 Pa.C.S. § 9545(b)(2). In 1995, the limitations were set at 60 days of the date when the claim could have been presented. In December 2018, this statutory section was amended to increase the time limitation for raising the exception from 60 days to one year.

The Comments to Rules 900 (Scope; Notice in Death Penalty Cases) and 901 (Initiation of Post-Conviction Collateral Proceedings) reference Section 9545(b)(2) but contain the earlier 60-day time limitation rather than the current one-year time limitation. The Committee concluded that the Comments to these rules should be updated. Rather than change the specific time, the Committee believed it better to provide a cross-reference that did not contain the specific time limitation in the statute. In that way, the Comment would not need to be revised if the time limitation in the statute is amended again. Therefore, the following language containing the specific time limitation has been replaced with the statement, “For time limits for filing a petition for post-conviction relief and any exceptions, see 42 Pa.C.S. § 9545(b).”

[Pa.B. Doc. No. 19-1547. Filed for public inspection October 18, 2019, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Order Amending Rule 191 of the Pennsylvania Rules of Juvenile Court Procedure; No. 804 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 1st day of October, 2019, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published for public comment at 49 Pa.B. 1897 (April 20, 2019):

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

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Juvenile Court Procedure 191 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 on January 1, 2020.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART D. JUVENILE COURT HEARING OFFICERS

Rule 191. Juvenile Court Hearing Officer's Findings and Recommendation to the Judge.

A. *Announcement of Findings and Recommendation.* At the conclusion of the hearing, the juvenile court hearing officer shall announce in open court on the record, the juvenile court hearing officer's findings and recommendation to the judge.

B. *Delinquency Recommendation.* If a recommendation includes an adjudication of delinquency:

1) the juvenile shall be advised of the right to challenge the recommendation pursuant to Rule 192, **as set forth in paragraph (E)**; and

2) a colloquy and inquiry of post-dispositional rights shall be conducted pursuant to Rule 512(C).

C. *Submission of Papers and Contents of Recommendation.* Within one business day, the juvenile court hearing officer shall submit a summary of the recommendation to the juvenile court judge. If requested, a copy of the summary shall be given to the juvenile's attorney, the juvenile, if unrepresented, the attorney for the Commonwealth, and the juvenile probation officer. The summary shall specifically state a recommendation to the judge.

D. *Judicial Action.* The judge shall by order:

- 1) accept the recommendation;
- 2) reject the recommendation and issue an order with a different disposition;
- 3) send the recommendation back to the juvenile court hearing officer for more specific findings; or
- 4) schedule a rehearing under Rule 192 within seven days.

E. Advisement of Right to Challenge Recommendation of Adjudication of Delinquency. The hearing officer shall advise the juvenile of the right to challenge the hearing officer's recommendation substantially in the following form:

RIGHT TO CHALLENGE RECOMMENDATION OF HEARING OFFICER

In re _____ : JD
 (Juvenile) :
 : Delinquent Act(s):
 : _____
 : _____
 : _____
 : _____

ADVISEMENT

1) You can disagree with the hearing officer's recommendation. You can ask for a new hearing before a judge. If you want a new hearing, you must request a new hearing in writing within three days from today and say why you want a new hearing.

2) You have the right to have a lawyer help you file your request. If your lawyer (who is helping you today) cannot or will not file the request for you, the court will appoint a new lawyer to help you.

3) Here's what could happen if you ask for a new hearing:

a) the court can deny your request for a new hearing within seven days after you ask for a new hearing; or

b) the court can give you a new hearing within seven days after you ask for a new hearing.

Comment

The juvenile court may promulgate a form for juvenile court hearing officers to use. The summary of the recommendation may take the form of a court order to be adopted by the court.

The requirements of paragraph (B) are intended to ensure the juvenile is advised of the right to challenge the juvenile court hearing officer's recommendation and post-dispositional rights in the event the judge accepts the recommendation. If a party challenges the juvenile court hearing officer's decision, the copy of the summary may be used as an attachment in a motion for a rehearing in front of the judge.

The juvenile court hearing officer's decision is subject to approval of the judge. When the judge, in rejecting the juvenile court hearing officer's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the juvenile court hearing officer's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. *See In re Perry*, 459 A.2d 789 (Pa. Super. 1983). The juvenile waives the right to complain of double jeopardy if the Commonwealth requests a rehearing before the judge. *See In re Stephens*, 419 A.2d 1244 (Pa. Super. 1980).

Nothing in this rule prohibits the court from modifying conclusions of law made by the juvenile court hearing officer.

The form contained in paragraph (E) is intended to advise juveniles in writing of their right to challenge the recommendation of a delinquency adjudication by a juvenile court hearing officer pursuant to Rule 192 by requesting a rehearing before a juvenile court judge. This form is in addition to the form contained in Rule 512(C) advising a juvenile of post-dispositional rights.

Official Note: Rule 191 adopted April 1, 2005, effective April 1, 2006. Amended April 6, 2017, effective September 1, 2017. Amended May 4, 2018, effective July 1, 2018. **Amended October 1, 2019, effective January 1, 2020.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 191 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 191 published with the Court's Order at 47 Pa.B. 2313 (April 22, 2017).

Final Report explaining the amendments to Rule 191 published with the Court's Order at 48 Pa.B. 2939 (May 19, 2018).

Final Report explaining the amendments to Rule 191 published with the Court's Order at 49 Pa.B. 6066 (October 19, 2019).

**JUVENILE COURT PROCEDURAL RULES
COMMITTEE**

FINAL REPORT¹

Amendment of Pa.R.J.C.P. 191

On October 1, 2019, the Supreme Court amended Rule of Juvenile Court Procedure 191 to provide a written advisement to juveniles of their right to challenge a Juvenile Court Hearing Officer's recommendation of an adjudication of delinquency.

Currently, Pa.R.J.C.P. 191(B)(1) requires a Juvenile Court Hearing Officer to advise a juvenile of the right to challenge a recommendation for an adjudication of delinquency pursuant to Pa.R.J.C.P. 192. The Juvenile Court Procedural Rules Committee ("Committee") believed such an advisement should thoroughly advise the juvenile of the right to challenge a recommendation. Further, it should be done so in writing using "plain language" more easily understood by juveniles. A rule-based form would ensure that sufficient and necessary information is provided to juveniles throughout Pennsylvania. This approach is consistent with the written information provided to a juvenile advising of post-dispositional rights. See Pa.R.J.C.P. 191(B)(2); Pa.R.J.C.P. 512(C). The requirement for a written advisement pursuant to Pa.R.J.C.P. 191(B)(1) is only intended when there is a recommendation for an adjudication of delinquency; it is not intended for other types of recommendations.

The amendment will become effective January 1, 2020.

[Pa.B. Doc. No. 19-1548. Filed for public inspection October 18, 2019, 9:00 a.m.]

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

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Rescission, Amendment and Adoption of Philadelphia Court of Common Pleas Criminal Rules; President Judge General Court Regulation No. 14 of 2019

Order

And Now, this 20th day of September, 2019, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on September 19, 2019, to rescind, amend, and adopt the Philadelphia Court of Common Pleas Criminal Rules following this Order, and as required by Pa.R.J.A. 103, the Supreme Court Criminal Procedural Rules Committee has reviewed the following rules and has determined that they are not inconsistent with the applicable statewide rules and has authorized their promulgation.

Now, therefore, it is hereby *Ordered* and *Decreed* that the Philadelphia Court of Common Pleas Criminal Rules are rescinded, amended and adopted, as follows, effective December 2, 2019.

This General Court Regulation is issued in accordance with Pa.R.J.A. 103 and shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for General Court Regulation issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this General Court Regulation and rules shall be distributed to the Legislative Reference Bureau, together with a copy on a computer diskette, for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this General Court Regulation and rules shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://www.philacourts.us>, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the General Court Regulation and local rules shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE IDEE C. FOX,
President Judge
Court of Common Pleas

Amendments, Rescission and Adoption of Philadelphia Criminal Rules—Court of Common Pleas

	<i>Current #</i>	<i>Local Rule</i>	<i>Page #</i>	<i>Comment</i>
1		*100. Scope of Rules	1	No changes
2		*102. Citing the Local Criminal Procedure Rules	1	Amended
3		*103. Definitions	1	Amended. Added definition of "Defendant's Service Address"
4		*104. Design of Forms	1	No Changes
5		*105. Local Rules	1	No Changes
6		*107. Contents of Subpoena	1	No Changes
7		*115. Recording and Transcribing Court Proceedings	2	Amended
8		*122. Appointment of Counsel in the First Judicial District		Reserved
9	122	*122-1. Standards for Appointment of Counsel	3	Amended
10	122-1	*122-2. Standards for Appointment in Homicide Cases	4	Amended
11	122-2	*122-3. Standards for Appointment of Appellate Counsel in cases where the death Penalty has been imposed	5	New Rule
12	122-3	*122-4. Standards for Appointment of Appellate Counsel in cases where the death penalty has not been imposed	5	Amended
13	122-4	*122-5. Standards for Appointment of PCRA Counsel in cases where the death penalty has not been imposed or of counsel in other Post-Conviction Evidentiary Hearings	5	Amended
14	122-5	*122-6. Standards for Appointment in Felony Cases	6	Amended
15		*122-6. Standards for Appointment of Counsel in Misdemeanor Cases	6	Rescinded
16		*122-7. Experience Exception to Standards	7	Amended
17		*122-8. Performance Standards; Processing Complaints	7	Amended
18		*122-9. Remedial Measures	9	Rescinded
19		*122-10. Appointment of Counsel in Multiple Defendant Cases	9	Rescinded
20		*122-11. Compensation Rates for Court-Appointed Counsel	10	Rescinded. Reserved
21		*122-12. Guidelines for Court-Appointed Counsel Who Request Compensation and Reimbursement in Criminal Cases	13	Rescinded. Reserved
22		*122-13. Procedure in Cases Involving Ineffective Assistance of Counsel	15	Rescinded
23		*122-14. Attorneys with Twenty (20) or More Cases	16	Rescinded
24		*202. Approval of Search Warrant Applications by the Attorney for the Commonwealth	16	No Changes
25		*435. Cases in which the Defendant is Minor	17	Rescinded. New Rule
26		*462. Trial De Novo. Summary Appeals	17	Amended
27		*507. Approval of Police Complaints and Arrest Warrant Affidavits by the Attorney for the Commonwealth	17	No Changes
28		*515. Bench Warrant Hearings	17	Rescinded
29	520	*529. Regulations Pertaining to Bail, Court of Common Pleas and Municipal Court	17	Amended
30		*528. Ten Percent (10%) Deposit of Bail	20	Amended
31		*530. Duties and Powers of Bail Agency. Pretrial Services Division	21	No Changes
32		*536. Procedures upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety	21	Amended
33		*540. Preliminary Arraignment	22	Rescinded
34		*542. Preliminary Hearing	23	Rescinded
35		*556. Indicting Grand Jury	23	Amended
36		*556.2. Philadelphia County Indicting Grand Jury Procedures and Protocols	23	Amended
37		*571. Arraignment	31	Amended
38		*576. Pilot Program: Electronic Filing	31	Amended
39		*588. Motion for Return of Property. Post-Deprivation Hearing	34	No Changes
40		*600. Motions/Filing	35	Rescinded
41		*605. Motions Court/Criminal Calendar Program and Homicide Cases	36	Rescinded
42		*610. Motions-Criminal List Program Cases	37	Rescinded
43		*620. Procedure for Filing and Entertaining Rule 1100 (& Rule 6013) Motions	37	Rescinded
44		*630. Application to Suppress Evidence in Municipal Court Cases	38	Rescinded
45		*640. Recording of Sentence	39	Rescinded
46		*645. Stay Pending Appeal of Municipal Court Judgment	39	Rescinded
47		*650. Post-Trial	39	Rescinded

Proposed Amendments, Rescission and Adoption of Philadelphia Criminal Rules—Court of Common Pleas

	<i>Current #</i>	<i>Local Rule</i>	<i>Page #</i>	<i>Comment</i>
48		*655. Hearings on Post-trial Motions and Deferred Sentences	40	Rescinded
49		*660. Sentencing-Fines-Indigents	40	Rescinded
50		*670. Funeral Orders-Prisoners	40	Amended
51		*680. Prisoners' Bring-ups	41	Rescinded
52	700	*780. Confiscation and Disposition of Firearms	41	Amended
53	705	*785. Rule Governing Analysis and Destruction of Narcotic and Dangerous Drugs	42	Amended
54		*708. Violation of Probation or Parole	44	No Changes
55		*710. Guilty Pleas Refused by Trial Judge	46	Amended
56		*800. Continuances in Common Pleas Felony and Municipal Court Cases	46	Rescinded
57		*801. Continuances at Preliminary Hearings	48	Rescinded
58	805	*786. Criminal Court Priority List and Busy Slips	49	Amended
59		*810. Applications for Continuances	50	Rescinded
60		*820. Continuances Involving Defendants in Custody	51	Rescinded
61		*900. State and Federal Prisoners in Philadelphia County Prison System	51	Rescinded
62		*910. Probation Detainer and Violation Procedure	52	Rescinded
63		*920. Appeals Procedure	52	Rescinded
64		*950. Post Conviction Hearing Act Procedure	52	Rescinded

PHILADELPHIA COURT OF COMMON PLEAS TRIAL DIVISION, CRIMINAL

Philadelphia Criminal Rules of Procedure

Chapter 1. Scope of Rules, Construction and Definitions, Local Rules.

Rule *100. Scope of Rules.

These local rules shall govern criminal proceedings in the Trial Division of the Court of Common Pleas of Philadelphia County unless otherwise specifically provided.

Note: Unless otherwise noted, adopted June 4, 2014, effective July 21, 2014.

Rule *102. Citing the Philadelphia Criminal Rules.

These rules shall be known as the Philadelphia Court of Common Pleas Criminal Rules and shall be cited as "Phila. Crim. R."

Rule *103. Definitions.

The following words, phrases and descriptive functions shall clarify and supplement the definitions set forth in Pa.R.Crim.P. 102 and 42 Pa.C.S. § 102 et seq.:

"Office of Judicial Records." The office formerly known as the Office of the Clerk of Quarter Sessions (which was abolished by the Council of the City of Philadelphia effective on July 1, 2010) and the Clerk of the Courts. The Office of Judicial Records is responsible for maintaining the official criminal case file, maintaining docket entries in each criminal case, and performing such other duties as required by law.

"Defendant's Service Address." Beginning at the preliminary arraignment and continuing until final disposition of the case, including the payment of all fines, costs and restitution ordered to be paid, the defendant shall provide a current address upon which service of all notices may be made. Defendant shall update any change of address within ten (10) business days of the defendant's move by contacting the Office of Court Compliance, Room 370 City Hall, Philadelphia, PA 19107 or by email at OCC@courts.phila.gov.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *104. Design of Forms.

All local forms shall comply with the Pennsylvania and Philadelphia Rules of Criminal Procedures, shall be approved by the Administrative Judge of the Trial Division, may be amended from time to time at the direction of the Administrative Judge of the Trial Division, and shall become effective upon compliance with Pa.R.Crim.P. 105. All local forms shall be posted on the First Judicial District's website (www.philacourts.us/forms).

Note: Amended September 20, 2019, effective December 2, 2019

Rule *105. Local Rules.

The term "local rule" shall include General Court Regulations and Administrative Orders issued by the Administrative Judge of the Trial Division and President Judge of the Court of Common Pleas.

Rule *107. Contents of Subpoena.

(A) *Forms.* Consistent with the requirements of Pa.R.Crim.P. 107, a Personal Appearance Subpoena and Subpoena Duces Tecum are adopted substantially as appended to these rules, and may be amended from time to time. All parties shall request subpoenas from the Office of Judicial Records which shall issue same upon payment of any requisite fees.

(B) A subpoena may be used to command a person to attend and to produce documents or things at trial or hearing in an action or proceeding pending in court.

(C) *Subpoenas Served on the First Judicial District or any of its employees.* All subpoenas directed to the First Judicial District or any of its employees shall be served on the Deputy Court Administrator for Legal Services, Room 369 City Hall, Philadelphia, PA who has been designated as the agent for acceptance of service of process and subpoenas directed to the First Judicial District or any of its employees.

Explanatory Note: Act 81 of 2006 requires the payment of \$43.00 plus mileage to the "First Judicial District of Pennsylvania" if District records are subpoenaed.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *115. Recording and Transcribing Court Proceedings.

The making, preserving, transcribing and requests for transcripts of proceedings in the First Judicial District of Pennsylvania shall be governed by Pennsylvania Rule of Judicial Administration No. 4001 et seq., and Philadelphia Rule of Judicial Administration No. *4007 et seq.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122. Appointment of Counsel in the First Judicial District of Pennsylvania. [RESERVED]**Rule *122-1. Standards for Appointment of Counsel.****(A) Lists of Qualified Attorneys**

The Criminal Listing Department will maintain a list of attorneys qualified for appointment in each of the following categories of cases:

- (1) Capital Homicide Lead Counsel
- (2) Capital Homicide-Penalty Phase Mitigation Counsel
- (3) Non-Capital Homicide
- (4) Capital homicide appellate
- (5) Non-capital homicide appellate
- (6) Homicide PCRA
- (7) PCRA
- (8) Felony
- (9) Misdemeanor

(B) Selection of Attorneys

(1) Each attorney who desires appointment in each of the above categories of cases must fill out the appropriate Application for Court Appointment Certification which shall be updated from time to time by the President Judge and the Administrative Judge of the Trial Division, shall reference the necessary qualifications, and shall be posted on the websites of the First Judicial District and the Philadelphia Bar Association. The Application will be submitted to a Screening Committee of the Philadelphia Bar Association. The Screening Committee shall consist of members appointed by the Board of Judges of Philadelphia County. Neither the Chief Defender, nor any attorney from the Defender Association of Philadelphia, nor any attorney from the District Attorney's Office shall be eligible for appointment to the Screening Committee. In making such appointments, the Board of Judges shall consider the recommendation of the Criminal Justice Section of the Philadelphia Bar Association, which shall submit to the Board of Judges a list of not less than fifteen names. Each member of the Screening Committee must be familiar with the practice of criminal law in Philadelphia.

(2) The Screening Committee will periodically review all Applications submitted, and will designate attorneys who are qualified for handling each category of case; the Screening Committee will maintain such lists of attorneys. It will be the duty of the Screening Committee to review these lists regularly, to add new applicants who meet the qualifications.

No member of the Screening Committee will be permitted to accept an appointment during the member's term on the Screening Committee.

(3) The Criminal Justice Section of the Philadelphia Bar Association is authorized to adopt rules of procedure governing: the recommendation of the members for the Screening Committee, the frequency of meetings, and the methods for establishing and maintaining lists of qualified attorneys.

(4) From time-to-time, the lists of approved attorneys will be made available to the judges authorized to make appointments.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122-2. Standards for Appointment in Homicide Trial Cases.**(A) Qualifications for Counsel**

An attorney may be appointed as counsel only if that attorney:

- (1) Has been admitted to the bar of the Pennsylvania Supreme Court, or admitted to practice pro hac vice;
- (2) Is an active trial and/or appellate practitioner who carries a current criminal caseload with at least three years litigation experience (trial and/or appellate) in the field of criminal law in this or any other jurisdiction;
- (3) Has prior experience as lead counsel in no fewer than ten criminal trials which were tried to completion in this or any other jurisdiction;
- (4) Has been lead counsel in at least five felony trials within the past two year period;
- (5) Is familiar with the practice and procedure of the Pennsylvania Supreme Court, and the Philadelphia Court of Common Pleas, and is reasonably available to accept appointments;
- (6) Has prior experience as counsel in no fewer than five major felony jury criminal trials which were tried to completion in this or any other jurisdiction in the last three years. "Tried to completion" shall include trials in which the jury is discharged at the conclusion of the case without reaching a verdict; and
- (7) Any attorney who also desires to be court-appointed in capital cases must meet the educational and experiential criteria set forth in Pa.R.Crim.P. 801.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122-3. Standards for Appointment of Appellate Counsel in Cases Where the Death Penalty Has Been Imposed.**(A) Qualifications for Counsel**

An attorney may be appointed as appellate counsel in cases in which the death penalty has been imposed only if that attorney:

- (1) Has been admitted to the Bar of the Pennsylvania Supreme Court, or admitted to practice pro hac vice;
- (2) Meets the educational and experiential criteria set forth in Pa.R.Crim.P. 801;
- (3) Has submitted a writing sample to the Screening Committee for one of the cases that meets the Rule 801 requirements; and
- (4) Is readily available to accept appointments.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122-4. Standards for Appointment of Appellate Counsel in Cases Where the Death Penalty Has Not Been Imposed.**(A) Qualifications for Counsel**

An attorney may be appointed as appellate counsel in cases in which the death penalty has not been imposed only if that attorney:

- (1) Has been admitted to the Bar of the Pennsylvania Supreme Court, or admitted to practice pro hac vice;

(2) Has provided a writing sample to the Screening Committee for one of the cases which meet the requirements referenced in paragraph 3 below;

(3) Has filed briefs within the past two years, as appellate counsel in either the Pennsylvania Supreme or Superior Court in no fewer than three criminal cases, or has otherwise demonstrated to the Screening Committee appellate experience and a knowledge of Pennsylvania appellate practice comparable with the requirements set forth in Rule *122-3;

(4) Is readily available to accept appointments.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122-5. Standards for Appointment of Counsel in Non-Capital Homicide PCRA and all other PCRA Cases.

(A) *Qualifications for Counsel*

An attorney may be appointed as counsel in PCRA and other post-conviction matters, only if that attorney:

(1) Has been admitted to the Bar of the Supreme Court of Pennsylvania or has been admitted to practice pro hac vice;

(2) Has experience, within the past two years, as PCRA counsel in no fewer than two cases in which a PCRA hearing has been held, or has completed one Continuing Legal Education program on Pennsylvania post-conviction practice within the past year;

(3) Has participated in the preparation and litigation of three criminal adversarial hearings where factual issues were contested, and has comparable experience. (This may include the two PCRA hearings required in paragraph 2.);

(4) Is readily available to accept appointments.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122.6. Standards for Appointment in Felony Cases.

(A) *Qualifications for Counsel*

An attorney may be appointed as counsel only if that attorney:

(1) Has been admitted to the bar of the Pennsylvania Supreme Court, or admitted to practice pro hac vice;

(2) Is an active trial and/or appellate practitioner with at least two years litigation experience (trial and/or appellate) in the field of criminal law in this or any other jurisdiction;

(3) Has prior experience as counsel in no fewer than five criminal trials which were tried to completion in this or any other jurisdiction in the last three years;

(4) Has been lead counsel in at least two felony trials within the past two year period, or has completed at least one Continuing Legal Education program in the field of criminal law within the past year and has comparable experience;

(5) Is familiar with the practice and procedure of the Pennsylvania Supreme Court, and the Philadelphia Court of Common Pleas, and is reasonably available to accept appointments;

(6) Has prior experience as counsel in no fewer than five felony criminal trials which were tried to completion in this or any other jurisdiction. "Tried to completion" shall include trials in which the jury is discharged at the

conclusion of the case without reaching a verdict. No more than two of the required five trials shall consist of major felony juvenile cases; and

(7) All attorneys certified in this category automatically shall be certified to handle non- homicide appellate and non-homicide PCRA matters.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122-6. Standards for Appointment of Counsel in Misdemeanor Cases.

Note: Rescinded September 20, 2019, effective December 2, 2019

Rule *122-7. Experience Exception to Standards.

(A) If any applicant fails to meet any of the above specified standards, the Screening Committee, after conducting a personal interview with the applicant, may rate the applicant to be qualified if the applicant's experience, knowledge and training are clearly equivalent to the standards for the category in which the applicant seeks qualification, except as otherwise required by Pa.R.Crim.P. 801.

(B) Even if the applicant meets all of the specific standards in any category, but it appears to the Selection Committee that the applicant's experience, knowledge, training and/or past performance in specific cases, may show the need for more training or supervision, the Screening Committee may require the applicant to appear before the Screening Committee for a personal interview, after which the Screening Committee may approve the applicant, or may require the applicant to undergo specified remedial measures before being approved. If the applicant refused to undergo those measures, or if after completing the measures, the Screening Committee still rejects the application, then the applicant may appeal the disapproval as provided in Rule *122-8.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122-8. Performance Standards; Processing Complaints.

(A) *General:* The Screening Committee may refuse to approve applicants as provided in Rule *122-7(B), or may impose remedial measures, if the applicant fails to meet the performance standards set forth in this Rule.

(B) *Processing Complaints.*

Any complaint about the performance of any court-appointed counsel shall be submitted, as applicable, to the President Judge, the Trial Division Administrative Judge, the Supervising Judge of the Trial Division, or their designees, for their review and appropriate disposition. Copies may, at the discretion of the President Judge, Administrative Judge, Supervising Judge or their designees, be sent to the Screening Committee, or its designee, for its review, recommendation or other disposition as may be requested by the applicable Judge. All information provided to the Screening Committee shall remain confidential.

Note: Amended September 20, 2019, effective December 2, 2019

Rule *122-9. Remedial Measures.

Note: Rescinded September 20, 2019, effective December 2, 2019

Rule *122-10. Appointment of Counsel in Multiple Defendant Cases.

Note: Rescinded September 20, 2019, effective December 2, 2019. The subject matter of this rule is addressed in Rule *122.

Rule *122-11. Payment Authorization Process for First Judicial District of Pennsylvania Court-Appointed Counsel.

RESERVED

Rule *122-12. Compensation Rates for Court-Appointed Counsel.

RESERVED

Rule *122-13. Procedure in Cases Involving Ineffective Assistance of Counsel.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *122-14. Attorneys with Twenty (20) or More Cases.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *202. Approval of Search Warrant Applications by the Attorney for the Commonwealth.

The District Attorney of Philadelphia County having filed a certification pursuant to Pa.R.Crim.P. 202, no search warrants shall be submitted to any judicial officer unless it has first been reviewed and approved by an attorney for the Commonwealth.

Note: Former Philadelphia Criminal Rule 402. Renumbered June 4, 2014, effective July 21, 2014.

Rule *435. Cases in which the Defendant is a Minor.

(A) In all cases, the preliminary arraignment will be held by the Philadelphia Municipal Court's Arraignment Court Magistrates.

(B) The Arraignment Court Magistrate shall schedule all Direct File Juvenile cases before a Municipal Court Judge or a Common Pleas Court Judge, as appropriate, for a status conference pursuant to Pa.R.Crim.P. 595.

(1) If the Defendant has not filed a motion for transfer to juvenile proceedings pursuant to Pa.R.Crim.P. 596, the case shall be scheduled for trial in the Court of Common Pleas Trial Division.

(2) If the Defendant has filed a motion for transfer and the motion is denied, the case shall be scheduled for trial in the Court of Common Pleas Trial Division.

(3) If the Defendant has filed a motion for transfer and the motion is granted, the case will be listed for appropriate action in Family Court.

Note: Amended September 20, 2019, effective December 2, 2019.

Rule *462. Trial De Novo. Summary Appeals.

The Court of Common Pleas may schedule a status conference prior to the de novo summary trial. In the event the attorney for the Commonwealth and the defendant reach a negotiated plea, the plea may be entered before a Trial Commissioner and, upon approval by a judge, the negotiated sentence will be recorded. In the event a negotiated plea is not reached or is not approved by the Court, the case shall be heard de novo by a judge of the Court of Common Pleas sitting without a jury.

Note: Amended September 20, 2019, effective December 2, 2019.

Rule *507. Approval of Police Complaints and Arrest Warrant Affidavits by the Attorney for the Commonwealth.

The District Attorney of Philadelphia County having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging any misdemeanor or felony shall not be submitted to any judicial officer unless it has first been reviewed and approved by an attorney for the Commonwealth.

Note: Former Philadelphia Criminal Rule 401. Renumbered June 4, 2014, effective July 21, 2014.

Rule 515. Bench Warrant Hearings.

Note: Rescinded September 20, 2019, effective December 2, 2019. General subject matter addressed by Pa.R.Crim.P. 150, 430 and 431.

Rule *529. Regulations Pertaining to Bail, Court of Common Pleas and Municipal Court.

(A) *Initial Determination of Bail.* Upon defendant's arrest, the initial determination of bail, where bail is applicable, to insure the defendant's appearance at proceedings concerning the charges for which the defendant was arrested shall be made at Preliminary Arraignment by the Arraignment Court Magistrate regularly assigned. Appeals from the Arraignment Court Magistrate's decision shall be heard only by the Emergency Municipal Court Bail Appeal Judge specifically assigned by the Municipal Court President Judge. No other Municipal Court Judge may make such initial determination of bail, except upon prior written order of the President Judge of the Municipal Court, or, in the case of a Judge of the Court of Common Pleas, both the President Judge of the Municipal Court and the President Judge of the Court of Common Pleas.

(B) Modification of Bail.

(1) Modifications as to the form and amount of bail made as part of the Preliminary Hearing or Municipal Court trial shall be made only by the Judge assigned to the Preliminary Hearing or Municipal Court trial.

(2) Any modification as to the form and amount of bail between Preliminary Arraignment and Common Pleas Court trial (except as part of the Preliminary Hearing or Municipal Court trial) shall be made only by the Judge regularly assigned to the Common Pleas Court Criminal Motion Court, or on weekends and Court holidays to the Judge assigned in advance for this purpose by the President Judge of the Common Pleas Court.

(3) An application for modification of bail shall be in writing and shall include the defendant's name, address, CPCMS number, the charges, the present bail, the date and name of the Judge or Arraignment Court Magistrate who presided at the Preliminary Arraignment or Municipal Court trial. During the business hours of Court operation (9 a.m. to 5 p.m., Monday through Friday), the application shall be filed with the Office of Judicial Records, which shall schedule the time and place of the hearing to be held in the Motion Court. The District Attorney shall be served with notice of the application by counsel for the applicant at least twenty-four (24) hours before the scheduled hearing unless waived by the Motion Court Judge or the District Attorney.

(4) No Judge shall rule upon such application without first providing the attorney for the defendant and the District Attorney opportunity to be heard and present evidence.

(5) The defendant need not be present. If defendant's counsel wishes to have the defendant present during the business hours of Court operation, counsel must request an appropriate bring-down order.

(6) All evidence offered at hearings held in Motion Court shall be stenographically recorded. Evidence presented on weekends, or Court holidays need not be so recorded.

(7) At the conclusion of the hearing, whether stenographically recorded or not, the Judge shall issue a written order as to the amount and form of bail on a certificate provided by the clerk. Copies of the certificate which shall include the CPCMS number, shall be issued forthwith by the Court and a copy provided to counsel.

(C) *Modification at Trial.* Once a case has been assigned to an individual Judge for trial, only that Judge may consider an application to modify the amount or form of bail. If the existing bail shall have been set by another Judge of the Court of Common Pleas, the Trial Judge shall not modify such order, except upon proof to his satisfaction of the existence of one of the reasons stated in Subsection B(8) of this Rule.

(D) *Habeas Corpus Bail.* Bail-pending proceedings on a petition for writ of habeas Corpus shall be determined by the Judge regularly assigned to the Criminal Motion Court, or, on weekends and Court holidays, by the Judge assigned pursuant to Subsection B of this Rule to hear bail applications. No other Judge may make such initial determination of bail on the petition, except upon written order of the President Judge.

(1) The amount and form of bail pending the petition shall be determined according to the procedures required by Subsection B of this Rule.

(2) If bail on the charges has been previously set by another Judge of the Court of Common Pleas, the Judge receiving the petition shall set bail on the petition in like amount and form. Any bail bond or other form of security accepted by the Court for defendant's release on the charges shall likewise be accepted for release on the petition.

(3) If bail on the charges was set by a Municipal Court Judge or has not been set at all, the Judge receiving the petition shall set bail as provided in these Rules and such bail shall apply both to the petition and the charges and shall supersede any bail on the charges as may have been set.

(E) *Appeal by Way of Re-Arrest.* When a re-arrest is effected by the Commonwealth following dismissal of the earlier proceeding because of lack or want of prosecution, the Preliminary Arraignment shall be conducted as provided in Pa.R.Crim.P. 544.

When a re-arrest is taken in the nature of an appeal by the Commonwealth from an earlier dismissal, the Judge assigned to the Common Pleas Court Motion Court shall hold the Preliminary Arraignment. The Preliminary Hearing shall likewise be scheduled in the Court of Common Pleas as provided in Pa.R.Crim.P. 544.

Note: Former Philadelphia Criminal Rule 500. Renumbered June 4, 2014, effective July 21, 2014.

Amended September 20, 2019, effective December 2, 2019.

Rule *528. Ten Percent (10%) Deposit of Bail.

(A) Any defendant who has been properly granted bail may obtain their release from custody as provided herein by depositing with the Office of Judicial Records a sum of

money equal to ten percent (10%) of the full amount of the bail, but in no event less than twenty-five dollars (\$25), and by executing a bail bond. A private individual who is not a surety company or bail bondsman may act as a third-party surety and execute the aforementioned bail bond on behalf of the defendant. Except as provided in this section, no other individual or business entity may act as a third-party surety unless approved by the Administrative Governing Board of the First Judicial District of Pennsylvania upon filing a petition pursuant to Pa.R.Crim.P. 531 and applicable local rules of court.

(B) With respect to deposited bail pursuant to subsection (A), the Court is empowered to designate a minimum sum of money which shall be retained by the Court.

(C) Should the defendant fail to appear as required by the bail bond, and not appear in court within ninety (90) days after notice of the forfeiture, as provided by Pa.R.Crim.P. 536(A)(2)(c), the amount deposited shall be forfeited and a judgment will be entered for the balance of the total bail ordered. Forfeitures and bail judgments shall only be reduced or vacated pursuant to Philadelphia Criminal Rule *536 and other applicable local rules of court.

(D) Upon the full and final disposition of the criminal case in which bail has been deposited:

(1) the bail deposit shall be returned in full, as provided in Pa.R.Crim.P. 535, if the defendant has appeared as required at all times for all court hearings and other events as required by the bail bond; or

(2) the bail deposit, less the retention amount authorized pursuant to subsection (B), shall be returned if the defendant has not appeared as required at all times for all court hearings and other events as required by the bail bond.

(E) A defendant or a third party surety as defined in this rule may post realty as security for bail. In this event, an encumbrance shall be created immediately on such realty before the defendant may be admitted to bail. The said encumbrance shall remain in force until the case is disposed as provided in subsection (D).

Realty posted as security for bail shall be valued in an amount equal to the assessed value of the realty used for determining tax liability on the realty. Only realty with an unencumbered assessed value equal to, or in excess of, the full amount of bail shall be accepted as security for the bail.

Comment:

Subsection (A) authorizes posting cash bail with the Office of Judicial Records.

Subsection (B) authorizes the Court to designate, consistent with Pa.R.Crim.P. 535(D), the fee to administer the cash bail program. The retention figures designated by the Court are 30% (thirty percent) of the amount of the deposit or 3% (three percent) of the total amount of the bail. However, the Court has directed that the maximum amount retained shall not exceed \$1,500 regardless of the total amount of the bail or the amount of the cash deposit, and that in no event shall the amount retained by the Court be less than \$10 (ten dollars).

Subsection (C) provides guidance regarding the forfeiture of the bail deposit and entry of a judgment for the balance of the bail ordered as well as reduction and vacation of same.

Subsection (D) provides that the entire bail deposit will be returned if the defendant appears for all court hear-

ings and events, and that the retention amount established in subsection (B) shall be retained if the defendant does not appear as required.

Subsection (E) controls real estate posted as bail.

Note: Star Rule *4008.1, adopted May 17, 1973; Star Rule *4009.1, adopted May 17, 1973, and Star Rule *4010(c), adopted May 20, 1971. General Court Regulation 73-5, July 2, 1973; comment amended by General Court Regulation 80-13, effective July 1, 1980; comment amended by General Court Regulation 88-4; effective June 1, 1988. Former Phila. Crim. R. 506. Comment amended and rule renumbered on April 20, 2012 by Administrative Governing Board Order 03 of 2012. Amended October 10, 2018, effective immediately.

Rule *530. Duties and Powers of Bail Agency. Pre-trial Services Division.

In all cases where the defendant is released on bail, whether the bail be nominal or substantial, and including cases where the defendant is released on his own recognizance, the Pretrial Services Division may be designated as surety for the defendant. Such designation shall not relieve the defendant or any third-party surety of any obligation imposed by these rules or other provisions of law.

Where the Pretrial Services Division is designated as a surety, the defendant shall be subject to all reasonable supervisory rules and regulations imposed by the Pretrial Services Division. Where the defendant fails or refuses to comply with these rules, he may be brought before the Court to determine whether additional bail shall be set in the case.

Note: Former Phila. Crim. R. 506. Renumbered June 4, 2014, effective July 21, 2014.

Rule *536. Procedures upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

(A) The presiding Judge may issue a bench warrant and order bail to be forfeited whenever the defendant does not appear on a day indicated, within one hour of the scheduled Court action.

At preliminary arraignment each defendant shall be given written notice of his next Court appearance. This notice shall state the date, time and place of the required appearance. It shall be the responsibility of the defendant to appear for any scheduled Court action. The defendant shall be served with written notice of any subsequent Court action, but failure to receive notice will not relieve the defendant of the responsibility of appearing.

THE SURETY IS UNDER OBLIGATION TO PRODUCE THE DEFENDANT FOR ALL REQUIRED COURT APPEARANCES UNDER PENALTY OF FORFEITURE OF THE SURETY'S BAIL BOND. NO OTHER NOTICE TO THE SURETY SHALL BE REQUIRED.

(B) Any bench warrant issued may be withdrawn by the presiding Judge or Administrative Judge, for proper cause. A bail order sue-out may be withdrawn by the presiding Judge or Administrative Judge at any time before judgment is entered thereon.

(C) Rescinded.

(D) No bail order sue-out which is reduced to judgment may be rescinded or altered, except by the President Judge of the Common Pleas Court or the President Judge's designee, in accordance with the following procedure:

(1) The surety shall file a petition with the Office of Judicial Records as may be provided from time to time.

(2) A hearing will be scheduled before a designated Court Officer at which the surety will have the opportunity to demonstrate facts in support of his petition, and to make oral argument. The Hearing Officer will make findings of fact and submit them to the President Judge or the President Judge's designee for review.

(3) As a general guideline, judgment on forfeited bail shall be reduced according to the following schedule, absent compelling reasons to the contrary:

<i>Amount of time between bench warrant and defendant's return to jurisdiction of the Court</i>	<i>Percentage of judgment which will be reduced</i>
0—60 days	90%
61—90 days	70%
91—120 days	50%
121—180 days	30%
Over 180 days	0%

(4) For good cause shown, the President Judge or the President Judge's designee may order all or partial vacation of judgment notwithstanding the schedule in subsection 3.

(E) Any surety, for proper cause finding the surety's position insecure, may apply to and obtain a Bail Piece from the Office of Judicial Records. This Bail Piece shall entitle said surety to arrest the named defendant for which the surety has deposited bail and surrender the defendant to the Superintendent of Prisons for incarceration. The Superintendent of Prisons shall accept said defendant for incarceration when a proper bail piece is submitted to the Superintendent of Prisons.

Note: This rule combines former Philadelphia Criminal Rules 510 and 520. Renumbered June 4, 2014, effective July 21, 2014. See also Administrative Order No. 01 of 2012, In re: Motions to Vacate or Reduce Bail Forfeitures. Amended September 20, 2019, effective December 2, 2019.

Rule *540. Preliminary Arraignment.

Note: Rescinded September 20, 2019, effective December 2, 2019. Subject matter governed by Phila. Municipal Court Rule *540

Rule *542. Preliminary Hearing.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *556. Indicting Grand Jury.

The First Judicial District shall, from time to time, designate Court of Common Pleas Judges to serve as Supervising Judges of the Philadelphia County Indicting Grand Jury.

Note: By order dated September 27, 2012, the Pennsylvania Supreme Court granted the First Judicial District's "Petition for Empanelment of Indicting Grand Jury" and authorized the First Judicial District to empanel indictment grand juries, in accordance with Pa.R.Crim.P. 556 et seq., on or after December 18, 2012. See In re Petition for Empanelment of Indicting Grand Jury, No. 138 EM 2012.

Note: Issued on October 27, 2016 as Administrative Order No. 04 of 2016 by President Judge Sheila Woods-Skipper. Published in the *Pennsylvania Bulletin* November 2016.

ber 19, 2016, effective December 19, 2016. Amended September 20, 2019, effective December 2, 2019.

Rule *556.2. Philadelphia County Indicting Grand Jury Procedures and Protocols.

(1) When the District Attorney, at the time of a defendant's preliminary arraignment in Municipal Court, requests that a case be sent to the Indicting Grand Jury (IGJ) rather than being scheduled for a preliminary hearing in Municipal Court (MC), the case will be listed in 30 days before the Court of Common Pleas IGJ Preliminary Hearing Supervising Judge for status.

(2) After preliminary arraignment, the District Attorney's Office will file an ex parte motion pursuant Pennsylvania Rule of Criminal Procedure (Pa.R.Crim.P) 556.2 with one of the IGJ Supervising Judges requesting approval to have the case heard by the IGJ. The motion must allege that witness intimidation has occurred, is occurring, or is likely to occur in the case. The motion is reviewed by an IGJ Supervising Judge for approval. If the motion is granted, the IGJ must act on the case within 21 days of the date the order granting the motion was signed by an IGJ Supervising Judge. If the District Attorney's Office requests a preliminary hearing after the motion authorizing presentment to the IGJ is granted by an IGJ Supervising Judge, then the case will remain in Common Pleas Court and be listed for a preliminary hearing in front of the IGJ Preliminary Hearing Supervising Judge. If no motion has been signed and the District Attorney's Office requests that a preliminary hearing be held instead of the case proceeding by way of the IGJ, then the case will be sent back to Municipal Court for a preliminary hearing in the appropriate MC courtroom.

(3) If the District Attorney's Office requests that a case be sent from a preliminary hearing room to the IGJ Preliminary Hearing Supervising Judge for status, the procedures delineated in # 2 above will also apply.

(4) All bail motions filed prior to the first status date will be heard by the IGJ Preliminary Hearing Supervising Judge on the first status listing, unless the IGJ Preliminary Hearing Supervising Judge agrees to list the bail motion earlier. The IGJ Preliminary Hearing Supervising Judge will continue to handle any bail motions filed after the first status date, until the case is assigned for trial.

(a) Until otherwise provided, all bail motions filed on IGJ cases must be served on the designated Assistant District Attorney or paralegal by fax or e-mail at least one business day prior. An Assistant District Attorney (ADA) will not be present to argue bail motions unless prior notice is given.

(b) Bail motions will be heard on Fridays at 9:00 a.m. during the IGJ case status listings unless the defense attorney and the specially assigned ADA agree to list the motion on a different day consistent with the IGJ Preliminary Hearing Supervising Judge's calendar.

(c) If the District Attorney's Office refiles a case that it intends to present to the Indicting Grand Jury, the District Attorney's Office must request the case be listed directly in the Court of Common Pleas before the IGJ Preliminary Hearing Supervising Judge for status. The procedures delineated in # 2 above will also apply.

(d) If a case is presented to the Indicting Grand Jury and the defendant is not indicted, the District Attorney's Office will immediately notify an IGJ Supervising Judge and the case will be dismissed. If the defendant is in custody on the matter, an order directing the defendant's

release on that matter will be sent to the Philadelphia County Prison Record Room or the Pennsylvania Department of Corrections Record Room. If the defense attorney provided an e-mail address to the District Attorney's Office, a copy of the order will be e-mailed. Otherwise, the defense attorney will be notified by telephone, fax or first class mail.

(e) At the status listing if the grand jury has voted to indict the defendant, the IGJ Preliminary Hearing Supervising Judge will direct the clerk to hold the defendant for court on those charges listed in the indictment. If the case is held for court, defendants who are out of custody will be given notice about IGJ procedures and their rights. (See Appendix C)

(f) The case then will be sent for formal arraignment in Common Pleas Court. During formal arraignment, defense will be provided Bills of Information, a disclosure order (see Appendix A), and a copy of the Indictment (if not filed under seal).

(g) Following formal arraignment in Common Pleas Court, the case will be sent directly for a scheduling conference to the trial judge. All homicide IGJ cases will be listed in front of the Homicide Calendar Judge in the Homicide Calendar Room. The Homicide Calendar Judge will handle all motions to quash, bail motions and discovery motions for IGJ direct file cases while these cases are in the Homicide Calendar Room. The Homicide Calendar Judge will handle all bail motions and IGJ discovery motions on IGJ cases in the Homicide Program, assisted by an IGJ Supervising Judge as provided from time to time.

(h) After formal arraignment of a defendant indicted by the IGJ and the assignment of the case to a trial judge, any bail motions and pretrial discovery motions will be listed before an IGJ Supervising Judge according to the zones outlined below. Likewise, bail motions and pretrial discovery motions for family violence and sexual assault IGJ cases will also be listed before an IGJ Supervising Judge based on which zone the case is assigned for trial at the time of formal arraignment. All pretrial discovery for IGJ cases shall be conducted pursuant to Pa.R.Crim.P. 556.10(B)(5), relating to the disclosure of grand jury material.

Indicting Grand Jury Detective Divisions and Case Types

IGJ Preliminary Hearing Supervising Judge
South & Southwest Detective Divisions Cases
Northeast & Northwest Detective Divisions Cases
Central & East Detective Divisions Cases
Direct File Juvenile Cases
Homicide Cases

(i) All IGJ defendants in custody will have a video conference with a Trial Commissioner on the Thursday following their formal arraignment. During the conference defendants will be informed on how their case has been handled by the IGJ, how their case will proceed to trial, contact information for their attorney, and their rights under the IGJ Rules and Procedures in the FJD. (See Appendix D). IGJ cases will be listed for trial within six (6) to nine (9) months, if possible, unless a longer date is agreed upon by counsel. At the scheduling conference, the District Attorney's Office will provide to defense a notice of rights. (See Appendix B). The District Attorney's Office will provide pretrial discovery to defense, pursuant to Pa.R.Crim.P. 573; however, pursuant to Pa.R.Crim.P. 556.10(B)(5), the District Attorney's Office will withhold all testimony and evidence that would disclose the iden-

tity of any witness or victim who has been intimidated, is being intimidated, or is likely to be intimidated.

(j) All IGJ cases listed for trial will also receive a status date, 60 days prior to trial, for a pretrial readiness conference. At this conference, the court will determine if the defense and the District Attorney’s Office expect to be ready for trial. If both sides are ready for trial, IGJ material will be turned over to defense counsel, subject to the disclosure limitations listed below. A motion to quash and any other motions may be filed within 10 days of when the transcript from the IGJ and any other IGJ discovery is turned over to defense counsel. If the case is not expected to be ready for trial, the case will get a new trial date and a new 60-day status date. The District Attorney’s Office will not turn over IGJ material until the trial court has made a determination that the case is expected to go forward as scheduled. The 60-day date for disclosure of IGJ material may be modified by order of an IGJ Supervising Judge.

a. *Disclosure limitations:* pursuant to the standard disclosure order, defense counsel may not give copies of the grand jury material to the defendant to retain or copy in

any way and may not disclose the grand jury material to any other parties without an additional disclosure order from an IGJ Supervising Judge. In connection with the standard disclosure order, grand jury material may be given to an investigator or mitigation specialist working for the defendant on a case where the defendant was indicted by the IGJ and is now awaiting trial.

b. After a determination that the case is ready for trial and disclosure of grand jury material to defense, the trial court will schedule a hearing for any filed motions to quash and other pretrial motions requested by defense counsel. Motions to quash and other pretrial motions will be heard by the trial court.

(k) Defense motions to continue the trial for any IGJ defendant may not be granted without the approval of one of the designated IGJ Supervising Judges.

Note: Issued on October 27, 2016 as Administrative Order No. 04 of 2016 by President Judge Sheila Woods-Skipper. Published in the *Pennsylvania Bulletin* on November 19, 2016, effective December 19, 2016. Amended September 20, 2019, effective December 2, 2019.

APPENDIX A—Disclosure Order

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
COUNTY TRIAL DIVISION—CRIMINAL SECTION**

COMMONWEALTH OF PENNSYLVANIA :
 :
v. : ___ -51-CR-
 :
[DEFENDANT] :

ORDER

DISCLOSURE OF INDICTING GRAND JURY MATERIALS

AND NOW, this day of , 20 , pursuant to Pa.R.Crim.P. 556.10(B)(5) and Pa.R.Crim.P. 573(F), it is hereby **ORDERED** and **DECREED** that the Philadelphia District Attorney’s Office shall disclose any Indicting Grand Jury materials, that were withheld from discovery pursuant to Pa.R.Crim.P. 556.10(B)(5) in connection with the above-captioned case, to defense counsel representing the above named defendant by sixty (60) days prior to the commencement of trial. Upon disclosure to defense counsel, such materials may be redacted as to not include the address, phone number, social security number, work information or closest relative information of any witnesses identified in the materials. Once these redacted materials are disclosed to the defense, no motion for a continuance based on said disclosure shall be granted unless granted by a Supervising Judge of the Indicting Grand Jury.

It is further **ORDERED** and **DECREED** that upon disclosure, counsel for the defendant shall not provide copies of the material disclosed and protected by this **ORDER** to the defendant. The defendant is not permitted to copy or retain these materials in any way. This **ORDER** does not prohibit counsel from showing these materials to the defendant, discussing these materials at meetings with the defendant or from reading from or discussing these materials in telephone conversations with the defendant.

IT IS SO ORDERED.

BY THE COURT:

IGJ SUPERVISING JUDGE

APPENDIX B—Notice of Rights



Commonwealth v. _____

CP-51-CR- _____

The Philadelphia County Indicting Grand Jury (IGJ) has indicted the defendant on the charge of _____ and related offenses, pursuant to Pa.R.Crim.P. 556. Bills of Information have been filed under the above-listed CP number. By order of an Indicting Grand Jury Supervising Judge, and in accordance with Pennsylvania Rules of Criminal Procedure (Pa.R.Crim.P.) 578 and 579, you have ten (10) days from the date when all Indicting Grand Jury material is disclosed to file a Motion to Quash the Bills of Information for your case before the trial judge. All Indicting Grand Jury material will be disclosed sixty (60) days prior to trial unless otherwise ordered by an Indicting Grand Jury Supervising Judge. (Note: the standard disclosure order authorizes IGJ discovery material to be disclosed sixty (60) days prior to trial, See Appendix A.)

Bail motions and any motions for disclosure of Indicting Grand Jury discovery (pursuant to Pa.R.Crim.P. 556.10(B)(5)) prior to the standard disclosure date of sixty (60) days before trial shall be filed before an Indicting Grand Jury Supervising Judge. See below for case type and Detective Division designations.

Indicting Grand Jury Supervising Judges

IGJ Supervising Judge [Name]

IGJ Supervising Judge [Name]

IGJ Supervising Judge [Name]

IGJ Supervising Judge [Name]

IGJ Supervising Judge [Name]

IGJ Supervising Judge [Name]

Defense Attorney: _____

Detective Divisions and Case Types

IGJ Preliminary Hearing Supervising Judge

South & Southwest Detective Divisions Cases

Northeast & Northwest Detective Divisions Cases

Central & East Detective Divisions Cases

Direct File Juvenile Cases

Homicide Cases

Date: _____

APPENDIX C

Defendants Out of Custody—Notice of IGJ Procedure and Rights

**NOTICE OF INDICTMENT FOR DEFENDANTS OUT OF CUSTODY**

Defendant: _____

CP-51-CR- _____ - _____

After you were arrested, your case was sent to a Philadelphia County Indicting Grand Jury instead of being listed for a preliminary hearing in Municipal Court. Evidence regarding the incident for which you are charged was presented to the Philadelphia County Indicting Grand Jury and the Grand Jury issued an indictment for the charge of _____ and related offenses. Following the indictment, an Indicting Grand Jury Supervising Judge ordered that you stand trial in Common Pleas Court. Your case is listed today for a Scheduling Conference before your assigned trial judge in Common Pleas Court. Today your case will be given a trial date.

Your attorney will be provided discovery today according to the Pennsylvania Rules of Criminal Procedure. However, Indicting Grand Jury material may not be disclosed to your attorney until 60 days prior to trial at the pretrial readiness conference before your assigned trial judge, unless otherwise ordered by the court. You will be subpoenaed to court for the pretrial readiness conference, which is generally scheduled sixty (60) days before your trial date. Upon disclosure of the Indicting Grand Jury material in your case, your attorney will have the right to file a motion to quash seeking to dismiss the case for insufficient evidence. The motion to quash will be heard by the assigned trial judge. Your attorney will also review the grand jury material with you prior to trial but you will not be permitted to retain a copy of the grand jury material.

At any time, your attorney may file a bail motion, as well as any other requests about the Indicting Grand Jury material, on your behalf with an Indicting Grand Jury Supervising Judge.

APPENDIX D

Defendants in Custody—Notice of IGJ Procedure and Rights



NOTICE OF INDICTMENT FOR CUSTODY DEFENDANTS

Date: _____

Defendant: _____

CP-51-CR- _____ - _____

After you were arrested, your case was sent to a Philadelphia County Indicting Grand Jury instead of being listed for a preliminary hearing in Municipal Court. Evidence regarding the incident for which you are charged was presented to the Philadelphia County Indicting Grand Jury and the Grand Jury issued an indictment for the charge of _____ and related offenses. Following the indictment, an Indicting Grand Jury Supervising Judge ordered that you stand trial in Common Pleas Court. The next listing for your case is on _____ in Courtroom _____ before Judge _____.

Your attorney will be provided discovery today according to the Pennsylvania Rules of Criminal Procedure. However, Indicting Grand Jury material may not be disclosed to your attorney until 60 days prior to trial at the pretrial readiness conference before your assigned trial judge, unless otherwise ordered by the court. You will be subpoenaed to court for the pretrial readiness conference, which is generally scheduled sixty (60) days before your trial date. Upon disclosure of the Indicting Grand Jury material in your case, your attorney will have the right to file a motion to quash seeking to dismiss the case for insufficient evidence. The motion to quash will be heard by the assigned trial judge. Your attorney will also review the grand jury material with you prior to trial but you will not be permitted to retain a copy of the grand jury material.

At any time, your attorney may file a bail motion, as well as any other requests about the Indicting Grand Jury material, on your behalf with an Indicting Grand Jury Supervising Judge.

Your attorney is _____ and can be reached at _____.

Defendant's Signature _____

By Trial Commissioner _____

Rule *571. Arraignment.

Arraignments may be conducted by Trial Commissioners. As authorized by Pa.R.Crim.P. 571, the Arraignment is scheduled as a matter of course approximately fourteen (14) days after the date the matter is held for court, or a Municipal Court Appeal is filed. The District Attorney shall file the Information before the scheduled Arraignment date and must have discovery available at the Arraignment. If the Information has not been filed before the scheduled Arraignment date, and the Arraignment is not waived by the defendant, the Arraignment shall be continued until the Information is filed. However, the Arraignment may be waived, even if the Information has not been filed, consistent with Pa.R.Crim.P. 571.

Note: Amended September 20, 2019, effective December 2, 2019.

Rule *576. Electronic Filing and Service of Motions and Other Papers.

Filing and Service of Motions and Other Legal Papers

(a)(1) General Scope and Purpose of this Rule. The electronic filing of motions and other legal papers in the criminal courts of Philadelphia County is hereby authorized as specifically provided in this rule. The applicable general rules of court and court policies that implement the rules shall continue to apply to all filings regardless of the method of filing. Electronic filing and service shall be governed by this rule.

(2) Legal papers. In the context of this rule, the "legal papers" which may be filed electronically shall encompass all written motions, written answers and any notices or documents for which filing is required or permitted, including orders, exhibits and attachments, but excluding:

- (i) applications for a search warrant;
- (ii) applications for an arrest warrant;
- (iii) grand jury materials;
- (iv) legal papers filed ex parte as authorized by law; and
- (v) legal papers filed or authorized to be filed under seal.

Comment: The primary intent of this rule is to facilitate the electronic filing of all legal papers other than as specifically excluded in this subsection. Until such time as necessary protocols are adopted to permit the electronic filing of these excluded legal papers, they shall be filed in paper format so as to limit potential harm to any party and to protect the confidentiality of information as provided by law.

(b) Participation and Fees.

(1) An attorney must establish an account, apply for a Username, Password and Personal Identification Number ("PIN"), and supply an email address in order to use the Criminal Electronic Filing System. An attorney is

responsible for the actions of other individuals whom the attorney authorizes to use the attorney's account. Parties who are proceeding without counsel must also establish an account, apply for a Username, Password and Personal Identification Number ("PIN"), supply an email address and be authorized to access their cases through the Criminal Electronic Filing System. Service of electronic filings on attorneys who have established an account and on parties without counsel who have been authorized will be made automatically by the Criminal Electronic Filing System.

(2) The Office of Judicial Records shall not require the payment of a filing fee by any party found by the court to be indigent and is represented by an attorney appointed pursuant to Pa.R.Crim.P. 122 or Pa.R.Crim.P. 904, or who has been granted in forma pauperis status, or is represented by an attorney who is providing free legal service to the party and has filed the praecipe required by Pa.R.C.P. No. 240(d).

(3) Applicable filing fees shall be paid electronically through procedures established by the Office of Judicial Records, and at the same time and in the same amount as required by statute, court rule or order. The Office of Judicial Records shall accept payment as follows:

(i) electronically, at the time the legal paper is electronically filed through the Criminal Electronic Filing System, with the following credit or debit cards: American Express, Discover, MasterCard, and Visa;

(ii) by mail, with certified or cashier check and money order; and

(iii) in person, in cash, certified checks and with the following credit or debit cards: American Express, Discover, MasterCard, and Visa.

(c) *Use of the Criminal Electronic Filing System.*

(1) Electronic filings may be submitted through the website of the First Judicial District of Pennsylvania: www.philacourts.us in accordance with the filing instructions contained in this rule and as may be otherwise provided at that site.

(2) Electronic filings may be submitted at any time (with the exception of periodic maintenance).

(3) The Criminal Electronic Filing System will attribute the filing of an electronic legal paper to the party whose Username, Password and PIN is used to log on and file the legal paper. The following additional provisions govern the signature and verification of legal papers:

(i) The signature of the filer on electronic filings shall be in the following form: /s/ Chris L. Smith.

(ii) The sworn affidavit or verification required by Pa.R.Crim.P. 575(A)(2)(g) and (B)(3)(d) shall be converted to a portable document format (hereinafter "pdf") and shall be attached to the legal paper when it is electronically submitted.

(iii) Any exhibit or other legal paper that requires or contains multiple signatures shall be converted to a pdf and shall be attached to the legal paper when it is electronically submitted.

(iv) The electronic filer shall maintain the original of a sworn or verified document contained in an electronic filing (e.g., affidavit) or contained within an electronic filing (e.g., verification), and shall make it available upon direction of the court or reasonable request of the signatory or opposing party.

(4) All legal papers electronically filed must be filed in a pdf and shall be maintained and retained by the Office of Judicial Records in an electronic format. Neither the Office of Judicial Records nor the court is required to maintain a hard copy of any legal paper filed electronically as provided in this rule.

(5) The electronic filing of a motion constitutes a certification pursuant to Pa.R.Crim.P. 575 that the filing party or attorney has read the motion, that to the best of the filing party's or attorney's knowledge, information and belief there is good ground to support the motion, and that it is not interposed for delay.

(6) The Office of Judicial Records shall provide, through the Criminal Electronic Filing System's website, an acknowledgement that the legal paper has been received, including the date and time of receipt, in a form which can be printed for retention by the filing party.

(7) Unless the legal paper is rejected by the Office of Judicial Records, and provided that the requisite payment has been received prior to or at the date and time of submission, the filing date and time of a legal paper shall be the date and time of submission. If the legal paper is not rejected by the Office of Judicial Records, and the payment is received after the date and time of submission, the filing date and time of a legal paper shall be the date and time payment is received.

(8) Upon review of the legal paper, the Office of Judicial Records shall provide, through the Criminal Electronic Filing System's website, an acknowledgement that:

(i) the legal paper has been accepted for filing, including the date and time of acceptance, and that the legal paper was served on the parties as provided in this rule, in a form which can be printed for retention by the filing party; or

(ii) the legal paper has been rejected as authorized by law. The Office of Judicial Records shall immediately notify, by email, the filing party of the reason for the rejection and whether the legal paper may be modified or a new legal paper must be submitted.

(9) A filing party shall be responsible for any delay, disruption, interruption of the electronic signals and legibility of the document electronically filed, except when caused by the failure of the Criminal Electronic Filing System's website.

(d) *Legal Papers Filed in a Paper Format.* Any legal paper submitted for filing to the Office of Judicial Records in a paper (or "hard-copy") format shall be accepted by the Office of Judicial Records in that format and shall be retained by the Office of Judicial Records as may be required by applicable rules of court and record retention policies. The Office of Judicial Records shall convert such hard-copy legal paper, other than any legal paper filed under seal, to pdf. Once converted to pdf, the pdf version of the legal paper shall be deemed to be, and shall be treated as, the original legal paper and may be used by the parties and the court for all purposes, including court hearings and trials, in the Municipal Court and the Court of Common Pleas.

(e) *Record on Appeal.* Electronically filed legal papers, and copies of legal papers filed in a paper format as provided in subsection (d), shall become the record on appeal.

(f) *Confidential information.* Rescinded, effective January 6, 2018, See Administrative Docket No. 01 of 2018.

(g) *Service of Legal Papers.*

(1) Use of the Criminal Electronic Filing System shall constitute the filer's certification that the submission is authorized and that electronic notice and service of other documents through the Criminal Electronic Filing System will be accepted by the filer.

(2) The submission of an electronic filing shall satisfy the service requirements of Pa.R.Crim.P. 576 on any attorney or party who has established an account as provided in subsection (b)(1) of this rule.

(3) Service of electronic filings on any attorney or party who has not established an account as provided in subsection (b)(1) of this rule shall be made by the traditional methods required under Pa.R.Crim.P. 576.

(h) *Miscellaneous provisions.*

(1) Rescinded, effective January 6, 2018, See Administrative Docket No. 01 of 2018.

(2) Rescinded, effective January 6, 2018, See Administrative Docket No. 01 of 2018.

(3) Rescinded, effective January 6, 2018, See Administrative Docket No. 01 of 2018.

(4) The Office of Judicial Records shall provide training and assistance to all parties as may be necessary to electronically file legal papers as provided in this rule.

(5) The Office of Judicial Records shall provide sufficient computer terminals at such locations as may be determined from time to time to allow parties and the public to access legal papers as provided by this rule and as authorized by applicable Public Access policies.

(i) As provided in subsection (a), the procedures contained in this rule control in the event a provision herein conflicts with the Pennsylvania Rules of Criminal Procedure. In all other respects, the Pennsylvania Rules of Criminal Procedure apply.

Editor's Note: By order issued February 6, 2013, the Supreme Court of Pennsylvania authorized the adoption of the instant rule as well as the implementation of the First Judicial District's Criminal Electronic Filing System. See Order No. 424, Criminal Procedural Rules Docket. The duration of the Pilot Program was extended by the Supreme Court on a yearly basis in 2014 and 2015. See Nos. 449 and 460, Criminal Procedures Rules Docket. By order of the Supreme Court issued on February 29, 2016, the Pilot Program was "...extended until further Order of Court." See Order No. 470, Criminal Procedures Rules Docket. By Order dated January 25, 2018 the Supreme Court adopted Rule 576.1. Electronic Filing of Legal Papers, effective statewide on May 1, 2018, which authorizes implementation of local electronic filing rules and systems provided that the "...Administrative Office of Pennsylvania Courts and the judicial district have agreed upon an implementation plan for PACFile in the judicial district." See Pa.R.Crim.P. 576.1 (B)(1)(d). Until such time, the First Judicial District's Criminal Electronic Filing System implemented pursuant to Rule 576 shall continue.

Note: Amended September 20, 2019, effective December 2, 2019.

Rule *588. Motion for Return of Property. Post-Deprivation Hearing.

(A) Any person aggrieved by a search and seizure may move for the return of the property seized by filing a motion with the Trial Division, Criminal regardless of

whether criminal charges have been filed against the owner of the property or the person in possession of the property.

(B) In the event criminal charges have been filed against the owner of the property or the person in possession of the property, the motion shall be filed utilizing the CPCMS number assigned to the underlying case. If criminal charges have not been filed against the owner or person in possession of the property, a Miscellaneous Docket number shall be assigned through CPCMS.

(C) The filer shall serve the Commonwealth through the District Attorney's Office, and shall file an Affidavit of Service. Provided, however, that the Commonwealth may agree to be served by the Office of Judicial Records upon its receipt of the Motion.

(D) The Office of Judicial Records shall schedule a prompt hearing on the motion and shall notify the Commonwealth and the filer.

(E) The assigned judge may require the filing of an Answer.

(F) In the event a forfeiture petition was filed by the Commonwealth before the filing of a motion for the return of property, the motion(s) shall be assigned to the same judge for disposition, as practicable.

Note: Adopted August 11, 2016; published in the *Pennsylvania Bulletin* on August 27, 2016; effective September 26, 2016. See Trial Division Administrative Order No. 02 of 2016. Amended by Trial Division Administrative Order No. 07 of 2018, effective November 1, 2018.

Rule *600. Motions/Filing.

Note: Rescinded September 20, 2019, effective December 2, 2019. Content governed generally by Pa.R.Crim.P. 575 and 576.

Rule *605. Motions Court/Criminal Calendar Program and Homicide Cases.

Note: Rescinded September 20, 2019, effective December 2, 2019. Content governed generally by Pa.R.Crim.P. 575 and 576

Rule *610. Motions-Criminal List Program Cases.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *620. Procedure for Filing and Entertaining Rule 1100 (& Rule 6013) Motions.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *630. Application to Suppress Evidence in Municipal Court Cases.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *640. Recording of Sentence.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule 645. Stay Pending Appeal of Municipal Court Judgment.

Note: Rescinded September 20, 2019, effective December 2, 2019. Subject Matter addressed by Pa.R.Crim.P. 461 and 462.

Rule *650. Post-trial.

Note: Rescinded September 20, 2019, effective December 2, 2019. Subject matter governed generally by Pa.R.Crim.P. 700 et seq.

Rule *655. Hearings on Post-trial Motions and Deferred Sentences.

Rescinded. Subject matter governed generally by Pa.R.Crim.P. 700 et seq.

Rule *660. Sentencing-Fines-Indigents.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *670. Funeral Orders-Prisoners.

Requests to permit prisoners to attend the funeral of a family member shall initially be submitted to the Sheriff's Office utilizing an approved form which contains all pertinent required information. If the Sheriff's Office determines that the request can be accommodated, the Sheriff's Office shall forward the request to the Administrative Judge of the Trial Division, or to the Administrative Judge's designee, for the entry of an appropriate order. The Petitioner shall pay all fees as may be required by the Sheriff.

Note: General Court Regulations 72-4, February 9, 1972. Amended September 20, 2019, effective December 2, 2019.

Rule *680. Prisoners' Bring-ups.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *780. Confiscation and Disposition of Firearms.

(A) Any firearm or other deadly weapon used in the commission of a crime which is offered as an exhibit in any criminal proceeding in which the defendant who was in possession of the weapon is convicted shall be confiscated by the Trial Judge.

The Trial Judge shall order the confiscated weapon to be destroyed by the Office of Judicial Records or awarded to the Police Department, the Sheriff's Office or the Superintendent of Prisons as per Subsections B, C and D immediately upon expiration of the time allowed for an appeal, if an appeal is not taken.

If an appeal is taken, the confiscated weapon shall be held by the Office of Judicial Records and shall be destroyed or awarded only if the conviction of the possessor/defendant is sustained on appeal.

This Rule shall not be operative in homicide cases or when lawful ownership of the weapon is proved to be in an innocent person.

(B) The Office of Judicial Records shall keep a record of all firearms and other deadly weapons directed to be confiscated and destroyed or awarded by the Court. That record shall include a description of the firearms or other deadly weapons which have been destroyed or awarded and the date of same. That record shall be forwarded on a quarterly basis to the President Judge. A record of the items awarded to the Police Department, the Sheriff's Office or the Superintendent of Prisons shall be furnished to that unit on a quarterly basis.

(C) Awards shall only be made upon written request by the Police Department, the Sheriff's Office or the Superintendent of Prisons to the Office of Judicial Records, who shall insert the request in the appropriate file prior to listing for trial. Awards to the Police Depart-

ment or the Sheriff's Office or the Superintendent of Prisons shall be only for cases involving thirty-eight (38) caliber handguns, Model 12 Winchester rifles, Model 1200 Winchester rifles, shotguns and any rifle possessing a telescopic sight. These firearms shall be disposed of at the discretion of the Police Department office to which the firearms are awarded. The firearms shall be awarded as per Subsection A.

(D) The Police Department, the Sheriff's Office or the Superintendent of Prisons may also request that other firearms be awarded to their custody through written communication with the Office of Judicial Records. If the request is granted, the firearm(s) will be handled as per Subsections A, B and C.

(E) The weapons contemplated by this Rule and awarded to the Police Department, the Sheriff's Office or the Superintendent of Prisons shall be for official purposes only.

Note: Star Rule *1122(a), adopted September 23, 1971, as amended February 15, 1973; further amended March 18, 1977; further amended by the Board of Judges February 21, 1985, General Court Regulation 85-1, effective May 27, 1985. Former Rule *700 was renumbered and amended September 20, 2019, effective December 2, 2019.

Rule *785. Rule Governing Analysis and Destruction of Narcotic and Dangerous Drugs.**I. Analysis of Drugs.**

A. On and after March 1, 1977, in every instance of a seizure of any drug which appears on the Schedules of Controlled Substances of the Uniform Controlled Substance, Drug, Device and Cosmetic Act, the Act of April 14, 1972, P.L. 233, 35 Purdon's § 780-101—780-144, the Police Commissioner or the Police Commissioner's designee shall, within 15 days after receipt thereof, perform or cause to be performed an analysis of such drugs, such analysis to include qualitative identification; weight and quantity where appropriate.

B. Within five days after the report of such analysis is received, the Commissioner or his the Police Commissioner's designee shall forward a copy thereof to the appropriate District Attorney and inform the District Attorney of the location where the subject drafts are being held.

C. The failure to have an analysis made or to forward a copy thereof within the time specified in subdivisions A and B of this section shall not be deemed or construed to bar the making or granting of a motion pursuant to this Rule or the prosecution of a case involving such drugs.

II. Pretrial Motion to Destroy Dangerous Drugs.

A. Subject to the exception in subdivision B, and the limitations in paragraph (2) of subdivision C hereof, the District Attorney shall, within twenty (20) days after receipt of the report of analysis, move in a Court of Common Pleas for an order of destruction of any drug which appears in the Schedules of Controlled Substances of the Uniform Controlled Substance, Drug, Device and Cosmetic Act in felony or misdemeanor cases involving the possession or sale of such drugs.

B. *Exception:* If special circumstances exist, making the destruction of any drug not feasible in a particular case, the District Attorney shall move the Court of Common Pleas for permission to retain the drugs pretrial and shall set forth in the petition the nature of the

special circumstances and the proposed place and manner of keeping the drugs pending trial.

C. A motion for an order of destruction of such drugs shall be in writing, have attached thereto a copy of the report of analysis, and shall be made in the following manner:

(1) *Ex parte*:

Where no defendants have been arrested in connection with the seizure of such drugs and a showing is made upon affidavit that the likelihood of any future arrest in connection therewith is non-existent; or

(2) *Upon notice*:

When a defendant has been arraigned upon an information charging him with a felony or misdemeanor involving the possession or sale of such drugs and the drugs sought to be destroyed are material to the prosecution of said information.

D. When such motion is *ex parte*, the Court may order the destruction of all or part of the subject drugs.

E. When such motion is upon notice, further proceedings shall be as provided in Section III hereof.

III. *Proceedings of Motion Upon Notice.*

A. When such motion is on notice, a hearing thereon shall be held by the Court before which it is returnable not later than thirty (30) days after the return date and the defendant shall be present at such hearing.

B. A hearing held pursuant to this section shall be conducted and recorded in the same manner as would be required were the witnesses testifying at trial. The District Attorney shall establish by competent evidence the nature and quantity of the drugs which are the subject of the motion. Each party shall have the right to call and cross-examine witnesses and to register objections and to receive rulings of the Court thereon. Participation by the defendant in such hearing is in no way an acknowledgment of ownership or possession of the material which is the subject of the hearing.

C. If the Court finds upon the conclusion of the hearing that neither the prosecution nor the defendant will be prejudiced thereby it may grant the motion and may make such order as it may deem appropriate for the destruction of part or all of such drugs.

D. A defendant may waive such hearing and consent to the granting of the motion and entry of an order of destruction either by sworn affidavit or by personal appearance in Court and declaration on the record of such waiver and consent. Such waiver is in no way an acknowledgment of ownership or possession of the material which is the subject of the motion and order.

IV. *Orders of the Court.*

A. In any proceeding brought pursuant to this Rule, the Court may grant or deny any motion made hereunder or the relief requested therein in whole or in part and issue any order thereon as it may deem proper and as the interests of justice may require in order to effectuate the provisions of this Rule.

B. An order of destruction of any drug which appears in the Schedules of Controlled Substances of the Uniform Controlled Substance, Drug, Device and Cosmetic Act issued by the Court pursuant to this Rule shall state the time within which the provisions of such orders are to be complied with. It shall direct the person having custody of the drug to make provision for the destruction thereof in the presence of four witnesses one of whom shall be

designated by each of the following: the Police Commissioner, the Sheriff, the District Attorney and the Office of Judicial Records.

V. *Affidavit of Destruction.*

An affidavit attesting to the date, time, place and manner of destruction of any drug pursuant to an order therefor and identifying the same by reference to the report of analysis or by other identifying number or system and the order of the Court issued thereon shall be filed with the Court by the person who destroyed the drugs and by each of the witnesses required to be present by Section IV(B) of this Rule.

VI. *Rules of Evidence—Drugs Destroyed Pursuant to Court Order.*

The destruction of drugs pursuant to the provisions of this Rule shall not preclude the admission at trial or in a proceeding in connection therewith of testimony, the chemist's report, photographs of the drugs or other evidence where such testimony or evidence would otherwise have been admissible if such drugs had not been destroyed.

Note: Star Rule *329, February 17, 1977. Former Rule *705 was amended September 20, 2019, effective December 2, 2019

Philadelphia Criminal Rule *708. Violation of Probation or Parole. Revocation Hearings.

(A) A probation officer may arrest or cause to be arrested, with or without a warrant, any person ("Defendant") who has been placed on probation or parole for: failure to report as required by the terms of that person's probation or parole, or for any other violation of that person's probation or parole as provided by law, including 42 Pa.C.S. §§ 9913 and 9754.

Explanatory Comment: 42 Pa.C.S. § 9913 authorizes a probation officer to arrest or detain any person on probation or parole for any violation of that person's probation or parole, imposed as provided in 42 Pa.C.S. § 9754 or otherwise.

A probation officer must exercise discretion in determining when a detainer ought to be issued, and shall reference the rule(s) and condition(s) of probation or parole allegedly violated by the Defendant.

(B) The procedure which follows shall be utilized whenever any Defendant who has been released on county probation or parole in Philadelphia County is arrested or detained by law enforcement officers to determine whether the Defendant's probation or parole ought to be revoked.

(1) *Gagnon I Hearing.* A hearing will be held before a Trial Commissioner or a judge as soon as practicable and within a reasonable time after the Defendant has been arrested or detained in order to determine whether there is probable cause to believe that the Defendant has committed a violation of his probation or parole. At the hearing, the Defendant shall:

- a. receive notice of the alleged violation of probation or parole;
- b. be provided the opportunity to appear in person or by two-way simultaneous audio-visual communication and to present evidence in his own behalf;
- c. be provided a conditional right to confront adverse witnesses;
- d. be provided counsel; and
- e. be provided a written hearing disposition report.

At the conclusion of the Gagnon I hearing, if the Trial Commissioner or judge determines that probable cause exists to believe that the Defendant has committed a violation of one or more condition of Defendant's probation or parole, the Defendant may be detained pending a Gagnon II hearing.

Explanatory Comment: See generally *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) which require that a person arrested and detained due to an alleged violation of a condition of probation or parole be provided a "preliminary revocation hearing" (a "Gagnon I hearing") conducted by an independent decisionmaker and a "final revocation hearing" (a "Gagnon II hearing") to determine whether the person may be detained and the person's probation or parole be revoked.

As noted above, the Gagnon I hearing need not be conducted by a judge, and may be conducted utilizing two-way simultaneous audio visual communications. See Comment to Pa.R.Crim.P. 119. Supervisory Probation staff have been designated in some counties to conduct Gagnon I hearings.

The Gagnon I hearing must be held within a reasonable period after the person is arrested and detained. See *Commonwealth v. Ferguson*, 2000 Pa. Super 312, 761 A.2d 613, 619 (2000). Requiring that a Gagnon I hearing be held within a mandatory or inflexible number of days, without regards to the individualized factors present in each case, may result in delay in the scheduling and holding some or all Gagnon I hearings.

Whether bail has been ordered and posted in connection with the new charge(s) is not dispositive in determining whether a person who is on probation or parole shall be released or will continue to be detained for violating the condition(s) of probation or parole. The sole consideration before the fact finder in the Gagnon I hearing is whether probable cause exists to believe that the person has violated any condition of the person's probation or parole.

When a detainer is issued due to conduct which resulted in an arrest, the person on probation or parole may only be detained if after the Gagnon I hearing, evidence of some facts in addition to the facts of arrest is necessary to determine that the person on probation or parole violated any applicable conditions. See *Commonwealth v. Davis*, 234 Pa. Super 31, 38, 336 A.2d 616 (1975).

A Gagnon I hearing is not necessary when a probable cause determination is made, after the preliminary hearing where the Defendant is held for trial or upon the conviction of an offense committed while the Defendant had been released on probation or parole, that the Defendant has violated a condition of probation or parole. See *Commonwealth v. Davis*, 234 Pa. Super 31, 336 A.2d 616 (1975) for the specific scenarios held not to require a Gagnon I hearing in Philadelphia County.

(2) *Gagnon II Hearing.* If at the conclusion of the Gagnon I hearing, it was determined that probable cause existed to believe that the Defendant violated one or more condition of Defendant's probation or parole, a hearing must be held to determine whether the facts warrant revocation of the Defendant's probation or parole and whether probation or parole is still an effective vehicle to accomplish the rehabilitation and a sufficient deterrent against future antisocial conduct, as follows:

a. a written request for revocation shall be filed as required by Pa.R.Crim.P. 708(A);

b. a hearing will be held before the sentencing judge or a judge generally assigned to hear violations of probation or parole;

c. a hearing will be scheduled as requested by the sentencing judge or judge generally assigned to hear violations of probation or parole

i. within a reasonable period after the filing of the written request for revocation required by Pa.R.Crim.P. 708(A); or

ii. within a reasonable period after a verdict is rendered in connection with the new charges which had resulted in Defendant's arrest;

d. the Defendant shall be provided counsel and the opportunity to be heard in person and to present witnesses and documentary evidence;

e. the defendant shall be provided the right to confront and cross-examine adverse witnesses; and

f. the hearing shall proceed as provided in Pa.R.Crim.P. 708.

Explanatory Comment: The judge may not revoke probation or parole on arrest alone, but only upon a finding of a violation thereof after a hearing, as provided in Pa.R.Crim.P. 708. However, the judge need not wait for disposition of new criminal charges to hold such hearing. See *Commonwealth v. Kates*, 452 Pa. 102, 305 A.2d 701 (1973).

The purpose of the Gagnon II Hearing is not to determine whether the person who is on probation or parole has committed a new offense, which the Commonwealth must establish by proving all of the requisite elements of the new offense beyond a reasonable doubt, but rather it is to establish the violation of a condition of probation or parole, which must be proved by a preponderance of the evidence, see *Commonwealth v. Allshouse*, 2009 Pa. Super 47, 969 A.2d 1236, 1240 (2009) and cases cited therein, and further to determine "whether the conduct of the probationer indicates that the probation has proven to be an effective vehicle to accomplish rehabilitation and a sufficient deterrent against antisocial behavior." *Commonwealth v. Kates*, supra, 452 Pa. at 115 (1973).

Note: Adopted March 6, 2019, effective April 29, 2019. See Administrative Order No. 07 of 2019.

Rule *710. Guilty Pleas Refused by Trial Judge.

Where a negotiated plea has been refused by the trial judge after hearing the facts of the case and the defendant is permitted to withdraw the guilty plea, the court clerk shall note on the transcript, with specificity, the District Attorney's recommendation and that the plea bargain was declined by the judge.

This procedure is intended to prevent counsel from taking the same case before another judge who might accept the negotiation that was previously refused by the court.

Note: Amended by the Municipal Court Board of Judges on November 18, 2005; effective March 15, 2006.

Rule *800. Continuances in Common Pleas Felony and Municipal Court Cases.

Note: Rescinded September 20, 2019, effective December 2, 2019. Subject matter governed generally by Pa.R.Crim.P. 106.

Rule *801. Continuances at Preliminary Hearings.

Note: Rescinded September 20, 2019, effective December 2, 2019. Subject matter governed generally by Pa.R.Crim.P. 541 et seq.

Rule *786. Criminal Court Priority List.

(A) Whenever an attorney has more than one criminal case listed in different courtrooms on the same day, the attorney shall appear in each courtroom wherein the attorney's case or cases are listed and provide scheduling and contact information. The attorney will be expected to report to the highest priority room to which the attorney has been assigned.

Priority List (listed in the order of their priority)

- (1) Homicide Case Assignment
- (2) Criminal Calendar Program
- (3) Major Felony Program
- (4) Felony Waiver Program
- (5) Municipal Court List Rooms
- (6) Criminal Motions List and PCRA Hearings
- (7) Any Other Assignment.

An attorney not actually on trial who desires to attend a Preliminary Hearing must obtain the prior approval of the Judge presiding in the highest priority room to which the attorney is assigned.

Note: Administrative Regulation 74-4, December 2, 1974; superseded by Administrative Regulation 79-4, October 22, 1979; amended December 8, 1980, effective immediately.

(B) *Federal and Common Pleas Court Conflicts*

(1) *Common Pleas Court*

Since the District Court lists criminal and civil cases interchangeably, the Common Pleas Court shall follow the same policy with respect to the engagement of counsel as set forth under civil cases, including Advance Special Listings.

(2) *District Court*

The District Court shall recognize as engaged any attorney-of-record in any homicide or major criminal case actually on trial and where same has been scheduled for trial by the appropriate Calendar Judge at the calendar call held no more than three days prior to the actual trial date.

Note: General Court Regulation 73-2, March 2, 1973, as amended by General Court Regulation 73-13, supplement July 10, 1974. Former Rule *805 was renumbered and amended September 20, 2019, effective December 2, 2019.

Rule *810. Applications for Continuances.

Note: Rescinded September 20, 2019, effective December 2, 2019. Subject matter governed generally by Pa.R.Crim.P. 106

Rule *820. Continuances Involving Defendants in Custody.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *900. State and Federal Prisoners in Philadelphia County Prison System.

Note: Rescinded September 20, 2019, effective December 2, 2019.

Rule *910. Probation Detainer and Violation Procedure.

Note: Rescinded by Joint Administrative Order No. 08-2018 issued October 9, 2018, effective immediately.

Rule *920. Appeals Procedure.

Rescinded. Subject matter governed generally by Pa.R.Crim.P. 720 et seq.

POST-CONVICTION PROCEEDINGS**Rule *950. Post-Conviction Hearing Act Procedure.**

Note: Rescinded September 20, 2019, effective December 2, 2019. Subject matter governed generally by Pa.R.Crim.P. 900 et seq.

[Pa.B. Doc. No. 19-1549. Filed for public inspection October 18, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES**MONTGOMERY COUNTY****Adoption of Local Rule of Civil Procedure: 1915.11-1*. Parenting Coordination; No. 2019-00001****Order**

And Now, this 2nd day of October, 2019, the Court hereby Adopts Montgomery County Local Rule of Civil Procedure 1915.11-1*. Parenting Coordination. This Rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.J.A. 103, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court. This Order shall also be published on the Court's website and incorporated into the complete set of the Court's Local Rules.

By the Court

THOMAS M. DeRICCI,
President Judge

Rule 1915.11-1*. Parenting Coordination.

(a) *Appointment of a Parenting Coordinator.*

(1) If the parties agree on the appointment of a Parenting Coordinator and/or if the Court deems one necessary, an appointment Order will be entered in accordance with Pa.R.C.P. 1915.22.

(2) Any person acting in the capacity of a Parenting Coordinator must be on the County roster.

(3) The roster of the Court's approved Parenting Coordinators shall be posted at www.montcopa.org/courts.

(b) *Approved Parenting Coordinators.*

An attorney or mental health professional seeking to be included on Montgomery County Court's roster of qualified individuals to serve as a Parenting Coordinator shall submit to Court Administration the following:

(1) A letter addressed to the Administrative Judge of the Family Division.

(2) The completed Affidavit in substantially the form set forth. The form referenced herein is available on-line at www.montcopa.org/courts.

(3) An acknowledgment that he or she must accept at least one (1) pro bono assignment each calendar year. The minimum requirement may be adjusted periodically subject to a determination by the Administrative Judge.

(c) *Parenting Coordinator Recommendations.*

(1) Parenting Coordinator shall file their Summary and Recommendations with the Prothonotary within two (2) days after the last communication with the parties on the issues in accordance with Pa.R.C.P. 1915.11-1(f)(2).

(2) Parenting Coordinator shall specifically state the manner of service of their Summary and Recommendations to the parties.

(3) Parenting Coordinator shall include the rationale for their Recommendations in the Summary and will also indicate if it requires the Court's immediate attention.

(4) *Objections to Parenting Coordinator's Recommendation(s) and a request for a Record Hearing:*

a. A party objecting to the Recommendations must file with the Prothonotary an original of their Objections and a request for a Record Hearing before the Court within five (5) days of service of the Summary and Recommendations together with a Proof of Service upon all parties and the Parenting Coordinator.

b. The Objections and Petition shall be in substantially the form set forth. The form referenced herein is available on-line at www.montcopa.org/courts.

c. The Prothonotary shall promptly forward the Objections and Petition to the Court Administrator's Office.

d. In the event Objections are filed, the Court shall schedule a timely proceeding.

(5) *Court Review of Parenting Coordinator's Recommendations.*

If no objections to the Parenting Coordinator's Recommendations are filed with the Prothonotary within five (5) days of service of the Summary and Recommendation, the Prothonotary shall forward the Summary and Recommendation to the Court Administrator's Office for the purpose of transmitting the same to the Family Court Judge assigned to the case for review of the Recommendation in accordance with Pa.R.C.P. 1915.11-1(f)(4).

(d) *Fees.*

Parties who request the appointment of a Parenting Coordinator, or who are identified by the Court as benefiting from the appointment of a Parenting Coordinator, shall pay the Parenting Coordinator as follows:

(1) His or her hourly rate.

(2) Any requirement for an initial retainer. The initial retainer shall not exceed the equivalent of five (5) hours at the Parenting Coordinator's hourly rate.

(3) If a party has previously filed and been granted In Forma Pauperis (IFP) status by the Court, and continues to be eligible for IFP status, the Judge appointing the Parenting Coordinator shall waive the fees for the parenting coordination process.

(e) *Miscellaneous.*

(1) A Parenting Coordinator shall not be required to make a Recommendation to the Court, at their discretion, on every disputed issue raised by the parties.

(2) The appointing Judge may reject a Recommendation from a Parenting Coordinator without a proceeding, at their discretion, if the disputed issue exceeds the authority set forth in Pa.R.C.P. 1915.11-1.

[Pa.B. Doc. No. 19-1550. Filed for public inspection October 18, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Adoption of Local Rule of Criminal Procedure 520(B)*. Bail Before Verdict; No. AD381-19

Order

And Now, this 27th day of September, 2019, the Court hereby Adopts Montgomery County Local Rule of Criminal Procedure 520(B)*: Bail Before Verdict. These Rule changes shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.J.A. 103, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court. This Order shall also be published on the Court's website and incorporated into the complete set of the Court's Local Rules.

By the Court

THOMAS M. DeRICCI,
President Judge

Rule 520(B)*. Bail Before Verdict.

(B) During normal office hours, bail may be posted at the Magisterial District Court from which the Transcript and the Original Papers shall issue. Bail may also be posted before verdict, on any day and at any time, at the Montgomery County Correctional Facility with a correctional officer approved by the Warden of the facility and deputized by the Montgomery County Clerk of Courts.

[Pa.B. Doc. No. 19-1551. Filed for public inspection October 18, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Amendment of Local Rule of Criminal Procedure 117*: Coverage: Issuing Warrants; Preliminary Arraignment and Summary Trials; and Setting and Accepting Bail; No. AD382-19

Order

And Now, this 27th day of September, 2019, the Court hereby amends Montgomery County Local Rule of Criminal Procedure 117*: Coverage: Issuing Warrants;

Preliminary Arraignment and Summary Trials; and Setting and Accepting Bail. These Rule changes shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.J.A. 103, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court. This Order shall also be published on the Court's website and incorporated into the complete set of the Court's Local Rules.

By the Court

THOMAS M. DeRICCI,
President Judge

Rule 117*. Coverage: Issuing Warrants; Preliminary Arraignment and Summary Trials; and Setting and Accepting Bail.

1. *****
- a. *****
- b. *****
- c. *****
- d. *****
- e. *****

f. The on-call Magisterial District Judge shall be available at all times during the week after normal business hours and at all times during weekends and holidays to

issue search warrants, arrest warrants and emergency orders under the Protection From Abuse Act and the Protection from Sexual Violence and Intimidation (PSVI) Act.

2. [Rescinded]

[Pa.B. Doc. No. 19-1552. Filed for public inspection October 18, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WESTMORELAND COUNTY

Offender Supervision Fees; No. 3 of 2019

Administrative Order of Court

And Now, to wit, this 26th day of September 2019, *It Is Hereby Ordered and Decreed* that offender supervision fees charged by the Westmoreland County Adult Probation and Parole Department and assessed by the Westmoreland County Clerk of Courts to each offender under supervision, shall increase to \$50.00 per month effective 30 days from the date of publication in the *Pennsylvania Bulletin*. This increase shall not be assessed against any offender to the extent that the offender has pre-paid supervision fees at the time the increase is effective.

By the Court

RITA DONOVAN HATHAWAY,
President Judge

[Pa.B. Doc. No. 19-1553. Filed for public inspection October 18, 2019, 9:00 a.m.]

RULES AND REGULATIONS

Title 55—HUMAN SERVICES

DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CHS. 1155 AND 5240]

Intensive Behavioral Health Services

The Department of Human Services (Department) adopts Chapters 1155 and 5240 (relating to intensive behavioral health services) to read as set forth in Annex A under the authority of sections 201(2) and 1021 of the Human Services Code (62 P.S. §§ 201(2) and 1021) and section 201(2) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4201(2)). Notice of the proposed rulemaking was published at 48 Pa.B. 4762 (August 4, 2018).

Purpose of this Final-Form Rulemaking

The purpose of this final-form rulemaking is to codify the minimum licensing standards and program requirements for participation in the Medical Assistance (MA) Program and MA payment conditions for agencies that deliver intensive behavioral health services (IBHS) to children, youth and young adults under 21 years of age with mental, emotional and behavioral health needs. IBHS includes individual services, applied behavior analysis (ABA) services, group services and evidence-based therapy (EBT) delivered through individual services, ABA services or group services.

This final-form rulemaking supports children, youth and young adults with mental, emotional and behavioral health needs because they can continue to receive a wide array of services that meet their needs in their homes, schools and communities, including EBT delivered through individual services, ABA services and group services.

This final-form rulemaking will replace the requirements for behavioral health rehabilitation services (BHRS) previously set forth in bulletins issued by the Department. It also adds a requirement for a separate and distinct license for agencies that deliver these services and additional oversight of services. This final-form rulemaking eliminates redundancies in bulletins, streamlines the admission process for IBHS, establishes training requirements and qualifications for staff delivering IBHS and includes provisions to protect the health and safety of a child, youth or young adult receiving services.

Background

BHRS were developed in response to the Omnibus Budget Reconciliation Act of 1989 (Pub.L. No. 101-239), which amended section 1905(r)(5) of the Social Security Act (42 U.S.C.A. § 1396d(r)) to require states to provide “necessary health care, diagnostic services, and other measures described in [the Social Security Act]. . . whether or not such services are covered under the State plan.” BHRS are individualized services provided in the home, school or community to meet the needs of children, youth and young adults with mental, emotional and behavioral health needs. The Department has issued bulletins to inform providers of the policies and procedures governing BHRS, many of which were issued when these services were new in the continuum of care. Since the publication of the bulletins, the service delivery system has become more complex and sophisticated. Individuals who receive BHRS and family members of individuals who receive

BHRS, advocates, providers and county administrators have also expressed the need for revised standards for the delivery of BHRS. In response, the Department engaged a diverse group of stakeholders to provide input into the development of regulations that would address the delivery of IBHS.

Affected Individuals and Organizations

This final-form rulemaking affects children, youth and young adults with mental, emotional or behavioral health needs currently receiving BHRS, their families and caregivers and the agencies that provide these services. Approximately 380 agencies are enrolled in the MA Program and currently provide BHRS to approximately 180,000 children, youth and young adults. This final-form rulemaking also affects providers that serve children, youth, and young adults with a behavioral health diagnosis, including autism spectrum disorder (ASD), that are not currently enrolled in the MA Program.

The Department engaged in an active community participation process throughout the development of this final-form rulemaking to ensure that children, youth and young adults who need IBHS and their families and the agencies that provide the services had the opportunity to provide input, express concerns and participate in the drafting process.

A total of 75 individuals were involved in a stakeholder workgroup that provided input on the proposed rulemaking, including providers of BHRS, advocates for individuals with ASD, physicians, family members of children receiving BHRS including ABA services, county administrators, representatives from provider associations, the Office of Mental Health and Substance Abuse Services (OMHSAS) Mental Health Planning Council, the Pennsylvania Mental Health Consumers Association, the Pennsylvania Health Law Project, Disability Rights Pennsylvania and MA behavioral health managed care organizations (BH-MCO). From May to September 2016, the Department participated in face-to-face meetings, telephone conference calls and webinars with stakeholders. The purpose of the workgroup meetings was for the Department to gather input and listen to concerns from interested parties regarding the development of a regulation for the licensure of agencies that will be providing IBHS.

Each of the major sections of this final-form rulemaking was reviewed and discussed by members of the workgroup through a series of six telephone conference calls and webinars and two face-to-face meetings. One of the initial recommendations from the stakeholder workgroup was to change the name of the service from BHRS to IBHS. Key sections of the proposed rulemaking were the focus of the discussion during each of the telephone calls. Topics discussed with the stakeholder workgroup included the array of services to be included in this final-form rulemaking, staff qualifications and training requirements for each service, service planning, coordination of care and requirements for provider eligibility. Workgroup members were provided with notes and drafts of the rulemaking after each call or webinar. A dedicated e-mail account was established for workgroup members to submit written comments between meetings. Workgroup members were requested to gather input and feedback from other interested parties during the drafting of the proposed rulemaking. In addition, information on the proposed rulemaking was provided at meetings with organizations and committees, including the Rehabilita-

tion Community Providers Association, including its Mental Health Committee and Children's Committee; committees sponsored by the County Commissioner's Association of Pennsylvania, including the County Administrator's Advisory Committee, the Mental Health Committee and the HealthChoices Committee; county Mental Health Administrators and Child and Adolescent Service System Program Coordinators; the Managed Care Subcommittee of the Medical Assistance Advisory Committee; and the Mental Health Planning Council. Numerous edits were made to the proposed rulemaking based upon the comments received from the workgroup members and other interested parties.

The stakeholder workgroup met in January 2017 through March 2017 to provide input on Chapter 1155, the companion rulemaking, which addresses payment for IBHS. There were again face-to-face meetings, telephone conference calls and webinars with stakeholders and workgroup members who provided comments and feedback on Chapter 1155, the payment rulemaking, and additional comments and feedback on Chapter 5240, the licensing rulemaking. The proposed rulemaking was revised after each meeting to reflect the input of workgroup members. Workgroup members were able to provide written comments between meetings using the e-mail account.

After publication of the proposed rulemaking, the Department reconvened the stakeholder workgroup. The stakeholder workgroup met in December 2018 and January 2019 to review and discuss some of the comments the Department received on the proposed rulemaking, including comments from the Independent Regulatory Review Commission (IRRC) and two legislators. The stakeholder workgroup discussed feedback the Department received about the decision to no longer require an evaluation to initiate services and instead require an assessment in the child's, youth's or young adult's home and community and the decision to no longer require Interagency Service Planning Team (ISPT) meetings prior to the initiation of services. The stakeholder workgroup also discussed whether the final-form rulemaking should include the requirement for post-discharge phone calls, suggestions for changes to the names of services and revisions to staff qualifications, the expected difficulty in implementing the re-initiation of service provisions included in the proposed rulemaking, possible changes to the supervision requirements, the challenges with creating a new certification through the Pennsylvania certification board prior to promulgation of this final-form rulemaking, concerns about capacity as a result of new staffing qualifications, the use of restrictive procedures, the need for 2:1 staffing or safety plans and rates for services.

The Department appreciates the workgroup members' expertise, time and commitment to this final-form rulemaking and the helpful comments which guided the drafting of this final-form rulemaking.

Accomplishments and Benefits

This final-form rulemaking benefits children, youth and young adults with mental, emotional and behavioral health needs by establishing a minimum standard for licensure of IBHS agencies, minimum requirements for IBHS agencies to enroll in the MA Program and conditions for the MA Program to pay for IBHS. In addition, the supervision and training requirements included in this final-form rulemaking will contribute to the development of a qualified IBHS workforce to deliver treatment services, which will help to improve clinical outcomes for children, youth and young adults receiving IBHS.

This final-form rulemaking will also facilitate the accessibility of behavioral health care for children, youth and young adults by eliminating requirements that have been identified as barriers to accessing services by workgroup members, such as convening an ISPT meeting prior to the delivery of services and requiring a comprehensive evaluation prior to a referral for services. In addition, a child's, youth's or young adult's treatment needs will be assessed in the home and community setting as part of the initiation of treatment and staff who assess a child, youth or young adult will be able to provide services to the child, youth or young adult, which allows for continuity of care, a smoother transition to service provision, reduction in inconsistencies in treatment approach and less delay in beginning treatment.

Furthermore, this final-form rulemaking promotes the use of EBTs by supporting their delivery through individual services, ABA services or group services, which may reduce the need for higher levels of care or out-of-home placements for children, youth and young adults.

Fiscal Impact

The overall fiscal impact for each IBHS agency will vary and depends upon the services provided by the agency, the current organizational structure of the agency, and the IBHS agency's current qualification, supervision and training requirements. Because of the wide array of existing staffing patterns, supervision and training requirements for staff who currently provide BHRS, the Department cannot determine the exact fiscal impact of this final-form rulemaking. For example, although training and supervision is not currently required for individuals with graduate degrees who provide services, most agencies provide some training and supervision for those individuals. Likewise, it is unknown to what extent IBHS agencies will need to hire new staff or encourage existing staff to obtain additional qualifications. For example, some IBHS agencies that provide ABA services may already employ a clinical director that meets the qualification requirements in this final-form rulemaking.

In addition, while this final-form rulemaking imposes new training requirements on IBHS agencies, the Department has included provisions in this final-form rulemaking that are intended to reduce the fiscal impact on IBHS agencies for training. This final-form rulemaking clarifies that staff do not need to repeat initial or annual training when employed by a new IBHS agency. It also promotes the employment of licensed or certified individuals, which will reduce training costs because training acquired through college coursework or as part of obtaining a license or certification is permitted to be counted towards the required staff training. Allowing IBHS agencies to count training acquired through coursework or as part of obtaining a license or certification will reduce the number of trainings agencies need to provide and will result in agencies having to spend less time creating their own trainings. It will also shorten the time between when a staff person is hired and when the staff person can begin to provide services because the staff person will require less training prior to beginning to provide services. In addition, when training is acquired through college coursework or as part of obtaining a license or certification, concerns about what was included in the training are alleviated and agencies will have more confidence that a staff person has the required training.

Likewise, it is unknown to what extent the requirement that an IBHS agency have a quality improvement plan will be an additional expense for IBHS agencies. Agencies that are currently accredited by entities such as The

Joint Commission or the Council on Accreditation (COA) complete quality improvement plans, as do many providers licensed by OMHSAS. Given the common practice of utilizing quality improvement activities, costs to implement this requirement may be minimal.

IBHS agencies will also have the ability to provide assistant behavior consultation-ABA services, which will be supervised by a qualified individual. This new service will allow IBHS agencies to increase the number of staff available to provide ABA services and provide more services without impacting the health and safety of children, youth and young adults receiving services.

To the extent that IBHS agencies incur additional costs as a result of this final-form rulemaking, these additional costs will be taken into consideration when the Department determines future BH-MCO capitation rates. The Department also anticipates that the need for additional licensing staff to license IBHS agencies will result in an additional cost to the Department.

Any additional costs to the Department may be offset by some savings to the Department as a result of this final-form rulemaking. This final-form rulemaking includes qualifications for staff who provide ABA services that are consistent with those required by private insurers, which is expected to result in increased third party payment for services for children, youth or young adults who also have private insurance. Similarly, the admission process for ABA services will be more in line with the admission process used by private insurers, which may result in private insurers paying for the services that result in a written order for ABA services, completing an assessment or completing an individual treatment plan (ITP).

This final-form rulemaking also establishes minimum standards for agencies that provide IBHS that include minimum staffing, training and supervision standards. This may increase the knowledge and skills of staff providing IBHS and may result in improved outcomes for children, youth and young adults who receive IBHS. Improved outcomes may decrease costs for the Department because they may result in a decrease in the utilization of higher levels of more costly care such as residential placement or out-of-home placement, a decrease in the length of time a child, youth or young adult receives IBHS or a decrease in the amount of services a child, youth or young adult needs.

No cost to local government or individuals receiving IBHS are anticipated by this final-form rulemaking.

Paperwork Requirements

This final-form rulemaking may result in increased paperwork for some agencies because it requires IBHS agencies to develop additional policies and procedures and includes a new requirement that IBHS agencies develop quality improvement plans, emergency plans, staff training plans and written agreements to coordinate care with other agencies. Agencies that are currently accredited by entities such as The Joint Commission or COA already are required to have a quality improvement plan and an emergency management plan. In addition, most agencies currently have written policies and procedures that address some of the topics required by this final-form rulemaking and agreements to coordinate care with other agencies. The elimination of the requirement for an ISPT meeting will decrease the paperwork required to document the meeting and result in less information needing to be submitted if prior authorization of IBHS is required.

Public Comment

Written comments, suggestions and objections regarding the proposed rulemaking were requested within a 30-day period following its publication in the *Pennsylvania Bulletin*. The Department received 107 written responses containing approximately 1,400 comments. These comments represented feedback from a broad spectrum of advocates, parents, providers, professionals, legislators, county entities and BH-MCOs. Public comments were received from all five BH-MCOs that provide behavioral health services to children, youth and young adults in the Commonwealth; Statewide advocacy groups, such as Disability Rights Pennsylvania and Pennsylvania Health Law Project; provider groups, such as the Pennsylvania Council for Children, Youth and Family Services and the Rehabilitation and Community Providers Association; and professional associations, such as the Pennsylvania Psychological Association. Feedback was also received from a variety of providers, including large Statewide providers, new providers of ABA services, rural providers, small agencies and agencies owned by licensed psychologists. The Department also received comments from IRRIC.

Discussion of Comments and Major Changes

Following is a summary of the major comments received within the public comment period following publication of the proposed rulemaking and the Department's responses to those comments. A summary of additional changes to the proposed rulemaking is also included.

Replacement of BHRS Bulletins

IRRIC stated in response to the Department's explanation that the rulemaking is replacing information previously conveyed by the Department through bulletins that it is unclear from the description of the rulemaking provided in the preamble of the proposed rulemaking if any of the language from the bulletins was carried over to the rulemaking. IRRIC requested that the Department provide a rationale for each section in the rulemaking and explain if that language previously existed in bulletins issued by the Department.

Response

The service array that is addressed in the bulletins has been carried over in the rulemaking. BHRS includes therapeutic staff support (TSS) services, mobile therapy services, behavior specialist consultant (BSC) services, behavior specialist consultant-autism spectrum disorder (BSC-ASD) services, summer therapeutic activities programs (STAP) and services that are not included on the MA Program fee schedule but are approved through the program exception process. Individuals who provide behavioral health technician (BHT) services and behavioral health technician-applied behavior analysis (BHT-ABA) services have similar qualifications and responsibilities as individuals who provide TSS services. Mobile therapy services can continue to be provided by individuals with qualifications similar to the qualifications for mobile therapists included in the bulletins. In addition, although the Department has changed the name of BSC services and BSC-ASD services to behavior consultation services and behavior consultation-ABA services, the services provided through these services are the same as the services that were provided through BSC services and BSC-ASD services. The Department has also included in the final-form rulemaking with some modifications the qualifications for providing BSC services and BSC-ASD services. Furthermore, the Department will continue to allow STAP to be provided through group services. In addition to the staff who can provide BHRS, the bulletins also

address which providers can enroll and receive payment for providing BHRs. These are the providers that the Department expects will obtain an IBHS agency license.

The bulletins also impose for individuals who provide TSS services initial and ongoing training requirements, onsite supervision requirements, which the Department calls "assessment and assistance," and individual and group supervision requirements. The rulemaking imposes similar training and supervision requirements for individuals providing BHT services. In addition, the bulletins require providers to coordinate services, draft treatment plans and plans for discharge, which are also all required by this rulemaking. The requirement that providers of BHRs submit service descriptions for review and approval by the Department is also addressed in the bulletins. The Department is continuing to require that service descriptions be submitted, although they will now be reviewed as part of the licensing process and the Department has updated some of the information that must be included in a service description as a result of its experience reviewing service descriptions. The bulletins also address the requirements for authorization of TSS services, which include a face-to-face evaluation, an ISPT meeting and a detailed treatment plan. As a result of input from stakeholders, the Department will no longer be requiring ISPT meetings. In addition, instead of requiring a face-to-face evaluation, the Department will be requiring a face-to-face interaction, which may include an evaluation, that results in a written order for IBHS and an assessment followed by the completion of an ITP for IBHS to be initiated. Finally, the bulletins encourage the use of a functional behavior assessment. The Department has changed this requirement from encouraging an assessment to requiring an assessment because assessments provide specifics for treatment delivery, including the number of hours of each service needed at each location.

Promulgating this rulemaking will allow the Department to consolidate and update information provided in multiple bulletins issued over a 24-year period. The Department has found that because not all of the information was included in one place, there were redundancies in the bulletins and it was not always clear which provisions applied. In addition, many of the bulletins were issued when these services were new in the continuum of care and as a result of the service delivery system becoming more complex and sophisticated, information needs to be updated.

The Department has drafted a payment regulation so that providers understand what is required to receive payment from the MA Program. A regulation that governs the licensing of IBHS agencies is needed to establish consistent standards and ensure that these standards are met. In addition, the Department has addressed staff qualifications, training, supervision and service planning and delivery in the rulemaking because it is seeking to align the services that are on the MA Program fee schedule with the services that are not on the MA Program fee schedule.

This rulemaking is also needed to address issues that are not currently addressed in the bulletins, such as the organizational structure of an IBHS agency, staff training plans, agency records, quality improvement plans and additional supervision and training requirements. New requirements, such as staff training plans, were added because staff training plans ensure that staff are properly trained, which is expected to have a positive effect on the outcomes of services. Requirements relating to agency

records are included to establish the specific items that must be kept by an IBHS agency, which will be used to license providers, and to clearly identify the information that must be kept in IBHS records for an individual, which will be used to provide services. The requirement that records must be reviewed is included in this rulemaking to ensure that information is accurately maintained in a child's, youth's or young adult's record. The Department has also included a quality improvement section in the final-form rulemaking because it believes that IBHS agencies should review the quality, timeliness and appropriateness of services they provide to children, youth and young adults and make improvements where needed. Finally, the Department has included training and supervision requirements for graduate-level professionals in the final-form rulemaking to ensure that individuals providing these services receive annual training and ongoing supervision.

One commentator asked if the Department will render the existing BHRs bulletins obsolete after the rulemaking is promulgated.

Response

The Department will obsolete the BHRs bulletins once this rulemaking is promulgated.

IRRC also requested that the Department identify the language in the ABA sections of the rulemaking that satisfies the requirements of the settlement agreement reached in *Sonny O v. Dallas*, No. 1:14-CV-1110 (M.D. Pa.).

Response

The settlement agreement requires the Department to specify minimum qualifications, including training and experience, as well as supervision requirements for practitioners who provide ABA services to children with ASD. The minimum qualifications must be sufficient to enable practitioners who provide ABA services to have the knowledge and skills about ABA set forth in Exhibit A to the settlement agreement.

The Department has addressed the minimum qualifications and experience requirements to provide ABA services in § 5240.81 (relating to staff qualifications for ABA services), the training requirements to provide ABA services in § 5240.83 (relating to training requirements for staff who provide ABA services) and the supervision requirements for individuals who provide ABA services in § 5240.82 (relating to supervision of staff who provide ABA services). The Department, with input from stakeholders, has determined that the qualification requirements, in addition to the supervision and training requirements, are sufficient to enable the practitioners who provide ABA services to have the knowledge and skills about ABA set forth in Exhibit A to the settlement agreement.

Services provided through IBHS

IRRC and 22 commentators expressed that they were confused about what services could be provided through IBHS and the qualifications of the individuals who could provide each service.

Response

In response to these concerns, the Department has simplified the overall structure of the rulemaking in a number of ways. The Department has revised the rulemaking to better explain the services that can be provided through IBHS and the qualifications required to provide a service. The Department has also changed the name of some services.

Individuals with graduate-level qualifications can provide behavior consultation services, mobile therapy services, behavior consultation-ABA services and behavior analytic services. Behavior consultation services consist of clinical direction of individual services, development and revision of the ITP, oversight of the implementation of the ITP and consultation with a child's, youth's or young adult's treatment team regarding the ITP. Mobile therapy services consist of individual therapy, family therapy, development and revision of the ITP, assistance with crisis stabilization and assistance with addressing problems the child, youth or young adult has encountered. Behavior analytic services and behavior consultation-ABA services consist of clinical direction of ABA services, development and revision of the ITP, oversight of the implementation of the ITP and consultation with a child's, youth's or young adult's treatment team on the ITP. In addition, behavior analytic services include functional analysis. Individuals with graduate-level qualifications can also provide group services, which include group and family psychotherapy, design of psychoeducational group activities, clinical direction of group services, creation and revision of the ITP, oversight of the implementation of the ITP and consultation with the child's, youth's or young adult's treatment team on the ITP.

Individuals with or without graduate-level qualifications can provide assistant behavior consultation-ABA services. Assistant behavior consultation-ABA services consist of assisting an individual who provides behavior analytic services or behavior consultation-ABA services and providing face-to-face behavioral interventions.

Individuals without graduate-level qualifications but who meet certification, training or experience requirements can provide BHT services or BHT-ABA services. BHT services and BHT-ABA services consist of implementing a child's, youth's or young adult's ITP. If group services are being provided, BHT services and BHT-ABA services consist of assisting with conducting group psychotherapy and facilitating psychoeducational group activities, in addition to implementing the child's, youth's or young adult's ITP.

In addition, originally the Department intended that EBT would be provided as a separate service. As part of simplifying the structure of services, the Department has revised the final-form rulemaking to allow for the provision of EBT through individual services, ABA services or group services.

Access to services

IRRC and 21 commentators were concerned that the qualifications for IBHS agency staff will create access issues and cause delays in children, youth and young adults receiving services because agencies will not be able to find and retain staff who meet the qualifications in the rulemaking. One of the commentators noted this concern specifically with regards to ABA services, and another commentator shared concerns about access to services in rural areas.

Response

The Department does not agree that the qualifications included in the final-form rulemaking will cause access issues or delays in children, youth and young adults receiving services. The Department has included a variety of acceptable qualifications for each service. In addition, the Department has considered stakeholder input about both access to services and appropriate qualifications for individuals providing services and has added new qualifications for individuals who provide BHT services or

BHT-ABA services, the two most highly utilized services. The Department has revised the final-form rulemaking to include that an individual with a high school diploma or the equivalent to a high school diploma who has completed 40 hours of training covering the RBT Task List can provide BHT services or BHT-ABA services and individuals who have 2 years of experience and 40 hours of training can provide BHT services or BHT-ABA services. In addition, the Department is allowing individuals who provide BHT services or BHT-ABA services additional time to obtain the qualifications needed to provide these services.

Rates and costs

One commentator suggested that the Department consider authorizing payment for time spent performing activities and duties, such as treatment plan writing, data analysis, training, coordination of services, establishing and maintaining written agreements, discharge planning, supervision, consultation and participation in treatment team meetings.

Response

The rulemaking does not change what activities are reimbursable.

IRRC and 28 commentators expressed concern that the Department has not addressed the increased costs to IBHS agencies as a result of the rulemaking.

Response

To the extent that IBHS agencies incur additional costs as a result of this rulemaking, these additional costs will be taken into consideration when the Department determines future BH-MCO capitation rates.

IRRC asked the Department to address the economic impact on the regulated community of increased training requirements in the final-form rulemaking.

Response

The Department developed training requirements using feedback from stakeholders. Most stakeholders supported the increased training requirements to enhance the skills of individuals providing services. The Department does not know what the specific economic impact of the costs of the training requirements will be for each provider because it depends on the IBHS agency's current training requirements. The Department has included in the rulemaking several provisions that are intended to reduce the costs to IBHS agencies as a result of the training requirements, including that staff do not need to repeat initial or annual training when changing employment to a different IBHS agency. The rulemaking also promotes the employment of licensed or certified individuals, which will reduce training costs because training acquired through college coursework or as part of obtaining a license or certification is permitted to be counted towards the required staff training. Allowing IBHS agencies to count training acquired through coursework or as part of obtaining a license or certification will reduce the number of trainings agencies need to provide, will result in agencies having to spend less time creating their own trainings and will decrease the time between when a staff person is hired and when the staff person begins to provide services since the new staff person will require less training prior to beginning to provide services. In addition, when training is acquired through college coursework or as part of obtaining a license or certification, concerns about what was included in the training are alleviated and agencies will have more confidence that a staff person has the required training.

One commentator asked if there will be an increased cost to the HealthChoices primary contractors and oversight entities as it relates to monitoring and oversight duties.

Response

There should be no increase in costs for the HealthChoices primary contractors and oversight entities as a result of the final-form rulemaking because they are already contracting with and monitoring providers of BHRS who are likely to become IBHS agencies.

Implementation of the rulemaking

Six commentators recommended that the Department make available provider friendly documents, including billing guidance, and provide technical support.

Response

The Department intends to hold in-person and online trainings about the requirements in this rulemaking and make training documents available to providers, including by distributing documents through listservs and posting documents on its website.

Definitions

§§ 1155.2 and 5240.2 Definitions

Two commentators suggested that a definition of “written order” be added to the final-form rulemaking.

Response

It is not necessary to include a definition of “written order” in the final-form rulemaking. Section 1155.32(a)(1)(iv) (relating to payment conditions for individual services) and § 1155.33(a)(1)(iv) (relating to payment conditions for ABA services) address what must be included in a written order.

One commentator suggested adding a definition of the term “provider” to the rulemaking.

Response

It is not necessary for the rulemaking to include a definition of “provider” because the Department uses the term “IBHS agency” to refer to providers in the rulemaking.

§§ 1155.2 and 5240.2 Definitions—ABA—Applied Behavior Analysis, consequence, variables and stimulus

The Department has revised the definition of “ABA—Applied behavior analysis” to be consistent with Act 62 of 2008 (40 P.S. § 764h). The definition of ABA included in Act 62 does not provide that ABA includes the attempt to address one or more behavior challenges or skill deficits using evidence-based principles and practices of learning and behavior and the analysis of the relationship between a stimulus, consequence or other variable, and therefore the Department has deleted these provisions from the definition of ABA included in the final-form rulemaking.

One commentator recommended that “applied behavioral analysis” be changed to “applied behavior analysis” because it is the term used in the behavior analysis field, including by the Behavior Analyst Certification Board and the Association for Behavior Analysis International. Other stakeholders also indicated that they agreed that this change should be made.

Response

The Department agrees that “applied behavioral analysis” should be changed to “applied behavior analysis” and has made this change in the final-form rulemaking.

Two commentators noted that the definition of ABA used in the rulemaking appears to limit ABA services to children, youth and young adults with ASD and also appears to indicate that it is the only recognized treatment service for children, youth and young adults diagnosed with ASD. The commentators stated that ABA services can be used to treat children, youth or young adults without ASD.

Response

Children, youth and young adults with ASD are eligible to receive all of the services identified in this rulemaking and ABA services are not limited to children, youth and young adults diagnosed with ASD. The definition of ABA included in the rulemaking does not state that ABA services can only be provided to children, youth or young adults with ASD.

IRRC and one commentator suggested adding a definition for “skills deficits” that is consistent with the Department’s Bulletin OMHSAS 17-02, Applied Behavioral Analysis Using Behavioral Specialist Consultant-Autism Spectrum Disorder and Therapeutic Staff Support Services, to clarify that acquisition of communication skills and age appropriate skills that are needed for daily living (e.g. toileting, dressing, etc.) are appropriate goals of ABA services.

Response

The definition of ABA is consistent with Act 62 of 2008 (40 P.S. § 764h) and language used in OMHSAS Bulletin 17-02. Because the definition of ABA includes that ABA services can be used “to produce socially significant improvement in human behavior or to prevent loss of attained skill or function,” it is not necessary to add a separate definition of “skill deficit.” ABA can be used to assist a child, youth or young adult with acquiring communication skills or age appropriate skills that are needed for daily living.

One commentator recommended that the definition of “ABA” be revised to be consistent with the definitions used by either the Behavior Analyst Certification Board or Association for Behavior Analysis International because standards have been set nationally and Pennsylvania should not be behind the national standards set forth by the profession, which reflect current research and best practices.

Response

The Department does not agree that the definition of “ABA” needs to be revised for Pennsylvania to not be behind the national standards set by the profession. The national standards are consistent with the definition of “ABA” used in the final-form rulemaking.

One commentator suggested changing the definition of “consequence” because it is confusing. The commentator suggested it be changed to “a directly measurable change of a child’s, youth’s or young adult’s behavior resulting from a change in stimulus or stimuli.” Another commentator stated that the definition of “variables” is confusing. In addition, IRRC and one commentator requested that the Department explain why the definition of “stimulus” only permits a behavior specialist analyst to manipulate events, circumstances or conditions.

Response

As a result of the revisions made to the definition of ABA, the Department deleted the terms “consequence,” “variable” and “stimulus” from the definition of “ABA.” Because these terms were only used in the definition of

ABA, it is no longer necessary for the Department to define them in the rulemaking.

§§ 1155.2 and 5240.2 Definitions—Caregiver

Two commentators stated that the definition of “caregiver” should be revised because a legal guardian should sign documents on behalf of a minor.

Response

The Department agrees that a legal guardian or parent is able to sign documents on behalf of a minor. Because the Department has revised the final-form rulemaking to clarify who can sign documents on behalf of a minor, the Department will not be revising the definition of “caregiver.”

§§ 1155.2 and 5240.2 Definitions—EBT-Evidence-based therapy

IRRC and four commentators suggested replacing “Substance Abuse and Mental Health Services Administration’s National Registry of Evidence-based Programs and Practices” with “Evidence-Based Practice Resource Center” in the definition of EBT because its name has changed.

Response

The definition of EBT has been updated to include “Evidence-Based Practice Resource Center.”

One commentator stated that it is unclear how a model intervention designated by the Department can be an EBT because the other requirements for a therapy to be considered an EBT have clear research-based support for their qualifications. The commentator believes that allowing therapies to be designated by the Department as EBTs could undermine the validity of calling a treatment an EBT and recommends that “designated as a model intervention by the Department” be removed from the definition of EBT. In addition, IRRC and one commentator asked what criteria will be used to determine whether an intervention developed by an IBHS agency can be a model intervention. Another commentator requested clarification as to how the Department will determine if an intervention is a model intervention, what process the Department will use to determine if an intervention is a model intervention, and how providers can submit programs or therapies to be considered as model interventions. One commentator asked if the Department will maintain a searchable list of the EBTs it has designated as model EBTs.

Response

The Department will publish on its website a list of EBTs it has approved to be delivered through IBHS. It will not be reviewing models not recognized at the national level and designating them as EBTs. The Department has removed “designated as a model intervention by the Department” from the definition of EBT.

One commentator recommended revising the definition of EBT to include the National Autism Center Standards Project and American Psychological Association Div. 25 and 12 standards, stating that standards have been set nationally and adopting national standards reflects current research and best practices.

Response

The Department did not make the suggested addition to the definition of EBT because the recommended standards did not include models or programs for interventions, but instead included information on best practice treatment approaches.

§§ 1155.2 and 5240.2 Definitions—Group services

One commentator stated that the definition of “group services” does not include size limits on group activities, including staff to individuals being served ratios.

Response

The Department has not imposed a specific size limit on group activities. An IBHS agency must include staffing ratios for each service it offers in its service description that it must submit to the Department for review and approval pursuant to § 5240.5 (relating to service description).

IRRC and one commentator requested that the last sentence of the definition of “group services” be moved to the body of the rulemaking because the requirement that group services can include individual interventions when included in the ITP is a substantive requirement.

Response

The Department has removed the last sentence of the definition of “group services” from the rulemaking. The Department determined that this sentence was not necessary because the definition states that services are “primarily” provided in a group format. In addition, § 5240.96(d)(3) (relating to individual treatment plan) already includes that an ITP for a child, youth or young adult who is receiving group services must include any individual interventions needed to address the therapeutic needs of the child, youth or young adult to function in the home, school or community and § 5240.97(a) (relating to group services provision) provides that a graduate-level professional may provide individual psychotherapy. The Department also revised § 1155.34 (relating to payment conditions for group services) to provide for payment for individual interventions provided as part of group services.

§§ 1155.2 and 5240.2 Definitions—IBHS—Intensive behavioral health services

One commentator is concerned that use of the term “intensive” will be misunderstood to mean that the rulemaking requires that individualized services are approved only if they are concentrated heavily within a specific time or continue for a very long period of time. The commentator further explained that this may not always be appropriate because some children, youth or young adults may benefit from short-term psychotherapy and the rulemaking should permit short-term psychotherapy when appropriate.

Response

The term “intensive behavioral health services” was discussed with stakeholders as a replacement for “behavioral health rehabilitation services” because behavioral health rehabilitation services did not accurately capture the array of services addressed in this rulemaking. The level of intensity of services and hours prescribed will continue to be based on medical necessity and will vary depending on a child’s, youth’s or young adult’s needs. The final-form rulemaking does not preclude children, youth and young adults from receiving other medically necessary services.

§§ 1155.2 and 5240.2 Definitions—Individual services

The Department has deleted from the definition of “individual services” the term “one-to-one” to clarify that if medically necessary, individual services can be provided by more than one individual at a time.

§§ 1155.2 and 5240.2 Definitions—Initiation of service

IRRC requested that the Department add a definition of “initiation” to the final-form rulemaking and use this term consistently throughout the rulemaking.

Response

The Department has added a definition of “initiation of service” to the rulemaking. “Initiation of service” is defined as “[t]he first day an individual service, ABA service or group service is provided. This includes the first day an assessment is conducted.”

§§ 1155.2 and 5240.2 Definitions—Staff

IRRC questioned if the training and supervision requirements in the rulemaking apply to independent contractors and consultants.

Response

The Department has added a definition of “staff” to the final-form rulemaking to clarify that the qualification, supervision and training requirements apply to all staff, including independent contractors and consultants who provide IBHS.

§ 5240.2 Definitions

Multiple commentators and IRRC suggested that the Department add definitions of “behavior specialist analyst,” “behavior specialist,” “mobile therapist,” “BHT” and “BHT-ABA” to the rulemaking to clarify the different qualifications and functions of each position. In addition, because the qualifications for licensure for behavior specialists are found in 49 Pa. Code § 18.524 (relating to criteria for licensure as behavior specialist), IRRC requested that the Department add a reference to this section.

Response

The final-form rulemaking was revised to reflect what services may be delivered through each service rather than be written in terms of which individuals can provide each service, and as a result, it is not necessary to include definitions of these terms. The Department also did not include a cross reference to 49 Pa. Code § 18.524 (relating to criteria for licensure as behavior specialist) because it did not define the term “behavior specialist” and the final-form rulemaking does not include cross references to the qualifications for other licenses whose holders can deliver IBHS.

IRRC and five commentators suggested adding a definition of “mental health professional” because this position was defined differently than the other positions.

Response

The Department has decided to no longer use the term “mental health professional” because it caused confusion since it is a term used in other Department programs. The Department is instead using the term “graduate-level professional.” The Department has included in § 5420.91 (relating to staff requirements and qualifications for group services) the qualifications a graduate-level professional must meet.

One commentator suggested adding a definition for “crisis event” because it is a term that is used often in the rulemaking and it is unclear how the Department defines a crisis event.

Response

The Department will not be adding a definition of “crisis event” to the final-form rulemaking because what is a crisis event varies from individual to individual. Each

child, youth or young adult receiving services is required to have a crisis plan which will define what is a crisis event for that child, youth or young adult.

One commentator suggested that the Department add a definition of “qualified individual” so that it is clear who can supervise individuals who provide ABA services.

Response

Because § 5240.82 (relating to supervision of staff who provide ABA services) was revised to include the qualifications of an individual who provides supervision to staff providing ABA services, the Department does not believe that it is necessary to include a definition of “qualified individual” in the rulemaking.

§ 5240.2 Definitions—ASD—Autism spectrum disorder

IRRC and one commentator noted that the definition of “autism spectrum disorder” differs from the definition of “autism spectrum disorder” found in 49 Pa. Code § 18.522 (relating to definitions) and requested that the Department explain why it used a definition different from the definition used in the State Board of Medicine’s regulations governing behavior specialist licenses.

Response

While the Department did use a different definition of “autism spectrum disorder,” the definitions in 49 Pa. Code § 18.522 (relating to definitions) and the definition used in this rulemaking are consistent. The definition included in this rulemaking includes a greater focus on the behaviors associated with ASD because IBHS are intended to treat maladaptive behaviors by decreasing them and increasing adaptive behavioral skills.

§ 5240.2 Definitions—Aversive conditioning, chemical restraint, mechanical restraint, pressure-point technique and seclusion

The Department identified in the final-form rulemaking the restrictive procedures providers are not permitted to use, which include seclusion, aversive conditioning, pressure-point technique, chemical restraint and mechanical restraint. As a result, the Department has added definitions of “seclusion,” “aversive conditioning,” “pressure-point technique,” “chemical restraint” and “mechanical restraint” to the final-form rulemaking.

§ 5240.2 Definitions—Community like setting

The Department has added a definition of “community like setting” to the final-form rulemaking to clarify where group services can be provided. The Department has defined “community like setting” as “[a] setting that simulates a natural or normal setting for a child, youth or young adult.” A community like setting can be at an IBHS agency’s site, but the setting where group services are provided must be designed in such a manner as to appear to be a natural or normal setting for a child, youth or young adult.

§ 5240.2 Definitions—Trauma-informed approach

Two commentators recommend including “traumatization” in addition to “retraumatization” in the definition of “trauma-informed approach.”

Response

The Department does not agree that it is necessary to include “traumatization” in the definition of “trauma-informed approach” because the definition already includes language about the impacts of trauma and practices to avoid traumatization.

§ 5240.2 *Definitions—Treatment team*

The Department has added a definition of "treatment team" to the final-form rulemaking to clarify who can be involved in a child's, youth's or young adult's treatment. A child's, youth's or young adult's treatment team may include the child, youth, young adult, parents, legal guardians, caregivers, teachers, individuals who provide services and any individual chosen by the child, youth, young adult, parents or legal guardians.

Scope of benefits

§ 1155.11 *Scope of benefits*

IRRC requested that the Department define the term "behavioral health diagnosis" and asked the Department to clarify if the term "behavioral health diagnosis" excludes children, youth and young adults with an intellectual disability. Another commentator stated that IBHS cannot be limited to children, youth and young adults with a behavioral health diagnosis and for clarity the rulemaking should be revised to state that a child, youth or young adult must have a diagnosis listed in the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* or *International Classification of Diseases (ICD)* to be eligible for IBHS.

Response

A behavioral health diagnosis requires a child, youth or young adult to meet the diagnostic criteria established in the current version of the DSM or ICD for a mental health or behavioral disorder. A child, youth or young adult with an intellectual disability would be eligible to receive IBHS if the child, youth or young adult has behaviors that meet the level of severity to meet the criteria for a mental health or behavioral disorder.

IRRC noted that since "young adult" is defined as a person who is "under 21 years of age," the Department should delete the phrase "under 21 years of age" from all subsequent references to young adults in the rulemaking.

Response

The Department has deleted the phrase "under 21 years of age" from subsequent references to young adult in the rulemaking.

Participation requirements

§ 1155.21 *Participation requirements*, § 1155.22 *Ongoing responsibilities of providers*

IRRC asked the Department to explain the difference between being licensed and enrolled and requested that the Department clarify the difference in the final-form rulemaking.

Response

An IBHS agency must obtain a license. However, if the provider wants to participate in the MA Program, the provider must obtain a license and enroll in the MA Program.

IRRC noted that § 1155.22(e) (relating to ongoing responsibilities of providers) requires an IBHS agency to notify the Department if the agency has changed its name, address or service provided. IRRC questioned if any of these changes will require Department approval, particularly if they differ from what was listed in the license or enrollment application.

Response

The Department revised this requirement in the final-form rulemaking because § 5240.5(b) (relating to service description) addresses updates to service descriptions.

However, providers are required to advise the Department of changes to the information in their MA enrollment applications.

Written order

§ 1155.32 *Payment conditions for individual services*, § 1155.33 *Payment conditions for ABA services*, § 1155.34 *Payment conditions for group services*, § 1155.35 *Payment conditions for EBT delivered through individual services, ABA services or group services*

IRRC and four commentators asked which licensed professionals, besides the licensed professionals identified in the rulemaking qualify to diagnose and treat behavioral health disorders. One commentator indicated that it would be better if the rulemaking identified the acceptable licenses. Another commentator shared concerns about broadening the types of licensed individuals who can prescribe IBHS and requested that who can prescribe IBHS remain limited to who is allowed to prescribe BHRS.

Response

The Department has chosen not to identify all of the specific licenses required to be able to prescribe IBHS because this may change over time and the Department cannot anticipate what other licenses may be created in the future that include within their scope of practice the diagnosis and treatment of behavioral health disorders or if the scope or practice of existing licenses will be changed. The Department will address this in provider training.

Fifteen commentators requested clarification if physical medicine physicians, such as developmental pediatricians and neurologists, may write an order for behavioral health services, such as ABA services.

Response

Because they are licensed physicians, physical medicine physicians may write an order for behavioral health services, including ABA services.

Two commentators asked if payment will still be made for IBHS if an unlicensed person writes the order for IBHS and a licensed prescriber signs off on the order. Similarly, two other commentators asked if psychological associates can complete the written order.

Response

Licensed individuals must follow the regulations that govern their license and should only sign off on tasks performed by an unlicensed individual, including psychological associates, if they are allowed to by their licensing regulations.

One commentator stated that agencies that deliver IBHS should not also prescribe the hours of IBHS needed because this creates a conflict of interest.

Response

Individuals who can prescribe IBHS are bound by their professional ethics and should not prescribe hours of service a child, youth, or young adult does not need. If it is believed that a prescriber is acting unethically, it should be reported to the prescriber's licensing board.

One commentator stated that only psychologists and psychiatrists are qualified to perform evaluations and the commentator is concerned that other practitioners do not have the same level of specialized training as a psychologist or psychiatrist.

Response

The Department believes that other individuals who have a license whose scope of practice includes the diagnosis and treatment of behavioral health disorders are qualified to write an order for IBHS.

One commentator expressed concern about lowering the credentials for evaluators who can prescribe ABA services because the commentator believes it is difficult to properly diagnosis children, youth and young adults who are part of a specialty population, including children, youth or young adults with ASD, social language disorder, depression, reactive stress disorder, post-traumatic stress disorder or attachment disorder.

Response

The Department does not agree that it is lowering the standard for who can prescribe ABA services. The Department is allowing licensed individuals whose scope of practice includes the diagnosis and treatment of behavioral health disorders to prescribe ABA services. The Department expects that this will include individuals who specialize in treating and diagnosing the populations identified by the commentator.

One commentator asked if individuals who prescribe ABA services should also have a certification related to ABA.

Response

The Department believes that such a requirement is unnecessary and would unduly restrict access to ABA services. A licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders is able to determine if a child, youth or young adult needs ABA services.

One commentator asked if an order for IBHS can be written by a physician assistant.

Response

A licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders may write an order for IBHS. If the scope of practice of the physician supervising the physician assistant includes the diagnosis and treatment of behavioral health disorders, the physician assistant may write an order for IBHS.

One commentator stated that the rulemaking does not mention where a written order originates and what authorization process for services, if any, must be followed.

Response

The written order must be written by someone who satisfies the requirements in §§ 1155.32—1155.35. The rulemaking does not establish the authorization process, if any, that must be followed. The Department and the BH-MCOs will establish this process and will provide further information on the process once established.

One commentator requested confirmation that a best practice evaluation would meet the written order requirements. This commentator also asked if a prescription letter meets the written order requirements.

Response

The requirements for a written order included in the final-form rulemaking must be complied with regardless of the format used for the written order. Acceptable formats include an evaluation or a prescription letter as

long as the requirements for a written order included in the rulemaking have been met

IRRC and one commentator questioned if the assessment is to be done in place of a psychological evaluation, or if both are required. Another commentator stated that a face-to-face evaluation by a licensed practitioner of the healing arts that results in a prescription for a covered service is the basis for billing MA for services. This commentator believes the requirement in the rulemaking for an order undermines this premise.

Response

The Department does not agree that an evaluation is necessary for MA to pay for IBHS. The rulemaking allows a graduate-level professional to conduct an assessment of the child, youth or young adult in the home and community, which can support or supplant components of an office-based evaluation. The rulemaking also does not preclude a qualified individual from providing a medically necessary evaluation.

One commentator stated that eliminating the best practice evaluation will likely help expedite access to services and asked if it is intended that the written order only contain a prescription for services and if the assessment will be used to determine the locations of service, as well as the hours of service needed in each location.

Response

The written order must contain the elements listed in the rulemaking, including the maximum number of hours of each service recommended a month for the child, youth or young adult. The assessment of the child, youth or young adult is intended to provide more specifics regarding treatment delivery, including the number of hours of each service needed at each location. The assessment is also intended to guide the development of the ITP. An evaluation of the child, youth or young adult can still be conducted.

One commentator advocated that for a prescriber to complete the written order, the prescriber must have a face-to-face interaction with a parent or caregiver and if a face-to-face interaction is not possible, a parent or caregiver should at least be consulted.

Response

Prescribers can have face-to-face interactions with a parent, legal guardian or caregiver even though the rulemaking does not require it. The Department has not made a face-to-face interaction between the prescriber and a parent, legal guardian or caregiver a requirement because it may not always be clinically appropriate for the prescriber to interact with a parent, legal guardian or caregiver and because young adults are able to access IBHS without parental or caregiver involvement.

One commentator stated that an increased emphasis on the evaluation as a requirement of the prescribing professional would add value for the prescribing professional and to the development of the initial ITP.

Response

The Department expects a prescriber's face-to-face interaction with a child, youth or young adult to be an evaluation, which allows the prescriber to obtain the information needed for the written order. The prescriber can conduct the face-to-face interaction in any manner that would allow the prescriber to obtain the information needed to complete the written order.

One commentator stated that a best practice evaluation is critical and is concerned that a written order will not

be sufficient. The commentator believes that assessments are not an adequate replacement for best practice evaluations. Similarly, another commentator believes this rule-making is attempting to eliminate the use of best practice evaluations.

Response

The final-form rulemaking does not prevent an evaluator from performing an evaluation.

One commentator asked if the written order can include the maximum number of hours of services per week instead of the maximum number of hours of each service each month.

Response

Because weekly is encompassed within the requirement of monthly, a recommendation for services that includes the maximum number of hours of services per week would be acceptable when the maximum number of hours per month is also included. The Department is requiring that the maximum number of hours per month be included in the written order to promote consistency and allow for treatment to be based on clinical needs, which may vary throughout the month.

Two commentators requested information on what needs to be included in a written order for initiation and re-initiation of services.

Response

Initiation and re-initiation of services can occur as long as there is a written order that meets the requirements listed in § 1155.32(a)(1)(iv) (relating to payment conditions for individual services) or § 1155.33(a)(1)(iv) (relating to payment conditions for ABA services).

One commentator asked if psychologists are expected to “rubber-stamp” prescriptions written by others who do not have the necessary credentials to conduct an evaluation. The commentator also questioned if the rulemaking should have included what is required to be in the written order because this impinges upon the practice of psychology.

Response

The Department does not expect a psychologist or any other prescriber to “rubber-stamp” a written order. Psychologists and other licensed professionals must continue to operate within the standards, guidelines and ethics set forth by their licensing boards and the regulations that govern their practice. The Department does not agree that specifying what must be in a written order infringes on the practice of psychology. The Department is not directing a psychologist or other licensed professionals regarding the individual’s clinical practice. A psychologist can obtain the information required to be included in the written order in any manner the psychologist believes appropriate, including an evaluation, as long as the method used includes a face-to-face interaction with the child, youth or young adult.

Four commentators asked if the Department will train evaluators to collect the information needed for the written order for services. One commentator pointed out that the rulemaking requires information in the written order that is much more detailed than what is currently required in an order and questioned how evaluators will know what to include in the written order. Similarly, four other commentators requested clarification and additional information on the admission process for IBHS, including the expectations regarding coordination between providers, the differences between the proposed requirements

and the current practice of requiring an evaluation and further information on the minimum content of the order.

Response

The Department will be providing training on the written order. It will address during the training what must be included in the written order and how provider coordination should occur during the admission process. The Department will also issue additional guidance documents on the written order and the admission process for IBHS, if necessary.

One commentator asked if there can be a range of hours included in the written order since the requirement is for a maximum number of hours per month.

Response

The prescriber should not include a range of hours in the written order. The written order should state the maximum number of hours a prescriber has concluded is medically necessary.

One commentator requested further information on what must be included in the clinical information to support the medical necessity of each service ordered.

Response

The clinical information needed to support the medical necessity of a service depends on the needs of the child, youth or young adult being served.

One commentator requested the Department provide a template to be used so that the written orders are standardized.

Response

The Department does not believe that it is necessary that written orders for services be standardized. The final-form rulemaking specifies what is needed to be included in a written order.

Two commentators asked if a new written order is required if as a result of the assessment it is determined that a child, youth or young adult needs more or less hours of service than indicated in the written order. One commentator asked if it is necessary for the prescriber to conduct a reevaluation, is another face-to-face interaction required.

Response

If as a result of an assessment it is determined that the child, youth or young adult needs a different number of hours of service than is included in the written order, the prescriber should be notified so the prescriber can review the additional information and determine if another face-to-face interaction with the child, youth or young adult is necessary. If it is determined that a child, youth or young adult needs less hours than indicated in the order, a new written order is not needed. If a child, youth or young adult needs more hours than indicated in the written order, a new written order is required.

One commentator asked if a primary care physician writes an order for an extensive amount of services, must the provider provide all ordered services when the child, youth or young adult does not appear to need the amount of services ordered. The commentator also asked if the written order should be considered a guide for services until the assessment and ITP are completed. Finally, this commentator asked what the next steps are if the assessment results in a determination that other services should have been prescribed.

Response

The assessment process may lead to additional information that the prescriber may find helpful when determining the service recommendations that should be included in the written order. If the assessment determines that there is a different amount of services required than is included in the written order or that other services should have been prescribed, the treatment team should convene to resolve the discrepancy.

Treatment can start once there is a written order for IBHS, but a treatment plan needs to be developed to guide the services provided. The treatment plan does not need to include all of the information required by § 5240.22 (relating to individual treatment plan), § 5240.86 (relating to individual treatment plan), § 5240.96 (relating to individual treatment plan) and § 5240.102 (relating to assessment and individual treatment plan).

One commentator asked why orders for ABA services can be written within 12 months prior to the initiation of ABA services and orders for non-ABA services must be written within 6 months prior to the initiation of the services. The commentator recommends that for ABA services the requirement be changed to require a new written order every 6 months. Another commentator recommends the requirement for a written order be consistent across services and recommends the time frame for a written order for all services be every 12 months.

Response

The Department agrees that the time frame should be consistent across all services and has changed the minimum requirement for written orders to at least every 12 months for all IBHS. The Department believes that a written order for services every 12 months is sufficient because the ITP will guide treatment and the ITP is reviewed every 6 months. If this process reveals the need to update an order, it can be updated as needed.

Seven commentators requested information on how often reevaluations must occur and what information must be included in a reevaluation. Similarly, two other commentators asked if there is a standard length of care and how the length of care will be known if there is no requirement for ISPT meetings.

Response

For payment for IBHS, there must be an order written within 12 months prior to the initiation of services. The information included in the written order may be the result of an evaluation, reevaluation or another similar process. The requirement that an order for services be written 12 months prior to the initiation of services does not preclude more frequent written orders for services or more frequent evaluations or reevaluations of the child, youth or young adult. There is no standard for how long services can be delivered because this is determined by the individual needs of the child, youth or young adult.

One commentator requested confirmation that the written order requirements also apply to group services.

Response

The requirements for written orders for group services are included in § 1155.34 (relating to payment conditions for group services) and § 5240.94 (relating to group services initiation requirements).

One commentator believes that it is problematic to require that the order include a maximum number of

hours and the setting where services may be provided because the assessment may conclude that a lesser amount of services are needed or a setting identified in the written order for where services should be provided is not a setting where services are needed. The commentator indicated that when this sort of discrepancy happens, it sometimes causes friction with the family. The commentator suggested that the written order recommend an assessment for IBHS and the licensed professional who conducts the assessment should recommend the number of hours of services that should be provided and where services should be provided. Finally, the commentator questioned what happens if there is a discrepancy between the written order and the assessment and the family wishes to dispute this discrepancy.

Response

The Department does not agree that this will cause friction with the family. The assessment process may lead to additional information that the prescriber may find helpful when determining the service recommendations that should be included in the written order. If there is a disagreement between the amount of services prescribed in the order and the amount of services the assessment determined are needed, the treatment team, which includes the family, should convene to resolve the discrepancy.

One commentator requested that the written order require that a recommended service also have an approved service description, as evaluators sometimes recommend services that do not exist in the geographical location where the child, youth or young adult lives.

Response

The Department appreciates the desire for a written order to include services that are available where the child, youth or young adult lives. The Department suggests that an evaluator be familiar with services that are available in the geographical area where the child, youth or young adult lives.

Assessment

§ 1155.32 *Payment conditions for individual services*, § 1155.33 *Payment conditions for ABA services*, § 1155.34 *Payment conditions for group services*, § 1155.35 *Payment conditions for EBT delivered through individual services, ABA services or group services*, § 5240.21 *Assessment*, § 5240.85 *Assessment*, § 5240.95 *Assessment*, § 5240.102 *Assessment and individual treatment plan*

The Department has deleted from § 1155.32 (relating to payment conditions for individual services) and § 1155.33 (relating to payment conditions for ABA services) the reasons assessments must be reviewed and updated because a face-to-face assessment must be reviewed and updated within 12 months of the previous face-to-face assessment for payment to be made for IBHS.

One commentator questioned why the individual services section of the rulemaking does not include a cross reference to § 5240.21 (relating to assessment) to identify that it applies to individual services or separate sections that discuss the requirements for assessment as is done for ABA services, group services and EBT.

Response

Section 5240.21 (relating to assessment) specifies which services it does not apply to in whole or in part and does not state that it does not apply to individual services. Because § 5240.21 applies to individual services, there is

no need for a separate section that discusses the requirements for assessments for individual services.

IRRC requested that the Department clarify if the MA Program will pay for services if an IBHS agency does not complete the assessment within an indicated time frame.

Response

The IBHS agency must complete the assessment within the time frames included in the final-form rulemaking to be paid. This is consistent with payment conditions included in other Department regulations.

Eight commentators requested that a definition of assessment that includes what comprehensive means and the specific requirements for an assessment be included in the rulemaking.

Response

The Department has removed the word “comprehensive” from the rulemaking because it was confusing and there is no need to include it. What must be included in an assessment is identified in the rulemaking. The Department will not be including a definition of assessment in the rulemaking because children, youth and young adults who receive IBHS have a variety of needs and diagnoses, and therefore, there is no definition that would encompass all situations. Generally, a mental health assessment is a process that is used to ascertain whether an individual is functioning on a healthy psychological, social or developmental level. Because the assessment process is used to inform the writing of a child’s, youth’s or young adult’s ITP, the assessment must be completed in a manner that allows for an informed ITP to be written.

IRRC and three commentators asserted that it is inappropriate for an assessment to be completed by a person who does not have a professional license and requested that the final-form rulemaking require that an assessment be done by a licensed professional or under the supervision of a licensed professional. IRRC also requested that the Department explain how the health, safety and welfare of children, youth and young adults will be protected by the level of expertise and experience of the person assessing them.

Response

There is no need to limit who can conduct an assessment to licensed professionals because individuals other than licensed professionals are trained to conduct assessments. In addition, an assessment is not a separate service, but rather assessing a child, youth or young adult is part of behavior consultation services, mobile therapy services, behaviors consultation-ABA services, behavior analytic services and a component of the services a graduate-level professional provides when providing group services. Individuals who provide behavior consultation services, mobile therapy services, behaviors consultation-ABA services, behavior analytic services and graduate-level professionals who provide group services will have received training in completing assessments as part of obtaining their graduate-level qualifications and are supervised by licensed clinical directors.

Three commentators questioned why the Department limited the individuals who could complete an assessment to the individuals who provide the direct services, rather than also allowing a supervisor or another qualified individual to perform the assessment.

Response

The final-form rulemaking was updated to clarify the minimum qualifications for an individual to conduct an

assessment. Individuals who conduct assessments no longer need to provide the direct services.

Two commentators requested that a requirement for face-to-face participation by the child’s, youth’s or young adult’s family in the assessment process be added to the rulemaking.

Response

As a result of the variance in family dynamics, clinical focus and types of assessments used, family participation in an assessment may not always be warranted. The rulemaking does provide that the assessment should include the strengths and needs of the family system in relation to the child, youth and young adult and clinical information related to family structure and history.

Two commentators asked how the assessment process works when services need to be provided during the assessment period.

Response

The Department has revised §§ 1155.32—1155.35 and § 5240.23 (relating to service provision) to clarify that IBHS can be provided during the assessment process if needed if there is a written order for services and there is a treatment plan for the services that will be provided.

One commentator asked if the Department will be developing its own assessment tool for EBT or if the tool developed for the EBT may be used.

Response

The Department will not be developing assessment tools. Providers should use an assessment developed for the EBT if such an assessment tool has been developed. If no assessment has been developed for the EBT, the provider should use a clinically appropriate assessment.

Five commentators questioned why different time frames for completion of the assessment were used for each IBHS and suggested that there be a consistent time frame for completing the assessment for all services. In addition, two commentators stated that 5 days was too short to complete an assessment for group services, especially if the assessment is for STAP. IRRC and five commentators questioned why there was no time period included for completion of an assessment for ABA services. In addition, IRRC noted that commentators asserted that 15 days is too short for completing an assessment because a family’s schedule could be a challenge.

Response

The Department understands the concerns expressed by IRRC and the commentators and has revised the rulemaking to include consistent time frames for the completion of the assessment for individual services, group services and EBT. All assessments must be completed for children, youth and young adults receiving these services within 15 days of the initiation of services. The Department has also added a requirement that the assessment be completed within 30 days of the initiation of ABA services. Additional time is allowed for an assessment when ABA services are provided because ABA services require more extensive initial data collection and analysis. Providers have confirmed to the Department that these revised time frames are feasible.

Six commentators asked that the Department clarify how the time frame for completing the assessment will be calculated and expressed concerns about the calculation of the time frames being tied to the written order for services.

Response

The time frame for completing an assessment is measured from the date of initiation of services, which can include the first day a staff person begins to conduct an assessment if that is the first service a child, youth or young adult receives. Calculation of the time frame for completing the assessment is not tied to the written order for services.

Two commentators questioned why an assessment needs to be updated if one goal had been reached.

Response

The Department agrees that it may not be necessary to update an assessment if the child, youth or young adult has completed one goal. The Department has revised the final-form rulemaking to state that an update is needed when a child, youth or young adult “has made sufficient progress to require an updated assessment.”

Two commentators asked how often an assessment must be updated if none of the reasons included in the rulemaking for updating as assessment apply. One commentator asked the same question, but specifically for ABA services.

Response

If an updated assessment is not required sooner, the assessment must be updated annually for all services.

Two commentators stated that input from individuals other than IBHS agency staff is not sufficient to require an update to the assessment.

Response

The Department agrees and has updated the language in § 5240.21(e)(7) (relating to assessment) and § 5240.85(e)(7) (relating to assessment) to require that the individual who has requested an update “provides a reason” the update is needed.

One commentator asked if § 5240.21(e)(7) (relating to assessment) includes individuals from the BH-MCOs. IRRC requested that the Department clarify who qualifies as an “other professional involved in the child’s, youth’s or young adult’s services” that is able to request an update to an assessment.

Response

Because individuals from a BH-MCO are “involved in the child’s, youth’s or young adult’s services,” if they provide a reason an update is needed, an assessment will be updated. Any individual who is involved in a child’s, youth’s or young adult’s treatment may request that an assessment be updated and the assessment will be updated if the individual provides a reason it is needed.

Four commentators had questions regarding signatures. IRRC and one commentator asked whether parents or caregivers should be required to sign the assessment and two other commentators questioned the need for a supervisor to co-sign the assessment.

Response

The Department does not believe it is necessary for the assessment to be signed because the assessment is used to complete the ITP and the ITP must be signed by the youth, young adult, or a parent or caregiver of a child or youth and an individual who meets the qualifications of a clinical director. The Department has deleted from the rulemaking the requirement that a supervisor of the staff person who completed the assessment or a clinical director sign the assessment.

One commentator asked if a child, youth or young adult is not progressing, can the ITP be updated without an assessment being conducted.

Response

If a child, youth or young adult has not made progress towards the child’s, youth’s or young adult’s goals within 90 days of initiation of services, another assessment must be conducted before an ITP can be updated.

Individual treatment plan

§ 1155.32 *Payment conditions for individual services*, § 1155.33 *Payment conditions for ABA services*, § 1155.34 *Payment conditions for group services*, § 1155.35 *Payment conditions for EBT delivered through individual services, ABA services or group services*, § 5240.22 *Individual treatment plan*, § 5240.86 *Individual treatment plan*, § 5240.96 *Individual treatment plan*, § 5240.102 *Assessment and individual treatment plan*

The Department has removed from § 1155.32 (relating to payment conditions for individual services) and § 1155.33 (relating to payment conditions for ABA services) the requirement that payment be made if the ITP has been reviewed and updated because an ITP goal is completed; no significant progress is made within 90 days from the initiation of services identified in the ITP; a youth or young adult requests a change; a parent or caregiver of a child or youth requests a change; the child, youth or young adult experiences a crisis event; the ITP is no longer clinically appropriate for the child, youth or young adult; or an IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child’s, youth’s or young adult’s services recommends a change. The Department has removed this requirement because regardless of the reason for the review, the ITP must be reviewed and updated within 6 months of the previous ITP for payment to be made for services.

Section 5240.22 (relating to individual treatment plan), § 5240.86 (relating to individual treatment plan) and § 5240.96 (relating to individual treatment plan) continue to include the reasons an ITP would need to be reviewed and updated sooner than 6 months after its completion. The Department has revised the requirement that the ITP be updated if a goal is completed because it may not be necessary to update an ITP if the child, youth or young adult has completed one goal. The final-form rulemaking states that an ITP must be updated if a child, youth or young adult “has made sufficient progress to require that the ITP be updated.” In addition, the Department has added a requirement that the ITP be updated if the child, youth or young adult experiences a change in living situation that results in a change of the child’s, youth’s or young adult’s primary caregivers.

The Department has also removed the requirement that the ITP include the type of staff providing the services because it is not necessary. The qualifications of the staff that can perform a service are included in the final-form rulemaking. In addition, to be consistent with the ITP requirements for other IBHS, the Department has added the requirement that an ITP for ABA services include a safety plan to prevent a crisis, a crisis intervention plan and a transition plan.

One commentator questioned why the individual services section of the rulemaking does not include a cross reference to § 5240.22 (relating to individual treatment plan) to identify that it applies to individual services or

separate sections that discuss the requirements for ITPs as is done for ABA services, group services and EBT.

Response

Section 5240.22 (relating to individual treatment plan) specifies which services it does not apply to in whole or in part and does not state that it does not apply to individual services. Because § 5240.22 applies to individual services, there is no need for a separate section that discusses the requirements for ITPs for individual services.

IRRC requested that the Department clarify if an IBHS agency can be paid if an ITP is not completed within an indicated time frame.

Response

The IBHS agency must complete the ITP within the time frames included in the final-form rulemaking to be paid. This is consistent with payment conditions included in other Department regulations.

One commentator stated that in order to close the loop between treatment and assessment, psychologists and other licensed professionals should be involved in updating the ITP.

Response

The Department agrees that it would be beneficial for a psychologist or other licensed professional to be involved in updating the ITP, but does not believe that their participation should be required because their participation may not always be clinically indicated. In addition, psychologists and other licensed professionals may be involved in a child's, youth's or young adult's treatment through other means, including providing written recommendations for services or treatment.

One commentator requested that the Department consider extending the time frame for completion of the ITP because 30 days is not enough time to complete the ITP.

Response

The child, youth or young adult will have an assessment completed prior to the development of the ITP that can be used to complete the ITP. The Department does not agree that the time frame for completing the ITP is not sufficient because an ITP is needed to guide the services a child, youth or young adult receives.

The Department is allowing 45 days for completion of the ITP after the initiation of ABA services because the Department has allowed an additional 15 days for completion of an assessment when ABA services are being provided. The Department has also changed the time frame for completing an ITP for group services from 10 days to 30 days after the initiation of group services, to align the time frame for completing an ITP for groups services with the time frame for completing an ITP for individual services.

IRRC requested that the Department explain the term "strength-based."

Response

Strength-based treatment planning is standard practice in the behavioral health community. Strength-based treatment means that a child's, youth's or young adult's strengths are incorporated into the ITP. For example, if a child enjoys writing, the ITP may include as a strategy to cope with anxiety that the child should write the child's concerns in a journal. The Department does not believe that an explanation is needed in the final-form rulemaking.

IRRC and one commentator requested that the Department clarify the terms "crisis" and "crisis intervention plan."

Response

The Department has not defined "crisis" in the rulemaking because what constitutes a crisis depends on the child, youth or young adult. Each child's, youth's or young adult's crisis intervention plan should specify what is a crisis event for the child, youth or young adult and what interventions the treatment team members should use in the event of a crisis.

IRRC and four commentators asked why an ITP must include a transition plan.

Response

The transition plan is needed because it is a plan to establish how a child, youth or young adult will resume the child's, youth's or young adult's regular activities after a crisis event.

Five commentators requested that the Department allow the ITP to include an estimate of the number of hours a service will be provided at a location to prevent the requirement that the ITP include the number of hours of service at each setting from becoming a reason to deny services or otherwise becoming a problem for families.

Response

The Department is requiring that the ITP specify the number of hours of services in each setting because the number of hours is determined after the assessment is completed, is based on clinical need and is used to guide the delivery of service.

One commentator stated that if the number of hours each service should be provided is not determined until the ITP is completed, it is unclear how the ITP relates to the prescription and what will be used to determine the medical necessity of services. This commentator believes that not determining the number of hours of services that can be provided until the ITP is completed will allow the provider to deliver as many hours of service as the provider wants and the number of hours of services a provider delivers could be influenced by financial gain, available staffing and other factors that have no relationship to the actual needs of the child, youth or young adult served.

Response

The provider cannot deliver as many hours as the provider wants. The written order specifies a maximum number of hours for each service and is followed by an assessment of the child, youth or young adult. The number of hours a service should be delivered in each environment is determined by the assessment.

Three commentators requested clarification regarding when lack of progress or minimal progress would require that an ITP be updated.

Response

The final-form rulemaking requires the ITP to be reviewed and updated at least every 6 months or if the child, youth or young adult has not made significant progress within 90 days from the initiation of the services identified in the ITP. What constitutes lack of significant progress will vary and should be determined by the treatment team.

One commentator questioned if individuals from the BH-MCO are included in the individuals that may pro-

vide a reason that an update to the ITP is needed. IRRC requested that the Department clarify who qualifies as an “other professional involved in the child’s, youth’s or young adult’s services” that is able to request an update to an ITP.

Response

Any individual who is involved in a child’s, youth’s or young adult’s treatment, including individuals who are employed by a BH-MCO, may request that an ITP be updated and the ITP will be updated if the individual provides a reason it is needed.

One commentator requested that the Department require that an ITP update include a visual display of progress.

Response

While the Department believes that is beneficial to include visual displays of progress in an ITP update, it is not mandating that they be used. A child’s, youth’s or young adult’s progress can be reported through various means, including a graphical representation of progress, a narrative that includes data collected on the child’s ITP goals or narrative reports from members of the treatment team.

Two commentators stated that they think that the ITP should reflect that there is a need for family involvement in treatment. One of the two commentators stated that by using the term “whether,” the Department is not requiring parent, legal guardian or caregiver participation, which contradicts best practice when treating a child and requested that the Department revise the requirement that the ITP include “whether and how parent, legal guardian or caregiver participation is needed to achieve the identified goals and objectives.” The commentators believe that the final-form rulemaking should address how the parent or caregiver will participate in treatment.

Response

The Department has not made the suggested change. Depending on the needs of the child, youth or young adult, participation by a parent, legal guardian or caregiver in treatment may not be needed.

Prior authorization

Two commentators asked which number of hours controls when determining if services are medically necessary, the number of hours included in the written order for service or the number of hours included in the assessment that follows the written order.

Response

The number of hours included in the written order should be used when determining if services that require prior authorization are medically necessary. The information provided in the assessment should further supplement the information provided in the written order.

One commentator asked if the assessment must be submitted to the BH-MCO for prior authorization of an IBHS. Another commentator asked if the ITP must be submitted to the BH-MCO when there is a request to reauthorize services.

Response

BH-MCOs are responsible for determining what must be submitted to support a request to prior authorize services.

Two commentators asked what credentials individuals who review a request for services on behalf of a BH-MCO must have to deny a request for IBHS because it is not medically necessary.

Response

Only a licensed physician or a licensed psychologist whose scope of practice includes the requested service can deny a request for IBHS because it is not medically necessary. In addition, the individual must have appropriate clinical experience or expertise to render such a decision.

Two commentators asked how BH-MCOs will determine that services in the written order are medically necessary.

Response

Each BH-MCO must determine the process and information it will require for review of prior authorization requests.

One commentator asked if services are initiated prior to being authorized and the service is subsequently denied, who is responsible for paying for the services.

Response

The MA Program will not pay for services that require prior authorization if authorization was denied. BH-MCO members can file a grievance if authorization is denied.

Two commentators requested clarification on how services are authorized.

Response

The Department and the BH-MCOs will issue guidance on how to request that services be authorized.

One commentator asked how assistant behavior consultation-ABA services are authorized and if they are prescribed at the discretion of the agency.

Response

Assistant behavior consultation-ABA services will be authorized in the same manner as other IBHS. The prescriber must include a recommendation for assistant behavior consultation-ABA services in the written order.

Two commentators asked what BH-MCOs should use to determine the medical necessity of services requested in a written order.

Response

The Department will be revising the medical necessity guidelines in Appendices T and S of the BH-MCO agreements to reflect the new requirements for prescribing IBHS.

Services provided prior to discharge from a facility

§ 1155.37 Limitations

Two commentators stated their support for payment for services provided to children, youth or young adults residing in 24-hour residential facilities provided within 60 days of discharge from the facility that assist in a child’s, youth’s or young adult’s transition to the home or community setting. One commentator asked if there is an exception to the 60-day limit on payment for IBHS when a child, youth or young adult is transitioning from a 24-hour residential facility to the home or community setting.

Response

The Department has revised the final-form rulemaking to remove the limitation that payment for IBHS will be made only within 60 days of discharge for a child, youth or young adult transitioning from a 24-hour residential facility to the home or community setting. Although generally the services provided by the residential facility will meet the needs of the child, youth or young adult

there may be situations, in addition to assisting with the transition to the home or community, where IBHS is appropriate. IBHS can be provided to a child, youth or young adult residing in a 24-hour residential facility if the order explains why IBHS is needed in addition to services provided by the facility and the service does not duplicate services included in the facility's rate.

Licensing

The Department has added a requirement that licensed IBHS agencies must comply with Chapter 20 (relating to licensure or approval of facilities and agencies) to § 5240.3 (relating to provider eligibility). The Department always intended that IBHS agencies comply with Chapter 20 and added the requirement that an IBHS agency must comply with Chapter 20 to the final-form rulemaking to avoid any confusion.

One commentator asked if agencies are able to provide one service or if they will be required to provide all IBHS in order to obtain a license and if agencies can provide a distinct service at each IBHS agency site.

Response

An agency may provide and be licensed to provide one service or multiple services and different services can be provided at different locations. Services other than group services may only be provided in the home, school and community. Group services may also be provided at a community like setting, which is a setting that simulates a natural or normal setting for a child, youth or young adult.

Six commentators questioned how the Department plans to address services approved through the program exception process, including STAP, team-based programs and EBT programs.

Response

Every agency that provides IBHS must obtain a license. The Department expects that most services that were approved through the program exception process will meet the requirements for individual services, ABA services or group services. If there is a requirement that cannot be met, the IBHS agency can request a waiver of the requirement pursuant to § 5240.111 (relating to waivers). Payment will also be made for services as indicated in § 1155.36(5) (relating to covered services) if the service has been approved through the program exception process under § 1150.63 (relating to waivers).

One commentator requested that providers that are currently providing group services be allowed a transition period to come into compliance with the rulemaking.

Response

Providers will need to comply with this rulemaking 90 days after its promulgation.

Two commentators requested that the Department provide information about the annual licensing inspections, including the qualifications needed to obtain a license and process to obtain a license to provide IBHS, the utilization management reviews and who will be conducting the licensing inspections. One commentator asked for additional information regarding what will be reviewed as part of licensing an IBHS agency.

Response

The Department will be providing training and technical assistance to providers about the licensing process. In addition, training and technical assistance will be offered

during each agency's initial licensing inspection. OMHSAS licensing staff will be conducting the licensing inspections.

Five commentators questioned whether this rulemaking applies to licensed psychologists.

Response

Licensed individuals who provide services directly within the scope of their license do not need to obtain an additional license to provide IBHS or to receive payment for psychological services. For example, a psychologist who provides behavioral interventions within the scope of the psychologist's license does not need to obtain an IBHS license to continue to provide services to a child, youth or young adult. However, if staff employed by the psychologist provide BHT services, the psychologist's agency would need to obtain an IBHS license. In order to clarify when a licensed psychologist must obtain a license to provide IBHS, the Department has added the word "directly" to § 1155.1(c) (relating to policy).

IRRC and seven commentators requested that the Department clarify what constitutes a branch or satellite site and questioned why an IBHS agency's branch location or satellite site in addition to its main facility must obtain a license.

Response

The Department has removed from § 1155.22 (ongoing responsibilities of providers) the requirement that a branch or satellite location must obtain a license or be enrolled by the Department.

Two commentators requested that a county letter of support be added to the requirements to obtain a license.

Response

The Department does not agree that a county letter of support should be required for an IBHS agency to obtain a license because such a letter would not address if an IBHS agency meets the minimum requirements to obtain a license.

Licensing time frames

§ 1155.31 General payment policy, § 5240.3 Provider eligibility

The Department received questions from eight commentators about the initial licensure time frames for IBHS agencies and whether services will be paid for prior to an IBHS agency obtaining a license. Questions included what are the time frames for obtaining a license, how agencies that do not currently hold an OMHSAS license will be notified that they must obtain a license within a certain time frame, why agencies already licensed by OMHSAS have more time to obtain an IBHS license, whether providers will have adequate time to come into compliance with the rulemaking and how the Department will ensure that services are not disrupted while IBHS agencies obtain licenses.

Response

Agencies that are not currently licensed are the Department's priority. The Department intends to publicize the requirement to obtain a license and will follow up with providers who have not timely obtained a license.

New IBHS agencies must obtain a license within 90 days of the promulgation of this rulemaking and an unlicensed agency that is approved to provide ABA services must obtain a license within 180 days of the promulgation of this rulemaking. An IBHS agency that holds an outpatient psychiatric clinic license, a psychiat-

ric partial hospitalization program license or a family based mental health license must obtain an IBHS license when its license expires. This will allow the provider to maintain its annual licensing time frame and allow OMHSAS time to license the provider. Finally, all other IBHS agencies that are currently approved to provide BHRS are required to obtain an IBHS license within 1 year of the promulgation of this rulemaking. The Department has revised the final-form rulemaking to clarify these requirements.

Regardless of when an IBHS agency obtains an IBHS license it can continue to receive payment for services if it complies with this rulemaking 90 days after its promulgation. The Department is allowing payment to be made to unlicensed agencies to ensure that children, youth and young adults do not lose services because an agency has not yet obtained a license.

Service descriptions

§ 5240.5 *Service description*

Because the Department has further clarified in the final-form rulemaking what services may be delivered through IBHS, the Department is no longer requiring that a service description include the purpose of the service being offered by the IBHS agency, expected duration of the service and expected outcomes for children, youth or young adults.

Two commentators questioned if an agency will need to update its service description to obtain an IBHS license. They expressed concerns about the length of time the review process takes because of the need to work with the BH-MCOs and counties to ensure that the services that are provided are needed by the BH-MCO. They were also concerned about the amount of staff time required to complete a service description and any requested revisions or updates.

Response

Agencies will need to update their service descriptions to obtain a license because some of the requirements for IBHS are different than the requirements for BHRS.

Four commentators requested that the role BH-MCOs and counties will have with regards to the approval of service descriptions be clarified. They questioned if BH-MCOs and counties will have input in the development of service descriptions.

Response

The service description required for an IBHS agency to obtain a license does not require county or BH-MCO input or approval. If a provider wants to contract with a BH-MCO, the BH-MCO may also require a service description.

IRRC and seven commentators stated that the process for review of a service description does not appear to differ from the current process and questioned why the Department said that the process was less burdensome than the current process. IRRC and other commentators requested that the Department provide additional guidance on the service description process or use a more standardized process that includes a template.

Response

The Department will be following the same process to review service descriptions for IBHS as it does for other services that are provided by licensed providers. In the past the Department required providers to submit a service description to OMHSAS's Children's Bureau for each service the provider provided. The rulemaking re-

quires that licensing staff review one service description that includes all of the services the provider provides.

The Department will provide training and technical assistance regarding the development of IBHS service descriptions. If a consistent delivery model is used, such as for an EBT, the Department may develop a template. Templates will not be developed for a service where there is a variety of ways the service can be provided.

Two commentators asked if a service description is needed for each program at each location and if separate service descriptions are needed when the same service is being provided at different locations.

Response

A service description should include all the locations where a service will be offered and may include multiple services in one service description.

Two commentators suggested that the requirement that the service description include the maximum number of children, youth or young adults who may be assigned to an individual who provides BHT services or BHT-ABA services if BHT services or BHT-ABA services will be provided be revised to also consider the number of hours of services ordered for the children, youth or young adults being served.

Response

The Department has revised the final-form rulemaking and is no longer requiring that a service description include the maximum number of children, youth or young adults who may be assigned to an individual who provides BHT services or BHT-ABA services because this information can be ascertained from the staffing ratios for each service offered by the IBHS agency, which must be included in the service description. The Department has added a requirement that a service description include the maximum number of children, youth or young adults who will be served at the same time through group service at each community setting or community like setting.

Two commentators requested clarification about the requirement that the service description include staffing ratios for each service offered by the IBHS agency.

Response

Staffing ratios must be included in a service description because they are needed to determine how a service will be provided and to ensure the service is appropriate for the clinical needs of the population being served.

Two commentators questioned how adherence to the service description will be monitored.

Response

Service descriptions will be reviewed as part of a licensing visit to confirm that the IBHS agency is providing services in accordance with its approved service description. During the licensing visit, the child's, youth's or young adult's ITP will be checked to see if it reflects the services described in the service description. The Department also expects the agency to monitor adherence to the service description as part of supervision of staff. Supervisors should be confirming that staff are providing services consistent with the approved service description.

One commentator questioned if Multi Systemic Therapy (MST) can be provided as an IBHS.

Response

An IBHS agency may provide MST. The agency will need to submit a service description based on the MST

model that includes the information required by § 5240.5 (relating to service description).

IRRC requested that the Department explain the approval process for changes to the service description, the time frames that are involved and how the Department will notify the IBHS agency of its decision. IRRC asked the Department to include this process in the final-form rulemaking.

Response

If an IBHS agency needs to change its service description, the IBHS agency should notify the Department. The Department suggests that this notification be by e-mail. The Department will notify the IBHS agency of its decision about the requested change. The amount of time needed for the Department to review a change to a service description will depend on the nature of the change and if revisions are needed by the IBHS agency. The Department will include information about this process in the training it will be providing to providers about the licensing process.

Restrictive procedures

§ 5240.6 Restrictive procedures

One commentator asked if the Department will be revising OMHSAS Bulletin-02-01, The Use of Seclusion and Restraint in Mental Health Facilities and Programs, because it currently prohibits the use of manual restraint by BHRIS providers.

Response

OMHSAS Bulletin-02-01 provides that manual restraint is not expected to occur. It does not prohibit its use by BHRIS providers. IBHS agencies will need to follow the provisions on restrictive procedures included in the final-form rulemaking.

Four commentators requested that the Department clarify which restrictive procedures may be used. The commentators wanted to know if manual restraints were the only type of restrictive procedure permitted.

Response

The Department held a stakeholder meeting to discuss the public comments it received on the use of restrictive procedures. As a result of the discussion with stakeholders and the comments received, the Department has included in the final-form rulemaking the restrictive procedures providers are not permitted to use. Other restrictive procedures are permitted to be used if the requirements in this rulemaking for their use are met.

Three commentators requested that the Department remove the requirement that a second staff person who is not applying a manual restraint procedure observe and document the physical and emotional condition of the child, youth or young adult at least every 10 minutes during the application of a manual restraint. They stated that this may not be possible because services are delivered in a community-based setting.

Response

The Department has revised this requirement in the final-form rulemaking. Rather than a second staff person being required to observe and document the use of a manual restraint, a trained individual must observe and document the use of a manual restraint. In addition to IBHS agency staff, a trained individual could be a member of the child's, youth's or young adult's treatment team.

Three commentators questioned if an IBHS agency can continue to maintain a restraint-free policy.

Response

IBHS agencies can choose to be restraint free. The rulemaking has been updated to include that an IBHS agency that uses restrictive procedures shall have written policies and procedures for their use that identify the specific restrictive procedures that may be used and when they may be used.

One commentator questioned if informed consent is required for a restrictive procedure to be used.

Response

Use of restrictive procedures should be discussed as a part of the child, youth or young adult's crisis plan. Informed consent would not be required in an emergency to prevent self-injury or injury to others after every attempt has been made to anticipate and de-escalate a behavior and less intrusive techniques and resources appropriate to the behavior have been tried but failed.

One commentator stated that staff should be required to receive training before implementing a manual restraint.

Response

The rulemaking requires an IBHS agency to require yearly training for each staff person who administers a restrictive procedure.

One commentator recommended that the rulemaking require that the ITP be reviewed following the use of a manual restraint.

Response

It is not necessary for the final-form rulemaking to include a requirement that the ITP be reviewed following the use of a manual restraint. Documentation of the use of a manual restraint is required to be included in a child's, youth's or young adult's record. The requirement to document the use of a manual restraint will result in the events that preceded the use of the manual restraint and the use of the manual restraint being reviewed.

IRRC and one commentator suggested that the rulemaking align with the Department of Education's restrictive procedure requirements because BHT services are often provided in an educational setting.

Response

IBHS are delivered in a variety of settings, including in school settings. The restrictive procedure requirements address the use of restrictive procedures in all settings where IBHS are provided.

IRRC and one commentator suggested that the language that addresses when a manual restraint should be discontinued be changed from "regain self-control" to "no longer an imminent danger to self or others" in § 5240.6(g) (relating to restrictive procedures) because a child, youth or young adult may not have regained self-control, but the child, youth or young adult may no longer be engaging in behaviors that would warrant the use of a manual restraint.

Response

The Department agrees and has revised the rulemaking to state that a manual restraint shall be discontinued when the child, youth or young adult is no longer an imminent danger to self or others.

One commentator stated that the rulemaking should prohibit the inappropriate use of manual restraint.

Response

Section 5240.6(c) (relating to restrictive procedures) states when a manual restraint may be used. Any other use of manual restraint is prohibited.

In addition, the rulemaking requires an IBHS agency that uses manual restraints to have policies and procedures for the use of manual restraints that include the appropriate use of a manual restraint, including prohibitions on the use of a manual restraint; the required use of less intrusive techniques and resources appropriate to the behavior prior to the use of a manual restraint; and the immediate discontinuation of the manual restraint when the child, youth or young adult is no longer an imminent danger to self or others. The Department has also added a requirement to the final-form rulemaking that the policies and procedures include the staff who may authorize the use of a manual restraint and how the use of a manual restraint will be monitored.

Two commentators stated that IBHS agencies should be required to fully train parents and caregivers on the use of restrictive procedures because this will allow the family to implement the ITP when IBHS agency staff are not present. In addition, during discussions with stakeholders several family members and advocates expressed that there is a benefit to being trained on restrictive procedures because this allows family members to continue to implement the child's, youth's or young adult's ITP and crisis plan when IBHS agency staff are not present.

Response

After discussion with stakeholders, including a meeting that addressed only restrictive procedures, the Department has revised the final-form rulemaking to provide that an IBHS agency may choose to train parents, legal guardians or caregivers on the use of restrictive procedures that are included in the ITP. If an IBHS agency provides training to parents, legal guardians and caregivers the trainings must be approved by the Department and the agency must have policies and procedures that address the training. In addition, the ITP must include that parents, legal guardians or caregivers will be trained on the use of restrictive procedures.

One commentator requested that IBHS agencies be required to receive training from a nationally certified training program in the use of restrictive procedures and manual restraints.

Response

The final-form rulemaking has been revised to provide that an IBHS agency must require yearly training that is approved by the Department for each staff person who administers a restrictive procedure, including a manual restraint. Nationally certified training programs may be approved by the Department, but there may be standardized training programs that are used on a local or regional level that provide sufficient training to warrant Department approval.

One commentator questioned how family members will be notified of the use of a manual restraint.

Response

The Department has revised the final-form rulemaking to require that within 24 hours of the use of a manual restraint the IBHS agency must notify the treatment team. IBHS agencies' policies and procedures must include how the treatment team will be notified if a manual restraint is used.

IRRC requested that the Department clarify how long an IBHS agency must keep a record of a staff person's yearly training in the use of restrictive procedures and that a cross reference be added to the recordkeeping requirements in § 5240.42 (relating to agency records).

Response

The Department has revised the final-form rulemaking to require that the record of each staff person's training in the use of restrictive procedures be kept in each staff person's personnel file in accordance with § 5240.42(b) (relating to agency records). Section 5240.42(b) requires that staff personnel records be maintained for at least 4 years after the staff person is no longer employed by the IBHS agency.

Coordination of services

§ 5240.7 Coordination of services

One commentator asked if a standardized document will be provided for providers to use for the written agreements to coordinate services with other service providers.

Response

The Department will not be providing a template for the written agreement for coordination of services with other service providers. IBHS agencies need to develop their own agreements.

One commentator requested that IBHS agencies that also provide psychiatric inpatient and outpatient services, partial hospitalization services, crisis intervention services or case management services be exempt from having written agreements to coordinate services with other providers of these services.

Response

IBHS agencies that also provide other services are not exempt from the requirement to have written agreements to coordinate services with other service providers because an IBHS agency must provide children, youth and young adults with a choice of provider. IBHS agencies are not precluded from including their own agency services as part of the community resources list required by § 5240.7(c) (relating to coordination of services).

One commentator asserted that requiring small ABA providers to have written agreements to coordinate services is an undue burden and should not be required. Six commentators requested that the Department require that IBHS agencies that provide group services must also have written agreements to coordinate services with other service providers.

Response

The Department will not be exempting small ABA providers from having written agreements to coordinate services. Coordination of services is essential for all children, youth and young adults who receive IBHS because they often have multiple needs and often receive services from different levels of care. The Department agrees that IBHS agencies that provide group services should be required to have written agreements to coordinate services with other service providers and has removed the exemption for these agencies from the final-form rulemaking.

One commentator asked for confirmation that an IBHS agency will not be held responsible if other providers do not respond to an IBHS agency's attempts to enter into a

written agreement to coordinate services as long as the IBHS agency documents its attempt to engage with other service providers.

Response

The Department confirms that it will not hold an IBHS agency responsible if other providers do not respond to the agency's attempts to enter into a written agreement to coordinate services and the IBHS agency documents its attempts to engage other providers.

One commentator asked if the Department had considered the cost of updating agreements with other service providers every 5 years.

Response

The Department considers this cost as part of the overall administrative costs an IBHS agency will incur. The Department expects the costs the IBHS agency incurs as a result of this requirement will be minimal because of the infrequency of the requirement to update agreements and because it is common practice to update agreements with other service providers.

IRRC requested that the Department add to the information an IBHS agency must make available on community resources that provide behavioral health services a requirement that the IBHS agency include the website of the community resources that provide behavioral health services.

Response

The Department has not added this requirement to the final-form rulemaking because not all community resources have a website or the ability to create or maintain a website.

Service provision

§ 5240.23 *Service provision*

IRRC and one commentator requested that the Department clarify what is meant by the requirement in § 5240.23 (service provision) that IBHS shall be delivered in "community-based" settings and whether community-based settings include a home, school or other location.

Response

"Community-based" means that services may be delivered anywhere children, youth or young adults would naturally be throughout their day.

One commentator asked if a family member or other individual involved with the child is allowed to participate in treatment if the child, youth or young adult is not present.

Response

If included in the ITP, family members or other individuals involved with the child are allowed to participate in treatment even if the child, youth or young adult is not present if it will help the child, youth or young adult achieve a goal identified in the ITP.

Discharge

§ 5240.31 *Discharge*, § 5240.32 *Discharge summary*

Three commentators questioned what is required for a child, youth or young adult to be discharged from services, including if a child, youth or young adult who is not making progress after 90 days could continue to receive services or if a child, youth or young adult could be discharged for non-compliance or if the child, youth or young adult could be discharged for not participating in services.

Response

The rulemaking does not mandate the discharge of a child, youth or young adult as a result of specified circumstances. It provides that a child, youth or young adult may be discharged from services if one of the reasons listed in the rulemaking occurs.

The Department has added to the final-form rulemaking that a child, youth or young adult may be discharged if the child, youth or young adult failed to attend scheduled IBHS for 45 consecutive days without any notification from the youth, young adult or the parent, legal guardian or caregiver of the child or youth and prior to discharge, the IBHS agency made at least three attempts to contact the youth, young adult or the parent, legal guardian or caregiver of the child or youth to discuss past attendance, ways to facilitate attendance in the future and the potential discharge of the child, youth or young adult for lack of attendance.

IRRC and 18 commentators expressed concern about the requirement that an IBHS agency may re-initiate services for up to 90 days if the condition of the child, youth or young adult has regressed and impacts the child's, youth's or young adult's ability to maintain functioning at home, school or in the community. The commentators questioned who would staff the services if they were re-initiated and staff had begun to serve other children, how re-initiated services would be authorized, what would be required in the written order for services that were re-initiated, what to do if re-initiation of services was not consistent with an EBT's requirements and what are the requirements for new assessments and ITPs.

Response

After discussing this topic with stakeholders, the Department has decided to remove from the final-form rulemaking the requirements relating to re-initiation of services. While generally stakeholders support the concept of allowing services to be re-initiated, there are problems with implementing this requirement. Stakeholders indicated that it would be difficult for IBHS agencies to re-initiate services if staff were no longer available to reengage with a child, youth or young adult or if there had been a change in the family's situation such as a move or change in custody. In addition, it would be difficult to re-initiate services when there has been a change in diagnosis, which may require a change in services.

The Department continues to support determining how best to assist children, youth and young adults who need to return to services for a brief time after discharge and intends to explore this issue further with stakeholders. In the meantime, there is nothing in the final-form rulemaking that precludes a child, youth or young adult from returning to services.

Two commentators asked who is qualified to write the discharge summary and one commentator requested that individuals in addition to the clinical director be allowed to sign the discharge summary.

Response

The Department has added the following language to § 5240.32(a) (relating to discharge summary) of the final-form rulemaking: "An individual qualified to provide behavior consultation services, mobile therapy services, behavior analytic services or behavior consultation-ABA services must complete a discharge summary." Because the individual who writes the discharge summary must

be a graduate-level professional, the agency's clinical director's signature on the discharge summary is not necessary.

IRRC and 25 commentators submitted comments about the requirement that the post discharge summary include documentation of at least two telephone contacts within the first 30 days after a child's, youth's or young adult's discharge to monitor the status of maintaining treatment progress. The commentators questioned who is responsible for making the phone calls, if letters could be substituted for phone calls, what is required if the discharge is unplanned, what to do if the IBHS agency is unable to reach the family, how many attempts must the IBHS agency make to contact the family, if attempts to contact the family and the telephone call are billable services, if discharge summaries would need to include information on post discharge phone calls and how to address families who did not respond to contact attempts.

Response

After discussing this topic with stakeholders, the Department has decided to remove the requirement that the post discharge summary include documentation of at least two telephone contacts within the first 30 days after a child's, youth's or young adult's discharge to monitor the status of maintaining treatment progress. While stakeholders believe post discharge phone calls have the potential to positively impact care, they were concerned that because of the volume of telephone calls a provider would be required to make, the calls would not include a meaningful discussion of the child's, youth's or young adult's status or maintenance of treatment progress. Also, BH-MCOs, not providers, typically provide care management, and therefore, BH-MCOs should be following up after a child, youth or young adult is discharged from services. The county mental health program may also be involved with the child, youth or young adult. As a result, the Department will be removing the requirement for post discharge phone calls from the final-form rulemaking.

Records

§ 5240.41 *Individual records*, § 5240.42 *Agency records*, § 5240.43 *Record retention and disposal*

The Department has revised the record retention requirements to require an IBHS agency to retain a child's, youth's or young adult's records for at least 4 years after the last date of service. This change aligns the rulemaking with the requirements in § 1101.51(e) (relating to ongoing responsibilities of providers), which require providers to maintain medical records for at least 4 years.

The Department has also included in the final-form rulemaking a requirement that if services are provided prior to the completion of the ITP, the child's, youth's or young adult's treatment plan must be included in the child's, youth's or young adult's record. The Department added this requirement to ensure that all pertinent records related to the treatment of the child, youth or young adult are included in the child's, youth's or young adult's record.

IRRC and ten commentators stated that requiring that the record for each child, youth or young adult an IBHS agency serves be reviewed every 6 months is excessive and suggested that a review of a sample of records should be required instead.

Response

In response to these concerns, the Department has updated the language in the final-form rulemaking to

require that a record be reviewed within the first 6 months of its initial entry and subsequent review may be limited to new additions to the records and must occur at least annually thereafter.

Three commentators requested that the requirement for having an emergency plan be removed because it was not a feasible requirement for providers that serve individuals in the community.

Response

The Department consulted with providers that serve individuals in the community and they confirmed that an emergency plan was needed because emergencies occur when a provider serves a child, youth or young adult in the community. In addition, agencies that are accredited by The Joint Commission or COA are required to have emergency plans.

IRRC requested that the Department specify how long an agency must retain records related to its operations. IRRC also requested that the Department clarify if records can be maintained in electronic format.

Response

The Department has added a requirement that agency records must be retained for at least 4 years. The Department chose 4 years because it is consistent with record retention requirements included in other Department regulations. The Department does not address in the rulemaking how agency records are maintained, and as a result, an IBHS agency may choose the format it wants to use to maintain its records.

IRRC and one commentator questioned why agency records must include a daily schedule for group services if group services are provided and suggested that a sample schedule would be sufficient. IRRC also requested that the Department explain why IBHS agencies must keep records of staff work schedules.

Response

A daily schedule is required because it is essential to guide staff and program operations. A sample schedule may be submitted as part of an IBHS agency's service description, but a schedule of daily activities must be available at the location where group services are provided. Records of staff work schedules must be maintained to ensure that individuals who provide services are receiving required supervision, to confirm that an IBHS agency is complying with the staffing requirements in this rulemaking and for program integrity reviews.

One commentator requested that the requirement to retain staffs' individual training plans be removed because it was overly burdensome.

Response

The Department believes that it is important for IBHS agencies to retain a record of staff training plans to allow the agency to ensure that staff receive required trainings and the trainings address the staffs' needs.

Nondiscrimination

§ 5240.51 *Nondiscrimination*

Two commentators asked if the moral belief clause applies to this section.

Response

Federal and state law, as well as the HealthChoices agreement, address the coverage of services.

*Quality improvement**§ 5240.61 Quality improvement requirements*

One commentator supported both the information required for the quality improvement plan as well as the requirement that the review and report be completed annually. One commentator asked the Department what mechanism will be used to account for the cost of the new quality improvement requirements.

Response

Agencies that are currently accredited by entities such as The Joint Commission or COA currently complete quality improvement plans as do the many providers licensed by OMHSAS. Given the common practice of utilizing quality improvement activities within organizations, the Department expects the cost of the new quality improvement requirements to be minimal.

One commentator stated the requirements in this section are too prescriptive and suggested that the provision be revised to contain language that provides the provider with more flexibility. In addition, the commentator asked that the quality management plan include the following: performance measures; performance improvement targets and strategies; methods to obtain feedback relating to personal experience from individuals; staff persons and other affected parties; data sources used to measure performance; identification of the actions to address annual findings and roles and responsibilities of the staff persons related to the practice of quality management. One commentator asked for further clarification regarding what must be included in the annual review and report. IRRC asked that the Department define "quality improvement plan."

Response

The Department does not believe it is necessary to define "quality improvement plan" because the Department has identified what must be included in the plan in § 5240.61(a)(1) (relating to quality improvement requirements). The Department also does not agree that additional requirements for what must be included in the quality improvement plan need to be added to the final-form rulemaking. The final-form rulemaking includes the minimum requirements for what must be included in a quality improvement plan. The quality improvement plan must explain how the IBHS agency will conduct an annual review of the items included in § 5240.61(a)(1), using a methodology that addresses the specific information required by § 5240.61(a)(2). The Department clarified some of the requirements in the final-form rulemaking.

Four commentators asked for further information regarding what must be shared with the public and how to address data so that it is not misconstrued due to a lack of understanding of the data. IRRC asked the Department to work with the regulated community regarding what information must be made available to the public.

Response

The annual report is to include an analysis of the annual review, the elements of which are set forth in the final-form rulemaking. The annual report is available to the public, as stated in the final-form rulemaking. The Department will work with the regulated community through stakeholder meetings and trainings to provide assistance regarding the content of the report, including providing information that would help individuals who are unfamiliar with data assessment and review to

understand the report. For example, IBHS agencies might consider explaining individual and family satisfaction data.

Three commentators requested that the requirement for the quality report happen less frequently than annually. One commentator suggested that the quality improvement plan be reviewed at least annually and revised at least every 3 years.

Response

The requirement for an annual review and report will remain. These are essential tools to be used by the IBHS agency and the Department in assessing the quality and delivery of services.

Two commentators asked for clarification regarding the staff qualifications to conduct the quality reviews.

Response

Specific qualifications of the staff conducting quality reviews were not defined. The requirement is that the staff qualifications of those performing the review are included in the quality improvement plan.

One commentator asked that IBHS agencies be required to share the annual report with all HealthChoices primary contractors and HealthChoices oversight entities.

Response

This rulemaking applies to IBHS agencies that may not be enrolled in the MA Program, and therefore the Department is not including this requirement in the final-form rulemaking.

Two commentators asked if there are standardized outcome measures. One commentator requested there be up to three standard outcome measurements that are to be used by all IBHS agencies so individuals and families have some form of comparison.

Response

The Department has not defined standardized outcome measures due to the variety of ways IBHS agencies may choose to assess and review the quality of the services they provide.

One commentator noted that the BH-MCOs are not included in the quality improvement process.

Response

This rulemaking applies to IBHS agencies that may not be enrolled in the HealthChoices program, and therefore the Department has not specifically included the BH-MCOs in the quality improvement process.

One commentator stated there are no requirements for the assessment of the outcomes for an individual who does not have ASD or is not receiving ABA services.

Response

Section 5240.61(a)(1)(iii) (relating to quality improvement requirements) requires an assessment of the outcomes of services delivered and whether ITP goals have been completed for all IBHS and is not limited to services to individuals with ASD or receiving ABA services.

The IRRC asked that the Department require the annual quality reports be posted on each IBHS agency's website and included in advertising literature.

Response

The Department is requiring that reports be made available to the public upon request and that IBHS agencies provide written notification to individuals served

by the agency that a copy of the report may be requested. These mechanisms will provide access to the reports. Also, IBHS agencies are not required to have a website or to use promotional materials.

Organizational structure

§ 5240.4 *Organizational structure*

Two commentators requested that the Department clarify when an IBHS agency must resubmit an organizational chart.

Response

The organizational chart must be resubmitted to the Department if there are changes to the organization. This includes when a position is eliminated or other structural changes occur. An organizational chart does not need to be submitted each time a staff person is hired or leaves as long as the position continues to be occupied by a staff person.

One commentator stated it was not feasible for an IBHS agency to submit organizational changes to the Department within 10 days of a change and requested that this requirement be removed.

Response

The Department has decided to allow an IBHS agency additional time to notify the Department of a change to its organizational structure. An IBHS agency will have 30 days to notify the Department of a change. This is consistent with Chapter 20 (relating to licensure or approval of facilities and agencies), which governs the licensing of agencies and also applies to IBHS agencies.

Administrative director of an IBHS agency

§ 5240.11 *Staff requirements*, § 5240.12 *Staff qualifications*, § 5240.81 *Staff qualifications for ABA services*

The Department has added a requirement that the administrative director's responsibilities include supervising staff who do not provide IBHS. The Department realized that it failed to address this responsibility in the rulemaking.

One commentator asked if one person could serve as both the administrative director and the clinical director and requested that if two people need to be hired, this be factored into the rates for IBHS.

Response

There is no requirement that two individuals be hired. However, if only one individual serves in the role of administrative director and clinical director that individual needs to be able to perform all of the duties required for both positions and must meet the qualifications for both positions.

One commentator asked for how many entities can an administrative director be responsible. IRRC and another 12 commentators requested clarification about the duties of the administrative director that would require an administrative director to dedicate a minimum of 7.5 hours each week to each IBHS agency the administrative director directs. Two commentators asked how agency is defined and if there is a maximum number of branches or satellites locations an IBHS agency can have. IRRC questioned why there is a need for the level of oversight included in the rulemaking by the administrative director.

Response

The Department has revised the final-form rulemaking to remove the requirement that an administrative director dedicate 7.5 hours at each program the administrative

director directs. The Department has also removed the provision allowing an administrative director to be responsible for more than one IBHS agency. The Department has determined that these requirements are not necessary because the rulemaking specifies the administrative directors' responsibilities and IBHS agencies should be allowed discretion to determine how best to ensure that an administrative director completes the administrative director's responsibilities.

IRRC and 14 commentators questioned why it is necessary for an administrative director to have a graduate degree.

Response

The qualifications for an administrative director have been changed to require a bachelor's degree to better align the educational qualifications with the duties and activities for which the administrative director is responsible. Stakeholders indicated that an individual with a bachelor's degree could have the appropriate education and training needed to fulfill the responsibilities of the administrative director's position.

Clinical director of an IBHS agency

§ 5240.11 *Staff requirements*, § 5240.12 *Staff qualifications*, § 5240.81 *Staff qualifications for ABA services*

Three commentators questioned if the clinical director can carry a caseload.

Response

The clinical director of an IBHS agency may provide services to a child, youth or young adult if the clinical director is qualified to provide the service. However, the provision of direct services cannot prevent the clinical director from completing the responsibilities of a clinical director described in § 5240.11(d)(1)–(5) (relating to staff requirements).

Two commentators questioned if a licensed social worker has the knowledge needed to be a clinical director of an IBHS agency that provides individual services or group services.

Response

To be qualified to be a clinical director of an IBHS agency that provides individual services or group services a licensed social worker must also complete a graduate clinical or mental health direct service practicum. Stakeholders supported the inclusion of the practicum requirement because it ensures that licensed social workers have additional clinical training.

Eight commentators questioned why the qualifications for a clinical director of an IBHS agency that provides individual services or group services do not include individuals with a behavior specialist license.

Response

The final-form rulemaking was revised to include that a clinical director of an IBHS agency that provides individual services or group services may be licensed as a behavior specialist if the individual also has a graduate degree that required a clinical or mental health direct service practicum. The Department included the practicum requirement to ensure that licensed behavior specialists have additional clinical training.

The Department has also revised the final-form rulemaking to include that a clinical director of an IBHS agency that provides individual services or group services may be licensed as a professional with a scope of practice that includes overseeing the provision of IBHS and have

a graduate degree that required a clinical or mental health direct service practicum. The Department added this option because there may be new licenses created and individuals who obtain these licenses may have the expertise needed to be a clinical director of an IBHS agency that provides individual services or group services. Because the Department does not know what education will be required to obtain such a license, the Department included the requirement that the individual have a graduate degree that required a clinical or mental health direct service practicum to ensure that the individual has clinical training.

IRRC requested that the Department explain what is meant by the requirement in § 5240.12 (relating to staff qualifications) that a clinical director have a minimum of 1 year of full-time postgraduate experience in the provision of mental health direct services to children, youth or young adults. IRRC and one commentator questioned if experience includes working with children in a school, daycare or another child and adolescent service system program.

Response

The clinical director's experience must include 1 year of working directly with a child, youth or young adult to provide mental health treatment after the clinical director received the clinical director's graduate degree. The experience can be in any setting as long as it involves the provision of mental health direct services that are included in a behavioral health treatment plan. This experience can be obtained while working with children in a school, daycare or another child and adolescent service system program.

One commentator questioned how an individual who is certified as a board-certified behavior analyst (BCBA) and is licensed as a behavior specialist has the training and experience to oversee mental health services which are provided through individual services, group services or EBT.

Response

The final-form rulemaking was updated to include that a licensed behavior specialist who is a clinical director of an IBHS agency must have a graduate degree that required a clinical or mental health direct service practicum.

Three commentators questioned why the Department was relying on qualifications determined by the Behavior Analyst Certification Board, including the requirement that the clinical director of an IBHS agency that provides ABA services be certified as a BCBA.

Response

Stakeholders indicated that it was important for the Department to consider the qualifications determined by the Behavior Analyst Certification Board because these qualifications are national standards.

IRRC asked the Department to explain the need and rationale for requiring monthly meetings between the clinical director and staff.

Response

The Department has removed the requirement in the final-form rulemaking that a clinical director must meet with staff on a monthly basis and document the meeting because the rulemaking includes requirements that specifically address the supervision an individual who meets the qualifications of a clinical director must provide.

Qualification to provide IBHS

IRRC and four commentators stated that as a result of this rulemaking providers will be forced to use fewer independent contractors and hire more employees, which will result in increased costs and administrative responsibility.

Response

The Department does not agree that as a result of this rulemaking providers will be forced to use fewer independent contractors and hire more employees because this rulemaking does not require an IBHS agency to change its current employment structure.

Two commentators asked if this rulemaking has made the behavior specialist license irrelevant

Response

The behavior specialist license will continue to be relevant after this rulemaking is promulgated. The behavior specialist license is included in the qualifications to provide IBHS.

§ 5240.71 Staff qualifications for individual services

The Department revised the final-form rulemaking to clarify that to be qualified to provide behavior consultation services an individual who has a graduate degree in psychology, social work, education or counseling must either have a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults or completed a clinical or mental health direct services practicum. The Department also revised the final-form rulemaking to clarify that if an individual has a graduate degree in a field related to psychology, social work, education or counseling, the individual must also have completed a clinical or mental health direct services practicum to be qualified to provide behavior consultation services. However, if an individual has a graduate degree in ABA, there are no additional requirements for the individual to be qualified to provide behavior consultation services. This is because a graduate degree in ABA cannot be obtained without 1 year of experience in providing mental health direct services.

Similarly, the Department revised the final-form rulemaking to clarify that to be qualified to provide mobile therapy services an individual must have a graduate degree in psychology, social work, or counseling; at least nine credits specific to clinical practice and must have either a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults or completed a clinical or mental health direct services practicum. The Department also clarified that to be qualified to provide mobile therapy services an individual who has a graduate degree in education or a field related to psychology, social work, education or counseling, must also have at least nine credits specific to clinical practice and completed a clinical or mental health direct services practicum.

IRRC and two commentators requested that the requirement that individuals who provide individual services through behavior consultation services to children diagnosed with ASD for the treatment of ASD meet the qualifications of an individual who provides behavior consultation-ABA services in § 5240.81(e) (relating to staff qualifications for ABA services) be removed from § 5240.71(b) (relating to staff qualifications for individual services).

Response

The Department cannot remove this requirement because Act 62 of 2008 (40 P.S. § 764h) requires individuals

who provide behavior specialist services to children, youth or young adults with ASD be licensed and § 5240.81 (relating to staff qualifications for ABA services) requires individuals who provide behavior consultation-ABA services to be licensed. This does not mean children, youth and young adults with ASD cannot receive services other than ABA or that children without ASD cannot receive ABA services. Rather it means that children, youth and young adults with ASD must receive services from staff who are licensed.

One commentator asked how many hours equal the 1 year of full-time experience in providing mental health direct services to children, youth or young adults that is required to be qualified to provide behavior consultation services or mobile therapy services.

Response

Full-time experience includes time spent in both direct service provision and non-billable activities related to behavioral health services. IBHS agencies should review the employment activities of a potential candidate to determine if they have worked sufficient hours to constitute full-time experience.

One commentator stated that there are many references to certified registered nurse practitioners (CRNPs) needing a mental health certification in order to provide services, but this requirement was not included for CRNPs that provide individual services.

Response

The Department did not include a requirement specific to CRNPs who provide behavior consultation services or mobile therapy services because CRNPs with mental health certifications will also satisfy the requirement that behavior consultation services and mobile therapy services be provided by individuals who have a graduate degree in a related field that includes a clinical or mental health direct services practicum.

One commentator requested that behavior specialist license be added to the licenses that an individual can hold to be qualified to provide mobile therapy services.

Response

The final-form rulemaking was revised to include that an individual may be qualified to provide individual services through mobile therapy services if the individual is licensed as a behavior specialist and has a graduate degree that required a clinical or mental health direct service practicum. The Department included the practicum requirement to ensure that licensed behavior specialists that provide mobile therapy services have clinical training.

IRRC and six commentators requested clarification about the requirement that all individuals who provide BHT services obtain a certification. IRRC also requested that the Department explain the process whereby it would engage the Pennsylvania certification board to ensure that individuals who provide BHT services and are certified by the Pennsylvania certification board meet the Department's standards for training and competency. In addition, the commentators requested information about how long it would take to complete the training needed for a certification. Another commentator asked if all individuals who provide BHT services would be required to obtain certification.

Response

As a result of the comments received, additional stakeholder feedback and concerns that the certification re-

quirement would result in there being an insufficient number of individuals who could provide the BHT service, the Department has decided to not require that all individuals who provide BHT services obtain certification within 18 months of being hired to provide BHT services or within 2 years of the promulgation of the rulemaking. Certification is now one of several options to qualify to deliver BHT services. Individuals can also be qualified to provide the BHT service if they have a high school diploma or equivalent and a certificate that indicates that they have completed a 40-hour training covering the RBT Task List or if they have a minimum of 2 years' experience in the provision of behavioral health services. Individuals who provide BHT services will have until January 1, 2021, to meet one of these qualifications.

In addition, as a result of concerns about what the Pennsylvania certification board would require to obtain certification as a BHT, the Department has deleted the option that an individual obtain certification as a BHT from the Pennsylvania certification board to be qualified to provide BHT services and has removed all references to the Pennsylvania certification board from the final-form rulemaking.

Two commentators requested information about the cost of the training required to obtain certification that allows an individual to provide BHT services and how this training could be obtained.

Response

How the training will be obtained will depend on the training entity chosen. Because there are several certifications that will be accepted, the cost and time to complete the certification program will vary.

One commentator asked what the Department meant when it stated that an individual who has an "other behavior analysis certification" can provide BHT services.

Response

The Department has revised the requirement to be other "behavior health certification and behavior analysis certification" since a certification in behavioral health will provide an individual with the knowledge and training needed to provide individual services. The Department has included this requirement in the rulemaking because the Department does not know what other certifications will be developed after the promulgation of this rulemaking.

Three commentators suggested that the requirement that an individual with an associate's degree or at least 60 credits towards a bachelor's degree also have 1 year of full-time experience in providing direct mental health services be removed from the qualifications to provide BHT services because there will not be enough individuals who meet the qualifications to provide BHT services.

Response

As a result of stakeholder feedback and to ensure that children, youth and young adults receive needed services from qualified individuals, the Department has revised the qualifications of individuals who can provide BHT services. As of January 1, 2021, individuals who have a certification as a board-certified assistant behavior analyst (BCaBA), registered behavior technician (RBT), board-certified autism technician (BCAT) or behavioral health certification or behavior analysis certification from an organization that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute; or a high school diploma or the equivalent of a high school diploma and have completed a

40 hour training covering the RBT Task List; or a minimum of 2 years of experience in the provision of behavioral health services may provide BHT services.

§ 5240.81 *Staff qualifications for ABA services*

The Department has revised and clarified the qualifications of the individuals who can provide behavior analytic services and behavior consultation-ABA services. To be qualified to provide ABA services through behavior analytic services an individual must be licensed as a psychologist, professional counselor, marriage and family therapist, clinical social worker, social worker, behavior specialist, certified registered nurse practitioner or a professional with a scope of practice that includes overseeing the provision of ABA services and have a certification as a BCBA or other graduate-level certification in behavior analysis. To be qualified to provide ABA services through behavior consultation-ABA services an individual must be licensed as a psychologist, professional counselor, marriage and family therapist, clinical social worker, social worker, behavior specialist, certified registered nurse practitioner or a professional with a scope of practice that includes overseeing the provision of ABA services and have a certification as a BCaBA or other undergraduate-level certification in behavior analysis, a minimum of 1 year of full-time experience providing ABA services and a minimum of 12 credits in ABA or a minimum of 1 year of full-time experience providing ABA services under the supervision of a professional with a certification as a BCBA or other graduate-level certification and a minimum of 40 hours of training related to ABA. An individual who is licensed as a psychologist and has a minimum of 1 year of full-time experience providing ABA services and a minimum of 40 hours of training related to ABA is also qualified to provide ABA through behavior consultation-ABA services.

To ensure that all individuals have the knowledge needed to provide ABA services, the Department added a requirement that licensed individuals that have 1 year of full-time experience providing ABA services must also obtain a minimum of 40 hours of training related to ABA. As a result of the addition of this requirement, the Department has determined that it is no longer necessary to require an individual who provides behavior analytic services or behavior consultation-ABA services and is licensed as a behavior specialist to have at least 45 hours of training related to ABA before independently providing ABA services to a child, youth or young adult. Because an individual who is licensed as a behavior specialist can provide behavior analytic services or behavior consultation-ABA services if the individual has a certification as a BCBA or a BCaBA, a minimum of 12 credits in ABA or 40 hours of training related to ABA, such an individual would have training in ABA.

Thirteen commentators were concerned about licensed professionals who oversee or provide ABA services having to obtain an additional credential specific to the provision of ABA services. The commentators were especially concerned about the impact of this rulemaking on licensed psychologists.

Response

The Department discussed the commentators' concerns about licensed professionals who oversee or deliver ABA services having to obtain additional credentials specific to the provision of ABA services with stakeholders. As a result of these discussions and the comments the Department received on this issue, the Department revised the final qualifications for a licensed psychologist to be a

clinical director of an IBHS agency that provides ABA services and to provide behavior consultation-ABA services. Because licensed psychologists are required to obtain a doctoral level credential and have clinical training, the Department has determined that it is not necessary for a licensed psychologist to obtain additional credentials specific to ABA. However, the Department has included additional education, experience and training requirements for licensed psychologists who provide behavior consultation-ABA services in the final-form rulemaking.

IRRC and three commentators expressed concerns about allowing a clinical director 3 years to obtain a BCBA and stated that individuals could jump between agencies to avoid having to obtain certification.

Response

The final-form rulemaking was updated to require that an individual meet the final qualifications to be a clinical director of an IBHS agency that provides ABA services by July 1, 2022. The Department chose July 1, 2022 to enable individuals who want to be clinical directors of IBHS agencies that provide ABA services sufficient time to complete the Behavior Analyst Certification Board approved course sequence and supervision requirements and take the certification exam. The Department also clarified that in addition to obtaining a BCBA, an individual who is a clinical director of an IBHS agency that provides ABA services must also have a minimum of 2 years of experience in providing ABA services.

Eight commentators stated that the qualifications, training and supervision requirements for individuals that provide ABA services should align with the Behavior Analyst Certification Board's qualifications, training and supervision requirements. This includes following the national standards set by associations that work with the Behavior Analyst Certification Board, which include the Association of Professional Behavior Analysts as well as the International Academic Standards set by the Association for Behavior Analysis International and the practice standards set by the Behavior Analyst Certification Board.

Response

In addition to consulting with stakeholders, the Department reviewed the Behavior Analyst Certification Board's standards and the requirements of its current BHRS system when it developed the qualifications, training and supervision requirements for individuals that provide ABA services. The Department modified requirements in an effort to align more closely with the Behavior Analyst Certification Board's requirements.

IRRC and four commentators requested that the Department clarify which individuals need to obtain certification as a BCBA to provide services.

Response

An individual with a certification as a BCBA can be a clinical director of an IBHS agency that provides ABA services and provide behavior consultation-ABA services or behavior analytic services. Behavior analytic services are the only service that must be provided by an individual who has a certification as a BCBA.

One commentator requested clarification about the term "behavior specialist analyst." The commentator stated that it appeared to be a combination of behavior analyst and behavior specialist, which are already recognized terms in the behavioral health field.

Response

The Department is no longer using the term “behavior specialist analyst.” The Department is instead using the term “behavior analytic services” and “behavior consultation-ABA services.”

IRRC requested that the Department explain the process it intended to use to engage the Pennsylvania certification board to ensure that individuals who provide behavior consultation-ABA services or BHT-ABA services and are certified by the Pennsylvania certification board meet the Department’s standards for training and competency.

Response

As a result of concerns about what requirements the Pennsylvania certification board would impose for an individual to obtain certification, the Department has deleted the option that an individual obtain a certification from the Pennsylvania certification board to be qualified to provide behavior consultation-ABA services or BHT-ABA services.

§ 5240.91 Staff requirements and qualifications for group services

As part of simplifying the overall structure of IBHS, the Department has aligned the qualifications of the individuals who provide group services with the qualifications to provide individual services and ABA services. A graduate-level professional who provides group services must meet the qualifications to provide behavior consultation services in § 5240.71(a) (relating to staff qualifications for individual services), the qualifications to provide mobile therapy services in § 5240.71(c), the qualifications to provide behavior analytic services in § 5240.81(d) (relating to staff qualifications for ABA services) or the qualifications to provide behavior consultation-ABA services in § 5240.81(e). Individuals who meet the qualifications to provide BHT services in § 5240.71(d) or the qualifications to provide BHT-ABA services in § 5240.81(g) may also provide group services.

The Department has also deleted the option that an IBHS agency that provides group services that include specialized therapies such as music, dance and movement, play or occupational therapies use staff that are supervised by a Nationally credentialed activities therapist. The Department has determined that Nationally credentialed activities therapists do not supervise individuals who provide specialized therapies. However, the Department has added as an option that an individual providing a specialized therapy be licensed in this Commonwealth in the specific therapy. This change was made because occupational therapists are licensed in Pennsylvania and other relevant licenses may be developed.

One commentator asked that the Department define “mental health professional” because it is a term the Department uses in other programs and for other license types.

Response

The term “mental health professional” has been removed from the final-form rulemaking and replaced with “graduate-level professional.”

Three commentators questioned the difference between a mental health worker and an individual who can provide BHT services and asked why there is a difference in the services these individuals can provide. The commentators indicated that they were confused why the Department made a distinction between individuals who

are mental health workers and individuals who can provide BHT services. Five commentators suggested adding a definition of “mental health worker” to clarify how it is different from an individual who provides BHT services.

Response

Because of the distinction between what services an individual who meets the qualifications to provide BHT services can provide and what services a mental health worker can provide caused confusion and created a discrepancy in the rulemaking between the qualifications of the individuals who could perform individual services and group services, the Department has deleted the requirement that a mental health worker provide group services.

Supervision and training requirements

§ 5240.13. Staff training plan, § 5240.72 Supervision of staff who provide individual services, § 5240.73 Training requirements for staff who provide individual services, § 5240.82 Supervision of staff who provide ABA services, § 5240.83 Training requirements for staff who provide ABA services, § 5240.92 Supervision of staff who provide group services, § 5240.93 Training requirements for staff who provide group services

IRRC requested that the Department explain how the supervisory standards included in the rulemaking ensure the protection of children, youth and young adults who receive IBHS. IRRC also requested that the Department explain the need for and reasonableness of the level of supervision required for staff. In addition, stakeholders indicated that they were concerned about the supervision standards in the proposed rulemaking.

Response

The supervision requirements protect children, youth and young adults who receive IBHS because they require that all staff receive supervision. Supervision provides oversight of the manner in which services are being delivered and allows staff who are delivering services to receive support and guidance. Previously, there were no supervision requirements for graduate-level staff.

The Department discussed with stakeholders the concerns about the amount of supervision required for staff who provide individual services. While stakeholders agree that there is a need for supervision, they also generally agreed that the amount of supervision time included in the proposed rulemaking should be reduced. As a result, the Department has decreased in the final-form rulemaking the frequency of required face-to-face supervision and onsite supervision.

Three commentators expressed concern about the cost of the training and supervision requirements for providers who use independent contractors to provide services.

Response

The Department does not understand why agencies who use independent contractors will have costs that are different than agencies that do not use independent contractors. All agencies must train and supervise staff who provide services.

IRRC requested clarification on the difference between supervision, face-to-face sessions and direct observation.

Response

The Department revised the final-form rulemaking to clarify what supervision includes and the formats in which it may be delivered. Supervision includes the

oversight of the clinical services provided by a staff person to each child, youth or young adult. This includes review of the interventions being implemented; the child's, youth's or young adult's progress towards the goals of the ITP; consideration of adjustments needed to the ITP and the staff person's skills in implementing the interventions in the ITP.

Face-to-face supervision occurs when the individual being supervised meets with the individual's supervisor in-person or through a secure means that enables the individuals to observe each other. Direct observation occurs when the supervisor observes staff during the provision of services.

IRRC and 12 commentators asked how training is approved by the Department, the time frame for obtaining approval and how the Department will notify an IBHS agency of its decision to approve or not approve a training.

Response

The Department will develop and disseminate the process it will be using to approve IBHS training.

One commentator inquired if college coursework can be used to satisfy the initial training requirements. The commentator asked if there is a limit on how long ago the coursework was completed and if coursework is counted by credit hour or course hour.

Response

There is no limit on how long ago a college course was completed for it to be used to satisfy a training requirement as long as the individual can verify the content of the course (e.g. syllabus, course description). Hours are counted by credit hours.

The Department has also revised the final-form rulemaking to clarify that hours of continuing training required to maintain certification or licensure may count towards the training requirements included in the final-form rulemaking.

Four commentators requested that the Department clarify the difference between clinical supervision and administrative supervision.

Response

The Department has revised the supervision sections of the final-form rulemaking to clarify what clinical supervision should include. The Department has not imposed any specific requirements on administrative supervision. Administrative supervision should address the operations of the IBHS agency.

One commentator asked what is meant by the IBHS agency must ensure that all staff complete training requirements.

Response

An IBHS agency must be able to demonstrate that its staff have completed the required trainings.

One commentator asked which trainings are allowed to be provided by an IBHS agency.

Response

An IBHS agency can provide training on any topic that is required to be addressed by this rulemaking.

One commentator expressed concern about not knowing the quality of another provider's training and how an

IBHS agency can obtain documentation from another agency that indicates that a staff person has already undergone training.

Response

An agency may accept training completed by another IBHS agency, but it is not required to accept it. The rulemaking allows for a number of different certification options which will enable individuals to receive standardized training. In addition, the Department must approve independent trainings, which will provide IBHS agencies with assurances about the quality of the training.

IRRC and one commentator suggested that "date of hire" be removed from the requirement that staff training plans be updated annually based on the staff's date of hire because this would ease some of the burden imposed by the requirement for annual staff training plans.

Response

The Department has removed "based on the date of hire" from § 5240.13(a)(1)(i) (relating to staff training plan).

IRRC and one commentator asserted that the requirement in § 5240.13(e)(6) (relating to staff training plan) to keep a copy of written materials that were used during a training is burdensome, costly and does not provide a benefit. IRRC requested that the Department explain the need for and reasonableness of this requirement.

Response

The Department does not agree that there is no benefit to requiring IBHS agencies to keep a copy of the materials that were used during a training. The materials provide information on what staff was trained on, which allows the Department to verify that staff were trained in accordance with this rulemaking and that the training was consistent with best practices. The Department has revised the final-form rulemaking to allow IBHS agencies to keep electronic copies of the trainings, which will reduce the costs and burden of retaining copies of the training materials.

IRRC pointed out that the Department included both references to "audio and video transmission" and "audio or video medium" in the rulemaking and requested that the Department clarify how supervision should be conducted and that it use consistent terms throughout the rulemaking.

Response

The Department has revised the rulemaking to use consistent terms. Supervision may be provided through secure audio and video transmission.

IRRC questioned the role of an IBHS supervisor.

Response

The final-form rulemaking does not include references to an "IBHS supervisor." The Department has revised the rulemaking to identify the qualifications required for an individual to supervise another staff person. An individual who meets the qualifications of a clinical director may provide supervision to individuals who provide behavior consultation services and mobile therapy services. An individual who meets the qualification of a clinical director or is qualified to provide behavior consultation services or mobile therapy services may provide supervision to individuals who provide BHT services. Because the Department is requiring that an individual who meets the qualifications of a clinical director provide supervision to individuals who provide behavior consulta-

tion services and mobile therapy services and not an IBHS supervisor, the Department has deleted the requirement in § 5240.11 (relating to staff qualifications) that a clinical director provide 1 hour of supervision to all staff that supervise other staff at least two times a month.

IRRC and 11 commentators requested that the Department explain why it is reasonable to limit the number of staff who can be supervised to nine full-time equivalent staff who provide BHT services. IRRC also requested that the Department explain why there is no limit on the number of other staff who can be supervised by one individual.

Response

The Department discussed the number of individuals that can be supervised by one person during the meetings with stakeholders. As a result of feedback received from stakeholders, this section was revised to allow an individual to supervise a maximum of 12 full-time equivalent staff who provide individual services, but only nine of the full-time equivalent staff can provide BHT services. The Department also aligned the number of staff that can receive group supervision with the number of individuals that may be supervised by one person.

These changes were made to allow individuals who provide behavior consultation services or mobile therapy services to be supervised by the same person who is supervising the individual who is providing BHT services to a child, youth or young adult. The Department has limited the total number of staff that an individual can supervise to 12 full-time equivalent staff to ensure that individuals providing IBHS receive adequate clinical oversight. The Department limited the number of individuals providing BHT services that can be supervised by one individual to nine full-time equivalent staff because this is consistent with the current limitation on the number of individuals providing TSS services that can be supervised by one individual and individuals that provide BHT services usually provide more hours of service to children, youth and young adults than individuals who provide behavior consultation services or mobile therapy services and individuals who provide BHT services do not have as much education as individuals who provide behavior consultation services and mobile therapy services.

One commentator questioned if assessment and assistance would still be a requirement for individuals providing BHT services and if assessment and assistance hours would count towards the 30 hours of training required before an individual can provide BHT services to a child, youth or young adult.

Response

The rulemaking replaces the requirements in bulletins issued by the Department. Assessment and assistance is now onsite supervision. The rulemaking requires that individuals who provide BHT services must receive 6 hours of onsite supervision during the provision of services prior to providing individual services independently. An individual providing BHT services must receive 30 hours of Department approved training required before the individual can independently provide BHT services to a child, youth or young adult.

One commentator asked if a provider's employee orientation can be counted towards satisfying the initial training requirements for an individual that provides BHT services and what other training resources are available.

Response

Time spent during employee orientation on topics that must be covered as a result of the initial training requirements may count towards the 30 hours of training required before an individual can provide individual services to a child, youth or young adult. While the Department does not endorse specific training resources, training resources include trainings provided by the Department's Bureau of Support for Autism and Special Populations, Pennsylvania Training and Technical Assistance Network and the Child Welfare Resource Center.

One commentator requested that the training requirements for individuals who provide behavior consultation services to children with ASD be clarified.

Response

Individuals who provide behavior consultation services must complete at least 16 hours of Department approved training annually that is related to the individual's specific job functions and is in accordance with the individual training plan. This requirement applies to all individuals who provide behavior consultation services regardless of the behavioral health diagnosis of the child, youth or young adult the individual serves.

One legislator and 22 commentators expressed concern that supervision standards were being lowered because individuals who meet the qualifications to provide assistant behavior consultation-ABA services can supervise individuals who provide BHT-ABA services.

Response

The Department has reviewed these comments and determined that there was a misunderstanding about the qualifications of individuals who can supervise individuals who provide BHT-ABA services. Only individuals who provide assistant behavior consultation-ABA services and have a BCaBA can supervise individuals who provide BHT-ABA services. By July 1, 2022 all individuals who provide assistant behavior consultation-ABA services will be supervised by individuals who are certified as CBAs or by licensed psychologists who have experience in providing clinical oversight of ABA programs and training related to ABA or licensed psychologists with graduate degrees or graduate certificates in ABA. The Department clarified the misunderstanding during discussions with stakeholders and stakeholders have not expressed further concern about individuals who have a BCaBA and meet the qualifications to provide assistant behavior consultation-ABA services supervising individuals who provide BHT-ABA services.

One commentator asked if someone other than the clinical director can provide supervision to staff who provide group services.

Response

Section 5240.92 (relating to supervision of staff who provide group services) has been revised and no longer requires the clinical director to provide supervision to the graduate-level professional. Supervision can now be provided by anyone who meets the qualifications of a clinical director of an IBHS agency.

In addition, as a result of confusion about the different training and supervision requirements, the Department has aligned the supervision and training requirements for group services with the supervision and training requirements for other IBHS.

*Provision of individual services**§ 5240.75 Individual services provision*

IRRC and 14 commentators requested that the Department clarify the therapeutic activities and interventions that can be delivered through individual services. Five of these commentators specifically asked who can develop the ITP. IRRC and six commentators stated that individuals who provide BHT services should not be allowed to make referrals. In addition, IRRC asked why consultation with parents, teachers and other caregivers was not included as part of individual services and one commentator asserted that consultation should be expanded to include all necessary treatment team members.

Response

As a result of the comments received and feedback obtained from stakeholders, the Department has revised § 5240.75 (relating to individual services provision). Section 5240.75 no longer lists the specific individual services a person can provide, but instead includes an overview of activities that may be delivered through behavior consultation services, mobile therapy services and BHT services.

The Department agrees that consultation should be expanded to include all necessary treatment team members and has removed the requirement that individuals providing behavior consultation services consult only with mobile therapists and BHTs about behavioral management protocols. The Department has revised the final-form rulemaking to provide that behavior consultation services consist of clinical direction of individual services, development and revision of the ITP, oversight of the implementation of the ITP and consultation with the treatment team on the ITP.

Mobile therapy services consist of individual therapy, family therapy, development and revision of the ITP, assistance with crisis stabilization and assistance with addressing problems the child, youth or young adult has encountered.

The Department also agrees that individuals who provide BHT services should not be allowed to make referrals. The Department has simplified its description of BHT services in the final-form rulemaking. The final-form rulemaking states that BHT services consist of implementing the ITP. Accordingly, the Department has deleted the requirement in the final-form rulemaking that prohibits an individual providing BHT services from developing or revising the ITP goals, objectives or interventions.

In addition, the Department has revised the final-form rulemaking to clarify that individual services, if medically necessary, can be provided by more than one individual at a time.

*ABA services**§ 5240.87 ABA services provision*

IRRC and 21 commentators requested that the Department clarify the therapeutic activities and interventions that can be provided through behavior analytic services, behavior consultation-ABA services, assistant behavior consultation-ABA services and BHT-ABA services. Four commentators requested that the Department clarify if therapeutic activities and interventions include training parents and caregivers on implementing the ITP. IRRC and three commentators suggested including language that indicates that ABA services can include interventions that target activities of daily living and skill development.

Response

The Department has revised the final-form rulemaking to no longer include a prescriptive list of therapeutic

activities, but instead include an overview of the ABA services that may be delivered through behavior analytic services, behavior consultation-ABA services, assistant behavior consultation-ABA services and BHT-ABA services. Behavior analytic services and behavior consultation-ABA services consist of clinical direction of ABA services, development and revision of the ITP, oversight of the implementation of the ITP and consultation with the child's, youth's or young adult's treatment team on the ITP. Additionally, behavior analytic services include conducting a functional analysis. Assistant behavior consultation-ABA services consist of assisting an individual who provides behavior analytic services or behavior consultation-ABA services and providing face-to-face behavioral interventions. BHT-ABA services consist of implementing the child's, youth's or young adult's ITP.

ABA services can be used to develop skills, including skills related to activities of daily living. An ITP may identify interventions that can be used to assist a child, youth or young adult with achieving or maintaining the skills needed for maximum functional capacity in performing activities of daily living.

Fifteen commentators expressed that they were concerned that children with ASD would only be able to receive ABA services and that ABA services would only be available for children, youth and young adults with an ASD diagnosis.

Response

Children, youth and young adults diagnosed with ASD can also receive individual services and group services and are not limited to ABA services. Likewise, ABA services can be provided to children, youth and young adults who do not have an ASD diagnosis.

Currently providers are required to attest to having the skills and knowledge to provide ABA services. One commentator questioned whether the attestation process is necessary since the rulemaking clearly stipulates training requirements and credentials.

Response

The attestation process will no longer be used upon promulgation of this rulemaking.

One commentator asked if monthly reporting on the capacity of providers to provide ABA services will continue to be required after promulgation of this rulemaking.

Response

Reporting on capacity to provide ABA services will continue to be required after this rulemaking is promulgated. The Department will provide guidance to the BH-MCOs.

*Group services**§ 5240.97 Group services provision*

As it has done for other services, the Department revised § 5240.97 (relating to group services provision) to no longer list the specific services a person can provide, but instead include an overview of activities that may be delivered through group services.

One commentator asked what community integration activities are allowed as part of group services.

Response

Community integration activities that enable children, youth and young adults to use skills learned through

group services in the natural environment or address a specific goal are allowed as part of group services.

One commentator requested that the Department define “individual interventions” to clarify what individual interventions may be billed as part of group services.

Response

The Department does not believe that a definition of “individual interventions” is necessary to clarify what individual interventions may be billed as part of group services. The rulemaking states that in order for an individual intervention to be billed as part of group services the individual intervention must address identified therapeutic needs for the child, youth or young adult to function in the home, school or community.

Two commentators were in favor of the graduate-level professional being able to provide consultation with the treatment team as part of group services.

Response

Section 5240.97(a) (relating to group services provision) has been revised to include consultation with the child’s, youth’s or young adult’s treatment team on the ITP as a service a graduate-level professional can provide.

One commentator requested that the Department add a requirement that a graduate-level professional must be present during the provision of group services.

Response

The Department agrees and has added the requirement that a graduate-level professional be present during the provision of group services.

Two commentators asked what ratios will be required for group services.

Response

Given the wide range of approaches, needs and programming occurring within group services the Department will not be requiring a specific staff ratio. Staffing ratios must be included in an IBHS agency’s approved service description.

One commentator asked if there is a restriction on the number of groups that can occur in one day.

Response

There is no restriction on the number of groups that can occur in one day; however, the number of groups that occur in one day must take into account the needs, age and functional abilities of the children, youth and young adults served as well as the staffing levels, hour of operation and size and space of the facility where services are being provided. An IBHS agency must include the number of groups and explain why this is an appropriate number in its service description.

IRRC asked if there is a maximum number of children, youth or young adults who can receive group services at a particular time and requested that if there is a maximum number it be specified in the final-form rulemaking.

Response

There is no maximum number of children, youth or young adults who can receive group services at one time. The final-form rulemaking requires an IBHS agency that provides group services to include in its service description the staffing ratio for group services and the maximum number of children, youth or young adults who will be served at the same time through group services at each community setting or community like setting.

One commentator requested that the Department describe how individual, group and family therapy can occur in group services.

Response

There is no one way for an IBHS agency to deliver group services that include individual, group and family therapy. It is up to the IBHS agency to decide if all three therapies should be part of their program and how the agency will deliver each therapy.

Five commentators questioned how group services will be billed, including if group services should be billed by number of units, what is a billable activity, if there will be a restriction on the number of group hours that can be billed in a day, if rates will support the rent for the location where services are provided and if there is a separate rate for different types of psychotherapy.

Response

The Department plans to issue billing guidance that addresses group services.

Seven commentators requested that IBHS agencies be allowed to provide ABA when providing group services.

Response

The Department agrees that IBHS agencies can provide ABA through group services and has revised the definition of group services to clarify that ABA services may be provided during the provision of group services.

Group services in school

§ 5240.98 Requirements for group services in school settings

The Department has changed the requirement in § 5240.98(2) (relating to requirements for group services in school settings) for a quarterly meeting between IBHS agency and school staff to discuss the student’s behavioral health services and progress related to school performance to at least every 6 months to align this time frame with the time frame for updates to the ITP. ITPs for group services must be updated at least every 6 months. The Department has also changed the requirement in § 5240.98(1)(iv) for a quarterly meeting between IBHS agency staff and school administration to review performance, collaboration issues and the written agreement to instead require that there be a meeting every 6 months so that only one meeting is needed between IBHS agency staff and school administration every 6 months. At this meeting IBHS agency and school staff can address behavioral health services a student is receiving and the student’s progress as well as review the performance of the group services and collaborate on issues.

One commentator asked if group services in school settings will replace outpatient satellite clinics that are located in schools.

Response

Outpatient services can continue to be provided at satellite sites in schools.

One commentator expressed concern that group services in the school setting will duplicate services schools are providing.

Response

To prevent group services from being duplicative of services schools are providing the Department has included a number of provisions in the rulemaking that are intended to foster communication between the school and the IBHS agency and awareness of the services the IBHS

agency is providing. These include a requirement for a written agreement with the school that provides for identification of space and equipment allocated for use by IBHS agency staff, describes how the school and IBHS agency staff will collaborate during the provision of group services in the school and identifies an authorized representative for the school.

Two commentators asked who can be an authorized representative for a school.

Response

A school is responsible for determining its authorized representative.

Two commentators asked the Department to provide an example of the written agreement needed between the IBHS agency and the school.

Response

The Department expects that the written agreements will vary greatly because they must be specific to the program the IBHS agency is providing, and therefore will not be providing an example.

One commentator asked what the requirement in § 5240.98(1)(iii) (relating to requirements for group services in school settings) for “assurances of the collaborative relationship between school staff and IBHS agency staff” means. IIRC requested that the Department revise § 5240.98(1)(iii) because “assurances” is not a regulatory term.

Response

The Department has revised § 5240.98(1)(iii). Section § 5240.98(1)(iii) requires that the written agreement with the school include a description of how the school and IBHS agency staff will collaborate during the provision of group services in the school.

Two commentators asked the Department to clarify expectations when school is not in session.

Response

In § 5240.98(5)(i) (relating to requirements for group services in school settings) the Department requires that the ITP for every child, youth or young adult who receives group services include how continuity of services when school is not in session will be addressed. As a result, the ITP must include what services or supports are needed if school is not in session.

Evidence-Based Therapy

§ 1155.35 *Payment conditions for EBT delivered through individual services, ABA services or group services, § 5240.103 Requirements for EBT delivered through individual services, ABA services or group services*

The Department has moved the provisions on EBT in the rulemaking to follow the discussion of the other services because individual services, ABA services and group services can be provided through EBT.

IIRC and one commentator stated that many EBTs do not have certification or licensure from a National certification organization or entity and cannot comply with § 1155.35(a)(7) (relating to payment conditions for EBT delivered through individual services, ABA services or group services). IIRC and the commentator also pointed out that while § 1135.35(a)(7) requires an IBHS agency to have a current certification or licensure from the National certification organization or entity that developed or owns the EBT, § 5240.103(a) (relating to requirements for EBT delivered through individual services, ABA

services or group services) specifies that a certification or license is only necessary if it is required to provide the EBT.

Response

Each EBT has its own requirements for licensure, certification or training for an individual or program to be recognized as being able to provide the EBT. The Department is requiring an IBHS agency that provides an EBT to have a current certification or licensure from the National certification organization or entity that developed or owns the EBT. The Department has revised the language in the final-form rulemaking so that the requirements in § 1135.35(a)(7) (relating to payment conditions for EBT delivered through individual services, ABA services or group services) and § 5240.103(a) (relating to requirements for EBT delivered through individual services, ABA services or group services) are consistent.

Two commentators questioned if providers who currently provide an EBT will be required to comply with this rulemaking (i.e. providers that offer Trauma Focused-Cognitive Behavioral Therapy, Dialectical Behavior Therapy through an outpatient program, Multisystemic Therapy, Functional Family Therapy).

Response

Not all providers of an EBT will need to comply with this rulemaking. Only providers of an EBT delivered through IBHS need to comply with this rulemaking.

Two commentators recommended that if ABA is not appropriate for a child, youth or young adult, the Department should issue guidance around which EBT may be appropriate.

Response

The Department will not be issuing guidance regarding the most appropriate use of an EBT because each EBT outlines its target population, including admissions criteria, for the service.

Six commentators requested clarification as to why the section of the rulemaking that addresses EBT does not include the same level of details as other sections of the rulemaking. The commentators requested that the Department clarify the overall scope of services and program standards for EBT such as supervision and training requirements and staff qualifications. IIRC also requested that the Department clarify the standards IBHS agencies that provide EBTs must adhere to when the rulemaking is silent on issues such as supervision, minimum qualifications, admissions or discharge criteria.

Response

IBHS agencies should comply with the EBT's requirements for supervision, minimum qualifications, admissions and discharge criteria. If the EBT does not provide guidance on an issue, the IBHS agency should adhere to the requirements in the rulemaking that address the specific service the provider is delivering (individual services, ABA services, group services).

IIRC and two commentators questioned if an EBT can be modified to meet a child's, youth's or young adult's needs.

Response

An EBT should not be modified unless allowed within the parameters of the EBT.

Two commentators asked if providers will be able to bill for all services included in an EBT.

Response

IBHS agencies cannot bill for services included in the EBT that are not reimbursable through the MA Program.

One commentator requested information on how an agency should obtain a license or certification for the EBT it wants to provide.

Response

Each entity that developed or owns an EBT has its own process for licensing or certifying a program that provides an EBT or an individual who provides an EBT.

Location of services

Two commentators stated that it is unclear if the Department will allow services other than group services to be delivered in the provider's office when clinically indicated. One of these commentators suggested that this be clarified in the definition section of the rulemaking and the other commentator indicated that families have requested that their child receive services in a provider's office or clinic. Another commentator suggested that for purposes of the provision of ABA services "community" should be defined to include a provider's office or a clinic because some aspects of ABA services may best be provided in an office setting and then transferred to the home, school, or other setting. The commentator explained that outpatient mental health therapy and virtually all other therapies, including physical therapy, occupational therapy and speech therapy, are permitted to be provided in clinics and provider's offices. The commentator believes that there is no reason to treat ABA services differently. The commentator also stated that if providing ABA services in an office or clinic setting is not allowed under the IBHS rulemaking, then the Department should allow providers to provide office and clinic services through other means. As a result of the concerns about where site-based services can be provided, IRRC also requested that the Department define "community" for purposes of ABA services.

Response

The final-form rulemaking does not prevent an entity from providing services in an office setting that is not community like; however, these services cannot be billed to MA as IBHS.

Waivers

§ 5240.111 *Waivers*

Two commentators support the continuation of exceptions written around specific diagnostic categories and specific individuals. One commentator stated that the waiver process should be consistent with current Department bulletins. The commentator also recommended time frames.

Response

The Department established the ability to seek a waiver of regulatory requirements in the final-form rulemaking. The Department will issue a bulletin that sets forth the procedures for seeking a waiver, including the timelines.

One commentator asked whether existing program exceptions that do not meet the criteria in the proposed rulemaking will fall under a waiver exception.

Response

Services previously approved through a program exception would generally fall under the final-form regulations and would be expected to meet the standards established

in this rulemaking. If there is an exception needed, the waiver process can be followed.

The Department also received comments about the Child Protective Services Law, 23 Pa.C.S. §§ 6301—6386. The Child Protective Service Law is beyond the scope of this rulemaking. Information about child abuse certifications and criminal history checks can be found at <http://keepkidssafe.pa.gov/>.

In addition to the major changes discussed previously, the Department made several changes in preparation of the final-form including revising language to enhance clarity and to conform to the changes previously discussed.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 18, 2018, the Department submitted a copy of the notice of proposed rulemaking, published at 48 Pa.B. 4762 (August 4, 2018), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees on Health and Human Services for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 14, 2019, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 15, 2019, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking has been given under §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) That the adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the Human Services Code.

Order

The Department, acting under sections 201(2) and 1021 of the Human Services Code (62 P.S. §§ 201(2) and 1021) and section 201(2) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4201(2)), orders that:

(a) The regulations of the Department, 55 Pa. Code are amended by adding §§ 1155.1, 1155.2, 1155.11, 1151.21, 1155.22, 1155.31—1155.37, 1155.41, 1155.51, 5240.1—5240.7, 5240.11—5240.14, 5240.21—5240.23, 5240.31, 5240.32, 5240.41—5240.43, 5240.51, 5240.61, 5240.71—5240.75, 5240.81—5240.87, 5240.91—5240.98, 5240.101—5240.103 and 5240.111 to read as set forth in Annex A .

(*Editor's Note:* Sections 5240.94—5240.98 are new and are not in the proposed rulemaking).

(*Editor's Note:* Proposed §§ 5240.104—5240.108 were not adopted in this final-form rulemaking).

(b) The Secretary of the Department has submitted this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law. The Office of General Counsel and the Office of Attorney General has approved the Order and Annex A as to legality and form.

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication. Providers will be required to comply with this final-form rulemaking 90 calendar days after publication in the *Pennsylvania Bulletin*.

TERESA D. MILLER,
Secretary

(*Editor's Note:* See IRRC's approval order at 49 Pa.B. 5078 (August 31, 2019).)

Fiscal Note: Fiscal Note 14-546 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 55. HUMAN SERVICES

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1155. INTENSIVE BEHAVIORAL HEALTH SERVICES

GENERAL PROVISIONS

- Sec.
1155.1. Policy.
1155.2. Definitions.

SCOPE OF BENEFITS

- 1155.11. Scope of benefits.

PROVIDER PARTICIPATION

- 1155.21. Participation requirements.
1155.22. Ongoing responsibilities of providers.

PAYMENT FOR INTENSIVE BEHAVIORAL HEALTH SERVICES

- 1155.31. General payment policy.
1155.32. Payment conditions for individual services.
1155.33. Payment conditions for ABA services.
1155.34. Payment conditions for group services.
1155.35. Payment conditions for EBT delivered through individual services, ABA services or group services.
1155.36. Covered services.
1155.37. Limitations.

UTILIZATION REVIEW

- 1155.41. Scope of claims review procedures.

ADMINISTRATIVE SANCTIONS

- 1155.51. Provider misutilization.

GENERAL PROVISIONS

§ 1155.1. Policy.

(a) The Medical Assistance (MA) Program provides payment for intensive behavioral health services (IBHS) when the services are medically necessary and provided to eligible children, youth or young adults with a behavioral health diagnosis by licensed IBHS agencies enrolled in the MA Program as providers under this chapter.

(b) Payment for IBHS is subject to the provisions in this chapter, Chapter 1101 (relating to general provisions), the limitations in Chapter 1150 (relating to MA Program payment policies) and the MA Program fee schedule.

(c) This chapter does not apply to individual licensed practitioners or group arrangements of licensed practitioners that bill only for services provided directly by the licensed practitioners.

§ 1155.2. Definitions.

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

ABA—*Applied behavior analysis*—The design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function including the use of direct observation, measurement and functional analysis of the relations between environment and behavior.

Caregiver—An individual with responsibility for the care and supervision of a child, youth or young adult.

Child—A person under 14 years of age.

DSM—*Diagnostic and Statistical Manual of Mental Disorders*.

Department—The Department of Human Services of the Commonwealth.

EBT—*Evidence-based therapy*—Behavioral health therapy that uses scientifically established behavioral health interventions and meets one of the following:

(i) Categorized as effective by the Substance Abuse and Mental Health Services Administration in the Evidence-Based Practice Resource Center.

(ii) Categorized as Model or Model Plus in the Blueprints for Healthy Youth Development registry.

(iii) Categorized as well-established by the American Psychological Association's Society of Clinical Child and Adolescent Psychology.

(iv) Rated as having positive effects by the Institute of Education Sciences' What Works Clearinghouse.

Group services—Therapeutic interventions provided primarily in a group format through psychotherapy; structured activities, including ABA services; and community integration activities that address a child's, youth's or young adult's identified treatment needs.

IBHS—*Intensive behavioral health services*—An array of therapeutic interventions and supports provided to a child, youth or young adult in the home, school or other community setting.

IBHS agency—An entity that provides one or more IBHS.

ICD—*International Classification of Diseases*.

ITP—*Individual treatment plan*—A detailed written plan of treatment services specifically tailored to address a child's, youth's or young adult's therapeutic needs that contains the type, amount, frequency, setting and duration of services to be provided and the specific goals, objectives and interventions for the service.

Individual services—Intensive therapeutic interventions and supports that are used to reduce and manage identified therapeutic needs, increase coping strategies and support skill development to promote positive behaviors with the goal of stabilizing, maintaining or maximizing functioning of a child, youth or young adult in the home, school or other community setting.

Initiation of service—The first day an individual service, ABA service or group service is provided. This includes the first day an assessment is conducted.

MA—Medical Assistance.

Staff—Any individual, including an independent contractor or consultant, who works for an IBHS agency.

Young adult—A person 18 years of age or older but under 21 years of age.

Youth—A person 14 years of age or older but under 18 years of age.

SCOPE OF BENEFITS

§ 1155.11. Scope of benefits.

Children, youth or young adults with a behavioral health diagnosis are eligible to receive covered IBHS.

PROVIDER PARTICIPATION

§ 1155.21. Participation requirements.

In addition to the participation requirements in Chapter 1101 (relating to general provisions), an IBHS agency shall meet the following requirements to participate in the MA Program:

(1) Be licensed as an IBHS agency in accordance with Chapters 20 and 5240 (relating to licensure or approval of facilities and agencies; and intensive behavioral health services).

(2) Enter into a written provider agreement with the Department.

(3) Be enrolled in the MA Program by the Department.

§ 1155.22. Ongoing responsibilities of providers.

(a) Ongoing responsibilities of IBHS agencies are in Chapters 1101 and 5240 (relating to general provisions; and intensive behavioral health services).

(b) Recordkeeping requirements for IBHS agencies are in §§ 1101.51(e), 5240.41 and 5240.42 (relating to ongoing responsibilities of providers; individual records; and agency records).

(c) An IBHS agency shall notify the Department of a change in name or address.

PAYMENT FOR INTENSIVE BEHAVIORAL HEALTH SERVICES

§ 1155.31. General payment policy.

(a) Except as provided in subsections (b)—(d), payment is made to a licensed IBHS agency for medically necessary IBHS provided by qualified individuals under the supervision and direction of a clinical director that meets the qualifications in § 5240.12(b) or § 5240.81(b) (relating to staff qualifications; and staff qualifications for ABA services), subject to the conditions and limitations in this chapter, Chapters 1101 and 1150 (relating to general provisions; and MA Program payment policies) and the MA Program fee schedule.

(b) Payment will be made to an IBHS agency that complies with Chapter 5240 (relating to intensive behavioral health services) and holds an outpatient psychiatric clinic, a psychiatric partial hospitalization program or a family-based mental health license issued by the Department as of October 19, 2019, until the agency's license expires.

(c) Payment will be made to an unlicensed IBHS agency that complies with Chapter 5240 and is approved

to provide behavioral health rehabilitation services as of October 19, 2019, for 1 year after promulgation of this chapter.

(d) Payment will be made to an unlicensed IBHS agency that complies with Chapter 5240 and is approved to provide ABA services as of October 19, 2019, for 180 days after promulgation of this chapter.

(e) Payment will not be made for a compensable IBHS if payment is available through a third party. Providers shall comply with § 1101.64 (relating to third-party medical resources (TPR)).

§ 1155.32. Payment conditions for individual services.

(a) Payment will be made to a licensed IBHS agency for individual services if the following conditions are met:

(1) There is a written order for services based on a face-to-face interaction with the child, youth or young adult that meets the following:

(i) Written within 12 months prior to the initiation of IBHS.

(ii) Written by a licensed physician, licensed psychologist, certified registered nurse practitioner or other licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders and the prescribing of behavioral health services, including IBHS.

(iii) Includes a behavioral health disorder diagnosis listed in the most recent edition of the DSM or ICD.

(iv) Orders one or more IBHS for the child, youth or young adult and includes the following:

(A) The clinical information to support the medical necessity of the service ordered.

(B) The maximum number of hours of each service per month.

(C) The settings where services may be provided.

(D) The measurable improvements in the identified therapeutic needs that indicate when services may be reduced, changed or terminated.

(2) A face-to-face assessment has been completed by an individual qualified to provide behavior consultation services or mobile therapy services within 15 days of the initiation of individual services and prior to completing the ITP in accordance with § 5240.21 (relating to assessment) or a face-to-face assessment has been reviewed and updated within 12 months of the previous face-to-face assessment.

(3) The assessment and all updates have been signed by the staff person who completed the assessment.

(4) An ITP based upon the assessment and the written order for services has been completed within 30 days after the initiation of services in accordance with § 5240.22 (relating to individual treatment plan) or an ITP has been reviewed and updated within 6 months of the previous ITP.

(5) The ITP and all updates have been reviewed and signed by the youth, young adult, or parent or legal guardian of the child or youth, the staff person who completed the ITP and an individual who meets the qualifications of a clinical director in § 5240.12 (relating to staff qualifications).

(6) For continued individual services, a child, youth or young adult shall have an order written within 12 months of the initiation of the continued services that complies with subsection (a)(1)(ii)—(iv).

(b) Payment will be made to a licensed IBHS agency for individual services for up to 45 days after initiation of services, if an ITP has not yet been completed but there is a written order for services that complies with subsection (a)(1) and there is a treatment plan for the individual services provided.

§ 1155.33. Payment conditions for ABA services.

(a) Payment will be made to a licensed IBHS agency for ABA services if the following conditions are met:

(1) There is a written order for ABA services based on a face-to-face interaction with the child, youth or young adult that meets the following:

(i) Written within 12 months prior to the initiation of ABA services.

(ii) Written by a licensed physician, licensed psychologist, certified registered nurse practitioner or other licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders and the prescribing of behavioral health services, including IBHS.

(iii) Includes a behavioral health disorder diagnosis listed in the most recent edition of the DSM or ICD.

(iv) Orders ABA services for the child, youth or young adult and includes the following:

(A) The clinical information to support the medical necessity of each ABA service ordered.

(B) The maximum number of hours of each ABA service per month.

(C) The settings where ABA services may be provided.

(D) The measurable improvements in targeted behaviors or skill deficits that indicate when services may be reduced, changed or terminated.

(2) A face-to-face assessment has been completed by an individual qualified to provide behavior analytic services or behavior consultation-ABA services within 30 days of the initiation of ABA services and prior to completing the ITP in accordance with § 5240.85 (relating to assessment) or a face-to-face assessment has been reviewed and updated within 12 months of the previous face-to-face assessment.

(3) The assessment and all updates have been signed by the staff person who completed the assessment.

(4) An ITP based upon the assessment and the written order for ABA services has been completed within 45 days after the initiation of ABA services in accordance with § 5240.86 (relating to individual treatment plan) or an ITP has been reviewed and updated within 6 months of the previous ITP.

(5) The ITP and all updates have been reviewed and signed by the youth, young adult, or parent or legal guardian of the child or youth, the staff person who completed the ITP and an individual who meets the qualifications of a clinical director in § 5240.81 (relating to staff qualifications for ABA services).

(6) For continued ABA services, a child, youth or young adult shall have an order written within 12 months of the initiation of the continued services that complies with subsection (a)(1)(ii)—(iv).

(b) Payment will be made to a licensed IBHS agency for ABA services for up to 75 days after initiation of services, if an ITP has not yet been completed but there is a written order for services that complies with subsection (a)(1) and there is a treatment plan for the ABA services provided.

§ 1155.34. Payment conditions for group services.

(a) Payment will be made to a licensed IBHS agency for group services if the following conditions are met:

(1) There is a written order for group services that meets the requirements of § 1155.32(a)(1) (relating to payment conditions for individual services).

(2) A face-to-face assessment has been completed by a graduate-level professional within 15 days of the initiation of group services and prior to completing the ITP in accordance with § 5240.95 (relating to assessment) or a face-to-face assessment has been reviewed and updated within 12 months of the previous face-to-face assessment.

(3) The assessment and all updates have been signed by the staff person who completed the assessment.

(4) An ITP based upon the assessment and written order for group services has been completed within 30 days after the initiation of services in accordance with § 5240.96 (relating to individual treatment plan) or an ITP has been reviewed and updated within 6 months of the previous ITP.

(5) The ITP and all updates have been reviewed and signed by the youth, young adult, or parent or legal guardian of the child or youth, the staff person who completed the ITP and an individual who meets the qualifications of a clinical director in § 5240.12 (relating to staff qualifications).

(6) For continued group services, a child, youth or young adult shall have an order written within 12 months of the initiation of the continued services that complies with § 1155.32(a)(1)(ii)—(iv).

(b) Payment will be made to a licensed IBHS agency for individual interventions provided as part of group services when included in the child's, youth's or young adult's ITP.

(c) Payment will be made to a licensed IBHS agency for group services for up to 45 days after initiation of services, if an ITP has not yet been completed but there is a written order for services that complies with subsection (a)(1) and there is a treatment plan for the group services provided.

§ 1155.35. Payment conditions for EBT delivered through individual services, ABA services or group services.

(a) Payment will be made to a licensed IBHS agency for EBT delivered through individual services, ABA services or group services if the following conditions are met:

(1) There is a written order for EBT that meets the requirements of §§ 1155.32(a)(1), 1155.33(a)(1) or 1155.34(a)(1) (relating to payment conditions for individual services; payment conditions for ABA services; and payment conditions for group services).

(2) A face-to-face assessment has been completed by an individual with the qualifications required by the EBT within 15 days of the initiation of the services and prior to completing the ITP in accordance with § 5240.102 (relating to assessment and individual treatment plan) or a face-to-face assessment has been reviewed and updated within 12 months of the previous face-to-face assessment.

(3) The assessment and all updates have been signed by the staff person who completed the assessment.

(4) An ITP based upon the assessment and the written order for services has been completed within 30 days of the initiation of services in accordance with § 5240.102 or an ITP has been reviewed and updated within 6 months of the previous ITP.

(5) The ITP and all updates have been reviewed and signed by the youth, young adult, or parent or legal guardian of the child or youth, the staff person who completed the ITP and an individual who meets the qualifications of a clinical director in § 5240.12 (relating to staff qualifications).

(6) For continued EBT, a child, youth or young adult shall have an order written within 12 months of the initiation of the continued services that complies with §§ 1155.32(a)(1)(ii)—(iv), 1155.33(a)(1)(ii)—(iv) or 1155.34(a)(1)(ii)—(iv).

(7) The IBHS agency or the individual providing the EBT has certification or licensure from the National certification organization or entity that developed or owns the EBT.

(8) Services are delivered in accordance with the specific EBT.

(b) Payment will be made to a licensed IBHS agency for EBT delivered through individual services, ABA services or group services for up to 45 days after initiation of services, if an ITP has not yet been completed but there is a written order for services that complies with subsection (a)(1) and there is a treatment plan for the EBT provided.

§ 1155.36. Covered services.

The Department will pay for the following IBHS when the services are medically necessary:

- (1) Individual services, which include:
 - (i) Behavior consultation services.
 - (ii) Mobile therapy services.
 - (iii) Behavioral health technician services.
- (2) ABA services, which include:
 - (i) Behavior analytic services.
 - (ii) Behavior consultation—ABA services.
 - (iii) Assistant behavior consultation—ABA services.
 - (iv) Behavioral health technician—ABA services.
- (3) Group services.
- (4) EBT delivered through individual services, ABA services or group services.

(5) Services approved through the program exception process under § 1150.63 (relating to waivers).

§ 1155.37. Limitations.

Payment is subject to the following limitations:

- (1) Services provided to a child, youth or young adult must be included in the agency's approved service description.
- (2) Services provided to a child, youth or young adult residing in a 24-hour residential facility will not be paid for unless the IBHS is ordered in accordance with §§ 1155.32(a)(1), 1155.33(a)(1) or 1155.34(a)(1) (relating to payment conditions for individual services; payment conditions for ABA services; and payment conditions for group services), the order explains why services are

needed in addition to services provided by the facility and the service does not duplicate services included in the facility's rate.

UTILIZATION REVIEW

§ 1155.41. Scope of claims review procedures.

Claims submitted for payment under the MA Program are subject to the utilization review procedures in Chapter 1101 (relating to general provisions).

ADMINISTRATIVE SANCTIONS

§ 1155.51. Provider misutilization.

If an IBHS agency is determined to have billed for services inconsistent with MA Program regulations, to have provided services outside the scope of customary standards of clinical practice or to have otherwise violated the standards in the provider agreement, the IBHS agency is subject to the sanctions in Chapter 1101 (relating to general provisions).

PART VII. MENTAL HEALTH MANUAL

Subpart D. NONRESIDENTIAL AGENCIES/FACILITIES/SERVICES

CHAPTER 5240. INTENSIVE BEHAVIORAL HEALTH SERVICES

GENERAL PROVISIONS

- Sec.
- 5240.1. Scope.
- 5240.2. Definitions.
- 5240.3. Provider eligibility.
- 5240.4. Organizational structure.
- 5240.5. Service description.
- 5240.6. Restrictive procedures.
- 5240.7. Coordination of services.

STAFFING

- 5240.11. Staff requirements.
- 5240.12. Staff qualifications.
- 5240.13. Staff training plan.
- 5240.14. Criminal history checks and child abuse certification.

SERVICE PLANNING AND DELIVERY

- 5240.21. Assessment.
- 5240.22. Individual treatment plan.
- 5240.23. Service provision.

DISCHARGE

- 5240.31. Discharge.
- 5240.32. Discharge summary.

RECORDS

- 5240.41. Individual records.
- 5240.42. Agency records.
- 5240.43. Record retention and disposal.

NONDISCRIMINATION

- 5240.51. Nondiscrimination.

QUALITY IMPROVEMENT

- 5240.61. Quality improvement requirements.

INDIVIDUAL SERVICES

- 5240.71. Staff qualifications for individual services.
- 5240.72. Supervision of staff who provide individual services.
- 5240.73. Training requirements for staff who provide individual services.
- 5240.74. Individual services initiation requirements.
- 5240.75. Individual services provision.

APPLIED BEHAVIOR ANALYSIS

- 5240.81. Staff qualifications for ABA services.
- 5240.82. Supervision of staff who provide ABA services.
- 5240.83. Training requirements for staff who provide ABA services.
- 5240.84. ABA services initiation requirements.
- 5240.85. Assessment.
- 5240.86. Individual treatment plan.
- 5240.87. ABA services provision.

GROUP SERVICES

- 5240.91. Staff requirements and qualifications for group services.
- 5240.92. Supervision of staff who provide group services.
- 5240.93. Training requirements for staff who provide group services.
- 5240.94. Group services initiation requirements.
- 5240.95. Assessment.
- 5240.96. Individual treatment plan.
- 5240.97. Group services provision.
- 5240.98. Requirements for group services in school settings.

EVIDENCE-BASED THERAPY

- 5240.101. EBT initiation requirements.
- 5240.102. Assessment and individual treatment plan.
- 5240.103. Requirements for EBT delivered through individual services, ABA services or group services.

WAIVERS

- 5240.111. Waivers.

GENERAL PROVISIONS**§ 5240.1. Scope.**

(a) This chapter applies to entities that provide intensive behavioral health services (IBHS), as defined in this chapter, to children, youth or young adults and sets forth the minimum requirements that shall be met for an agency to obtain a license to provide one or more IBHS.

(b) This chapter does not apply to individual licensed practitioners or group arrangements in which only licensed practitioners provide IBHS.

§ 5240.2. Definitions.

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

ABA—Applied behavior analysis—The design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function including the use of direct observation, measurement and functional analysis of the relations between environment and behavior.

ASD—Autism spectrum disorder—A pervasive neurodevelopmental disorder present from early childhood that involves maladaptive or restrictive behaviors, impairments in communication, and impairments in social interactions and relationships as described in the diagnostic criteria in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*.

Aversive conditioning—The application of startling, painful or noxious stimuli.

BCaBA certification—Board-certified assistant behavior analyst certification—An undergraduate-level certification by the Behavior Analyst Certification Board.

BCAT certification—Board-certified autism technician certification—A certification by the Behavioral Intervention Certification Council.

BCBA certification—Board-certified behavior analyst certification—A graduate-level certification by the Behavior Analyst Certification Board. BCBA refers to both master's (BCBA) and doctoral level credentials (BCBA-D).

BHT—Behavioral health technician.

BHT-ABA—Behavioral health technician-applied behavior analysis.

Caregiver—An individual with responsibility for the care and supervision of a child, youth or young adult.

Chemical restraint—The administration of a drug that has a temporary effect of restricting the child's, youth's or young adult's freedom of movement that is used to

manage a child's, youth's or young adult's behavior and reduce a risk to the safety of the child, youth, young adult or others. Chemical restraint does not include standard treatment for the child's, youth's or young adult's medical or physical condition.

Child—A person under 14 years of age.

Community like setting—A setting that simulates a natural or normal setting for a child, youth or young adult.

Department—The Department of Human Services of the Commonwealth.

EBT—Evidence-based therapy—Behavioral health therapy that uses scientifically established behavioral health interventions and meets one of the following:

(i) Categorized as effective by the Substance Abuse and Mental Health Services Administration in the Evidence-Based Practice Resource Center.

(ii) Categorized as Model or Model Plus in the Blueprints for Healthy Youth Development registry.

(iii) Categorized as well-established by the American Psychological Association's Society of Clinical Child and Adolescent Psychology.

(iv) Rated as having positive effects by the Institute of Education Sciences' What Works Clearinghouse.

Formal support—An agency, organization or person that provides assistance or resources to a child, youth or young adult within the context of an official role.

Full-time equivalent—37.5 hours per week of staff time.

Group services—Therapeutic interventions provided primarily in a group format through psychotherapy; structured activities, including ABA services; and community integration activities that address a child's, youth's or young adult's identified treatment needs.

IBHS—Intensive behavioral health services—An array of therapeutic interventions and supports provided to a child, youth or young adult in the home, school or other community setting.

IBHS agency—An entity that provides one or more IBHS.

ITP—Individual treatment plan—A detailed written plan of treatment services specifically tailored to address a child's, youth's or young adult's therapeutic needs that contains the type, amount, frequency, setting and duration of services to be provided and the specific goals, objectives and interventions for the service.

Individual services—Intensive therapeutic interventions and supports that are used to reduce and manage identified therapeutic needs, increase coping strategies and support skill development to promote positive behaviors with the goal of stabilizing, maintaining or maximizing functioning of a child, youth or young adult in the home, school or other community setting.

Initiation of service—The first day an individual service, ABA service or group service is provided. This includes the first day an assessment is conducted.

Manual restraint—A physical hands-on technique that restricts the movement or function of a child, youth or young adult, or a portion of a child's, youth's or young adult's body. A manual restraint does not include the use of hands-on assistance needed to enable a child, youth or young adult to achieve a goal or objective identified in an ITP.

Mechanical restraint—The use of a device attached or adjacent to a child’s, youth’s or young adult’s body that restricts freedom of movement or normal access to the child’s, youth’s or young adult’s body which cannot easily be removed by the child, youth or young adult. A mechanical restraint does not include the use of a seat belt during movement or transportation or a device prescribed by a licensed medical professional.

Mental health direct service—Service that involves working directly with a child, youth or young adult to provide mental health treatment.

Natural support—An agency, organization or person that provides support to a child, youth or young adult in a personal or nonprofessional role.

Pressure-point technique—The application of pain for the purpose of achieving compliance. A pressure-point technique does not include a clinically-accepted bite release technique that is applied only to release a bite.

RBT certification—Registered behavior technician certification—A certification by the Behavior Analyst Certification Board.

Restrictive procedure—A practice that limits or restricts a child’s, youth’s or young adult’s freedom of movement, activity or function.

Seclusion—The involuntary confinement of a child, youth or young adult alone in a room or an area from which the child, youth or young adult is physically prevented from leaving.

Staff—Any individual, including an independent contractor or consultant, who works for an IBHS agency.

Systems of care principles—Guiding philosophies that form the essential elements of a coordinated network of community-based services and supports that is organized to meet the challenges of children, youth and young adults with serious mental health needs and their families that is family-driven and youth-guided and includes interagency collaboration, individualized strengths-based care, cultural and linguistic competence, community-based services and accountability.

Trauma—The result of an event, series of events or set of circumstances that is experienced by a child, youth or young adult as physically or emotionally harmful or threatening and that has lasting effects on the child’s, youth’s or young adult’s functioning and physical, social, emotional or spiritual well-being.

Trauma-informed approach—An approach that recognizes the widespread impact of trauma including the signs and symptoms of trauma and potential paths for recovery by integrating knowledge about trauma into policies, procedures and practices that avoids retraumatization.

Treatment team—Individuals involved in a child’s, youth’s or young adult’s treatment. Members of the treatment team may include the child, youth, young adult, parents, legal guardians, caregivers, teachers, individuals who provide services and any individual chosen by the child, youth, young adult or parents or legal guardians of the child or youth to be part of the treatment team.

Young adult—A person 18 years of age or older but under 21 years of age.

Youth—A person 14 years of age or older but under 18 years of age.

§ 5240.3. Provider eligibility.

(a) Except for IBHS agencies described in subsections (c)—(e), an IBHS agency shall obtain a license from the Department prior to beginning operations.

(b) Regardless of when a license is obtained, an IBHS agency shall comply with this chapter as of January 17, 2020.

(c) An IBHS agency that holds an outpatient psychiatric clinic, a psychiatric partial hospitalization program or a family based mental health license issued by the Department as of October 19, 2019, shall obtain a license under this chapter when the license expires.

(d) An IBHS agency that is approved to provide ABA services shall obtain a license under this chapter within 180 days of October 19, 2019.

(e) An unlicensed IBHS agency that is currently approved to provide behavioral health rehabilitation services shall obtain a license under this chapter within 1 year of October 19, 2019.

(f) An IBHS agency shall meet the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies).

§ 5240.4. Organizational structure.

(a) An IBHS agency shall have an administrative director, clinical director and staff.

(b) The organizational structure of the IBHS agency must be specified in an organizational chart, and the IBHS agency shall notify the Department within 30 days of a change in the organizational structure of the IBHS agency.

§ 5240.5. Service description.

(a) As part of the initial licensing application, the IBHS agency shall submit to the Department for review and approval a written description of services to be provided that includes the following:

- (1) Identification and description of each service offered by the IBHS agency.
- (2) Identification of the target population served by each service, including age range and presenting issues, which may include specific diagnoses.
- (3) The days and hours each service is available.
- (4) Identification of the counties where the IBHS agency provides each service.
- (5) Description of admission criteria.
- (6) Description of discharge criteria.
- (7) Description of exclusionary criteria.
- (8) Staffing ratios for each service offered by the IBHS agency.
- (9) Treatment modalities.
- (10) Locations where services are offered.

(11) Maximum number of children, youth or young adults served at the same time through group services at a community setting or a community like setting.

(b) Prior to the IBHS agency changing its services or if the information in the service description is otherwise no longer accurate, the IBHS agency shall submit an updated service description to the Department for review and approval.

§ 5240.6. Restrictive procedures.

(a) The following restrictive procedures are prohibited:

- (1) Seclusion.
- (2) Aversive conditioning.
- (3) Pressure-point technique.
- (4) Chemical restraint.
- (5) Mechanical restraint.

(6) A restrictive procedure that is not the least restrictive procedure.

(7) A restrictive procedure that does not maintain a child's, youth's or young adult's welfare and dignity.

(8) A restrictive procedure that limits a child's, youth's or young adult's access to food, drink or toilet.

(b) An IBHS agency that uses restrictive procedures shall have written policies and procedures that identify the specific restrictive procedures that may be used and when such restrictive procedures may be used.

(c) A manual restraint shall only be used in an emergency situation to prevent self-injury or injury to others by a child, youth or young adult and only after:

(1) Every attempt has been made to anticipate and de-escalate the behavior.

(2) Less intrusive techniques and resources appropriate to the behavior have been tried and failed.

(d) A manual restraint may not:

(1) Apply pressure or weight on a child's, youth's or young adult's respiratory system.

(2) Use a prone position.

(e) The position of the manual restraint or the staff person applying a manual restraint shall be changed at least every 10 minutes during the application of the manual restraint.

(f) A trained individual who is not applying the manual restraint shall observe and document the physical and emotional condition of the child, youth or young adult at least every 10 minutes during the application of the manual restraint.

(g) A manual restraint shall be discontinued when the child, youth or young adult is no longer an imminent danger to self or others.

(h) Within 24 hours of using a manual restraint on a child, youth or young adult, an IBHS agency shall notify the treatment team.

(i) An IBHS agency shall document the use of a manual restraint in the child's, youth's or young adult's individual record in accordance with § 5240.41(a)(12) (relating to individual records).

(j) An IBHS agency that uses manual restraints shall have policies and procedures for the use of manual restraints that shall include the following:

(1) Appropriate use of the manual restraint, including prohibitions on the use of a manual restraint.

(2) Required use of less intrusive techniques and resources appropriate to the behavior prior to the use of a manual restraint.

(3) Immediate discontinuation of the manual restraint when the child, youth or young adult is no longer an imminent danger to self or others.

(4) The staff who may authorize the use of a manual restraint.

(5) How the use of a manual restraint will be monitored.

(k) An IBHS agency shall require yearly training that is approved by the Department for staff who administer a restrictive procedure that includes the following:

(1) De-escalation techniques and strategies.

(2) Proper use of the restrictive procedure, including what is appropriate for the age and weight of a child, youth or young adult.

(3) Demonstrated experience in the proper use of the restrictive procedure, including practice on other staff.

(4) A testing process to demonstrate the ability to properly apply the restrictive procedure.

(l) An IBHS agency shall keep a record of each staff person's training in the use of restrictive procedures in each staff person's personnel file in accordance with § 5240.42(b)(2) (relating to agency records).

(m) An IBHS agency that provides training to parents, legal guardians or caregivers on the use of restrictive procedures that are included in the child's, youth's or young adult's ITP shall use trainings approved by the Department and have policies and procedures that address training parents, legal guardians or caregivers on the use of restrictive procedures.

§ 5240.7. Coordination of services.

(a) An IBHS agency shall have written agreements to coordinate services with other service providers, including the following:

(1) Psychiatric inpatient facilities.

(2) Partial hospitalization programs.

(3) Psychiatric outpatient clinics.

(4) Crisis intervention programs.

(5) Mental health and intellectual or developmental disability case management programs.

(b) An IBHS agency shall update the written agreements with other service providers at least every 5 years.

(c) An IBHS agency shall have a list of community resources that provide behavioral health services that is available upon request by a parent, legal guardian, or caregiver of a child or a youth, or a youth or young adult receiving services that includes the following:

(1) The name of the program or organization.

(2) Description of the services provided.

(3) Address and phone number of the program or organization.

(d) An IBHS agency shall update the community resource list annually.

(e) An IBHS agency shall have a written referral process for children, youth and young adults whose therapeutic needs cannot be served by the agency. The IBHS agency shall document in its records referrals made for a child, youth or young adult the IBHS agency could not serve.

STAFFING**§ 5240.11. Staff requirements.**

(a) An IBHS agency shall have an administrative director and a clinical director.

(b) An administrative director's responsibilities shall include the following:

- (1) The overall daily management of the agency.
 - (2) Ensuring that staff schedules meet the needs of the children, youth and young adults served and accommodate their parents', legal guardians' or caregivers' schedules.
 - (3) Ensuring compliance with staff qualifications and training requirements.
 - (4) Monitoring the IBHS agency's compliance with this chapter.
 - (5) Developing and monitoring the quality improvement plan for the IBHS agency.
 - (6) Supervising staff who do not provide IBHS.
- (c) An administrative director may also be a clinical director if the person meets the qualifications for both positions.

(d) A clinical director's responsibilities shall include the following:

- (1) Ensuring that staff who provide IBHS are supervised in accordance with this chapter.
- (2) Maintaining clinical oversight of IBHS provided.
- (3) Ensuring staff who provide IBHS have access to supervisory staff during the hours that IBHS are provided, including evenings and weekends.
- (4) Completing and documenting a clinical record review for quality of the IBHS provided and compliance with this chapter and documenting the outcomes of the review quarterly.
- (5) Ensuring that training for staff is being provided as required by this chapter.

(e) An IBHS agency shall employ a sufficient number of qualified staff to comply with the administrative oversight, clinical supervision and monitoring requirements of this chapter.

(f) An IBHS agency shall employ a sufficient number of qualified staff to provide the maximum number of service hours identified in the written order and the ITP for each child, youth or young adult admitted to services.

§ 5240.12. Staff qualifications.

(a) An administrative director of an IBHS agency shall meet one of the following:

- (1) The qualifications for a clinical director in subsection (b).
- (2) Have a bachelor's degree in psychology, social work, counseling, education, human services, public administration, business administration or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(b) A clinical director of an IBHS agency shall have a minimum of 1 year of full-time postgraduate experience in the provision of mental health direct services to children, youth or young adults and meet one of the following:

(1) Be licensed in this Commonwealth as a physician practicing psychiatry, psychologist, professional counselor, marriage and family therapist, certified registered nurse practitioner with a mental health certification or clinical social worker.

(2) Be licensed in this Commonwealth as a behavior specialist and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(3) Be licensed in this Commonwealth as a social worker and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(4) Be licensed in this Commonwealth as a professional with a scope of practice that includes overseeing the provision of IBHS and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(c) This section does not apply to ABA services.

§ 5240.13. Staff training plan.

(a) An IBHS agency shall develop and implement a written plan to ensure initial and annual training requirements are met that includes the following:

- (1) A written individual training plan that is:
 - (i) Updated annually for each staff person.
 - (ii) Based upon the staff person's educational level, experience, current job functions and performance reviews.
 - (iii) Appropriate to the staff person's skill level.

(2) An overall plan to ensure that staff receive training in accordance with this chapter and in a manner that is consistent with the policies and procedures of the IBHS agency.

(3) An annual review and update of the IBHS agency training plan based on service outcomes and staff performance evaluations.

(b) An IBHS agency shall keep documentation of completion of initial and annual training requirements in each staff person's personnel file in accordance with § 5240.42(b)(2) (relating to agency records).

(c) An IBHS agency shall accept documentation of completion of initial or annual training requirements from a college, university, National training organization, training entity accepted by a professional licensing organization or the Department.

(d) An IBHS agency may choose to not require a staff person to complete additional training if the staff person has completed the required initial or annual training while working for another IBHS agency.

(e) An IBHS agency shall keep records of initial and annual trainings that it provides to staff that includes documentation of the following:

- (1) The date, time and location of the training.
- (2) The name of the person who conducted the training and the person's qualifications to conduct the specific training.
- (3) The names of staff who participated in the training.
- (4) The specific topics addressed during the training.
- (5) A copy of materials distributed to participants.
- (6) A copy of materials that were used during the training.
- (7) Department approval of the training.

§ 5240.14. Criminal history checks and child abuse certification.

(a) Criminal history checks and child abuse certification shall be completed in accordance with 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to protective services).

(b) An IBHS agency shall have written policies and procedures to ensure that staff having contact with children or youth comply with 23 Pa.C.S. §§ 6301—6386 and 55 Pa. Code Chapter 3490, including mandated reporting and training requirements.

SERVICE PLANNING AND DELIVERY

§ 5240.21. Assessment.

(a) Within 15 days of the initiation of services and prior to completing an ITP, a face-to-face assessment shall be completed for the child, youth or young adult by an individual qualified to provide behavior consultation services or mobile therapy services.

(b) The assessment shall be completed in collaboration with the child, youth, young adult or parent, legal guardian or caregiver of the child or youth, as appropriate.

(c) The assessment shall be individualized and include the following:

- (1) The strengths and needs across developmental and behavioral domains of the child, youth or young adult.
- (2) The strengths and needs of the family system in relation to the child, youth or young adult.
- (3) Existing and needed natural and formal supports.
- (4) The specific services, skills, supports and resources the child, youth or young adult requires to address the child's, youth's or young adult's identified therapeutic needs.
- (5) The specific supports and resources, if any, the parent, legal guardian or caregiver of the child, youth or young adult requires to assist in addressing the child's, youth's or young adult's identified therapeutic needs.

(6) Clinical information that includes the following:

- (i) Treatment history.
- (ii) Medical history.
- (iii) Developmental history.
- (iv) Family structure and history.
- (v) Educational history.
- (vi) Social history.
- (vii) Trauma history.
- (viii) Other relevant clinical information.

(7) The child's, youth's or young adult's level of developmental, cognitive, communicative, social and behavioral functioning across the home, school and other community settings.

(8) The cultural, language or communication needs and preferences of the child, youth or young adult and the parent, legal guardian or caregiver.

(d) The assessment shall include a summary of the treatment recommendations received from health care providers, school or other service providers involved with the child, youth or young adult.

(e) The assessment shall be reviewed and updated at least every 12 months or if one of the following occurs:

- (1) A parent, legal guardian or caregiver of the child or youth requests an update.
- (2) The youth or young adult requests an update.
- (3) The child, youth or young adult experiences a change in living situation that results in a change of the child's, youth's or young adult's primary caregivers.
- (4) The child, youth or young adult has made sufficient progress to require an update.
- (5) The child, youth or young adult has not made significant progress towards the goals identified in the ITP within 90 days from the initiation of the services.
- (6) The child, youth or young adult experiences a crisis event.

(7) A staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services provides a reason an update is needed.

(f) The assessment and all updates shall be signed and dated by the staff person who completed the assessment.

(g) This section does not apply to ABA services.

(h) Subsection (a) does not apply to EBT or group services.

§ 5240.22. Individual treatment plan.

(a) A written ITP shall be completed within 30 days after the initiation of a service and be based on the assessment completed in accordance with § 5240.21 (relating to assessment).

(b) The ITP must include the recommendations from the licensed professional who completed the written order for IBHS in accordance with § 1155.32(a)(1) (relating to payment conditions for individual services).

(c) The ITP shall be strength-based with individualized goals and objectives to address the identified therapeutic needs for the child, youth or young adult to function at home, school or in the community.

(d) The ITP must include the following:

(1) Service type and the number of hours of each service.

(2) Whether and how parent, legal guardian or caregiver participation is needed to achieve the identified goals and objectives.

(3) Safety plan to prevent a crisis, a crisis intervention plan and a transition plan.

(4) Specific goals, objectives and interventions to address the identified therapeutic needs with definable and measurable outcomes.

(5) Time frames to complete each goal.

(6) Settings where services may be provided.

(7) Number of hours of service at each setting.

(e) The ITP shall be developed in collaboration with the child, youth, young adult or parent, legal guardian or caregiver of the child or youth, as appropriate.

(f) The ITP shall be reviewed and updated at least every 6 months or if one of the following occurs:

(1) The child, youth or young adult has made sufficient progress to require that the ITP be updated.

(2) The child, youth or young adult has not made significant progress towards the goals identified in the ITP within 90 days from the initiation of the services.

(3) The youth or young adult requests an update.

(4) A parent, legal guardian or caregiver of the child or youth requests an update.

(5) The child, youth or young adult experiences a crisis event.

(6) The ITP is no longer clinically appropriate for the child, youth or young adult.

(7) A staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services provides a reason an update is needed.

(8) The child, youth or young adult experiences a change in living situation that results in a change of the child's, youth's or young adult's primary caregivers.

(g) An ITP update must include the elements in subsection (d) and the following:

(1) A description of progress or lack of progress toward previously identified goals and objectives.

(2) A description of any new goals, objectives and interventions.

(3) A description of any changes made to previously identified goals, objectives or interventions.

(4) A description of new interventions to be used to reach previously identified goals and objectives.

(h) The ITP and all updates shall be reviewed, signed and dated by the youth, young adult or parent or legal guardian of the child or youth, and the staff person who completed the ITP.

(i) The ITP and all updates shall be reviewed, signed and dated by an individual who meets the qualifications of a clinical director in § 5240.12 (relating to staff qualifications).

(j) This section does not apply to ABA services or group services.

§ 5240.23. Service provision.

(a) IBHS shall be provided in accordance with the child's, youth's or young adult's ITP.

(b) Prior to the completion of the ITP, IBHS can be provided if there is a treatment plan for the individual services, ABA services or group services provided.

(c) IBHS shall be delivered in home or community-based, clinically appropriate settings as identified in the written order and ITP. Group services may also be delivered in a community like setting.

(d) IBHS shall be provided in accordance with the IBHS agency's approved service description under § 5240.5 (relating to service description).

DISCHARGE

§ 5240.31. Discharge.

(a) An IBHS agency may discharge a child, youth or young adult when one of the following occurs:

(1) The child, youth or young adult has completed the goals and objectives in the ITP and no new goals or objectives have been identified.

(2) The child, youth or young adult is not progressing towards the goals identified in the ITP within 180 days from the initiation of service and other clinical services are in place.

(3) The child, youth or young adult requires a more restrictive service to meet the child's, youth's or young adult's needs and other clinical services are in place.

(4) The parent or legal guardian of a child or youth who provided consent to receive services agrees services should be discontinued.

(5) The youth or young adult agrees services should be discontinued.

(6) The child, youth or young adult failed to attend scheduled IBHS for 45 consecutive days without any notification from the youth, young adult or the parent, legal guardian or caregiver of the child or youth. Prior to discharge, the IBHS agency made at least three attempts to contact the youth, young adult or the parent, legal guardian or caregiver to discuss past attendance, ways to facilitate attendance in the future and the potential discharge of the child, youth or young adult for lack of attendance.

(b) An IBHS agency shall provide the following information to the youth, young adult or parent, legal guardian or caregiver of the child upon discharge:

(1) If the child, youth or young adult has been referred to other services, contact information for each service.

(2) Contact information for the local crisis intervention service.

§ 5240.32. Discharge summary.

(a) An individual qualified to provide behavior consultation services, mobile therapy services, behavior analytic services or behavior consultation—ABA services shall complete a discharge summary for the child, youth or young adult that includes the following:

(1) Summary of the service outcomes.

(2) Reason for discharge.

(3) Referral for services other than IBHS if needed.

(b) An IBHS agency shall ensure that the discharge summary is:

(1) Completed within 45 days after the date of discharge.

(2) Provided to the youth, young adult or parent, legal guardian or caregiver of the child.

RECORDS

§ 5240.41. Individual records.

(a) An IBHS agency shall maintain a record for each child, youth or young adult it serves that includes the following:

- (1) Identifying information.
- (2) A written order for IBHS in accordance with §§ 1155.32(a)(1), 1155.33(a)(1) or 1155.34(a)(1) (relating to payment conditions for individual services; payment conditions for ABA services; and payment conditions for group services).
- (3) An assessment and any updates to the assessment in accordance with §§ 5240.21, 5240.85, 5240.95 or 5240.102.
- (4) Presenting problems.
- (5) The ITP and any updates to the ITP in accordance with §§ 5240.22, 5240.86, 5240.96 or 5240.102.
- (6) A treatment plan if services are being provided prior to the completion of the ITP.
- (7) Documentation of any efforts to coordinate care with other services and community supports if needed.
- (8) Documentation of each service provided that includes the following:
 - (i) Date and time services were provided, duration of services and setting where services were provided.
 - (ii) Identification of the service provided to address a goal in the ITP.
 - (iii) Description of the outcome of the services provided.
 - (iv) Signature of the staff person providing the service.
- (9) If services are not provided in accordance with the ITP and written order, an explanation of the reason why services were not provided in accordance with the ITP and written order.
- (10) Consent to treatment and consent to release information forms.
- (11) Discharge summary in accordance with § 5240.32 (relating to discharge summary).
- (12) Documentation of any use of a manual restraint and a description of how the use was in accordance with § 5240.6 (relating to restrictive procedures), including the following:
 - (i) The specific behavior addressed.
 - (ii) The less intrusive methods of intervention used to address the behavior prior to initiating the manual restraint used.
 - (iii) The specific manual restraint used.
 - (iv) The name and training of the staff person who used the manual restraint.
 - (v) The duration of the manual restraint.
 - (vi) The name of the trained individual who observed the child, youth or young adult during the application of the manual restraint.
 - (vii) The child's, youth's or young adult's condition following the manual restraint.

(viii) The date and time the manual restraint was used.

(ix) The date and time the treatment team was notified of the use of a manual restraint and the members of the treatment team who were notified.

(b) The record must be:

- (1) Legible.
- (2) Signed and dated by the staff person writing in the record.
- (3) Reviewed for quality by the administrative director, clinical director or designated quality improvement staff within 6 months of the initial entry. After initial review, subsequent reviews may be limited to new additions to the record and must occur at least annually.
- (c) The record shall be maintained for a minimum of 4 years after the last date of service.

§ 5240.42. Agency records.

(a) An IBHS agency shall maintain records that contain the following for at least 4 years:

- (1) Inspection reports, certifications or licenses issued by State and local agencies.
- (2) A detailed agency service description in accordance with § 5240.5 (relating to service description).
- (3) A written emergency plan that includes, at a minimum, a plan for natural disasters, inclement weather and medical emergencies.
- (4) Human resources policies and procedures that address the following:
 - (i) Job descriptions for staff positions.
 - (ii) Staff work schedules and time sheets.
 - (iii) Criminal history checks, child abuse certifications and training on and compliance with the mandated reporting requirements in 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to protective services).
- (5) Written agreements to coordinate services in accordance with § 5240.7 (relating to coordination of services).
- (6) Daily schedules for group services if providing group services.
- (7) Quality improvement plan in accordance with § 5240.61 (relating to quality improvement requirements).
- (b) An IBHS agency shall maintain staff personnel records that include the following for at least 4 years after the staff person is no longer employed by the agency:

- (1) Documentation of staff credentials or qualifications.
- (2) Documentation of completion of required training for staff, including completion of continuing education credits required for professionally licensed staff in accordance with the applicable professional regulations.
- (3) Criminal history checks and child abuse certifications.
- (4) The staff person's individual training plan in accordance with § 5240.13 (relating to staff training plan).

§ 5240.43. Record retention and disposal.

An IBHS agency shall ensure that records that contain protected health information, both written and electronic,

are secured, maintained and disposed of in accordance with applicable Federal and State privacy and confidentiality statutes and regulations.

NONDISCRIMINATION

§ 5240.51. Nondiscrimination.

An IBHS agency may not discriminate against staff or children, youth or young adults receiving services on the basis of race, color, creed, disability, religious affiliation, ancestry, gender, gender identity or expression, sexual orientation, national origin or age, and shall comply with applicable Federal and State statutes and regulations.

QUALITY IMPROVEMENT

§ 5240.61. Quality improvement requirements.

(a) An IBHS agency shall establish and implement a written quality improvement plan that meets the following requirements:

(1) Provides for an annual review of the quality, timeliness and appropriateness of services that includes the following:

- (i) Review of individual records.
- (ii) Review of individual and family satisfaction information.
- (iii) Assessment of the outcomes of services delivered and if ITP goals have been completed.
- (iv) Evaluation of compliance with the agency's approved service description and licensure requirements in this chapter.

(2) Identifies the methodology for the review of agency and individual records that includes the following:

- (i) Method for establishing sample size of agency and individual records.
- (ii) Frequency of review of the agency and individual records to prepare for the annual quality review in subsection (a)(1).
- (iii) Staff's qualifications who perform the review.

(b) An IBHS agency shall prepare an annual quality report that includes the following:

- (1) Analysis of the findings of the annual quality review required under subsection (a)(1).
- (2) Identification of the actions to address annual review findings.
- (c) An IBHS agency shall make annual quality reports available to the public upon request.

(d) An IBHS agency shall provide written notification that a copy of the annual quality report may be requested by a youth, young adult or parent, legal guardian or caregiver of a child, youth or young adult upon admission to services.

INDIVIDUAL SERVICES

§ 5240.71. Staff qualifications for individual services.

(a) Except as set forth in subsection (b), individuals who provide individual services through behavior consultation services must meet one of the following:

- (1) Be licensed in this Commonwealth as a behavior specialist.
- (2) Have a certification as a BCBA or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(3) Have a graduate degree in ABA from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(4) Have a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults and a graduate degree in psychology, social work, education, or counseling from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(5) Completed a clinical or mental health direct service practicum and have a graduate degree in psychology, social work, education, counseling or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(b) Individuals who provide behavior consultation services to children diagnosed with ASD for the treatment of ASD shall be licensed in this Commonwealth as a psychologist, professional counselor, marriage and family therapist, clinical social worker, social worker, behavior specialist, certified registered nurse practitioner or a professional with a scope of practice that includes overseeing the provision of ABA services.

(c) Individuals who provide individual services through mobile therapy services shall meet one of the following:

- (1) Be licensed in this Commonwealth as a psychologist, professional counselor, marriage and family therapist or clinical social worker.
- (2) Be licensed in this Commonwealth as a social worker or a behavior specialist and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.
- (3) Have a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults and a graduate degree with at least nine credits specific to clinical practice in psychology, social work or counseling from a college or university accredited by an agency recognized by the United States

Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(4) Completed a clinical or mental health direct service practicum and have a graduate degree with a least nine credits specific to clinical practice in psychology, social work, education, counseling or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(d) By January 1, 2021, individuals who provide individual services through BHT services shall meet one of the following:

- (1) Have a certification as a BCaBA.
- (2) Have a certification as an RBT.
- (3) Have a certification as a BCAT.

(4) Have a behavior health certification or behavior analysis certification from an organization that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(5) Have a high school diploma or the equivalent of a high school diploma and have completed a 40-hour training covering the RBT Task List as evidenced by a certification that includes the name of the responsible trainer, who is certified as a BCBA or BCaBA.

(6) Have a minimum of 2 years of experience in the provision of behavioral health services.

§ 5240.72. Supervision of staff who provide individual services.

(a) An individual who meets the qualifications of a clinical director shall provide the following supervision to individuals who provide behavior consultation services and mobile therapy services:

(1) One hour of individual face-to-face supervision per month that includes oversight of the following:

- (i) The interventions being implemented.
- (ii) The child's, youth's or young adult's progress towards the goals of the ITP.
- (iii) Consideration of adjustments needed to the ITP.
- (iv) The staff person's skill in implementing the interventions in the ITP.

(2) If the individual who provides behavior consultation services or mobile therapy services supervises an individual who provides BHT services, the individual shall receive an additional hour of face-to-face supervision per month that includes a discussion of the BHT services being provided.

(3) Thirty minutes of direct observation of services being provided every 6 months.

(b) An individual who meets the qualifications of a clinical director or is qualified to provide behavior

consultation services or mobile therapy services shall provide the following supervision to individuals who provide BHT services:

(1) One hour of supervision each week if the individual who provides BHT services works at least 37.5 hours per week or 1 hour of supervision two times a month if the individual who provides BHT services works less than 37.5 hours a week. An individual who provides BHT services must receive 1 hour of individual face-to-face supervision each month.

(2) If the individual has not previously provided BHT services, 6 hours of onsite supervision during the provision of services to a child, youth or young adult prior to providing services independently.

(3) One hour of direct observation of the provision of individual services to a child, youth or young adult during the implementation of the ITP every 4 months, unless the individual meets the qualifications to provide BHT services included in § 5240.71(d)(5) (relating to staff qualifications for individual services). If the individual meets the qualifications to provide BHT services included in § 5240.71(d)(5), the individual shall receive 1 hour of direct observation of the provision of individual services to a child, youth or young adult during the implementation of the ITP every 2 months.

(4) The supervision must include oversight of the following:

- (i) The interventions being implemented.
- (ii) The child's, youth's or young adult's progress towards the goals of the ITP.
- (iii) Consideration of adjustments needed to the ITP.
- (iv) The staff person's skills in implementing the interventions in the ITP.

(c) An individual may supervise a maximum of 12 full-time equivalent staff who provide individual services, but only nine of the full-time equivalent staff can provide BHT services.

(d) Group supervision may be provided to no more than 12 staff who provide individual services, but only nine of the staff can provide BHT services.

(e) Face-to face supervision may be delivered through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191).

(f) A supervisor shall maintain documentation about each supervision session in the supervised staff person's personnel file that includes the following:

- (1) The date of the supervision session.
- (2) The location and modality of the session, such as in-person or through secure, real-time, two-way audio and video transmission.
- (3) The format of the session, such as individual, group or onsite.
- (4) The start and end time of the supervision session.
- (5) A narrative summary of the points discussed during the session.

(6) The signature and signature date of the supervisor and the staff person receiving supervision.

(g) A supervisor shall be available to consult with staff during the hours that individual services are being provided, including evenings and weekends.

§ 5240.73. Training requirements for staff who provide individual services.

(a) An IBHS agency that provides individual services shall ensure that staff complete initial and annual training requirements.

(b) An individual who provides behavior consultation services or mobile therapy services shall complete at least 16 hours of Department-approved training annually that is related to the individual's specific job functions and is in accordance with the individual training plan required under § 5240.13 (relating to staff training plan).

(c) If the individual has not previously provided BHT services, the individual shall complete at least 30 hours of Department-approved training prior to providing services independently that includes the following topics:

(1) Sections 6301—6386 of 23 Pa.C.S. (relating to Child Protective Services Law) and mandated reporting requirements.

(2) Crisis intervention skills, including risk management, de-escalation techniques and safety planning.

(3) Behavior management skills and coaching.

(4) Child and adolescent development.

(5) Overview of serious emotional disturbance and other behavioral and psychosocial needs of the children, youth and young adults with whom the individual works.

(6) Professional ethics, conduct and confidentiality.

(7) First aid, universal precautions and safety.

(8) Psychotropic medications, including common side effects.

(d) If an individual has not previously provided BHT services, the individual shall complete at least 24 hours of Department-approved training within the first 6 months of providing BHT services that includes the following topics:

(1) Documentation skills.

(2) Systems of care principles.

(3) Overview of functional behavioral assessment.

(4) Ethnic, cultural and linguistic considerations of the community served.

(5) Strategies and interventions to engage children, youth or young adults and parents, legal guardians or caregivers in services, including family systems theory.

(6) Skills and techniques for working with families.

(7) Overview of community resources and child and youth-serving systems and processes.

(8) Cross-systems collaboration.

(9) Communication and conflict resolution skills.

(10) Basic individual education plan and special education information.

(11) Safe use of restrictive procedures in accordance with § 5240.6 (relating to restrictive procedures).

(e) An individual who provides BHT services shall complete at least 20 hours of Department-approved training annually that is related to the individual's specific job functions and is in accordance with the individual training plan required under § 5240.13.

(f) An individual who provides BHT services may substitute completed college coursework for required training topics in subsection (c) or (d) by providing an

official transcript and other documentation to the IBHS agency that reflects that the coursework addressed a required training topic.

(g) An individual who is certified may count hours of training required to maintain certification towards the training requirement in subsections (b)—(e).

(h) An individual who is licensed in this Commonwealth may count hours of training required to maintain licensure towards the training requirements in subsections (b)—(e).

§ 5240.74. Individual services initiation requirements.

(a) An IBHS agency shall provide individual services to a child, youth or young adult in accordance with a written order under § 1155.32(a)(1) (relating to payment conditions for individual services).

(b) Prior to the initiation of individual services, the IBHS agency shall obtain written consent to receive the individual services identified in the written order from the youth, young adult or parent or legal guardian of a child or youth.

§ 5240.75. Individual services provision.

(a) Behavior consultation services consist of clinical direction of services to a child, youth or young adult; development and revision of the ITP; oversight of the implementation of the ITP and consultation with a child's, youth's or young adult's treatment team regarding the ITP.

(b) Mobile therapy services consist of individual therapy, family therapy, development and revision of the ITP, assistance with crisis stabilization and assistance with addressing problems the child, youth or young adult has encountered.

(c) BHT services consist of implementing the ITP.

(d) An individual who provides BHT services may not provide interventions requiring skills, experience, credentials or licensure that the individual does not possess.

APPLIED BEHAVIOR ANALYSIS

§ 5240.81. Staff qualifications for ABA services.

(a) An administrative director of an IBHS agency that provides ABA services shall meet one of the following:

(1) Have a bachelor's degree in ABA, psychology, social work, counseling, education, public administration, business administration or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(2) The qualifications for a clinical director in subsection (b).

(b) A clinical director of an IBHS agency that provides ABA services shall meet one of the following:

(1) Be licensed in this Commonwealth as a physician practicing psychiatry, psychologist, professional counselor, marriage and family therapist, certified registered nurse practitioner with a mental health certification, clinical social worker, social worker, behavior specialist or other

professional with a scope of practice that includes overseeing the provision of ABA services and have one of the following:

(i) A certification as a BCBA or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(ii) A graduate degree or graduate certificate in ABA from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services and a minimum of 1 year of full-time experience in providing ABA services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(2) As of October 19, 2019, be a licensed psychologist in this Commonwealth and have a minimum of 3 years of full-time experience in providing clinical oversight of an ABA program and a minimum of 40 hours of training related to ABA approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board.

(c) By July 1, 2022, a clinical director of an IBHS agency that provides ABA services shall meet one of the following:

(1) Be licensed in this Commonwealth as a physician practicing psychiatry, psychologist, certified registered nurse practitioner, professional counselor, marriage and family therapist, clinical social worker, behavior specialist, social worker or other professional with a scope of practice that includes overseeing the provision of ABA services and have a certification as a BCBA or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute and a minimum of 2 years of experience in providing ABA services.

(2) Be licensed in this Commonwealth as a psychologist and have a minimum of 5 years of full-time experience providing clinical oversight of an ABA program and a minimum of 40 hours of training related to ABA approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board.

(3) Be licensed in this Commonwealth as a psychologist and have a graduate degree or graduate certificate in ABA from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(d) Individuals who provide ABA services through behavior analytic services shall be licensed in this Commonwealth as a psychologist, professional counselor, marriage and family therapist, clinical social worker, social worker, behavior specialist, certified registered nurse practitioner or a professional with a scope of practice that includes overseeing the provision of ABA services and

have a certification as a BCBA or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(e) Individuals who provide ABA services through behavior consultation—ABA services shall meet one of the following:

(1) Be licensed in this Commonwealth as a psychologist, professional counselor, marriage and family therapist, clinical social worker, social worker, behavior specialist, certified registered nurse practitioner or a professional with a scope of practice that includes overseeing the provision of ABA services and have one of the following:

(i) A certification as a BCaBA or other undergraduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(ii) A minimum of 1 year of full-time experience providing ABA services and a minimum of 12 credits in ABA from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or the equivalent from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services.

(iii) A minimum of 1 year of full-time experience providing ABA services under the supervision of a professional with a certification as a BCBA or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute and a minimum of 40 hours of training related to ABA approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board.

(2) Be licensed in this Commonwealth as a psychologist and have a minimum of 1 year of full-time experience providing ABA services and a minimum of 40 hours of training related to ABA approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board.

(f) Individuals who provide ABA services through assistant behavior consultation—ABA services shall meet one of the following:

(1) Have the qualifications for licensure as a behavior specialist under 49 Pa. Code § 18.524 (relating to criteria for licensure as behavior specialist) except the experience required under section 18.524(c).

(2) Have a certification as a BCaBA or other undergraduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute and a bachelor's degree in psychology, social work, counseling, education or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(3) Have a minimum of 6 months of experience in providing ABA services and a bachelor's degree in psychology, social work, counseling, education or related field and a minimum of 12 credits in ABA from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or the equivalent from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(g) By July 1, 2020, individuals who provide ABA services through BHT-ABA services shall meet one of the following:

- (1) Have a certification as a BCaBA.
- (2) Have a certification as an RBT.
- (3) Have a certification as a BCAT.
- (4) Have a behavior analysis certification from an organization that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.
- (5) Have a high school diploma or the equivalent of a high school diploma and have completed a 40-hour training covering the RBT Task List as evidenced by a certification that includes the name of the responsible trainer, who is certified as a BCBA or BCaBA.

(6) Have a minimum of 2 years of experience in providing ABA services and a minimum of 40 hours of training related to ABA approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board.

§ 5240.82. Supervision of staff who provide ABA services.

(a) An individual who meets the qualifications of a clinical director shall provide the following supervision to individuals who provide behavior analytic services and behavior consultation—ABA services:

- (1) One hour of individual face-to-face supervision per month that includes oversight of the following:
 - (i) The interventions being implemented.
 - (ii) The child's, youth's or young adult's progress towards the goals of the ITP.
 - (iii) Consideration of adjustments needed to the ITP.
 - (iv) The staff person's skills in implementing the interventions in the ITP.

(2) If the individual who provides behavior analytic services or behavior consultation—ABA services supervises an individual who provides assistant behavior consultation—ABA services or BHT-ABA services, the individual shall receive an additional hour of face-to-face supervision per month that includes a discussion of the assistant behavior consultation—ABA services or BHT-ABA serviced being provided.

(3) Thirty minutes of direct observation of services being provided every 6 months.

(b) An individual who meets the qualifications of a clinical director or is qualified to provide behavior analytic services or behavior consultation—ABA services shall provide the following supervision to individuals who provide assistant behavior consultation—ABA services:

(1) One hour of supervision two times a month. The supervision must be face-to-face and include only the individual being supervised and the supervisor.

(2) If the individual has not previously provided assistant behavior consultation—ABA services, 3 hours of onsite supervision during the provision of ABA services to a child, youth or young adult prior to providing ABA services independently.

(3) Thirty minutes of direct observation of the provision of ABA services to a child, youth or young adult during the implementation of the ITP every 6 months.

(4) The supervision must include oversight of the following:

- (i) The interventions being implemented.
- (ii) The child's, youth's or young adult's progress towards the goals of the ITP.
- (iii) Consideration of adjustments needed to the ITP.
- (iv) The staff person's skills in implementing the interventions in the ITP.

(c) An individual who meets the qualifications of a clinical director or is qualified to provide behavior analytic services or behavior consultation—ABA services or an individual who is qualified to provide assistant behavior consultation—ABA services and has a BCaBA or other undergraduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute shall provide the following supervision to individuals who provide BHT-ABA services:

(1) One hour of supervision each week if the individual who provides BHT-ABA services works at least 37.5 hours per week or 1 hour of supervision two times a month if the individual who provides BHT-ABA services works less than 37.5 hours a week. An individual who provides BHT-ABA services must receive 1 hour of individual face-to-face supervision each month.

(2) If the individual has not previously provided BHT-ABA services, 6 hours of onsite supervision during the provision of ABA services to a child, youth or young adult prior to providing ABA services independently.

(3) One hour of direct observation of the provision of ABA services to a child, youth or young adult during the implementation of the ITP every 4 months, unless the individual meets the qualifications to provide BHT-ABA services included in § 5240.81(g)(5) (relating to staff qualifications for ABA services). If the individual meets the qualifications to provide BHT-ABA services included in § 5240.81(g)(5), the individual shall receive 1 hour of direct observation of the provision of ABA services to a child, youth or young adult during the implementation of the ITP every 2 months.

(4) The supervision must include oversight of the following:

- (i) The interventions being implemented.
- (ii) The child's, youth's or young adult's progress towards the goals of the ITP.
- (iii) Consideration of adjustments needed to the ITP.
- (iv) The staff person's skills in implementing the interventions in the ITP.

(d) Group supervision may be provided to no more than 12 staff who provide ABA services, but only nine of the staff can provide BHT-ABA services.

(e) An individual may supervise a maximum of 12 full-time equivalent staff who provide ABA services, but only nine of the full-time equivalent staff can provide BHT-ABA services.

(f) A supervisor shall be available to consult with staff during the hours that ABA services are being provided, including evenings and weekends.

(g) Face-to face supervision may be delivered through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191).

(h) A supervisor shall maintain documentation about each supervision session in the supervised staff person's personnel file that includes the following:

- (1) The date of the supervision session.
- (2) The location and modality of the session, such as in-person or through a secure real-time, two-way audio and video transmission.
- (3) The format of the session, such as individual, group or onsite.
- (4) The start and end time of the supervision session.
- (5) A narrative summary of the points discussed during the session.
- (6) The signature and signature date of the supervisor and the staff person receiving supervision.

§ 5240.83. Training requirements for staff who provide ABA services.

(a) An IBHS agency that provides ABA services shall ensure that all staff complete initial and annual training requirements.

(b) An individual who provides behavior analytic services or behavior consultation—ABA services shall complete at least 16 hours of training annually that is approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board that is related to the individual's specific job functions and is in accordance with the individual training plan required under § 5240.13 (relating to staff training plan).

(c) An individual who provides assistant behavior consultation—ABA services shall complete the following:

(1) If the individual does not have a certification as a BCBA, BCaBA, BCAT or other graduate or undergraduate certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute, at least 20 hours of training related to ABA that is approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board before independently providing ABA services to a child, youth or young adult.

(2) At least 20 hours of training annually that is approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board that is related to the individual's specific job functions and is in accordance with the individual training plan required under § 5240.13.

(d) An individual who provides BHT-ABA services shall complete the following:

(1) Training in accordance with § 5240.73(c), (d) and (f) (relating to training requirements for staff who provide individual services).

(2) At least 20 hours of training annually related to ABA that is approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board that is related to the individual's specific job functions and is in accordance with the individual training plan required under § 5240.13.

(e) An individual who is certified may count hours of training required to maintain certification towards the training requirement in subsections (b)—(d).

(f) An individual who is licensed in this Commonwealth may count hours of training required to maintain licensure towards the training requirements in subsections (b)—(d).

§ 5240.84. ABA services initiation requirements.

(a) An IBHS agency shall provide ABA services to a child, youth or young adult in accordance with a written order under § 1155.33(a)(1) (relating to payment conditions for ABA services).

(b) Prior to the initiation of ABA services, the IBHS agency shall obtain written consent to receive the ABA services identified in the written order from the youth, young adult or parent or legal guardian of a child or youth.

§ 5240.85. Assessment.

(a) Within 30 days of the initiation of ABA services and prior to completing the ITP, a face-to-face assessment shall be completed for the child, youth or young adult by an individual qualified to provide behavior analytic services or behavior consultation—ABA services.

(b) The assessment shall be completed in collaboration with the child, youth, young adult or parent, legal guardian or caregiver of the child or youth, as appropriate.

(c) The assessment shall be individualized and include the following:

- (1) The strengths and needs across developmental and behavioral domains of the child, youth or young adult.
- (2) The strengths and needs of the family system in relation to the child, youth or young adult.
- (3) Existing and needed natural and formal supports.
- (4) Clinical information that includes the following:
 - (i) Survey data gathered from a parent, legal guardian or caregiver.
 - (ii) Treatment history.
 - (iii) Medical history.
 - (iv) Developmental history.
 - (v) Family structure and history.
 - (vi) Educational history.
 - (vii) Social history.
 - (viii) Trauma history.
 - (ix) Adaptive skills assessment.
 - (x) Other relevant clinical information.

(5) Completion of standardized behavioral assessment tools as needed.

(6) Compilation of observational data to identify developmental, cognitive, communicative, behavioral and adaptive functioning across the home, school and other community settings.

(7) Identification and analysis of skill deficits, targeted behaviors or both, in measurable terms to address needs.

(8) The cultural, language or communication needs and preferences of the child, youth or young adult and the parent, legal guardian or caregiver.

(d) The assessment shall include a summary of the treatment recommendations received from health care providers, school or other service providers involved with the child, youth or young adult.

(e) The assessment shall be reviewed and updated at least every 12 months or if one of the following occurs:

(1) A parent, legal guardian or caregiver of the child or youth requests an update.

(2) The youth or young adult requests an update.

(3) The child, youth or young adult experiences a change in living situation that results in a change of the child's, youth's or young adult's primary caregivers.

(4) The child, youth or young adult has made sufficient progress to require an updated assessment.

(5) The child, youth or young adult has not made significant progress towards the goals identified in the ITP within 90 days from the initiation of the services.

(6) The child, youth or young adult experiences a crisis event.

(7) A staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services provides a reason an update is needed.

(f) The assessment and all updates shall be signed and dated by the staff person who completed the assessment.

§ 5240.86. Individual treatment plan.

(a) A written ITP shall be completed by an individual qualified to provide behavior analytic services or behavior consultation—ABA services within 45 days after the initiation of ABA services and be based on the assessment completed in accordance with § 5240.85 (relating to assessment).

(b) The ITP must include the recommendations from the licensed professional who completed the written order for ABA services in accordance with § 1155.33(a)(1) (relating to payment conditions for ABA services).

(c) The ITP must be strength-based with individualized goals and objectives to address the identified skill deficits, targeted behaviors or both for the child, youth or young adult to function at home, school or in the community.

(d) The ITP must include the following:

(1) Service type and number of hours of each service.

(2) Specific measurable long, intermediate and short-term goals and objectives to address socially significant behaviors, skill deficits or both.

(3) Delineation of the frequency of baseline behaviors, the treatment planned to address behaviors, skill deficits or both, and the frequency at which the child's, youth's or young adult's progress in achieving each goal is measured.

(4) Time frames to complete each goal.

(5) Whether and how parent, legal guardian or caregiver training, support and participation is needed to achieve the identified goals and objectives.

(6) ABA interventions that are tailored to achieving the child's, youth's or young adult's goals and objectives.

(7) Settings where services may be provided.

(8) Number of hours of service at each setting.

(9) Safety plan to prevent a crisis, a crisis intervention plan and a transition plan.

(e) The ITP shall be developed in collaboration with the child, youth, young adult or parent, legal guardian or caregiver of the child or youth, as appropriate.

(f) The ITP shall be reviewed and updated at least every 6 months or if one of the following occurs:

(1) The child, youth or young adult has made sufficient progress to require that the ITP be updated.

(2) The child, youth or young adult has not made significant progress towards the goals identified in the ITP within 90 days from the initiation of ABA services.

(3) The youth or young adult requests an update.

(4) A parent, legal guardian or caregiver of the child or youth requests an update.

(5) The child, youth or young adult experiences a crisis event.

(6) The ITP is no longer clinically appropriate for the child, youth or young adult.

(7) A staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services provides a reason an update is needed.

(8) The child, youth or young adult experiences a change in living situation that results in a change of the child's, youth's or young adult's primary caregivers.

(g) An ITP update must include the elements in subsection (d) and the following:

(1) A description of progress or lack of progress toward previously identified goals and objectives.

(2) A description of any new goals, objectives and interventions.

(3) A description of any changes made to previously identified goals, objectives or interventions.

(4) A description of any new interventions to be used to reach previously identified goals and objectives.

(h) The ITP and all updates shall be reviewed, signed and dated by the youth, young adult or parent or legal guardian of a child or youth, and the staff person who completed the ITP.

(i) The ITP and all updates shall be reviewed, signed and dated by an individual who meets the qualifications of a clinical director in § 5240.81 (relating to staff qualifications for ABA services).

§ 5240.87. ABA services provision.

(a) Behavior analytic services and behavior consultation—ABA services consist of clinical direction of services to a child, youth or young adult; development and revision of the ITP; oversight of the implementation of the ITP and consultation with a child's, youth's or young adult's treatment team regarding the ITP.

(b) In addition to the services listed in subsection (a), behavior analytic services include functional analysis.

(c) Assistant behavior consultation—ABA services consist of assisting an individual who provides behavior analytic services or behavior consultation—ABA services and providing face-to-face behavioral interventions.

(d) BHT-ABA services consist of implementing the ITP.

(e) An individual who provides assistant behavior consultation—ABA services and BHT-ABA services may not provide interventions requiring skills, experience, credentials or licensure that the individual does not possess.

GROUP SERVICES

§ 5240.91. Staff requirements and qualifications for group services.

(a) In addition to the staff required under § 5240.11 (relating to staff requirements), an IBHS agency that provides group services shall have a graduate-level professional who meets one of the following qualifications:

(1) The qualifications to provide behavior consultation services in § 5240.71(a) (relating to staff qualifications for individual services).

(2) The qualifications to provide mobile therapy services in § 5240.71(c).

(3) The qualifications to provide behavior analytic services in § 5240.81(d) (relating to staff qualifications for ABA services).

(4) The qualifications to provide behavior consultation—ABA services in § 5240.81(e).

(b) Group services may also be provided by an individual who meets one of the following:

(1) The qualifications to provide BHT services in § 5240.71(d).

(2) The qualifications to provide BHT-ABA services in § 5240.81(g).

(c) An IBHS agency that provides group services that include specialized therapies such as music, dance and movement, play or occupational therapies shall use clinical staff to provide the specialized therapies who meet one of the following:

(1) Are Nationally certified or licensed in this Commonwealth in the specific therapy.

(2) Are graduate-level professionals with a minimum of 12 graduate-level credit hours in the specialized therapy and a minimum of 1 year of supervised experience in the use of the specialized therapy technique.

§ 5240.92. Supervision of staff who provide group services.

(a) An individual who meets the qualifications of a clinical director shall provide the following supervision to a graduate-level professional:

(1) One hour of individual face-to-face supervision per month that includes oversight of the following:

- (i) The specific interventions being implemented.
- (ii) The child's, youth's or young adult's progress towards the goals of the ITP.
- (iii) Consideration of adjustments needed to the ITP.
- (iv) The staff person's skills in implementing the interventions in the ITP.

(2) If the graduate-level professional supervises an individual who is qualified to provide BHT services or BHT-ABA services, the graduate-level professional shall receive an additional hour of face-to-face supervision per month that includes a discussion of the BHT or BHT-ABA services being provided.

(b) A graduate-level professional shall provide the following supervision to individuals who are qualified to provide BHT services or BHT-ABA services:

(1) One hour of supervision each week if the individual works at least 37.5 hours per week or 1 hour of supervision two times a month if the individual works less than 37.5 hours a week. The individual must receive 1 hour of individual face-to-face supervision each month.

(2) The supervision must include oversight of the following:

- (i) The interventions being implemented.
- (ii) The child's, youth's or young adult's progress towards the goals of the ITP.
- (iii) Consideration of adjustments needed to the ITP.
- (iv) The staff person's skills in implementing the interventions in the ITP.

(c) Group supervision may be provided to no more than 12 staff who provide group services, but only nine of the staff can be qualified to provide BHT services or BHT-ABA services.

(d) An individual may supervise a maximum of 12 full-time equivalent staff that provide group services, but only nine of the full-time equivalent staff can be qualified to provide BHT services or BHT-ABA services.

(e) A supervisor shall be available to consult with staff during the hours that group services are provided, including evenings and weekends.

(f) Face-to face supervision may be delivered through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191).

(g) A supervisor shall maintain documentation about each supervision session in the supervised staff person's personnel file that includes the following:

- (1) The date of the supervision session.
- (2) The location and modality of the session, such as in-person or through secure real-time, two-way audio and video transmission.
- (3) The format of the session, such as individual, group or onsite.
- (4) The start and end time of the supervision session.
- (5) A narrative summary of the points discussed during the session.
- (6) The signature and signature date of the supervisor and the staff person receiving the supervision.

§ 5240.93. Training requirements for staff who provide group services.

(a) An IBHS agency that provides group services shall ensure that staff complete initial and annual training requirements.

(b) A graduate-level professional who is qualified to provide behavior consultation services in accordance with § 5240.71(a) (relating to staff qualifications for individual services) shall complete the annual training requirements included in § 5240.73(b), (g) and (h) (relating to training requirements for staff who provide individual services).

(c) A graduate-level professional who is qualified to provide mobile therapy services in accordance with § 5240.71(c) shall complete the training required by § 5240.73(b), (g) and (h).

(d) A graduate-level professional who is qualified to provide behavior analytic services or behavior consultation—ABA services in accordance with § 5240.81(d) or (e)

(relating to staff qualifications for ABA services) shall complete the training required by § 5240.83(b), (e) and (f) (relating to training requirements for staff who provide ABA services).

(e) An individual who meets the qualifications to provide BHT services in accordance with § 5240.71(d) shall complete the training required by § 5240.73(c)—(h).

(f) An individual who meets the qualifications to provide BHT-ABA services in accordance with § 5240.81(g) shall complete the training required by § 5240.83(d)—(f).

§ 5240.94. Group services initiation requirements.

(a) An IBHS agency shall provide group services to a child, youth or young adult in accordance with a written order under § 1155.34(a)(1) (relating to payment conditions for group services).

(b) Prior to the initiation of group services, the IBHS agency shall obtain written consent to receive the group services identified in the written order from the youth, young adult or parent or legal guardian of a child or youth.

§ 5240.95. Assessment.

(a) A face-to-face assessment shall be completed by a graduate-level professional for a child, youth or young adult within 15 days of the initiation of group services in accordance with § 5240.21(b)—(d) and (f) (relating to assessment) and prior to completing the ITP.

(b) The assessment shall be reviewed and updated in accordance with § 5240.21(e) and (f).

§ 5240.96. Individual treatment plan.

(a) A written ITP shall be completed by a graduate-level professional within 30 days after the initiation of group services and be based on the assessment completed in accordance with § 5240.95 (relating to assessment).

(b) The ITP must include the recommendations from the licensed professional who completed the written order for group services in accordance with §§ 1155.32(a)(1) and 1155.34(a)(1) (relating to payment conditions for individual services; and payment conditions for group services).

(c) The ITP shall be strength-based with individualized goals and objectives to address the identified therapeutic needs for the child, youth or young adult to function at home, school or in the community.

(d) The ITP must include the following:

(1) Specific goals and objectives to address the identified therapeutic needs with definable and measurable outcomes.

(2) Whether and how parent, legal guardian or caregiver participation is needed to achieve the identified goals and objectives.

(3) Structured therapeutic activities, community integration activities and individual interventions to address identified therapeutic needs for the child, youth or young adult to function at home, school or in the community.

(4) Time frames to complete each goal.

(5) Settings where group services may be provided.

(6) Number of hours that group services will be provided to the child, youth or young adult.

(e) The ITP shall be developed in collaboration with the child, youth, young adult or parent, legal guardian or caregiver of the child or youth as appropriate.

(f) The ITP shall be reviewed and updated at least every 6 months or if one of the following occurs:

(1) The child, youth or young adult has made sufficient progress to require that the ITP be updated.

(2) The child, youth or young adult has not made significant progress towards the goals identified in the ITP within 90 days from the initiation of the services.

(3) The youth or young adult requests an update.

(4) A parent, legal guardian or caregiver of the child or youth requests an update.

(5) The child, youth or young adult experiences a crisis event.

(6) The ITP is no longer clinically appropriate for the child, youth or young adult.

(7) A staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services provides a reason an update is needed.

(8) The child, youth or young adult experiences a change in living situation that results in a change of the child's, youth's or young adult's primary caregivers.

(g) An ITP update must include the elements in subsection (d) and the following:

(1) A description of progress or lack of progress toward previously identified goals and objectives.

(2) A description of any new goals, objectives and interventions.

(3) A description of any changes made to previously identified goals, objective or interventions.

(4) A description of new interventions to be used to reach previously identified goals and objectives.

(h) The ITP and all updates shall be reviewed, signed and dated by the youth, young adult or parent or legal guardian of the child or youth, and the staff person who completed the ITP.

(i) The ITP and all updates shall be reviewed, signed and dated by an individual who meets the qualifications of a clinical director in § 5240.12 (relating to staff qualifications).

§ 5240.97. Group services provision.

(a) A graduate-level professional may provide individual, group and family psychotherapy; design of psychoeducational group activities; clinical direction of services to a child, youth or young adult; create and revise the ITP; oversee implementation of the ITP and consult with the child's, youth's or young adult's treatment team regarding the ITP.

(b) An individual who meets the qualifications to provide BHT services or BHT-ABA services may assist with conducting group psychotherapy, facilitate psychoeducational group activities and implement the child's, youth's or young adult's ITP.

(c) Group services shall be structured to address the goals and objectives identified in the child's, youth's or young adult's ITP.

(d) Group services can be provided in a school, community setting or community like setting.

(e) An IBHS agency that provides group services and ABA services shall also comply with §§ 5240.81—5240.87 (relating to applied behavior analysis).

(f) A graduate-level professional shall be present while group services are being provided.

§ 5240.98. Requirements for group services in school settings.

A licensed IBHS agency that provides group services and identified a school as a location where services will be provided in its approved service description shall meet the following requirements:

(1) Have a written agreement with the authorized representative for each school location in which it provides group services that includes the following:

(i) Identification of the IBHS agency's and the school's lead contacts and their contact information.

(ii) Delineation of roles and responsibilities of the school and the IBHS agency staff.

(iii) Description of how the school and IBHS agency staff will collaborate during the provision of group services in the school.

(iv) A requirement for a meeting at least every 6 months between IBHS agency staff and school administration to review performance, collaboration issues and the written agreement.

(v) Crisis management protocols.

(vi) Procedures for school staff to refer students for group services.

(vii) Identification of the space and equipment allocated for use by IBHS agency staff.

(viii) Process for revising or updating the written agreement.

(2) IBHS agency and school staff involved with the child, youth or young adult receiving group services shall meet at least every 6 months to discuss the student's behavioral health services and progress related to school performance.

(i) A youth, young adult or parent or legal guardian of the child or youth shall be invited to participate in the meeting.

(ii) Other professionals as requested by a youth, young adult or parent or legal guardian of the child or youth shall be invited to participate in the meeting.

(3) An IBHS agency shall document the outcome of the meeting and include the following:

(i) Attendance.

(ii) Date of meeting.

(iii) Summary of the discussion.

(iv) Recommendations for a change in group service participation if discussed.

(v) Reason a meeting was not convened as required.

(4) An IBHS agency providing group services in school settings shall keep the child's, youth's or young adult's records in accordance with § 5240.41 (relating to individual records).

(5) An ITP for group services provided in school settings shall be developed in accordance with § 5240.96 (relating to individual treatment plan) and must include the following:

(i) Continuity of services when school is not in session.

(ii) Interventions that specifically address the child's, youth's or young adult's functioning in school.

(iii) Input from the teachers and guidance counselors directly involved with the child, youth or young adult receiving group services.

(6) An IBHS agency that provides group services and ABA services and provides the services in school settings shall comply with §§ 5240.81—5240.87 (relating to applied behavior analysis).

EVIDENCE-BASED THERAPY

§ 5240.101. EBT initiation requirements.

(a) An IBHS agency shall use individual services, ABA services or group services to provide EBT to a child, youth or young adult in accordance with a written order under § 1155.35(a)(1) (relating to payment conditions for EBT delivered through individual services, ABA services or group services).

(b) Prior to the initiation of EBT, the IBHS agency shall obtain written consent to receive the EBT identified in the written order from the youth, young adult or parent or legal guardian of a child or youth.

§ 5240.102. Assessment and individual treatment plan.

(a) A face-to-face assessment shall be completed by staff with the qualifications required by the EBT for a child, youth or young adult within 15 days of the initiation of the service in accordance with §§ 5240.21(b)—(d) and (f), 5240.85(b)—(d) and (f) or 5240.95(a) (relating to assessment) and prior to completing the ITP.

(b) The assessment shall be reviewed and updated in accordance with §§ 5240.21(e) and (f), 5240.85(e) and (f) or 5240.95(b).

(c) A written ITP shall be completed, reviewed and updated in accordance with §§ 5240.22, 5240.86 or 5240.96 (relating to individual treatment plan).

§ 5240.103. Requirements for EBT delivered through individual services, ABA services or group services.

(a) An IBHS agency or the individual providing the EBT shall have a certification or licensure from the National certification organization or entity that developed or owns the EBT.

(b) An IBHS agency shall ensure that EBT is provided by staff that meet the qualifications and receive supervision as set forth in the EBT.

(c) An IBHS agency that is using an EBT shall have written policies and procedures to measure the following:

(1) Adherence to the implementation of the specific EBT.

(2) Outcomes of the EBT that incorporate review standards associated with the EBT.

(d) An IBHS agency using an EBT shall continuously monitor the fidelity to the EBT.

(e) An IBHS agency shall ensure that procedures related to and decisions about continuing services and discharge are made in accordance with the specific EBT.

(f) An IBHS agency that does not meet the standards of the EBT it provides shall:

(1) Have a corrective action plan that is approved by the National certification organization or the Department.

(2) Track the corrective action plan to ensure that the plan has been implemented.

(3) Complete the corrective action plan to meet the standards of the EBT within the time frame identified in the corrective action plan.

WAIVERS

§ 5240.111. Waivers.

(a) An IBHS agency may submit a written request to the Department for a waiver of a specific requirement in this chapter.

(b) The Department may grant a waiver unconditionally or subject to conditions that shall be met. The Department may revoke a waiver if conditions required by the waiver are not met.

(c) A waiver request will be granted only in exceptional circumstances and if the following are met:

(1) The waiver does not jeopardize the health and safety of the children, youth or young adults served by the IBHS agency.

(2) The waiver will not adversely affect the quality of services provided by the IBHS agency.

(3) The intent of the requirement to be waived will still be met.

(4) Children, youth or young adults will benefit from the wavier of the requirement.

(5) The waiver does not violate a Federal or State statute or regulation.

[Pa.B. Doc. No. 19-1554. Filed for public inspection October 18, 2019, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Commonwealth Specialty Crop Block Grant Program; 2019-2020 Program Guidelines

The Department of Agriculture (Department) announces the program requirements and application period for grants under the Commonwealth Specialty Crop Block Grant Program (Program). The Program is authorized under the act of July 1, 2019 (P.L. 279, No. 40) (3 Pa.C.S. §§ 10501—10509).

1. *Program objectives.*

The purpose of the Program is to enhance, but not replace, the Federal Specialty Crop Block Grant Program by establishing a Commonwealth Specialty Crop Block Grant Program for specialty crops that are not currently eligible for grant payments under the Federal Specialty Crop Block Grant Program, or that are otherwise designated high-priority specialty crops by the Secretary. Funding for the Program will assist the growth, certification of seed and marketing of these eligible specialty crops.

2. *Eligible applicants and projects.*

(a) *Eligibility of applicants.* State and local organizations, producer associations, academia, community-based organizations and other eligible specialty crops stakeholders are eligible to apply for grants under the Program.

(b) *Eligible projects.*

(1) Grants may not be awarded to projects that directly benefit a particular commercial product or provide a profit to a single organization, institution or individual.

(2) Grants must be for projects that are focused on an eligible specialty crop. For the Fiscal Year 2019-2020 round of grant applications, the Secretary designates the following as the high-priority specialty crops that are eligible for Program grants:

- (i) hemp;
- (ii) hardwoods;
- (iii) honey;
- (iv) hops; and
- (v) barley, rye and wheat for distilling, brewing and malting only.

(3) If a project relates to a processed eligible specialty crop, the processed product must consist of greater than 50% of the eligible specialty crop by weight, exclusive of added water.

(4) Projects must enhance the competitiveness of eligible specialty crops and benefit the eligible specialty crop industry as a whole and may include, but are not limited to, projects such as:

- (i) Increasing child and adult nutrition knowledge and consumption of specialty crops.
- (ii) Participation of industry representatives at meetings of international standard setting bodies in which the Federal government participates.
- (iii) Improving efficiency and reducing costs of distribution systems.
- (iv) Assisting all entities in the specialty crop distribution chains in developing good agricultural practices, good

handling practices, good manufacturing practices and in cost-share arrangements for funding audits of such systems for small farmers, packers and processors.

(v) Investing in specialty crop research, including organic research to focus on conservation and environmental outcomes and enhancing food safety.

(vi) Developing new and improved seed varieties and specialty crops.

(vii) Pest and disease control.

(viii) Sustainability.

3. *Definitions.*

The following words and terms have the following meanings:

Crop—Plants that are cultivated for sale, production, processing or subsistence. The term does not include wild plants.

Department—The Department of Agriculture of the Commonwealth.

Eligible specialty crop—A specialty crop designated as a high-priority specialty crop by the secretary, with priority given to crops, plants and products that are not currently eligible for funding under the Federal Specialty Crop Block Grant Program. For the Fiscal Year 2019-2020 round of grant applications, these designated eligible specialty crops are hemp, hardwoods, honey, hops and the following grains if used for distilling, brewing and malting only: barley, rye and wheat.

Federal Specialty Crop Block Grant Program—The Specialty Crops Competitiveness Act of 2004 (Pub.L. No. 108-465, 118 Stat. 3882).

General evaluation criteria—The evaluation criteria established by the Department and utilized for the Federal Specialty Crop Block Grant Program.

Horticultural crop—A crop that is used by people for food, medicinal purposes and aesthetic gratification.

Population density—The total population of this Commonwealth as determined by the most recent Federal decennial census, divided by the total area of this Commonwealth in square miles.

Program—The Commonwealth Specialty Crop Block Grant Program established under the act of July 1, 2019, (P.L. 279, No. 40) (3 Pa.C.S. §§ 10501—10509).

Rural municipality—A municipality of this Commonwealth with a population density less than the Statewide average population density or a total population less than 2,500, unless more than 50% of the population lives in an urbanized area, as defined by the United States Census Bureau.

Secretary—The Secretary of the Department.

Silvicultural product—A product of a forest or woodland, including, but not limited to, timber.

Specialty crop—A horticultural crop or silvicultural product, a plant cultivated and utilized for fiber or biofuel purposes or an apiary product.

Urban municipality—A municipality of this Commonwealth not defined as a rural municipality.

4. *Limitations on grants.*

(a) *Project duration.* A project must have a completion date of no later than June 30, 2021.

(b) *Reimbursement grants.* Grant funds will be awarded as reimbursement grants.

5. *Available funds; allocation of moneys.*

(a) *Funds-available basis.* The sum of \$460,000 is available for grants under the Program. Grants will be awarded on a funds-available basis.

(b) *Allocation of funding.* Moneys made available by the Department for Program grants will be allocated as follows:

(1) An amount equal to 6.2% of the money will be allocated to recipients and projects located in rural municipalities where at least 20% of the population has been below the Federal poverty line since 1990, based on census data. A list of these rural municipalities can be accessed at www.agriculture.pa.gov/pafarmbill, under the Commonwealth Specialty Crop Block Program link.

(2) An amount equal to 3.8% of the money will be allocated to recipients and projects located in urban municipalities where at least 20% of the population has been below the Federal poverty line since 1990 based on census data. A list of these urban municipalities can be reviewed on the Department's web site, at the Internet address previously provided in paragraph (1).

(3) The balance of the money remaining after making these allocations, and after deducting for the Department's permissible administrative costs, will be allocated to recipients and projects in a manner which seeks to distribute the money evenly among types of eligible specialty crops and, where practicable, in a manner that distributes the money across this Commonwealth.

6. *Applications.*

(a) *Concept paper required.* The Department will accept proposals for eligible projects as part of a two-phase competitive process. Eligible applicants must submit a concept proposal for a project which describes how the grant would be used to enhance the competitiveness of the subject eligible specialty crop through market development, technology, innovation, food safety, nutrition knowledge, or sustainable practices or management, or both. Concept proposals should include, in this order: a statement of the project purpose; an estimated timeline for completion of the project; a statement of project goals, objectives and expected measurable outcomes; a work plan; and a project budget. A template for the concept proposal may be found on the Department's web site, at the Internet address previously provided in paragraph 5(b)(1).

(b) *Electronic applications only.* Interested applicants must submit a complete electronic concept proposal using the Department of Community and Economic Development's Electronic Single Application web site at <https://www.esa.dced.state.pa.us/login.aspx?var=5>.

(c) *Application window.* Completed concept proposals may be electronically submitted beginning October 21, 2019. All concept proposals must be received by no later than 4:59 p.m. on December 2, 2019.

7. *Review of application.*

The Secretary will review and evaluate the concept proposal and supporting documentation and will consider the following factors, which are consistent with the

general evaluation criteria of the Federal Specialty Crop Block Grant Program, in deciding whether to approve or reject the concept proposal:

(1) The concept proposal involves a project for an eligible specialty crop as previously defined.

(2) The proposal states the specific issue, problem or need the project will address, the timeliness and relevance to the specialty crop industry, if it will provide a direct benefit to the specialty crop industry, and if the approach is rational and sound.

(3) The proposals will result in at least one of the eight outcomes as predetermined by the United States Department of Agriculture Specialty Crop Block Grant Program. Outcomes are measurable changes in behavior or conditions that reflect a positive impact to the specialty crop industry. Only one outcome and indicator is required. Scoring will be based on the outcome selected and the project's likelihood of success and relevance to the specialty crop industry.

(4) The predetermined indicator (as described on the application form) listed under the outcome identified, and the quantifiable results written for the indicator selected.

(5) How the data will be collected and how well the project will accomplish the outcome and indicator selected.

(6) The extent to which the budget is reasonable and consistent with the project's purpose, outcome and indicator. Are matching funds or in-kind contributions anticipated? Is it feasible that the proposed work can be accomplished given the proposed budget? Matching funds are not a requirement of the Program; however, matching funds are encouraged and may serve as evidence to demonstrate industry commitment to, or support for, the project.

(7) The extent to which the concept paper meets the requirements for an "eligible project" presented in section 2(b).

(8) Whether the subject specialty crop is not currently eligible for grant payments under the Federal Specialty Crop Block Grant Program.

8. *Notice of disposition of application.*

The Department will mail written notice of the acceptance or rejection of a concept proposal. This notice will be by regular mail to the address provided by the applicant in the application. Applicants of successful concept proposals will be invited to submit an application containing a full proposal for the Program. This application will be provided by the Department with instructions for submittal. Only those applicants notified by the Department will be eligible to submit a full proposal. The Department will evaluate all full proposals by applying the allocation percentages presented in section 5, and the evaluation factors presented in section 7.

9. *Grant agreement.*

After the Secretary approves a grant application, and as a precondition to the Department's release of grant moneys to a successful applicant, the Department and the applicant will execute a written or electronic Grant Agreement which describes the terms and conditions subject to which the grant is made. The Grant Agreement shall contain and conform to the requirements of this notice, and shall also contain special terms and conditions as required by the Secretary.

10. *Verification of project completion.*

(a) *General.* Within 30 days of completion of the subject project, the applicant shall provide the Department with proof of the completion of the project and eligibility to receive reimbursement grant funds from the Department.

(b) *Required documentation.* The proof described in subsection (a) shall consist of:

(1) copies of invoices for goods or services directly related to the project, along with the written certification of the president or treasurer of the applicant that the goods or services that are the subject of the invoices have been delivered or provided to the applicant; and

(2) a certificate of completion, signed by its president or treasurer, verifying completion of the subject project

and stating that the grant funds will reimburse the applicant for a portion of the costs incurred by the applicant in completing the subject project.

11. *Questions and additional information.*

Questions on this Program, including on the online application process, may be directed to Morgan Sheffield, Bureau of Market Development, Department of Agriculture, 2301 North Cameron Street, Room 310, Harrisburg, PA 17110-9408, (717) 787-3568, msheffield@pa.gov.

RUSSELL C. REDDING,
Secretary

[Pa.B. Doc. No. 19-1555. Filed for public inspection October 18, 2019, 9:00 a.m.]

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 October 8, 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>
09-25-2019	Hyperion Bank Philadelphia Philadelphia County	3525 Piedmont Road Atlanta Fulton County, GA	Opened
10-01-2019	Sharon Savings Bank Darby Delaware County	900 West Sproul Road Suite 102 Springfield Delaware County	Opened
10-01-2019	Hometown Bank of Pennsylvania Bedford Bedford County	149 Main Street Woodbury Bedford County	Opened
10-04-2019	PeoplesBank, A Codorus Valley Company York York County	101 North Queen Street Suite 105 Lancaster Lancaster County	Approved

CREDIT UNIONS

Branch Relocations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
10-04-2019	Freedom Credit Union Warminster Bucks County	<i>To:</i> 9910 Frankford Avenue Philadelphia Philadelphia County <i>From:</i> 10400 Drummond Road Philadelphia Philadelphia County	Approved

The Department's web site at www.dobs.pa.gov includes public notices for more recently filed applications.

ROBIN L. WIESSMANN,
Secretary

[Pa.B. Doc. No. 19-1556. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT APPLICATIONS FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a General Permit. The applications concern, but are not limited to, discharges regarding industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFO). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Waste; Discharge into Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 Individual Permits and Individual Stormwater Construction Permits in Sections IV and VI, the Department, based upon preliminary reviews, has made tentative determinations of proposed effluent limitations and other terms and conditions for the permit applications. In accordance with 25 Pa. Code § 92a.32(d), the proposed discharge of stormwater associated with construction activities will be managed in accordance with the requirements of 25 Pa. Code Chapter 102. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the United States Environmental Protection Agency (EPA) Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on NPDES applications are invited to submit statements to the contact office noted before the application within 30 days from the date of this public notice. Persons wishing to comment on WQM permit applications are invited to submit statements to the office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. A comment submittal should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for public hearings on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications.

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>
PA0032166 (Sewage)	Delaware Valley School Route 6 & 209 Complex 236 Route 6 and 209 Milford, PA 18337-9454	Pike County Westfall Township	Delaware River (WWF, MF) (2-E)	Yes

<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>
PAS802217 (Storm Water)	UPS Freight—PABHL 342 Stoke Park Road Bethlehem, PA 18017	Northampton County Bethlehem City	Unnamed Tributary to Monocacy Creek (HQ-CWF, MF) (2-C)	Yes
PA0065170 (Sewage)	Benton Park STP 204 Franklin Valley Road Dalton, PA 18414	Lackawanna County Benton Township	Unnamed Tributary to South Branch Tunkhannock Creek (CWF, MF) (4-F)	Yes
PA0063240 (Sewage)	Lehigh Township Municipal Authority Danielsville WWTF 1069 Municipal Road Walnutport, PA 18088	Northampton County Lehigh Township	Bertsch Creek (CWF/MF) (2-C)	Yes
PA0063690 (Sewage)	Melroe's Restaurant 832 Salem Boulevard Berwick, PA 18603	Luzerne County Salem Township	Unnamed Tributary to Susquehanna River (CWF, MF) (05B)	Yes

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0110442— SEW	Florence E. Shockey Trust Brookwood MHP P.O. Box 1233 Falling Waters, WV 25419	Bedford County/ Bedford Township	Brush Creek/11-C	Y
PA0087904— IW	Roaring Spring Blank Book Co., Inc. 740 Spang Street Roaring Spring, PA 16673	Blair County/ Roaring Spring Boro	Halter Creek/11A	Y
PA0084085— SEW	Country View Estates P.O. Box 175 Newville, PA 17241-0175	Cumberland County/ Newville Boro and Upper Frankford Twp	Blosser Creek/7B	Y
PA0083526— SW	R.H. Sheppard Company Inc. 101 Philadelphia Street Hanover, PA 17331	York/Hanover Boro & Penn Township	UNT Oil Creek WWF/MF	Y

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>
PA0204901 (Industrial)	Port Authority Ross Garage 345 6th Avenue Floor 3 Pittsburgh, PA 15222-2527	Allegheny County Ross Township	Nelson Run (WWF) (18-A)	Yes
PA0024864 (Sewage)	Ligonier WPCP 2132 US 30 Ligonier, PA 15658	Westmoreland County Ligonier Borough	Mill Creek (CWF) (18-C)	Yes
PA0098299 (Sewage)	Donegal Center Inc. STP 212 Snyder Road Donegal, PA 15628	Westmoreland County Donegal Township	Unnamed Tributary to Fourmile Run (TSF) (18-C)	Yes
PA0216593 (Industrial)	Holbrook Comp Station 5400 Westheimer Court Houston, TX 77056-5310	Greene County Richhill Township	North Fork Dunkard Fork (TSF) (20-E)	Yes

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Non-Waived Permit Applications.

Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5970.

PA0052663, Sewage, SIC Code 4952, **Knight's Bridge Corporation**, 112 Chesley Drive, Suite 200, Media, PA 19063-1762. Facility Name: Knight's Bridge STP. This existing facility is located in Chadds Ford Township, **Delaware County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Unnamed Tributary to Harvey Run (WWF, MF), is located in State Water Plan watershed 3-H and is classified for Migratory Fishes and Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .09 MGD.—Interim Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.6	XXX	1.5
Total Phosphorus	1.5	XXX	XXX	2.0	XXX	4

The proposed effluent limits for Outfall 001 are based on a design flow of .09 MGD.—Final Limits.

Parameters	Mass Units (lbs/day)		Daily Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Total Phosphorus	0.37	XXX	XXX	0.5	XXX	1
Ultraviolet light dosage (mjoules/cm ²)	XXX	XXX	Report	XXX	XXX	XXX

The proposed effluent limits for Outfall 001 are based on a design flow of .09 MGD.—Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	Inst Min 5.0	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)						
Nov 1 - Apr 30	15	XXX	XXX	20	XXX	40
May 1 - Oct 31	7.5	XXX	XXX	10	XXX	20
Biochemical Oxygen Demand (BOD ₅)						
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
Total Suspended Solids						
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
Total Suspended Solids	7.5	XXX	XXX	10	XXX	20
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	1,000
				Geo Mean		
Nitrate-Nitrite as N	7.5	XXX	XXX	10	XXX	20
Total Nitrogen	15.0	XXX	XXX	10.0	XXX	20
Ammonia-Nitrogen						
Nov 1 - Apr 30	2.3	XXX	XXX	3.0	XXX	6
May 1 - Oct 31	0.8	XXX	XXX	1.0	XXX	2

Sludge use and disposal description and location(s): Sewage sludge and biosolids are transported from Knight's Bridge WWTP by a licensed hauler to the DELCORA STP which operates under NPDES permit number PA0027103 for further processing and treatment.

In addition, the permit contains the following major special conditions:

- Optimization of Chlorine dosage
- Little/no assimilative capacity of Dry stream
- Notification of designation of responsible operator
- Schedule of compliance
- Solids management for non-lagoon system

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is not in effect.

PA0012891, Sewage, SIC Code 4952, **The Upper Hanover Authority**, P.O. Box 205, East Greenville, PA 18041-0205. Facility Name: Upper Hanover Perkiomen WWTP. This existing facility is located in Upper Hanover Township, **Montgomery County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Unnamed Tributary to Perkiomen Creek (TSF), is located in State Water Plan watershed 3-E and is classified for Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .098 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Weekly Average</i>		<i>Average Monthly</i>	<i>Weekly Average</i>	
Flow (GPD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0 Inst Min	Report	XXX	XXX
CBOD ₅	20	32	XXX	25	40	50
CBOD ₅ —Influent	Report	Report	XXX	Report	Report	XXX
BOD ₅ —Influent	Report	Report	XXX	Report	Report	XXX
Total Suspended Solids Influent	Report	Report	XXX	Report	Report	XXX
Total Suspended Solids	25	37	XXX	30	45	60
Total Dissolved Solids	817	1,635	XXX	1,000	2,000	2,500
		Daily Max			Daily Max	
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Ultraviolet light intensity (mW/cm ²)	XXX	XXX	Report	XXX	XXX	XXX
Total Nitrogen	Report	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	12.0	XXX	XXX	15.0	XXX	30
May 1 - Oct 31	4.0	XXX	XXX	5.0	XXX	10
Total Phosphorus	0.4	XXX	XXX	0.5	XXX	1

In addition, the permit contains the following major special conditions:

- Operator Notification
- Remedial Measures
- No Stormwater
- Change in Ownership
- Proper Sludge Disposal
- Operation and Maintenance Plan
- Fecal Coliform Monitoring Requirements

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is in effect.

PA0054313, Sewage, SIC Code 4952, **Sherry Stangil & Ryan Kostishion**, 3176 Walnut Street, Springtown, PA 18081-0512. Facility Name: Stangil & Kostishion SRSTP. This existing facility is located in Springfield Township, **Bucks County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated SRSTP sewage.

The receiving stream(s), Unnamed Tributary to Cooks Creek (EV, MF), is located in State Water Plan watershed 2-D and is classified for Exceptional Value Waters and Migratory Fish, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0008 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Daily Maximum</i>	<i>Maximum</i>	
Flow (GPD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	6.0 Daily Min	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	Report	XXX	Report

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Daily Maximum	Maximum	
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)						
Nov 1 - Apr 30	XXX	XXX	XXX	20.0	XXX	40
May 1 - Oct 31	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 Annl Avg	XXX	1,000
Ammonia-Nitrogen						
Nov 1 - Apr 30	XXX	XXX	XXX	9.0	XXX	18
May 1 - Oct 31	XXX	XXX	XXX	3.0	XXX	6

Sludge use and disposal description and location(s): Sludge is disposed off-site for treatment and disposal.

In addition, the permit contains the following major special conditions:

- Proper sludge disposal
- AMR submission
- Transfer of the permit

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is in effect.

PA0056847, Sewage, SIC Code 4952, **East Rockhill Township**, 1622 Ridge Road, Perkasio, PA 18944. Facility Name: East Rockhill Township WWTP. This existing facility is located in East Rockhill Township, **Bucks County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, East Branch Perkiomen Creek (TSF, MF), is located in State Water Plan watershed 3-E and is classified for Migratory Fishes and Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.113 MGD.—Limits.

Parameters	Mass Units (lbs/day)		Daily Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Weekly Average		Average Monthly	Weekly Average	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0 Inst Min	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.6
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)						
Nov 1 - Apr 30	24	38	XXX	25	40	50
May 1 - Oct 31	19	28	XXX	20	30	40
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
Biochemical Oxygen Demand (BOD ₅)						
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
Total Suspended Solids	28	42	XXX	30	45	60
Total Suspended Solids Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Ultraviolet light intensity (mW/cm ²)	XXX	XXX	Report	XXX	XXX	XXX
Total Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	14.1	XXX	XXX	15	XXX	30
May 1 - Oct 31	9.4	XXX	XXX	10	XXX	20
Total Phosphorus	1.9	XXX	XXX	2.0	XXX	4

The proposed effluent limits for Outfall 001 are based on a design flow of 0.113 MGD.—Limits.

Parameters	Mass Units (lbs/day)		Daily Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Weekly Average		Average Monthly	Weekly Average	
Total Dissolved Solids	XXX	XXX	XXX	Report Daily Max	XXX	XXX

Sludge use and disposal description and location(s): Hauled off-site for disposal at various landfills.

In addition, the permit contains the following major special conditions:

- Designation of responsible operator
- Proper disposal of sludge
- TRC minimization in effluent
- Operation & Maintenance Plan

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is in effect.

PA0245127, Sewage, SIC Code 4952, **Wolfington Katherine & Schindler Thomas**, 910 Stargazers Road, Coatesville, PA 19320. Facility Name: Wolfington & Schindler SRSTP. This proposed facility is located in Newlin Township, **Chester 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 West Branch Brandywine Creek (WWF, MF), is located in State Water Plan watershed 3-H and is classified for Migratory Fishes and Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .0005 MGD.—Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Annual Average	Maximum	
Flow (MGD)	Report Annl Avg	XXX	XXX	XXX	XXX	XXX
Biochemical Oxygen Demand (BOD ₅)	XXX	XXX	XXX	10.0	XXX	20.0
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20.0
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	XXX
Total Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX

Sludge use and disposal description and location(s): Septic tanks shall be pumped and hauled off-site.

In addition, the permit contains the following major special conditions:

Proposed Part C Conditions:

- A. AMR to DEP
- B. DMR to DEP if Attached
- C. 1/year Measure Depth of Septage and Scum
- D. Septic Tanks Pumped Once Every Three Years
- E. Total Residual Chlorine Requirement
- F. No Stormwater
- G. Necessary Property Rights
- H. Proper Sludge Disposal
- I. Abandon STP when Municipal Sewers Available

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is in effect.

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

PA0086860, Sewage, SIC Code 4952, **Springfield Township York County**, P.O. Box 75, Seven Valleys, PA 17360-0075. Facility Name: Springfield Township Hollow Creek STP. This existing facility is located in Springfield Township, **York County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Unnamed Tributary to East Branch Codorus Creek (CWF), is located in State Water Plan watershed 7-H and is classified for Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .7 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>			<i>Concentrations (mg/L)</i>		
	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0 Inst Min	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.013	XXX	0.042
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	58	87	XXX	10	15	20
Biochemical Oxygen Demand (BOD ₅)						
Raw Sewage Influent	Report	Report Daily Max	XXX	Report	XXX	XXX
Total Suspended Solids						
Raw Sewage Influent	Report	Report Daily Max	XXX	Report	XXX	XXX
Total Suspended Solids	58	87	XXX	10	15	20
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Nitrate-Nitrite as N (Total Load, lbs) (lbs)	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Total Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Nitrogen (Total Load, lbs) (lbs)	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Effluent Net	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	24.5	XXX	XXX	4.2	XXX	8.4
May 1 - Oct 31	8.1	XXX	XXX	1.4	XXX	2.8
Ammonia-Nitrogen (Total Load, lbs) (lbs)	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen (Total Load, lbs) (lbs)	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Total Phosphorus	11.6	XXX	XXX	2.0	XXX	4
Total Phosphorus (Total Load, lbs) (lbs)						
Effluent Net	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Total Phosphorus (Total Load, lbs) (lbs)	Report Total Mo	XXX	XXX	XXX	XXX	XXX
Zinc, Total	0.46	XXX	XXX	0.079	XXX	0.158

Sludge use and disposal description and location(s): Sludge cake is landfilled off site.

In addition, the permit contains the following major special conditions:

- N/A

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is not in effect.

PA0083020, Sewage, SIC Code 4952, **Forbes Road School District**, 159 Red Bird Drive, Waterfall, PA 16689-7137. Facility Name: Forbes Road High School & Elementary School. This existing facility is located in Taylor Township, **Fulton County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Elders Branch (HQ-CWF), is located in State Water Plan watershed 12-C and is classified for High Quality Waters—Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.012 MGD.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Total Annual		Average Monthly	Maximum	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.6
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	XXX	XXX	XXX	20.0	XXX	40.0
Total Suspended Solids	XXX	XXX	XXX	20.0	XXX	30.0
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Total Nitrogen	XXX	Report	XXX	Report	XXX	XXX
Total Phosphorus	XXX	Report	XXX	Annl Avg Report	XXX	XXX
				Annl Avg		

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

PA0086908, Sewage, SIC Code 8661, **Mid Creek Retreat & Event Center**, 3230 E Imperial Highway # 208, Brea, CA 92821. Facility Name: Middle Creek Retreat & Event Center. This existing facility is located in Freedom Township, **Adams County**.

Description of Existing Activity: The application is for a renewal & transfer of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Middle Creek (CWF), is located in State Water Plan watershed 13-D and is classified for Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.04 MGD.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Total Annual		Average Monthly	Maximum	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
	Wkly Avg	Daily Max				
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Ultraviolet light transmittance (%)	XXX	XXX	Report	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	XXX	XXX	25.0	XXX	XXX	50.0
Total Suspended Solids	XXX	XXX	30.0	XXX	XXX	60.0
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Nitrate-Nitrite as N (lbs/year)	XXX	Report	XXX	Report	XXX	XXX
Total Nitrogen (lbs/year)	XXX	Report	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen (lbs/year)	XXX	Report	XXX	Report	XXX	XXX
Total Phosphorus (lbs/year)	XXX	Report	XXX	Report	XXX	XXX

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

PA0267007, Sewage, SIC Code 4952, **Teresa L Caldwell**, 105 Windrush Lane, Mechanicsburg, PA 17055. Facility Name: Caldwell Res. This proposed facility is located in Franklin Township, **York 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), North Branch Bermudian Creek (WWF, MF), is located in State Water Plan watershed 7-F and is classified for Migratory Fishes and Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .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>Annual Average</i>	<i>Maximum</i>	
Flow (MGD)	Report Annl Avg	XXX	XXX	XXX	XXX	XXX
Biochemical Oxygen Demand (BOD ₅)	XXX	XXX	XXX	10.0	XXX	20.0
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20.0
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	XXX

Sludge use and disposal description and location(s): Offsite location.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

PA0266931, Industrial, SIC Code 8051, **Garden Spot Communities**, 433 Kinzer Avenue, New Holland, PA 17557. Facility Name: Garden Spot Village Retirement Community. This proposed facility is located in Earl Township, **Lancaster County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated industrial waste.

The receiving stream(s), Unnamed Tributary to Mill Creek (CWF, MF) and Unnamed Tributary to Mill Creek (WWF, MF), is located in State Water Plan watershed 7-J and is classified for Cold Water Fishes, Migratory Fishes, and Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .01084 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Temperature (°F)	XXX	XXX	Inst Min XXX	Report	XXX	XXX

The proposed effluent limits for Outfall 002 are based on a design flow of .00075 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Temperature (°F)	XXX	XXX	Inst Min XXX	Report	XXX	XXX

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

PA0261050, Sewage, SIC Code 4952, **Quail Creek Homeowners Association**, 602 Quail Creek, Manheim, PA 17545. Facility Name: Quail Creek Subdivision WWTP. This existing facility is located in Rapho Township, **Lancaster County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Unnamed Tributary to Chickies Creek, is located in State Water Plan watershed 7-G and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0076 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Minimum</i>	<i>Concentration (mg/l)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.2	XXX	0.66

Parameters	Mass (lb/day)		Minimum	Concentration (mg/l)		Instant. Maximum
	Average Monthly	Daily Maximum		Average Monthly	Daily Maximum	
CBOD ₅	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
Ammonia-Nitrogen						
May 1 - Oct 31	XXX	XXX	XXX	3.0	XXX	6.0
Nov 1 - Apr 30	XXX	XXX	XXX	9.0	XXX	18
Total Phosphorus	XXX	XXX	XXX	2.0	XXX	4.0

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 001.

Parameters	Mass (lbs)		Minimum	Concentration (mg/l)	
	Monthly	Annual		Monthly Average	Maximum
Ammonia—N	Report	Report	XXX	Report	XXX
Kjeldahl—N	Report	XXX	XXX	Report	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX
Total Phosphorus	Report	Report	XXX	Report	XXX
Net Total Nitrogen	XXX	0	XXX	XXX	XXX
Net Total Phosphorus	XXX	0	XXX	XXX	XXX

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document # 392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

* The compliance date for Net Total Nitrogen and Net Total Phosphorus will begin on the Permit Effective Date. Since these reporting requirements are annual loads, the reporting on compliance with the annual limitations will be required to be reported on the Supplemental DMR—Annual Nutrient Summary. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of 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 EPA Waiver is in effect.

PA0034363, Sewage, SIC Code 6515, **Hess, Stuart A.**, 116-B Blantz Road, Lititz, PA 17543-9573. Facility Name: Pine View Acres MHP. This existing facility is located in Penn Township, **Lancaster County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Unnamed Tributary to Chiques Creek (WWF), is located in State Water Plan watershed 7-G and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .0036 MGD.—Interim Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.6
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Total Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	XXX	XXX	XXX	27	XXX	54
May 1 - Oct 31	XXX	XXX	XXX	9.0	XXX	18
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX

The proposed effluent limits for Outfall 001 are based on a design flow of .0036 MGD.—Final Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.6
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Total Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	XXX	XXX	XXX	27	XXX	54
May 1 - Oct 31	XXX	XXX	XXX	9.0	XXX	18
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	XXX	XXX	XXX	2.0	XXX	4.0

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

PA0082228 A-1, Sewage, SIC Code 2451, **Mobile Realty 6, LLC**, 1768 Oregon Pike, Lancaster, PA 17601. Facility Name: Hill Top Acres MHP. This existing facility is located in Rapho Township, **Lancaster County**.

Description of Existing Activity: The application is for a transfer of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Chiques Creek (WWF), is located in State Water Plan watershed 7-G and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .005 MGD.—Interim Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.6
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	1,000
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Total Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen	XXX	XXX	XXX	Report	XXX	XXX

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	Report	XXX	XXX	Report	XXX	XXX
Total Phosphorus (Total Load, lbs)	XXX	122	XXX	XXX	XXX	XXX
Total Annual						

The proposed effluent limits for Outfall 001 are based on a design flow of .005 MGD.—Final Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.6
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	1,000
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Total Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	Report	XXX	XXX	2.0	XXX	4.0
Total Phosphorus (Total Load, lbs)	XXX	122	XXX	XXX	XXX	XXX
Total Annual						

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0272507, Sewerage, SIC Code 4952, 8800, **Ralph Engel**, 202 Estate Lane, Harmony, PA 16037-8708. Facility Name: Ralph Engel SRSTP. This proposed facility is located in Muddycreek Township, **Butler County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated sewage.

The receiving stream is an Unnamed Tributary to Little Yellow Creek, located in State Water Plan watershed 20-C and classified for Cold Water Fish, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0005 MGD.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Annual Average	Maximum	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	XXX	XXX	XXX	10.0	XXX	20.0
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20.0
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	XXX

Sludge is disposed off-site.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA Waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law.

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

WQM Permit No. 6719408, Sewerage, **Jackson Township Sewer Authority**, 439 Roth's Church Road, Spring Grove, PA 17362.

This proposed facility is located in Jackson Township, **York County**.

Description of Proposed Action/Activity: Replacement of Sprenkle and Sunnyside Road Pump Stations.

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

WQM Permit No. 0277205 A-3, Industrial, **US Steel Corp**, P.O. Box 878, Dravosburg, PA 15034-0878.

This existing facility is located in West Mifflin Borough, **Allegheny County**.

Description of Proposed Action/Activity: An application for amendment was received for the replacement of the existing treatment units.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 6219413, Sewage, **Michael Forster**, 11264 Whitewood Drive, Newbury, OH 44065.

This proposed facility is located in Sheffield Township, **Warren County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

WQM Permit No. 1019406, Sewage, **Ronald Cehelsky**, 221 Carbon Center Road, Butler, PA 16002-1021.

This proposed facility is located in Summit Township, **Butler County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

WQM Permit No. 2570403 A-1, Sewage, **Harborcreek Township Sewer Authority**, 5601 Buffalo Road, Harborcreek, PA 16421.

This existing facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Action/Activity: Replacement of Six Mile Creek Pump Station and construction of equalization tank.

V. Applications for NPDES Waiver Stormwater Discharges from MS4.

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717-705-4707.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>Municipality, County</i>	<i>Waiver Application Submitted (Y/N)</i>	<i>Pollutant Reduction Plan Submitted (Y/N)</i>
PAS203503 (Storm Water)	Beck Manufacturing— Greencastle Plant 330 East 9th Street Waynesboro, PA 17268	Franklin County Antrim Township	Unnamed Tributary to Muddy Run (HQ-CWF, MF) (13-C)	Yes
PAG133641	Royalton Borough Dauphin County 101 Northumberland Street Middletown, PA 17057-1612	Royalton Borough Dauphin County	Y	N
PAG133696	Penn Township Perry County 100 Municipal Building Road Duncannon, PA 17020-1130	Penn Township Perry County	Y	N
PAG133695	Jonestown Borough Lebanon County 295 South Mill Street Jonestown, PA 17038-0446	Jonestown Borough Lebanon County	Y	N

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>
PAD00009	MLH Exploration, LLC 308 Lancaster Avenue Suite 300 Wynnewood, PA 19096-2145	Bucks	Falls Township	Unnamed Tributary to Delaware River WWF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD150146	Diament Building Corp Byers Road P.O. Box 471 Uwchlan, PA 19480	Chester	West Vincent Township	Unnamed Tributary to Pickering Creek HQ-TSF-MF
PAD460039	400 Barr Harbor Drive, LLC 3843 West Chester Pike Newtown Square, PA 19073	Montgomery	West Conshohocken Borough	Schuylkill River Gulf Creek WWF-MF
PAD510052	Beach Street Developers, LLC 2337 Philmont Avenue 2nd Floor Huntingdon Valley, PA 19006-6200	Philadelphia	City of Philadelphia	Delaware River WWF

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Carbon County Conservation District, 5664 Interchange Road, Lehighton, PA 18235.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD130023	Bruce Beaty Blue Ridge Estate Co P.O. Box 707 Blakesless, PA 18610	Carbon	Kidder Twp	UNT to Tunkhannock Creek (HQ-CWF, MF)

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>
PAD390142	Lehigh Valley Custom Homes LLC 3975 Gubitosi Dr Coopersburg, PA 18036	Lehigh	Lower Macungie Twp	Little Lehigh Creek (HQ-CWF, MF)

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>
PAD480106	Devon Katzev Lig Business Holdings LLC 2020 Highland Ave Bethlehem, PA 18020	Northampton	Forks Twp	Bushkill Creek (HQ-CWF, MF)
PAD480107	UGI Utilities Inc 1 UGI Dr Denver, PA 17517	Northampton	East Allen Twp	Monocacy Creek (HQ-CWF, MF) EV Wetlands

Schuylkill Conservation District, 1206 AG Center Drive, Pottsville, PA 17901-9733.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD540014	Like Portieles PPL Electric Utilities 2 N 9th St Allentown, PA 18101	Schuylkill	Delano Twp Mahanoy Twp Rush Twp	Neifert Creek (CWF, MF) N Mahanoy Creek (CWF, MF) UNT to N Mahanoy Creek (CWF, MF) Pine Creek (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>
PAD220007	Zion Evangelical Congregational Church 210 McKelvey Road Dauphin, PA 17018	Dauphin	Middle Paxton Township	UNT Clark Creek (HQ-CWF, TSF)

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570.327.3574.

Lycoming County Conservation District: 542 County Farm Road, Suite 202, Montoursville, PA 17754, (570) 433-3003.

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAD410008	DCNR 400 Market St Harrisburg, PA 17105	Lycoming	McIntyre Twp	Pleasant Stream HQ/EV

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

Permit No.	Applicant & Address	County	Municipality	Stream Name
PAD630044	AGL Development, LLC 700 Maple Grove Bulger, PA 15019	Washington County	Donegal Township	Dutch Fork (HQ-WWF)
PAD630045	Robinson Power Co., LLC 563 Route 18 Burgettstown, PA 15021	Washington County	Cross Creek Township; Jefferson Township; Smith Township; and Robinson Township	UNTs to Little Raccoon Run (WWF); UNTs to Raccoon Creek (WWF); Raccoon Creek (WWF); UNTs to Burgetts Fork (WWF); Burgetts Fork (WWF); North Fork Cross Creek (WWF); UNTs to North Fork Cross Creek (WWF)

**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**

Agricultural Operation Name and Address	County	Total Acres	AEU's	Animal Type	Special Protection Waters (HQ or EV or NA)	New or Renewal
Embrovac, LLC 616 Dairy Road Tamaqua, PA 18253	Schuylkill	20.4	460.88	Layers	HQ	Renewal

PUBLIC WATER SUPPLY (PWS) PERMITS

Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17), the following parties have applied for PWS permits to construct or substantially modify public water systems.

Persons wishing to comment on permit applications are invited to submit statements to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding an application. A comment should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability that require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).

Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 6719516, Public Water Supply.

Applicant	Suez Water Pennsylvania, Inc.
Municipality	Newberry Township
County	York
Responsible Official	John D. Hollenbach, General Manager 4211 East Park Circle Harrisburg, PA 17111-0151
Type of Facility	Public Water Supply
Consulting Engineer	Jamie R. Shambaugh, P.E. Gannett Fleming, Inc. P.O. Box 67100 Harrisburg, PA 17106-7100
Application Received:	7/30/2019

Description of Action	This permit is to upgrade the previously approved granular activated carbon (GAC) units to provide treatment for Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic acid (PFOS) at SUEZ Newberry's existing Conley & DuPont Pumphouses (EP 101 & 102) to permanent facilities.
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WATER ALLOCATIONS

Applications received under the Act of June 24, 1939 (P.L. 842, No. 365) (35 P.S. §§ 631—641) relating to the Acquisition of Rights to Divert Waters of the Commonwealth.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WA20-350B, Water Allocations. **Cambridge Springs Borough**, 161 Carringer Street, Cambridge Springs, PA 16403, Borough of Cambridge Springs, **Crawford County**. Water Allocation Permit application requesting the right to withdraw 750,000 gallons per day from French Creek.

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 pub-

lished 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:

Southwest Region: Environmental Cleanup & Brownfields Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Former Monroeville Dry Cleaning, 4301-4311 Northern Pike, Monroeville Borough, **Allegheny County**. American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, PA 15668 on behalf of 4301 Northern Pike Partners, LLC, 437 Grant Street, Pittsburgh, PA 15219 submitted a Notice of Intent to Remediate. Soil, groundwater, and soil gas have been found to be contaminated with chlorinated volatile organic compounds associated with dry cleaning solvents that were historically used at the site. The Notice of Intent to Remediate was published in the *Pittsburgh Post-Gazette* on September 6, 2019.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Application(s) Received Under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Northeast Region: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Permit Application No. 101537. Hinkle Transfer Station, LLC, 1184 McClellandtown Road, McClellandtown, PA 15458. An application for permit renewal for the continued operation of a municipal waste transfer station located in Lower Macungie Township, **Lehigh County**. The application was received by the Regional Office on September 30, 2019, supplemental information was received on October 2, 2019 and the application was deemed administratively complete on October 3, 2019.

Comments concerning the application should be directed to Roger Bellas, Environmental Program Manager, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18701-1915 at 570-826-2511. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

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.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.

37-185D: Universal Refractories Inc. (915 Clyde Street, P.O. Box 97, Wampum, PA 16157-0097), for the construction and initial operation of two new blending process lines at their facility in Wampum Borough, **Lawrence 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.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: James A. Beach, New Source Review Chief—Telephone: 484-250-5920.

46-0171: John Evans' Sons, Inc. (1 Spring Avenue, Lansdale, PA 19446) to allow for an increase in the use of perchloroethylene from 4 tons to 9.9 tons per 12 month rolling sum. John Evans' Inc. operates under a Non-Title V Facility, State-Only, Natural Minor Permit in Lansdale Borough, **Montgomery County**. The plan approval will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

15-0067J: Herr Foods Inc. (273 Old Baltimore Pike, Nottingham, PA 19362-0300) an application for the installation of two new natural gas fired batch kettle fryers as an expansion to Potato Chip Line 2B (Source ID 160) at its facility in West Nottingham Township, **Chester County**. Herr Foods Inc. is a Synthetic Minor facility, operating under SMOP 15-00067. The Plan Approval will contain monitoring, recordkeeping and operating restrictions designed to minimize emissions and keep the facility operating within all applicable air quality requirements.

46-0005AV: Merck, Sharp & Dohme, Corp. (770 Sunnyside Pike, West Point, PA 19486-0004) for the construction of a new wing to Building 60A and to retrofit part of existing Building 69D to create additional good manufacturing practice (GMP) spaces at an existing permitted Title V facility in Upper Gwynedd Township, **Montgomery County**. The Building 60A expansion will support the HPV vaccine production process in Buildings 60 and 60A, which are part of the Vaccine and Sterile Manufacturing operations. The Building 69D Retrofit will support sterile supply operations. The modifications involve the use of organic solvent-based cleaners and

disinfectants in the GMP spaces. VOC emissions from Buildings 60 and 60A are currently included with the VOC emission units that are grouped together under Source ID 105 (Biological Manufacturing) in the site's Title V Operating Permit. Per this Plan Approval, building 60 and 60A cleaning and disinfecting emissions from Source ID 105 will be regrouped with the Building 60A expansion as a separate new source (Source ID 114). VOC emissions from Source ID 114 will be limited to 4.60 TPY (reflective of an increase of emissions of 0.38 TPY for VOC). A new source (Source ID 115) has been created for all cleaning and disinfection operations in the retrofitted Building 69D, with a VOC limit of 2.49 TPY (new emissions). This emission limit will include only cleaning and disinfection operations occurring in the Building 69D GMP space. This project overall will result in a potential increase of 2.87 TPY for VOC. This project does not trigger applicability toward NSR or PSD regulations. The plan approval will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

15-0141A: Tin Technology and Refining (905 Fern Hill Road, West Chester, PA 19380), for the installation of an additional recovery furnace and two (2) melting pots at a non-Title V facility in West Goshen Township, **Chester County**. Tin Technology and Refining operates a tin and tin alloy recycling facility. Existing sources include a Rotary Furnace # 1 and Melting Pots # 1, # 2, # 3, and # 4. All sources burn natural gas. Emissions from PM, which also include emissions of Lead, are vented to a dust collector. The new recovery furnace and two (2) new melting pots will also be controlled by the existing dust collector. With the addition of the new recovery furnace and the two (2) new melting pots, PM emissions are not expected to increase above the current limit of 15.02 TPY, as this is based on a maximum exhaust concentration of 0.01 grain per dry standard cubic feet. However, because of the new sources, Lead emissions are expected to increase to 0.11 TPY for the whole site. The following reflect emissions from the combustion of natural gas from these sources: NO_x—4.78 TPY; CO—4.01 TPY; SO₂—0.03 TPY; VOC—0.26 TPY; PM—0.36 TPY; and HAP—0.09 TPY. The permit will contain monitoring, recordkeeping, reporting, and work practice standards designed to keep the facility operating within all applicable air quality regulations and requirements.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.

43-310D: NLMK Pennsylvania LLC (15 Roemer Boulevard, Farrell, PA 16121), for the proposed construction of process equipment related to the Walking Beam Furnace as a result of non-construction within 18-months of Plan Approval 43-310G issuance in City of Farrell, **Mercer County**. This is a Title V facility. The public notice is required for sources required to obtain a Plan Approval in accordance with 25 Pa. Code § 127.44. This plan approval will, in accordance with 25 Pa. Code §§ 127.450 or 127.505, be incorporated into the facility operating permit at a later date.

Plan approval No 43-310H is for the proposed construction of process equipment related to the Walking Beam Furnace as a result of non-construction within 18-months of Plan Approval 43-310G issuance on August 15, 2017. This Plan Approval will contain emission restriction, testing, recordkeeping, work practice standard and additional requirement conditions, which will satisfy the

requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate Best Available Technology (BAT) for the source including, but are not limited to, the following:

- Site Level:
 - Subject to 40 CFR 52.21(r)(6)(iii) & (v) & (vi)
 - Subject to 25 Pa. Code § 127.203a(a)(5)(iii)
- Source 208 [Slab Reheat Furnace 3]:
 - The permittee shall limit the emissions from Source 208 & Source 244 to the following:
 - NO_x: 181.3 tpy based on a consecutive 12-month period and an emission factor of 58 #/mmcf for Source 208
 - CO: 90.7 tpy based on a consecutive 12-month period and an emission factor of 3 #/mmcf for Source 208
 - VOC: 14.2 tpy based on a consecutive 12-month period and an emission factor of 2.8 #/mmcf for Source 208
 - PM/PM₁₀/PM_{2.5}: 7.8 tpy based on a consecutive 12-month period and an emission factor of 3 #/mmcf for Source 208
 - SO_x: 1.55 tpy based on a consecutive 12-month period and an emission factor of 0.6 #/mmcf for Source 208
 - The natural gas fuel usage limit is 5,181 mmcf/yr based on a consecutive 12-month period for Source 208 & Source 244.
 - The facility shall maintain the following records:
 - Monthly records of the fuel usage for Source 208 & Source 244
 - 12-month rolling totals of the fuel usage for Source 208 & Source 244
 - Monthly & 12-month rolling totals Source 208 & Source 244 for NO_x, CO, VOC, SO_x, & PM/PM₁₀/PM_{2.5} emissions
 - All conditions from the facility operating permit revised on December 8, 2015, for this source remain in effect unless modified in this plan approval.
- Source 244 [Walking Beam Furnace # 4]
 - Subject to 25 Pa. Code §§ 123.13 & 123.21.
 - The permittee shall limit the emissions from Source 244 & Source 208 to the following:
 - NO_x: 70.0 #/mmcf
 - NO_x: 181.3 tpy based on a consecutive 12-month period
 - CO: 35.0 #/mmcf
 - CO: 90.7 tpy based on a consecutive 12-month period
 - VOC: 3.50 #/hr
 - VOC: 14.2 tpy based on a consecutive 12-month period
 - PM/PM₁₀/PM_{2.5}: 1.93 #/hr
 - PM/PM₁₀/PM_{2.5}: 7.8 tpy based on a consecutive 12-month period
 - SO_x: 0.39 #/hr
 - SO_x: 1.55 tpy based on a consecutive 12-month period
 - The natural gas fuel usage limit is 5,181 mmcf/yr based on a consecutive 12-month period for Source 244 & Source 208.
 - The facility shall conduct an initial stack test and subsequent tests every 5 years for NO_x, CO, VOC, & PM (filterable & condensable).
 - The company shall maintain a log of all preventative maintenance inspections of the source. The inspection logs, at a minimum, shall contain the dates of the inspections, the name of the person performing the inspection, any mechanical repairs and/or adjustments, any potential problems or defects that were encountered, and the steps taken to correct them.
 - The company shall maintain a log of the following, at a minimum, from the operational inspections:
 - Completion of inspection—daily defined as at least once per calendar day, while the source is operating
 - The facility shall maintain the following records:
 - Monthly records of the fuel usage for Source 244 & Source 208
 - 12-month rolling totals of the fuel usage for Source 244 & Source 208
 - Monthly & 12-month rolling totals Source 244 & Source 208 for NO_x, CO, VOC, SO_x, & PM/PM₁₀/PM_{2.5} emissions
 - The permittee shall record each adjustment conducted during the annual tune-up. This record must contain, at a minimum:
 - The date of the tuning procedure.
 - The name of the service company and the technician performing the procedure.
 - The final operating rate or load.
 - The final NO_x and CO emission rates.
 - 5. The final excess oxygen rate.
 - The permittee shall perform a daily operational inspection of the source.
 - The permittee shall conduct an annual tune-up in accordance with the procedures in 40 CFR 63.11223 (relating to how do I demonstrate continuous compliance with the work practice and management practice standards). The annual tune-up must include, at a minimum, the following:
 - Inspection and cleaning or replacement of fuel-burning equipment, including the burners and components, as necessary, for proper operation as specified by the manufacturer.
 - Inspection of the flame pattern and adjustment of the burner, as necessary, to optimize the flame pattern to minimize total emissions of NO_x and, to the extent possible, emissions of CO.
 - Inspection and adjustment, as necessary, of the air-to-fuel ratio control system to ensure proper calibration and operation as specified by the manufacturer.
 - The source shall be operated and maintained in accordance with the manufacturer's specifications and in accordance with good air pollution control practices.
- Source 245 [Cooling Tower]
 - The PM emissions shall not exceed 0.08 #/hr and 0.36 tpy based on a 12-month rolling basis.

- The PM₁₀ emissions shall not exceed 0.08 #/hr and 0.36 tpy based on a 12-month rolling basis.
- The PM_{2.5} emissions shall not exceed 0.08 #/hr and 0.36 tpy based on a 12-month rolling basis.
- The total dissolved solids (TDS) of the cooling tower water shall not exceed 750 ppmw. [Compliance with the #/hr limitations shall be demonstrated provided TDS concentrations do not exceed 750 ppmw.]
- The permittee shall, at a minimum once every 6-months, sample and analyze the cooling tower water for total dissolved solids (TDS) at a point which is representative of the water being evaporated to the atmosphere.
- The company shall maintain a log of all preventative maintenance inspections of the source. The inspection logs, at a minimum, shall contain the dates of the inspections, the name of the person performing the inspection, any mechanical repairs and/or adjustments, any potential problems or defects that were encountered, and the steps taken to correct them.
- The company shall maintain a log of the following, at a minimum, from the operational inspections:
 - Completion of inspection—daily defined as at least once per calendar day, while the source is operating.
- The company shall maintain a daily log of the following:
 - Water circulation and makeup rates
- The company shall maintain records of the water sample TDS analysis.
- The permittee shall perform a daily operational inspection of the source.
- The permittee shall maintain and operate the source in accordance with the manufacturer's specifications, the manufacturer's preventative maintenance schedule, and good air pollution control practices. The facility shall maintain a copy of the manufacturer's preventative maintenance schedule on-site.

In accordance with 25 Pa. Code § 127.44(f)(1), all the pertinent documents regarding this application (applications, review memos, and draft approvals) are also available for review from 8:00 a.m. to 4:00 p.m. at the Meadville Regional DEP Office (Air Quality). Appointments for scheduling a review must be made by calling the DEP at (814) 332-6340.

In accordance with 25 Pa. Code § 127.44(f)(2), a 30-day comment period, from the date of publication, will exist for the submission of comments. Any person(s) wishing to provide DEP with additional information, which they believe should be considered prior to the issuance of this permit, may submit the information to Regional Air Quality Program Manager, Pennsylvania Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335-3494 and must contain the name, address and telephone number of the person submitting the comments, identification of the proposed plan approval [43-310H] and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments 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 the *Pennsylvania Bulletin* or by telephone, where DEP determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Regional Air Quality Program Manager, Pennsylvania Department of Environmental Protection, 230 Chestnut St., Meadville, PA 16335; Phone (814) 332-6940.

In accordance with 25 Pa. Code § 127.45, a person may oppose the proposed plan approval by filing a written protest with the Department's Northwest Region Air Quality Program Manager.

If a plan approval has not undergone the previously listed public notice process, the change to an operating permit must be treated as a significant modification. In these situations, the Department should follow the procedures described in §§ 127.421 to 127.431 for State only operating permits or §§ 127.521 to 127.524 for Title V operating permits.

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.

46-00274: Sonoco Protective Solutions, Inc. formerly known as Tegrant Diversified Brands, Inc. (161 Corporate Drive, Montgomeryville, PA 18936) for the renewal of their operating permit for an insulated shipping container manufacturing operation in Montgomery Township, **Montgomery County**. Sonoco is a synthetic minor facility. The manufacturing process is a closed mold, rigid polyurethane foam molding operation which uses materials containing Volatile Organic Compounds (VOC) and the VOC emission limit is 8.0 tpy. All the VOC emissions are fugitive and are reduced by: fazing out the use of clean up solvent, more efficient injection equipment, and good housekeeping practices. The operating permit also includes work practice standards, monitoring, and recordkeeping requirements 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.

13-00016: Haulmark Trailers of PA, Inc. (6 Banks Avenue, McAdoo, PA 18237-2507). The Department intends to issue a State-Only Operating Permit for operation of sources at a fabricated structural metal manufacturing facility in Banks Township, **Carbon County**. The sources include a paint booth and dryer controlled by panel filters. The proposed permit contains all 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.

39-00090: Inhance Technologies, LLC (16233 Park Row, Suite 100, Houston, TX 77084). The Department intends to issue a State-Only Operating Permit for operation of sources at a plastics materials and resins manufacturing facility in Hanover Township, **Lehigh County**. The sources three reaction chambers controlled by activated alumina scrubbing towers, and a fluorine cell area controlled by an activated alumina scrubbing tower. The

proposed permit contains all 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.

40-00043: Crestwood Membranes, Inc. (755 Oakhill Road; Crestwood Industrial Park, Mountaintop, PA 18707). The Department intends to issue a State-Only Operating Permit for operation of sources at a plastics products manufacturing facility in Wright Township, **Luzerne County**. The sources include two hydrotherms and a rotogravure press controlled by a regenerative thermal oxidizer. The proposed permit contains all 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.

39-00020: Lehigh Valley Health Network/Cedar Crest (1628 West Chew Street, Allentown, PA 18102-3649). The Department intends to issue a renewal State-Only (Natural Minor) Permit for operation of a general medical and surgical hospitals facility in Salisbury Township, **Lehigh County**. The primary sources at this facility consist of boilers and emergency generators. The sources are considered minor emission sources of nitrogen oxide (NO_x), sulfur oxides (SO_x), carbon monoxide (CO), particulate matter (PM₁₀), and volatile organic compounds (VOC) emissions. The operating 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.

54-00083: Trans Western Polymers, Inc. (31 Progress Avenue, Tamaqua, PA 18252-4333). The Department intends to issue a renewal State-Only Natural Minor Permit for Trans Western Polymers located in Rush Township, **Schuylkill County**. The plant manufactures plastic waste bags from polyethylene pellets. The sources are considered minor emission sources 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.

01-05022: Knouse Foods Coop, Inc. (1505 Orrtanna Road, Orrtanna, PA 17353) for the operation of a fruit processing facility in Hamiltonban Township, **Adams County**. This is for renewal of the existing State-only permit. Potential air emissions from the facility are estimated at 13.7 tpy PM₁₀, 98.8 tpy NO_x, 28.6 tpy CO, 1.66 tpy VOC, 91.0 tpy SO₂ and 0.98 tpy HAPs. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations.

67-05069: Pennsy Supply, Inc. (550 S Biesecker Rd, Thomasville, PA 17364) for the operation of a limestone quarry in Jackson Township, **York County**. This is for renewal of the existing State-only permit. Potential air

emissions from the facility are estimated at 12.15 tpy PM, 32.2 tpy NO_x, 27.1 tpy CO, 1.36 tpy VOC, 0.19 tpy SO₂, and 0.61 tpy HAPs. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations.

07-03046: Penn Mag, Inc. (719 Tarrtown Road, Adrian, PA 16210) to issue a State-Only Operating Permit for the operation of their iron chromite processing facility in Greenfield Township, **Blair County**. This is for renewal of the existing State-only permit. The facility wide potential to emit in is estimated to be 11.55 tpy PM, 24.67 tpy NO_x, 9.34 tpy CO, 1.83 ton of VOC, and 1.25 tpy SO_x. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 40 CFR 63 Subpart ZZZZ—Standards of Performance for Stationary Reciprocating Internal Combustion Engines.

67-03071: PA State Pet Memorial at Golden Lake (210 Andersontown Rd, Mechanicsburg, PA 17055) to issue a State Only Operating Permit for the pet crematory located in Monaghan Township, **York County**. This is for renewal of the existing State-only permit. The potential emissions are estimated at 4.18 tpy of NO_x, 3.48 tpy of CO, 3.21 tpy of PM₁₀, 1.44 tpy of SO_x, and 0.30 tpy of VOC. 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.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.

24-00134: ASM Holdco, Inc.'s Contact Technologies, Inc. (229 West Creek Rd., St. Marys, PA 15857), the Department intends to issue the renewal of the State-Only Operating Permit of a facility that manufactures ceramic and metal electrical parts located in St. Marys City, **Elk County**. Permitted air contamination sources are ceramic parts production and machining, metal parts mixing and molding, metal parts machining, machine shop activities, and a degreaser. The facility is Natural Minor for permitting purposes. In this renewal, a replacement control device authorized through a Request for Determination issued in 2016 is incorporated.

43-00055: Anchor Concrete, Fredonia Plant (97 Main St., Fredonia, PA 16124), the Department intends to issue the renewal of the State-Only Operating Permit of a facility that blends and packages concrete mix products located in Fredonia Borough, **Mercer County**. Permitted air contamination sources are a rotary drum dryer, bagging and storage operations, and a degreaser. The facility is Natural Minor for permitting purposes. In this renewal, there are no major changes in permit requirements. Permitted sources and operations remain the same and there are no new Federal and State regulations applicable to the facility.

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

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 56090109. Wilson Creek Energy, LLC, 1576 Stoystown Road, P.O. Box 260, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface and auger mine in Lincoln Township, **Somerset County**, affecting 30.4 acres. Receiving streams: unnamed tributaries to Quemahoning Creek, classified for the following use: cold water fishes. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority. Application received: September 26, 2019.

Permit No. 05130101 and NPDES No. PA0279307. Robindale Energy Services, Inc., 224 Grange Hall Road, P.O. Box 228, Armagh, PA 15920, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Broad Top Township, **Bedford County**, affecting 271.4 acres. Receiving streams: unnamed tributaries to/and Longs Run, Shreves Run and Six Mile Run classified for the following use: warm water fishes. The first downstream potable water supply intake from the point of discharge is Saxton Municipal Authority. Application received: September 27, 2019.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

17814000 and NPDES PA0608769. Rob Holland Enterprises (52 Holland Lane, Curwensville, PA 16833). Permit renewal for continued operation and restoration of a bituminous surface coal and auger mine located in Penn Township, **Clearfield County** affecting 206.9 acres. Receiving stream(s): Irish Run and Unnamed Tributaries to Irish Run classified for the following use(s): CWF. There are no potable water supply intakes within 10 miles downstream. Application received: September 23, 2019.

17813182 and NPDES PA0609692. Penn Coal Land, Inc. (P.O. Box 68, Boswell, PA 15531). Permit renewal for reclamation only with post mining water treatment of a bituminous surface mine located in Decatur Township, **Clearfield County** affecting 125.8 acres. Receiving stream(s): Unnamed Tributary to Big Run classified for the following use(s): CWF and MF. There are no potable water supply intakes within 10 miles downstream. Application received: September 25, 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.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 34190802. Allen Zimmerman, 7270 Licking Creek Road, Mifflintown, PA 17059, commencement, operation, and restoration of a small noncoal (industrial minerals) operation in Milford Township, **Juniata County**,

affecting 5.0 acres, receiving stream: unnamed tributary to East Licking Creek. Application received: September 20, 2019.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

4976SM2. Burtville Enterprises, LLC (2093 Bells Run Road, Shinglehouse, PA 16748). Transfer of an existing large noncoal surface mine from Earl F Dean, Inc. located in Middlebury Township, **Tioga County** affecting 24.4 acres. Receiving stream(s): Unnamed Tributary to Crooked Creek classified for the following use(s): WWF, MF. There are no potable water supply intakes within 10 miles downstream. Application received: September 30, 2019.

PAM219010. Burtville Enterprises LLC, 2093 Bells Run Road, Shinglehouse, PA 16748, coverage under General NPDES Permit For Stormwater Discharges Associated With Mining Activities (BMP GP-104) on Large Noncoal Permit No. 4976SM2 located in Middlebury Township, **Tioga County**. Receiving stream(s): Unnamed Tributary to Crooked Creek classified for the following use(s): WWF, MF. Application received: September 30, 2019.

41990301 and NPDES No. PA0238287. Glenn O. Hawbaker, Inc. (1952 Waddle Road, Suite 203, State College, PA 16803). Permit revision to add 2.8 acres on an existing large noncoal mine in Armstrong Township, **Lycoming County**, affecting 44.1 acres. Receiving streams: Hagerman's Run classified for the following use(s): EV, CWF, MF. There are no potable water supply intakes within 10 miles downstream. Application received: September 11, 2019.

PAM219016. Scott A. Dunn, 1053 Chevy Lane, Towanda, PA 18848, coverage under General NPDES Permit For Stormwater Discharges Associated With Mining Activities (BMP GP-104) on Noncoal Permit No 08060809 located in Wysox Township, **Bradford County**. Receiving stream(s): Fall Run and Unnamed Tributary to Wysox Creek classified for the following use(s): CWF. There are no potable water supply intakes within 10 miles downstream. Notice of Intent for Coverage received: October 3, 2019.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 52070805. Sunnylands, Inc. (3000 Sunrise Lake, Milford, PA 18337), Stage I & II bond release of a quarry operation in Dingman Township, **Pike County** affecting 5.0 acres on property owned by Sunnylands, Inc. Application received: September 27, 2019.

Permit No. 5278SM2C12. Hanson Aggregates PA, LLC (7660 Imperial Way, Allentown, PA 18195), correction of an existing quarry operation to reduce the permitted acres from 107.8 to 89.0 acres in Lake Township, **Wayne County**, receiving stream: unnamed tributary to Middle Creek, classified for the following uses: HQ—cold water and migratory fishes. Application received: September 26, 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:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (Total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (Total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	
Alkalinity greater than acidity*			

*The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applies to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; mined areas backfilled and revegetated; and all other discharges and drainage (resulting from a precipitation event of greater than 1-year 24-hour to less than or equal to a 10-year 24-hour event) from coal refuse disposal piles. Similarly, modified BAT limits apply to iron, manganese and suspended solids in surface runoff, discharges and drainage resulting from these precipitation events and those of greater magnitude in accordance with 25 Pa. Code §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Exceptions to BAT effluent limits may be applicable in accordance with 25 Pa. Code §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Effluent Limits for Noncoal Mining Activities

The limits for noncoal mining activities as provided in 25 Pa. Code Chapter 77 are pH 6 to 9 and other parameters the Department may require.

Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional water quality based effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description specifies the parameters.

In addition to BAT or WQBEL limits, coal and noncoal NPDES permits establish effluent limitations in the form of implemented Best Management Practices (BMPs) identified in the associated Erosion and Sedimentation Plan, the Reclamation Plan and the NPDES permit application. These BMPs restrict the rates and quantities of associated pollutants from being discharged into surface waters in this Commonwealth.

More restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining that may occur are incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91—96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 563-2112-115, Developing National Pollutant Discharge Elimination System (NPDES) Permits for Mining Activities. Other specific factors to be considered include public comments and Total Maximum Daily Load(s). Additional discharge limitations may apply in the event that unexpected discharges occur.

Discharge rates for surface mining activities are precipitation driven. Discharge rates for proposed discharges associated with underground mining are noted in the permit description.

Persons wishing to comment on an NPDES draft permit should submit a written statement to the Department at the address of the district mining office indicated before each draft permit within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. Comments must include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92a.82(d). The request or petition for a public hearing shall be filed within 30 days of this public notice and contain the name, address, telephone number and the interest of the party filing the request, and state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. When a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

Coal NPDES Draft Permits

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

NPDES No. PA0124834 (Mining Permit No. 32803010), CONSOL Mining Company, LLC, CNX Center, 1000 Energy Drive, Canonsburg, PA 15317, renewal of an NPDES permit for surface mining in Blacklick Township, **Indiana County**, affecting 89.9 acres. Receiving streams: unnamed tributaries to Aultmans Run, classified for the following use: Trout Stocked Fishery. These receiving streams are included in the Kiski-Conemaugh River TMDL. Application received: February 21, 2019.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described previously for coal mining activities.

The following outfall discharges to unnamed tributaries to Aultmans Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
007 (Passive Treatment Bog)	N

The proposed effluent limits for the previously listed outfall are as follows:

<i>Outfalls: 007 Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Iron (mg/l)	1.5	3.0	3.7
Manganese (mg/l)	1.0	2.0	2.5
Aluminum (mg/l)	0.75	0.75	0.75
Total Suspended Solids (mg/l)	35.0	70.0	90.0

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times.
Alkalinity must exceed acidity at all times.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

NPDES No. PA0119440 (Mining Permit No. 4473SM10), Penn Coal Land, Inc., P.O. Box 68, Boswell, PA 15531, renewal of an NPDES permit for bituminous surface mining in Decatur Township, **Clearfield County**, affecting 32.1 acres. Receiving stream(s): Coal Run classified for the following use(s): CWF. This receiving stream is included in the Moshannon Creek Watershed TMDL. Receiving stream(s): Laurel Run classified for the following use(s): CWF. This receiving stream is included in the Laurel Run Watershed TMDL. Application received: June 5, 2019.

The following outfall discharges to Laurel Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
001 (Treatment Facility)	N

The proposed effluent limits for the previously listed outfall are as follows:

<i>Outfalls: 001 (All Weather Conditions)</i> <i>Parameter</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>Maximum</i>
Iron (mg/l)	3.0	6.0	7.0
Manganese (mg/l)	2.0	4.0	5.0
Aluminum (mg/l)	0.75	0.75	0.75
Total Suspended Solids (mg/l)	35.0	70.0	90.0
Sulfate (mg/L)		Monitor & Report	
Flow (gpm)		Monitor & Report	
Temperature (°C)		Monitor & Report	
Specific Conductivity (µmhos/cm)		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.			

The following outfall discharges to Coal Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
002 (Treatment Facility)	N

The proposed effluent limits for the previously listed outfall are as follows:

<i>Outfalls: 002 (All Weather Conditions)</i> <i>Parameter</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>Maximum</i>
Iron (mg/l)	2.8	5.6	7.0
Manganese (mg/l)	2.0	4.0	5.0
Aluminum (mg/l)	0.75	1.5	1.8
Total Suspended Solids (mg/l)	35.0	70.0	90.0
Sulfate (mg/L)		Monitor & Report	
Flow (gpm)		Monitor & Report	
Temperature (°C)		Monitor & Report	
Specific Conductivity (µmhos/cm)		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.			

NPDES No. PA0243132 (Mining Permit No. 17010110), River Hill Coal Company, Inc., P.O. Box 141, Kylertown, PA 16847, revision of an NPDES permit for bituminous coal surface mining in Bigler & Woodward Townships, **Clearfield County**, affecting 320.0 acres. Receiving stream(s): Upper Morgan Run and Clearfield Creek classified for the following use(s): CWF. This receiving stream is included in the North Branch Upper Morgan Run TMDL. Application received: August 16, 2018.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described previously for coal mining activities.

The following outfall discharges to Upper Morgan Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
016 (15E—Subchapter F Discharge Treatment System)	Y

The proposed effluent limits for the previously listed outfall are as follows:

<i>Outfall: 016 (All Weather Conditions)</i> <i>Parameter</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>Maximum</i>
Net Acid Load (lbs/day)			0.476
Iron Load (lbs/day)			0.202
Manganese Load (lbs/day)			0.135
Aluminum Load (lbs/day)			0.046
Total Suspended Solids (mg/l)	35.0	70.0	90.0
Sulfate (mg/L)		Monitor & Report	
Flow (gpm)		Monitor & Report	
Temperature (°C)		Monitor & Report	
Specific Conductivity (µmhos/cm)		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.			

Noncoal NPDES Draft Permits

New Stanton District Office: P.O. Box 133, 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

NPDES No. PA0200492 (Surface Mining Permit No. 65930401), Hanson Aggregates BMC, Inc. (2200 Springfield Pike, Connellsville, PA 15425), renewal to the NPDES permit for noncoal surface mine (Latrobe Quarry), located in Ligonier and Derry Townships, **Westmoreland County**, affecting 172.6 acres. Receiving stream: UNT to Loyalhanna Creek and Loyalhanna Creek, classified for the following use: TSF. This receiving stream is included in the Kiskiminetas-Conemaugh TMDL. Application received: January 31, 2019.

The following stormwater outfalls discharge to Loyalhanna Creek:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>	<i>Type</i>
001	No	Stormwater
002	No	Stormwater
003	No	Stormwater

The proposed effluent limits for the previously listed stormwater outfall 001 are as follows:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Total Iron (mg/l)	3.0	6.0	7.0
Total Manganese (mg/l)	2.0	4.0	5.0
Total Aluminum (mg/l)	2.0	4.0	5.0
Total Suspended Solids (mg/l)	35	70	90

Oil & Grease 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.

The proposed effluent limits for the previously listed stormwater outfalls 002 and 003 are as follows:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Total Iron (mg/l)	1.5	3.0	3.7
Total Manganese (mg/l)	1.0	2.0	2.5
Total Aluminum (mg/l)	0.75	0.75	0.75
Total Suspended Solids (mg/l)	35	70	90

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

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.

E4802219-004. Northampton Borough, 1401 Laubach Avenue, Northampton, PA 18067-1677, in Northampton Borough, **Northampton County**, U.S. Army Corps of Engineers, Philadelphia District.

To construct and maintain a stream restoration project in approximately a 1,000-foot reach of a Dry Run (CWF, MF) using natural stream channel design techniques for the purpose of improving safety, channel stability, water quality and aquatic habitat. Work will include re-grading of the channel; regrading the floodway; establishment of riparian buffers; and the placement of in-stream structures including sawtooth deflectors, live stake plantings and stone toe protection.

The project is located between Anthony Drive and Howertown Road (Catasauqua, PA Quadrangle Latitude: 40° 40' 37.04"; Longitude: -75° 28' 44.56") in Northampton Borough, Northampton County.

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E5904219-008. Blossburg Municipal Authority, 241 Main Street, Blossburg, PA 16912. Wastewater Treatment Plant, in Blossburg Borough, **Tioga County**, ACOE Baltimore District (Blossburg, PA Quadrangle; Latitude: 41° 41' 34.9"; Latitude -77° 4' 13.4").

The Blossburg Municipal Authority is applying for installation of a 8' high × 20' wide reinforced concrete box

culvert with wingwalls on each end. The culvert will be 24' long (two lanes with guide rails) and rip-rap protection will be provided at the inlet & outlet ends. Underclearance will provide 12" of submergence for fish passage in East Creek (existing use EV, ME) tributary to the Tioga River (CWF, MF). NWI mapping indicates no wetlands other than the stream in the project area and the site specific determination confirms that. No wetland disturbance is proposed by the project. 5,520 SF of temporary in channel disturbance is anticipated along with 5,980 SF of permanent in channel impacts and 1,000 SF of permanent floodway impacts.

Southwest Region: Waterways and Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

E02052-1818, Allegheny County Sanitary Authority, 3300 Preble Avenue, Pittsburgh, PA 15233, City of Pittsburgh, **Allegheny County**; Pittsburgh ACOE District.

The applicant proposes to:

1. Construct and maintain a 1,158 linear foot river wall within the Ohio River (WWF);
2. Relocate and construct four outfalls (Outfall 001, Outfall 002, CSO 026, and SW-2) within the Ohio River (WWF);
3. Remove 13 existing mooring cells within the Ohio River (WWF);
4. Place and maintain 0.66 acre of rip-rap within the Ohio River (WWF), along the aforementioned river wall, for scour protection, which includes 0.29 acre of mitigation rip-rap along the Ohio River.

For the purpose of creating a usable footprint to expand ALCOSAN's existing Woods Run Wastewater Treatment Plant as part of a Consent Decree with the U.S. Environmental Protection Agency, Department of Environmental Protection, and Allegheny County Health Department, to eliminate sanitary sewer overflows and reduce combined sewer overflow events. As part of this project, 1,158 feet and 0.66 acre of permanent impact to the Ohio River will take place.

The project site is located on Preble Avenue, approximately 0.4 mile from Beaver Avenue (Pittsburgh West, PA USGS topographic quadrangle; N: 40°, 28', 34"; W: -80°, 02', 38"; Sub-basin 20G; USACE Pittsburgh District), in the City of Pittsburgh, Allegheny County.

ENVIRONMENTAL ASSESSMENTS

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ed Muzic, Section Chief, 717.705.4802.

EA3603219-001: Mount Joy Township, 8853 Elizabethtown Road, Elizabethtown, PA 17022 in Mount Joy Township, **Lancaster County**, U.S. Army Corps of Engineers Baltimore District.

To construct and maintain a stream restoration project along 1,173 feet of Conoy Creek including: 1.) 2,129 feet of bank grading (left and right bank); 2.) a 33-foot-long mudsill; and 3.) 120 feet of rock toe protection, all for the purpose of reducing sediment loading to the stream. The project is located immediately upstream of Radio Road (Latitude: 40° 09' 56" N; Longitude: 76° 35' 24" W) in Mount Joy Township, Lancaster County. No wetlands will be impacted by this project.

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.

<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>
PA0063797 (Sewage)	Gluko Lodge Wastewater Treatment Plant 1127 Kemmertown Road Stroudsburg, PA 18360-6799	Monroe County Hamilton Township	Unnamed Tributary of Cherry Creek (HQ-CWF, MF) (1-E)	Yes
PA0061352 (Sewage)	Delaware Water Gap WWTP 92 Broad Street Delaware Water Gap, PA 18327-0128	Monroe County Delaware Water Gap Borough	Cherry Creek (CWF, MF) (1-E)	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>
PA0252522 (Sewage)	Lavansville STP P.O. Box 247 Somerset, PA 15501-0247	Somerset County Somerset Township	West Branch Coxes Creek (WWF) (19-F)	Yes
PA0217387 (Industrial)	Messer, LLC Braddock Plant 1000 Washington Avenue Braddock, PA 15104	Allegheny County Braddock Borough	Monongahela River (WWF) (19-A)	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
PA0096628 (Sewage)	Hamill Manufacturing STP 500 Pleasant Valley Road Trafford, PA 15085-2701	Westmoreland County Penn Township	Lyons Run (TSF) (19-A)	Yes
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
PA0001562 (Industrial)	Allenport Plant P.O. Box 249 1 Wheeling Pittsburgh Drive Allenport, PA 15412-0249	Washington County Allenport Borough	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>
PA0221996 (Sewage)	North Brook Subdivision 107 McDonnell Lane Butler, PA 16002	Butler County Middlesex Township	Unnamed Tributary to Glade Run (WWF) (20-C)	Yes

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions.

Northeast Regional Office: Regional Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570.826.2511.

NPDES Permit No. PA0012963, Industrial Waste, SIC Code 2631, **WestRock Converting Company, LLC**, P.O. Box 770, 1 Paper Mill Road, Delaware Water Gap, PA 18327.

This existing facility is located in Smithfield Township, **Monroe County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit for an existing discharge of treated industrial wastewater.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES Permit No. PA0028223, Sewage, SIC Code 4952, **Corry City Municipal Authority**, 100 South Center Street, Corry, PA 16407-1923.

This existing facility is located in Corry City, **Erie County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit Amendment for an existing discharge of treated sewage.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law.

Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.

WQM Permit No. 3919405, Sewage, SIC Code 4952, **Upper Macungie Township**, 8330 Schantz Road, Breinigsville, PA 18031.

This proposed facility is located in Upper Macungie Township, **Lehigh County**.

Description of Proposed Action/Activity: This application is for a Water Quality Management permit for the construction of 19,939 linear feet of 8-inch diameter gravity sewage conveyance system. The sewer extension will serve the Lehigh Hills Lot No. 5 Development. A pump station will convey sewage flows to existing gravity sewers. The sewage will ultimately be treated at the existing Kline's Island Treatment Plant under PA0026000. This permit is only for the gravity sewer collection system. A Water Quality Management Permit application for the upgrade to the Applewood Pump Station has been submitted under a separate cover.

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

WQM Permit No. 4319201, CAFO, **Lakeland Dairy**, 272 Angel Road, New Wilmington, PA 16142.

This proposed facility is located in Wilmington Township, **Mercer County**.

Description of Proposed Action/Activity:

This permit approves the construction and operation of manure storage facilities consisting of:

- Proposed Circular Manure Storage
- Proposed separator
- All pumps, transfer lines, and leak detection systems associated with the proposed manure storage

WQM Permit No. 2218404, Sewage, **Hershey RV Park & Lodging LLC**, P.O. Box 544, Glenmoore, PA 19343.

This proposed facility is located in Conewago Township, **Dauphin County**.

Description of Proposed Action/Activity:

This permit approves the construction of sewage facilities consisting of:

- Raw influent screening and grinding (existing)
- Influent Pumping Station (250 gpm at 20' TDH, duplex submersibles)
- EQ Tank (20,600 gal effective volume)
- EQ Pumping Station (90 gpm at 15' TDH, duplex submersibles)
- Extended Aeration Reactors (52,442 gal capacity over two trains)
- Secondary Clarifiers (168 ft² over two clarifiers)
- Tablet Chlorinator (1,042 gal)
- Tablet De-Chlorinator (0.050 mgd capacity)
- Sludge Holding Tank (11,600 gal)
- Effluent Flow Metering
- Chemical Feed Systems (Alum)
- Air-lift RAS pumps
- EQ Blowers, Aeration Blowers, Sludge Holding Blowers as described in the application

WQM Permit No. 6718404, Sewage, **Dover Township Sewer Authority York County**, 2480 W Canal Road, Dover, PA 17315.

This proposed facility is located in Dover Township, **York County**.

Description of Proposed Action/Activity:

This permit approves the modification of sewage facilities consisting of:

The proposed project is intended as a corrective action to address an existing hydraulic overload/SSO at Manhole J01002. To eliminate the overflow, the applicant proposes the replacement of the existing Lower Conewago Interceptor (J01022-IPS) and Fox Run Interceptor (F01000-J01002) and (J01002-IPS) with higher capacity pipe.

- Improvements to the Lower Conewago Interceptor (J01022-IPS) will entail replacing the existing 42" pipe with 60" Santite Pipe. The Design Engineer states that this sewer run will experience Peak Instantaneous flows of 20.88 mgd; the hydraulic calculations in Section 5 of the application state that the most limiting sewer run in this section has a carrying capacity of 57.5 mgd.

- Improvements to the Fox Run Interceptor (F01000-J01002) will entail replacing the existing 30" pipe with 36" pipe. The Design Engineer states that this sewer run will experience Peak Instantaneous flows of 12.21 mgd; the hydraulic calculations in Section 5 of the application state that the most limiting sewer run in this section has a carrying capacity of 18.7 mgd.

- Improvements to J01002-IPS will entail replacing the existing 42" pipe with 60" Santite Pipe. The Design Engineer states that this sewer run will experience Peak Instantaneous flows of 20.88 mgd; the hydraulic calculations in Section 5 of the application state that the most limiting sewer run in this section has a carrying capacity of 33.09 mgd.

- Manholes J01001A and J01002 have been added to provide a new alignment for the proposed 60" interceptor.

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

WQM Permit No. 3281205 A-18, Industrial, SIC Code 4911, **Homer City Generation LP**, 1750 Power Plant Road, Homer City, PA 15748.

This existing facility is located in Center Township, **Indiana County**.

Description of Proposed Action/Activity: Coal desilting pond modifications to improve the management of excess runoff.

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.

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>
PAG136118	Borough of Pitcairn 582 6th Street Pitcairn, PA 15140-1200	Borough of Pitcairn Allegheny	Turtle Creek (WWF)/ WWF

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>
PAD390123	Upper Macungie Township 8330 Schantz Rd. Breinigsville, PA 18031	Lehigh	Upper Macungie Township	UNT to Little Lehigh Creek, (HQ-CWF, MF)
PAD390109	Black Creek Group (aka IPT Acquisitions, LLC) 301 Route 17 North Suite 206 Rutherford, NJ 07070-2585	Lehigh County	South Whitehall Township & Upper Macungie Township	Tributary to Little Cedar Creek, (HQ-CWF, MF)

Luzerne Conservation District, 325 Smiths Pond Road, Shavertown, PA 18708.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD400026	Presidential Land Company, LTD 95 S. Main Road Mountain Top, PA 18707	Luzerne	Fairview Township	Big Wapwallopen Creek, (HQ-CWF, MF)

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>
PAD480084	Columbia/Wegman Hanover, LLC c/o Ms. Brit Funk 1910 Fairview Avenue E Suite 200 Seattle, WA 98102	Northampton	Hanover Township	UNT to Monocacy Creek (HQ-CWF, MF)
PAD480097	Kranson and Youwakim Properties, Inc. c/o Mr. Marc Kranson 523 Walnut Street Allentown, PA 18101	Northampton	Moore Township	Monocacy Creek (HQ-CWF, MF)

Wayne Conservation District, 925 Court Street, Honesdale, PA 18431.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD640014	Mary Louise Skinner P.O. Box 334 Verona, NJ 07044-0334	Wayne County	Dyberry Township	UNT to Lackawaxen River (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>
PAD210018 Issued	Landmark Homes at Cedar Run, LLC 1737 West Main Street Ephrata, PA 17522	Cumberland	Mechanicsburg Borough	UNT Cedar Run (CWF, MF)
PAD220006 Issued	Susquehanna Township Authority 1900 Linglestown Road Harrisburg, PA 17110	Dauphin	Susquehanna Township	Slotznick Run (CWF, MF) EV Wetlands

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>
PAD590006	Seneca Resources Corporation, LLC Baldwin Run Road (T-531) Wellsboro, PA 16901	Tioga	Delmar Twp	Baldwin Run HQ-CWF/MF

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>
Hilltown Township Bucks County	PAC090303	Guidi Homes, Inc. 925 Harvest Drive Suite 220 Blue Bell, PA 19422	Unnamed Tributary to North Branch Neshaminy Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Lower Makefield Township Bucks County	PAC090306	First Baptist Church of Newtown 592 Washington Crossing Road Newtown, PA 18940-3820	Core Creek CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Wrightstown Township Bucks County	PAC090004 A-1	Triumph Building Group 2324 2nd Street Pike Newtown, PA 18940	Unnamed Tributary to Mill Creek 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.

Schuylkill Conservation District, 1206 AG Center Drive, Pottsville, PA 17901-9733.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAC540074	Westwood Storage LLC Jason Gherghel P.O. Box 265 Orwigsburg, PA 17961	Schuylkill	Norwegian Twp	West Branch Schuylkill River (CWF, MF)

Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Phillips, Section Chief, 717.705.4802.

Facility Location:

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Littlestown Borough Adams County Issued	PAC010121	Donald R. Smith 25 Foxtown Drive Abbottstown, PA 17301	Alloway Creek (WWF)	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325-3404 717.334.0636
Lower Heidelberg Township Berks County Issued	PAC060063	Glen Gery Real Estate Company 900 Ashwood Parkway Suite # 600 Atlanta, GA 30338	UNT Cacoosing Creek (CWF, MF)	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610.372.4657

NOTICES

6179

<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>
Oley Township Berks County Issued	PAC060222	Oz Property Builders 318 West Main Street Birdsboro, PA 19508	Monocacy Creek (WWF, MF)	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610.372.4657
Bethel Township Berks County Issued	PAC060219	Adam Martin Poultry Operation 390 Midway Road Bethel, PA 19507	UNT Little Swatara Creek (CWF-MF)	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610.372.4657
Lower Paxton Township Dauphin County Issued	PAC220173	PennDOT District 8-0 2140 Herr Street Harrisburg, PA 17103	Paxton Creek (WWF, MF)	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 717.921.8100
Elizabeth Township Lancaster County Issued	PAC360405	Matt Clair 210 Kings Cross Road Lititz, PA 17543	UNT Hammer Creek (WWF, TSF, MF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
Pequea Township Lancaster County Issued	PAC360331	CCS Building Group 100 Willow Valley Lakes Drive Willow Street, PA 17584	Existing Wetland (WWF) UNT Conestoga River (WWF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
Rapho Township East Hempfield Township Lancaster County Issued	PAC360452	PPL Electric Utilities Corp 2 North 9th Street GENN 4 Allentown, PA 18101	Chiques Creek (WWF, MF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
Clay Township Lancaster County Issued	PAC360251	Lincoln Land Group, Inc. 1737 West Main Street Ephrata, PA 17522	Middle Creek (WWF) Indian Run (TSF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
Mount Joy Township Lancaster County Issued	PAC360420	Harold Weik 805 Westminster Drive Lancaster, PA 17601	UNT Conestoga Creek (TSF, MF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5

<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>
Salisbury Township Lancaster County Issued	PAC360367	Houston Run Properties 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
Union Township Lebanon County Issued	PAC380136	Fort Indiantown Gap Building T-0-1, FTIG Annville, PA 17003	UNT Vesle Run (WWF, MF) Vesle Run (WWF, MF) UNT Aires Run (WWF, MF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
Union Township Lebanon County Issued	PAC380116	Eric D. Newswanger 107 Awol Road Jonestown, PA 17038	UNT Swatara Creek (WWF, MF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
York Township York County Issued	PAC670218	Steven Schiding 1660 Crows Nest Lane York, PA 17403	Barshinger Creek (CWF) EB Codorus Creek (MF)	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717.840.7430
Penn Township York County Issued	PAC670317	Silbaugh Investors LP # 5 P.O. Box 20202 York, PA 17403-0165	UNT SB Conewago Creek (WWF)	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717.840.7430
Manheim Township York County Issued	PAC670312	Manheim Township 5191 Wool Mill Road Glenville, PA 17329	Codorus Creek (TSF)	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717.840.7430

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<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>
Washington Twp Lycoming Cnty	PAC410044	Norman Esh 6801 Sulphur Springs Rd Montgomery, PA 17752	UNT to Spring Creek TSF, MF	Lycoming County Conservation District 542 County Farm Rd Ste 202 Montoursville, PA 17754 (570) 433-3003
Ralpho Twp Northumberland Cnty	PAC490043	Damage, Inc. SR 2008 Elysburg, PA 17824	UNT Shamokin Creek CWF, MF	Northumberland County Conservation District 441 Plum Creek Rd Sunbury, PA 17801 (570) 286-7114 ext. 4

NOTICES

6181

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Phone No.</i>
South Park Township	PAC020392	Zokaites Properties, LP 375 Golfside Drive Wexford, PA 15090	Piney Fork (TSF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
City of Pittsburgh	PAC020442	Mangrove Cay, LP 2500 Eldo Road Monroeville, PA 15146	Chartiers Creek (WWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
Pine Township	PAC020449	Showcase Properties, Inc. 11 Timberglen Drive Imperial, PA 15126	Pine Creek (CWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
Indiana Township	PAC020439	Independence Excavating, Inc. 3826 Saxonburg Boulevard Cheswick, PA 15024	Deer Creek (CWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
Robinson Township	PAC020446	Delores Holdings, LLC 115 VIP Drive Suite 210 Wexford, PA 15090	UNT to Campbells Run (WWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
Ross Township	PAC020448	Executive Developers, LLC 208 Crawford Court Mars, PA 16046	Lowries Run (TSF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
McCandless Township	PAC020468	Baierl Chevrolet, Inc. 10430 Perry Highway Wexford, PA 15090	Pine Creek (CWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Phone No.</i>
McKees Rocks Borough	PAC020473	Greenville Commercial Properties, LP One Atlantic Avenue Pittsburgh, PA 15202	Ohio River (WWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
City of Pittsburgh	PAC020427	Urban Redevelopment Authority of Pittsburgh 200 Ross Street Pittsburgh, PA 15217	Monongahela River (WWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
Hampton Township	PAC020202	Wildwood Acres, LLC 1550 Connor Road South Park, PA 15129	UNT to Crouse Run (TSF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
City of Pittsburgh	PAC020461	CB ICON, LP 5877 Commerce Street Pittsburgh, PA 15206	UNT to Turtle Creek (WWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
Hampton Township	PAC020478	Uhl Construction Co., Inc. P.O. Box 8 Allison Park, PA 15101	Pine Creek (TSF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
City of Pittsburgh	PAC020465	Pennley Park South, Inc. 535 Smithfield Street Suite 900 Pittsburgh, PA 15222	Allegheny River (WWF)	Allegheny County Conservation District River Walk Corporate Centre 33 Terminal Way Suite 325b Pittsburgh, PA 15219 412-241-7645
Cambria Township	PAC110051	Copart of Connecticut 14185 Dallas Parkway Suite 300 Dallas, TX 75254	UNT to South Branch Blacklick Creek (CWF)	Cambria County Conservation District 401 Candlelight Drive Suite 229 Ebensburg, PA 15931 814-472-2120
Jackson Township	PAC110060	Laurel Highlands Landfill, Inc. 260 Laurel Ridge Road Johnstown, PA 15909	UNT to Shuman Road	Cambria County Conservation District 401 Candlelight Drive Suite 229 Ebensburg, PA 15931 814-472-2120

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Phone No.</i>
South Strabane Township	PAC630046-A1	J. Angelides Enterprises, LP 136 Powers Street # 3E Brooklyn, NY 11211	UNT to Chartiers Creek (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301-724-705-7098
Cecil Township	PAC630143	Traditions of America, LP 1235 Westlakes Drive Suite 300 Berwyn, PA 19312	Chartiers Creek (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301-724-705-7098
Amwell Township	PAC630145	Lane Construction Corporation 300 Bilmar Drive Suite 150 Pittsburgh, PA 15206	UNT to Redd Run (TSF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301-724-705-7098
Allenport Borough Long Branch Borough Twilight Borough Fallowfield Township	PAC630154	West Penn Power Company 800 Cabin Hill Drive Greensburg, PA 15601	Maple Creek (WWF); South Branch Maple Creek (WWF); Hooders Run (WWF); Monongahela River (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301-724-705-7098

General Permit Type—PAG-3

<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>
York City York County	PAG033608	Minerals Technologies Inc. 35 Highland Avenue Bethlehem, PA 18017-9482	Willis Run (WWF, MF) in Watershed(s) 7-H	DEP—SCRO— Clean Water Program 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707

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>
Stone Hog Production, LLC Bronson Stone 12547 Stage Road McClure, PA 17841	Snyder	89.7 for manure application 410.9 for manure application	946.15	Swine	NA	Approved
Ridge Valley Farms Roberts S. Martin 4227 Ridge Road Beaver Springs, PA 17812	Snyder	117.9 for manure application	1,190.7	Swine/ Turkeys	NA	Approved

PUBLIC WATER SUPPLY PERMITS

The Department has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, 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).

Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 3619523 MA, Minor Amendment, Public Water Supply.

Applicant	Manheim Area Water and Sewer Authority
Municipality	Manheim Borough
County	Lancaster

Responsible Official	Terry Shaffer Authority Manager 18 East High Street Manheim, PA 17545
Type of Facility	Maintenance and repair of the existing diatomaceous earth filters.
Consulting Engineer	Jamie Lorah, P.E. Spotts Stevens & McCoy 1047 North Park Road Reading, PA 19610
Permit to Construct Issued	10/3/2019
Permit No. 6719518 MA, Public Water Supply.	
Applicant	Country View Manor Park, LLC
Municipality	Washington Township
County	York
Responsible Official	George J. Adams Managing Member P.O. Box 66 East Berlin, PA 17316
Type of Facility	Replacement of the Well No. 2 pump.
Consulting Engineer	Daniel S. Hershey, P.E. Hershey Engineering, Inc. 703 Woodcrest Avenue Lititz, PA 17543
Permit to Construct Issued	10/1/2019

Operation Permit No. 2115510 MA issued to: **United Water Pennsylvania (PWS ID No. 7210027)**, Mechanicsburg Borough, **Cumberland County** on 9/30/2019 for facilities approved under Construction Permit No. 2115510 MA.

Operation Permit No. 4417502 issued to: **The Municipal Authority of the Borough of Lewistown (PWS ID No. 4440010)**, Armagh Township, **Mifflin County** on 10/2/2019 for facilities submitted under Application No. 4417502.

Operation Permit No. 3819503 issued to: **Myers-town Water Authority (PWS ID No. 7380025)**, Myers-town Borough, **Lebanon County** on 10/3/2019 for facilities submitted under Application No. 3819503.

Operation Permit No. 2819506 MA issued to: **Washington Township Municipal Authority (PWS ID No. 7280026)**, Washington Township, **Franklin County** on 9/27/2019 for facilities submitted under Application No. 2819506 MA.

Operation Permit No. 0619508 MA issued to: **Reading Area Water Authority (PWS ID No. 3060059)**, Ontelaunee Township, **Berks County** on 9/13/2019 for facilities submitted under Application No. 0619508 MA.

Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.

Porter Township Municipal Authority (Public Water Supply), Clinton County: On October 3, 2019, the Safe Drinking Water Program approved the Source Water Protection (SWP) plan for the Porter Township Municipal Authority community water system. The personnel involved with the development of this SWP are to be commended for taking these proactive steps to protect these water sources for their community. Development of the SWP plan was funded by the Department of Environmental Protection (Mark R. Stephens, P.G., (570) 327-3422).

Permit No. 1419506MA—Construction—Public Water Supply.

Applicant	Pennsylvania American Water
Township/Borough	Rush Township
County	Centre County
Responsible Official	Mr. David R. Kaufman, P.E. Vice President—Engineering Pennsylvania American Water 852 Wesley Drive Mechanicsburg, PA 17055
Type of Facility	Public Water Supply—Construction
Consulting Engineer	Mr. David R. Kaufman, P.E. Vice President—Engineering Pennsylvania American Water 852 Wesley Drive Mechanicsburg, PA 17055
Permit Issued	October 2, 2019
Description of Action	Authorizes Pennsylvania American Water Company to replace the two existing horizontally-oriented pumps in the Sandy Ridge Booster Pump Station with two new vertically-oriented pumps, with some new discharge piping.

Permit No. MA (6/22/95) T1A1—Operation—Public Water Supply.

Applicant	Aqua Pennsylvania, Inc.—Monroe Manor
Township/Borough	Monroe Township
County	Snyder County
Responsible Official	Mr. Stephen J. Draus Area Manager Aqua Pennsylvania Monroe Manor 204 East Sunbury Street Shamokin, PA 17872

Type of Facility	Public Water Supply— Operation
Consulting Engineer	N/A
Permit Issued	October 3, 2019
Description of Action	Authorizes emergency designation of Shamokin Dam Interconnection source availability. PWS Permit No. Minor Amendment (6/22/95) T1A1—operation, issued November 21, 2002 to Pennsylvania Suburban Water Company for Shamokin Dam Interconnection is hereby superseded.

Northwest Region: Safe Drinking Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Operation Permit issued to **Sugarcreek Water Company, PWSID No. 6610029**, Sugarcreek Borough, **Venango County**. Permit Number 363W12-MA2 issued October 3, 2019 for the operation of the new 10,300-gallon finished water storage tank. This permit is issued in response to an operation inspection conducted by the Department of Environmental Protection personnel on September 19, 2019.

Permit No. 0399501-MA1, Public Water Supply.

Applicant	Dayton Municipal Water Department
Township or Borough	Wayne Township
County	Armstrong
Type of Facility	Public Water Supply
Consulting Engineer	Matt Coleman Uni-Tech Corp 2007 Cato Avenue State College, PA 16801
Permit to Construct Issued	October 3, 2019

**HAZARDOUS SITES CLEAN-UP
UNDER THE ACT OF
OCTOBER 18, 1988**

**Notice of Proposed Interim Response
Easton Road PFC HSCA Site
Doylestown, Plumstead, and Buckingham
Townships, and Doylestown Borough,
Bucks County**

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P.S. §§ 6020.102—6020.1303), is proposing an interim response action at the Easton Road PFC HSCA Site located in Doylestown, Plumstead and Buckingham Townships, and Doylestown Borough, Bucks County, PA.

The Easton Road PFC HSCA Site (the Site) encompasses portions of Doylestown, Buckingham, and Plumstead Townships and Doylestown Borough. The investigation was initiated in June 2016, after testing of a Doylestown Township Municipal Authority (DTMA) supply well detected combined concentrations of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA), two compounds within the larger family of per- and polyfluorinated alkyl substances (PFAS), also

referred to as perfluorinated compounds (PFCs), above the health advisory level (HAL) of 70 parts per trillion (ppt) established by the United States Environmental Protection Agency (EPA) in May 2016.

The Department, with the assistance of its contractor, has collected samples from properties with private wells at approximately 350 properties within the Site area. Results of this testing have ranged from Non-Detect (ND) to 229 ppt for the combined concentrations of PFOS and PFOA.

The Department has identified 8 properties with private wells that exceeded the HAL within the Site area. All 8 properties are located within Doylestown Township. The Department is currently supplying 4 of these properties with bottled water, as 4 properties have since elected to privately install a filtration system.

To address the release of contaminants at the Site that are presenting a substantial danger to the public health and safety, the Department proposes a response action at the Site under Section 501(a) of HSCA, 35 P.S. § 6020.501(a). The Department hereby proposes the installation and maintenance of whole-house filtration systems combined with restrictions on the use of groundwater on affected private residential water supplies with combined concentrations of PFOS and PFOA exceeding the HAL. This proposed alternative complies with Applicable, Relevant and Appropriate Requirements (ARARs) and is feasible and cost-effective. Other possible alternatives include no action, continued delivery of bottled water combined with restrictions on the use of groundwater, and installation of a public water supply waterline combined with restrictions on the use of groundwater.

This notice is being provided pursuant to Section 506(b) of HSCA, 35 P.S. § 6020.506(b). The Administrative Record which contains information that forms the basis of, and documents the selection of, this response action is available for public review and comment. The Administrative Record is located at the Department's office located at 2 East Main Street, Norristown, PA 19401, and is available for review Monday through Friday from 8:00 am until 4:00 pm. Those interested in examining the Administrative Record at the Department's office should contact Josh Crooks at 484.250.5784 to arrange for an appointment. Additional copies of the Administrative Record are available for review at the Doylestown, Plumstead and Buckingham Township Buildings.

The Administrative Record will be open for comment from October 19, 2019 until January 17, 2020. Persons may submit written comments into the record during this time only, by sending them to Josh Crooks, Environmental Protection Specialist at the Pennsylvania Department of Environmental Protection, 2 East Main Street, Norristown, PA 19401, or by email at jcrooks@pa.gov. In addition, persons may present oral comments for inclusion in the Administrative Record at the public hearing. The Department has scheduled the hearing for Monday, November 18, 2019 at 6:30 PM at Lenape Middle School, 313 W. State Street, Doylestown, PA 18901. Individuals wishing to present comments may register in advance by calling the Department's Community Relations Coordinator, Virginia Cain, at 484.250.5808 or by email at vicain@pa.gov. Those wishing to testify do not need to register in advance.

Persons with a disability who wish to attend the hearing and require auxiliary aid, service or other accommodations to participate in the proceedings, should call Ms. Cain at 484.250.5808 or the Pennsylvania AT&T

Relay Service at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

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:

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

Logos Academy, 243-255 West King Street, York, PA 17401, City of York, **York County**. Independence Environmental Consulting, LLC, 1750 Kaylor Road, Hummels-town, PA 17036, on behalf of 426 Property Management, LLC, 3631 Trout Run Road, York, PA 17406, and Logos Academy, 250 West King Street, York, PA 17401-3877, submitted a Remedial Investigation Report and Cleanup Plan 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 Site-Specific Standard.

Esterly Concrete Company, Inc., Diesel and UMO Release, Right of Way adjacent to 500 Plum Creek Road,

Leesport, PA 19533. Penn Township, **Berks County**. Crawford Environmental Services, 20 Cardinal Drive, Birdsboro, PA 19508, on behalf of Esterly Concrete Company, 410 Elm Street, Reading, PA 19611, and Pennsylvania Department of Transportation, 4680 Fifth Street Highway, Temple, PA 19560 submitted a Final Report concerning remediation of site soil contaminated with diesel fuel and used motor oil. The report is intended to document remediation of the site to meet the Residential Statewide Health Standard.

Proposed Lidle Grocery Store, 2001, 2015, and 2017 Columbia, Avenue, East Hempfield Township, Lancaster, PA 17603, East Hempfield Township, **Lancaster County**. Whitestone Associates, Inc., 1600 Manor Drive, Suite 220, Chalfont, PA 18914, on behalf of Lidl US, LLC, 1035 Virginia Drive, Suite 203, Fort Washington, PA 19034 submitted a Final Report concerning remediation of site soil contaminated with various historic contamination. The report is intended to document remediation of the site to meet the Residential Statewide Health Standard.

Southwest Region: Environmental Cleanup & Brownfields Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Larimer/East Liberty Phase II Development, Intersection of Larimer Avenue and Broad Street, City of Pittsburgh, **Allegheny County**. KU Resources, Inc., 22 South Linden Street, Duquesne, PA 15110 on behalf of the Housing Authority of the City of Pittsburgh, 200 Ross Street, Pittsburgh, PA 15219 submitted a Final Report concerning remediation of site soil and groundwater. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Former National Torch Tips & McQuaid Property, 50 Freeport Road & 37 Western Avenue, O'Hara Township & Borough of Aspinwall, **Allegheny County**. American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, PA 15668 on behalf of 50 Freeport Road Partners L.P., 602 Squaw Run Road East, Pittsburgh, PA 15238 submitted a Combined Cleanup Plan and Final Report that identifies areas of the site with soil and groundwater impacted by volatile organic compounds associated with historical industrial operations. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Former Civic Arena, Property bound by Center Avenue, Fullerton Street, Washington Place, and Bedford Avenue, City of Pittsburgh, **Allegheny County**. KU Resources, Inc., 22 South Linden Street, Duquesne, PA 15110 on behalf of the Sports & Exhibition Authority, 171 10th Street, 2nd Floor, Pittsburgh, PA 15222 submitted a Remedial Investigation, Risk Assessment, and Cleanup Plan Report concerning remediation of site soil and groundwater. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Larimer/East Liberty Phase IV Development, Larimer Avenue, Winslow Street, and Maxwell Way, City of Pittsburgh, **Allegheny County**. KU Resources, Inc., 22 South Linden Street, Duquesne, PA 15110 on behalf of the Housing Authority of the City of Pittsburgh, 200 Ross Street, Pittsburgh, PA 15219 submitted a Remedial Investigation, Risk Assessment, and Cleanup Plan Report concerning remediation of site soil and groundwater. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Larimer/East Liberty Phase III Development, Larimer Avenue, Winslow Street, Stoebner Way, and Meadow Street, City of Pittsburgh, **Allegheny County**.

KU Resources, Inc., 22 South Linden Street, Duquesne, PA 15110 on behalf of the Housing Authority of the City of Pittsburgh, 200 Ross Street, Pittsburgh, PA 15219 submitted a Remedial Investigation, Risk Assessment, and Cleanup Plan Report concerning remediation of site soil and groundwater. 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:

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

Green Land Enterprises, 513 Freedom Street, East Freedom, PA 16637, Freedom Township, **Blair County**. Whispering Pines Environmental Recovery LLC, 2012 Whispering Pines Lane, Duncansville, PA 16635, on behalf of Green Land Enterprises, P.O. Box 444, Hollidaysburg, PA 16637 submitted a Final Report concerning remediation of site groundwater contaminated with diesel and No. 2 fuel oil. The Final Report did not demonstrate attainment of the Residential Statewide Health Standard and was disapproved by the Department on September 30, 2019.

Former Structures Facility, 471 North Reading Road, Ephrata, PA 17522, Ephrata Township, **Lancaster County**. August Mack Environmental, 941 Wheatland Avenue, Lancaster, PA 17603, on behalf of Charmaine Garman, 529 Stevens Road, Ephrata, PA 17522, submitted a Remedial Investigation Report and Cleanup Plan concerning remediation of site groundwater contaminated with chlorobenzene. The combined Report was administratively incomplete and was disapproved by the Department on October 3, 2019.

HAZARDOUS WASTE TRANSPORTER LICENSE

Actions on applications for Hazardous 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 regulations to transport hazardous 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

Veolia ES Technical Solutions, LLC, 1 Eden Lane, Flanders, NJ 07836. License No. PA-AH 0500. Effective Oct 01, 2019.

Miller Environmental Group Inc., 538 Edwards Ave, Calverton, NY 11933. License No. PA-AH 0501. Effective Oct 03, 2019.

Robbie D. Wood, Inc., P.O. Box 125, Dolomite, AL 35061. License No. PA-AH 0504. Effective Oct 01, 2019.

Transporter Licenses Reissued

Veolia ES Technical Solutions, LLC, 1 Eden Lane, Flanders, NJ 07836. License No. PA-AH 0500. Effective Oct 01, 2019.

Miller Environmental Group Inc., 538 Edwards Ave, Calverton, NY 11933. License No. PA-AH 0501. Effective Oct 03, 2019.

Robbie D. Wood, Inc., P.O. Box 125, Dolomite, AL 35061. License No. PA-AH 0504. Effective Oct 01, 2019.

Transporter Licenses Expired

K&D Industrial Services, Inc., 6470 Beverly Plaza, Romulus, MI 48174. License No. PA-AH 0320. Effective Oct 01, 2019.

Perdue Environmental Contracting Co., Inc., 250 Etter Drive, Nicholasville, KY 40356. License No. PA-AH 0829. Effective Oct 01, 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.

New Applications Received

Lewis Environmental, Inc., P.O. Box 639, Royersford, PA 19468. License No. PA-HC 0280. Effective Oct 02, 2019.

Transporter License Issued

Lewis Environmental, Inc., P.O. Box 639, Royersford, PA 19468. License No. PA-HC 0280. Effective Oct 02, 2019.

RESIDUAL WASTE GENERAL PERMITS

Permit(s) Issued Under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

Northeast Region: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

General Permit Application No. WMGM044-NE004. American Container & Disposal, LLC, 1438 Wil-lowbrook Road, Northampton, PA 18067. A determination of applicability for the processing of wood and construction/demolition material for beneficial use as mulch, soil erosion control material, aggregate material in construction, animal bedding, and alternative fuel at a site located in Allen Township, **Northampton County**. The application was approved by the Regional Office on October 1, 2019.

Persons interested in reviewing the permit may contact Roger Bellas, Environmental Program Manager, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18701-1915 at 570-826-2511. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

REGISTRATION FOR RESIDUAL WASTE GENERAL PERMITS

Registration(s) Issued Under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act; and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Telephone 412-442-4000.

General Permit Application No. WMGR123SW036. Range Resources-Appalachia, LLC, 3000 Town Center Blvd., Canonsburg, PA 15317. A request for registration for coverage under General Permit WMGR123 to construct and operate the Imperial Land North Well Site facility for storage and reuse of oil and gas liquid waste at a site located in Robinson Township, **Washington County**. The registration was granted by the Regional Office on October 3, 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.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: James Beach, New Source Review Chief—Telephone: 484-250-5920.

GP14-23-0122. Pagano Funeral Home (3711 Foulk Road, Garnet Valley, PA 19061). On October 3, 2019, for the renewal of the general plan approval and operating permit to operate a human crematory at its funeral home in Bethel Township, **Delaware County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2531.

GP3-58-067: Meshoppen Stone, Incorporated (P.O. Box 127, Meshoppen, PA 18630) on October 1, 2019, for the construction and operation of a portable stone crushing plant at the Elk Lake Quarry located in Dimock Township, **Susquehanna County**.

GP9-58-067: Meshoppen Stone, Incorporated (P.O. Box 127, Meshoppen, PA 18630) on October 1, 2019, for the installation and operation of I C Engines at the Elk Lake Quarry located in Dimock Township, **Susquehanna County**.

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.

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.

67-05107B: Crown Cork & Seal USA, Inc. (1650 Broadway, Hanover, PA 17331) on September 30, 2019, 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.

21-03132A: Generations Tribute Center & Crematory (1303 Bridge Street, New Cumberland, PA 17070) on October 2, 2019, for the construction of a human crema-

tory located in New Cumberland Borough, **Cumberland County**. The unit will be a Matthews Environmental IE43-PPI (Power Pak I) multiple-chamber crematory.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.

24-083Y: Mersen USA St. Mary's (215 Stackpole Street, St. Mary's, PA 15857), on September 18, 2019 issued a Plan Approval for the installation of a backup thermal oxidizer in City of St. Mary's, **Elk County**. This is a Title V facility.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104.

Contact: Edward Wiener, Chief—Telephone: 215-685-9426.

IP19-000428: Norwood Fontbonne Academy (8891 Germantown Ave., Philadelphia, PA 19118). On October 4, 2019, 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 plan approval contains operating, monitoring, recordkeeping, and reporting requirements to ensure operation within all applicable requirements.

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.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: James A. Beach, New Source Review Chief—Telephone: 484-250-5920.

09-0236: Covanta Metals (500 Middle Drive, Fairless Hills, PA 19030). On October 3, 2019, for a Minor Modification to plan approval 09-0236 for the installation of Non-Ferrous Metals Recovery Facility in Falls Township, **Bucks County**. The modification addressed pressure drop change on Source ID CO3 and change of baghouse equipment; Source ID 101 increased the maximum ton/hr production rate from 25 to 50 and changed how the facility will measure the ton/hr and ton/yr production rate. Covanta is a Minor facility. The Plan Approval modification contains monitoring, recordkeeping and operating restrictions designed to minimize emissions and keep the facility operating within all applicable air quality requirements.

46-0296A: Woot Services Inc. (4121 International Pkwy., Carrollton, TX 75007). On October 3, 2019, for the minor modification of the Plan Approval 46-0296A for the printing operations at 2455 Boulevard of the Generals, Norristown Borough, **Montgomery County**. The original plan approval allowed for the installation of seventy-two (72) digital printers, four (4) UV printers, ten (10) sublimation printers, twenty (20) sublimation heat printers and eighteen (18) dryers. The proposed modification is to allow the use a new ink line that uses a fixation agent that is formulated to reduce or eliminate hazardous air pollutants (HAPs) emissions from its digital apparel

printing operations and restricts the usage of the cleaning solvent used for UV printing operations to 12 gallons per year. In addition, the number of digital printers has been changed to forty-eight (48).

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.

36-03207A: R. E. Ebersole, Inc. (236 Governor Stable Road, Bainbridge, PA 17502) on October 4, 2019, for an existing 16.752 MMBtu/hr, # 2 oil fired, boiler at the rendering facility located in Conoy Township, **Lancaster County**. The plan approval was extended, with a compliance schedule.

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.

15-00010: ArcelorMittal Plate, LLC (139 Modena Road, Coatesville, PA 19320). On October 3, 2019, the Department issued a renewal Title V Operating Permit for ArcelorMittal Plate's steel manufacturing plant located in Coatesville Borough, **Chester County**. Additionally, this Title V Operating Permit renewal incorporates RACT Phase II in accordance with 25 Pa. Code § 129.99 (a) [Alternate RACT proposal]. This permit renewal also incorporates Plan Approval No. 15-0010E, for replacing the burners on Ladle Preheaters "B" and "D" (previously identified under Source ID 229; now identified under Source ID 229B). The facility is a major source for NO_x, CO, VOC, PM₁₀, SO_x, and greenhouse gases (GHG). Sources include furnaces, boilers, steel surface conditioning processes, generators, fire pumps, parts washers, nickel plating with scrubbers, surface coating operations, and other miscellaneous steel manufacturing components, many of them controlled by dust collection systems. One 4SLB Emergency Generator (Source ID 769) is subject to 40 CFR Part 60, Subpart JJJJ. The following sources are subject to 40 CFR Part 63: D Electric Furnace—Source ID 104 (Subpart YYYY); 12,000 Gal Underground Gas Storage Tank—Source ID 226 (Subpart CCCCC); Nickel Plating and 2 Scrubbers—Source ID 254 (Subpart WWWW); Emer Pump/Generator—Source ID 768 (Subpart ZZZZ); and Small Emergency Generators and Pumps—Source 770 (Subpart ZZZZ). Applicable requirements are incorporated into the Title V Operating Permit. The following sources are subject to Compliance Assurance Monitoring (CAM) requirements: Source IDs 104, 174, 176, 181, 182, 207, 228, 232, 234, 235, 258, and 263.

In conjunction with RACT Phase II, the following sources are subject to case-by-case RACT II regulations: the EMS Boiler (Source ID 055), the "D" Electric Furnace (104), BHT Furnaces # 2—# 7 (Source ID 136), BHT Furnaces # 8 & # 10 (Source ID 136A), the 145' NAB Furnace (Source ID 146A), the 200' NAB Furnace (Source ID 146B), Soaking Pits # 35—# 49 (Source ID 151), Identification Marking (Source ID 250), and the Continuous Caster Spray Chamber (Source ID 270). The RACT analysis provided by ArcelorMittal Plate, LLC was evaluated to determine if any new or additional controls could be required to reduce NO_x and/or VOC from the afore-

mentioned sources. DEP concurs with the analysis performed by ArcelorMittal Plate, LLC that there are no additional controls available currently that are both technically and economically feasible. Where appropriate, NO_x and VOC limits have been established for the case-by-case sources, including methods of compliance. For those sources subject to presumptive RACT requirements of 25 Pa. Code § 129.97, applicable conditions have been incorporated into the Title V Operating Permit. Changes to the Title V Operating Permit that are made in conjunction with RACT Phase II will be submitted to EPA for review and approval to be added to the State implementation plan. This permit is being modified in accordance with 25 Pa. Code § 127.541.

Allowable emissions from the facility have not increased as a result of this permit renewal or RACT Phase II. 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, 2008, and 2015 National Ambient Air Quality Standard (NAAQS) for ozone.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

41-00082: EPP Renewable Energy, LLC (1605 N Cedar Crest Blvd., Suite 509, Allentown, PA 18104) on October 3, 2019, issued a renewal operating permit for their landfill gas to energy facility located at the Lycoming County Landfill in Brady Township, **Lycoming County**. The Title V operating permit contains requirements including monitoring, recordkeeping, and reporting conditions to ensure compliance with applicable Federal and State regulations.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.

24-00120: Dominion Transmission, Inc. (5000 Dominion Boulevard, Glen Allen, VA 23060-3308). On October 1, 2019, the Department renewed a Title V Permit for the Ardell Natural Gas Compressor Station in Benazette Township, **Elk County**. The facility's emission sources include a 15,140 hp gas turbine, a 10,320 hp gas turbine, two 1,775 hp natural gas compressor engines, one 275 hp natural gas fueled emergency generator, 1 natural gas microturbine, 2 natural gas fueled boilers, 1 natural gas furnace, 2 natural gas space heaters, and storage tanks. The facility is a major facility due to its potential to emit CO and NO_x in quantities over the major source thresholds. Maximum Potential Emissions for the facility are calculated as follows: NO_x, 134.38 tpy; SO_x, 2.83 tpy; CO, 157.51 tpy; PM₁₀, 11.05 tpy; VOCs, 44.75 tpy; Any Single HAP, < 3 tpy; All Combined HAPs, 9.86 tpy; and CO_{2e}, 135,813 tpy. This facility is subject to 40 CFR Part 60 Subpart GG, Standards of Performance for Stationary Gas Turbines. It is also subject to 40 CFR Part 60 Subpart KKKK, Standards of Performance for Stationary Combustion Turbines. The 2 compressor engines and the emergency generator are subject to 40 CFR Part 63 Subpart ZZZZ, the NESHAP for Stationary RICE. The conditions of the previous plan approvals and operating permit are incorporated into the renewal permit as well as the applicable presumptive RACT II provisions of 25 Pa. Code §§ 129.97 and 129.100.

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.

46-00301: PECO (263 Flint Hill Road, King of Prussia, PA 19406). On October 3, 2019, for installation of a new portable non-metallic processing plant and supporting engine located in Upper Merion Township, **Montgomery County**.

09-00120: BASF Corporation (6450 Bristol Pike, Levittown, PA 19057). On October 3, 2019, for a non-Title V, Natural Minor manufacturing facility for the production of commercial coatings of buildings and treatment of concrete and cement surfaces at their location in Bristol Township, **Bucks County**.

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.

21-05010: Mountain Power, LLC (315 Riegelsville Road, Milford, NJ 08848-1888) on September 30, 2019, for the Mountain electric generating station located in South Middletown Township, **Cumberland County**. The State-Only permit was renewed.

01-05004: Hamilton Power, LLC (315 Riegelsville Road, Milford, NJ 08848) on October 1, 2019, for the Hamilton electric generating station located in Hamilton Township, **Adams County**. The State-Only permit was renewed.

22-05054: Highspire Terminal DE LLC (P.O. Box 2621, Harrisburg, PA 17105-2621) on September 30, 2019, for the petroleum products distribution terminal located in Lower Swatara Township, **Dauphin County**. The State-Only permit was renewed.

06-05051: Morgan Truck Body, LLC dba Morgan Corp. (P.O. Box 588, Morgantown, PA 19543-0588) on September 10, 2019, for the truck body manufacturing facility located in Caernarvon Township, **Berks County**. The State-Only permit was renewed.

36-03076: New Enterprise Stone & Lime Co., Inc. (3580 Division Highway, East Earl, PA 17519-9217) on October 3, 2019, for the stone crushing operations at the Weaverland Quarry located in East Earl Township, **Lancaster County**. The State-Only permit was renewed.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

49-00005: Hoeganaes Corp. (4330 Paradise Road, Watsonstown, PA 17777), on October 4, 2019, for their Watsonstown Plant located Delaware Township, **Northumberland County**. The State-Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

09-00209: Univar Solutions USA Inc. (4 Steel Road, Morrisville, PA 19067). On October 3, 2019, for an Administrative Amendment to their Non-Title V Facility, State-Only, Synthetic Minor Permit in Falls Township, **Bucks County**. The amendment addressed a name change from Univar USA Inc to Univar Solutions USA Inc. No additional monitoring, record keeping and reporting requirements have been added to the permit.

09-00106: Univar Solutions USA Inc. (200 Dean Sievers Place, Morrisville, PA 19067). On October 3, 2019, for an Administrative Amendment to their Non-Title V Facility, State-Only, Synthetic Minor Permit in Falls Township, **Bucks County**. The amendment addressed a name change from Univar USA Inc to Univar Solutions USA Inc. No additional monitoring, record keeping, and reporting requirements have been added to the 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.

36-05014: Alumax Mill Products, Inc. (14809 Manheim Pike, Lancaster, PA 17601-3152) on September 9, 2019, for the secondary aluminum processing facility in Manheim Township, **Lancaster County**. The Title V permit underwent a significant modification to add case-by-case RACT 2 requirements for the facility, clarify cold rolling mill lubricant and applicability, revise list of emergency generators, add VOC emission caps for Source 122 and 161, and make minor naming, throughput and administrative clarifications, including a change in responsible official. The portions of the permit related to approval of the RACT 2 case-by-case proposal will be submitted to US EPA for approval and incorporation into Pennsylvania's State Implementation Plan (SIP). Other requirements will be excluded from the SIP submittal. The SIP revision does not adopt any new regulations. It incorporates the provisions and requirements contained in the amended RACT approval for the facility, which are determined to satisfy the requirements for the 1997, 2008 and 2015 National Ambient Air Quality Standards (NAAQS) for ozone.

21-05037: Union Quarries, Inc. (P.O. Box 686, Carlisle, PA 17013-0686) on October 2, 2019, for the batch asphalt and stone crushing operations at the facility located in South Middleton Township, **Cumberland County**. The State-Only permit was administratively amended in order to incorporate the requirements of Plan Approval No. 21-05037B.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.

24-00009: Domtar Paper Company/Johnsonburg Mill (100 Center Street, Johnsonburg, PA 15845). On

October 1, 2019, the Department issued a minor operating permit modification for the Title V Operating Permit to eliminate coal and oil for boilers 81 and 82 and remove the associated Sulfur Dioxide (SO₂) Continuous Emission Monitoring System (CEMS) requirements. The elimination of coal and oil as fuels and removal of SO_x CEMS did not result in an increase in any pollutant. The modification generated emission reduction credits for NO_x and SO_x emissions of 181.4 tons and 28.64 tons, respectively.

De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.

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.

36-03197: Sunoco Pipeline, L.P.—Blainsport Pump Station (1920 Texter Mountain Road, Reinholds, PA 17569). Pursuant to 25 Pa. Code § 127.449(i), this *Pennsylvania Bulletin* Notice is for a de minimis emissions increase of 0.01 tpy NO_x, 0.05 tpy CO, 0.38 tpy VOC and 0.02 tpy HAPs resulting from the maintenance activities at the Blainsport Pump Station located in West Cocalico Township, **Lancaster County**. This is the first de minimis emissions increase at the facility during the term of the current operating permit.

31-03036: Sunoco Pipeline, L.P.—Mount Union Pump Station (15242 Croghan Pike, Mount Union, PA 17066). Pursuant to 25 Pa. Code § 127.449(i), this *Pennsylvania Bulletin* Notice is for a de minimis emissions increase of 0.01 tpy NO_x, 0.05 tpy CO, 0.38 tpy VOC and 0.02 tpy HAPs resulting from the maintenance activities at the Mount Union Pump Station located in Shirley Township, **Huntingdon County**. This is the second de minimis emissions increase at the facility during the term of the current operating permit.

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

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 56080109, PBS Coals, Inc., P.O. Box 260, Friedens, PA 15541, commencement, operation and restoration of a bituminous surface & auger mine to change

the land use from Cropland and Unmanaged Natural Habitat in Somerset Township, **Somerset County**, affecting 320.7 acres. Receiving stream: unnamed tributaries to Wells Creek to Stonycreek classified for the following use: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: July 17, 2019. Permit issued: October 4, 2019.

New Stanton District Office: P.O. Box 133, 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

Permit No. 03080104, Rosebud Mining Company (301 Market Street, Kittanning, PA 16201). Permit renewal issued for reclamation only to an existing bituminous surface mine, located in East Franklin and North Buffalo Townships, **Armstrong County**, affecting 114.8 acres. Receiving streams: unnamed tributaries to Glade Run. Application received: April 12, 2019. Renewal permit issued: October 2, 2019.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 40920102R5, Susquehanna Coal Company (P.O. Box 27, Nanticoke, PA 18634), renewal of an existing anthracite surface mine operation in Newport Township, **Luzerne County** affecting 1,325.0 acres, receiving stream: Newport Creek. Application received: March 20, 2019. Renewal issued: October 1, 2019.

Permit No. PAM114013R, Susquehanna Coal Company (P.O. Box 27, Nanticoke, PA 18634), renew coverage under the General NPDES Permit for Stormwater Discharges Associated with Mining Activities (BMP GP-104) on Surface Mining Permit No. 40920102 in Newport Township, **Luzerne County**, receiving stream: Newport Creek. Application received: March 20, 2019. Renewal issued: October 1, 2019.

Permit No. 40920102C23, Susquehanna Coal Company (P.O. Box 27, Nanticoke, PA 18634), correction of an existing anthracite surface mine operation to update the post-mining land use to unmanaged natural habitat in Newport Township, **Luzerne County** affecting 1,325.0 acres, receiving stream: Newport Creek. Application received: March 20, 2019. Correction issued: October 1, 2019.

Permit No. 19930101R5, Burnrite Coal Company (231 Thomas Road, Elysburg, PA 17824), renewal for reclamation activities only of an existing anthracite surface mine operation in Conyngham and Mt. Carmel Townships, **Columbia and Northumberland Counties** affecting 559.1 acres, receiving streams: South Branch Roaring Creek and Quake Run. Application received: June 10, 2019. Renewal issued: October 4, 2019.

Noncoal Permits Issued

New Stanton District Office: P.O. Box 133, 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

Permit No. PAM318003, United States Steel Corporation (1350 Penn Avenue, Suite 200, Pittsburgh, PA 15222). General NPDES permit for stormwater discharge associated with mining activities on an existing small noncoal (Industrial Mineral), Permit No. 3473SM15, located in Penn Hills Township, **Allegheny County**, affecting 112.1 acres. Receiving streams: Unnamed Tributary to Thompson Run. Application received: July 16, 2018. GP-104 permit issued: October 2, 2019.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 58182502, Powers Stone, Inc. (15644 SR 267, Montrose, PA 18801), commencement, operation and

restoration of a quarry operation in Middletown Township, **Susquehanna County** affecting 10.0 acres, receiving stream: no discharge to unnamed tributary to North Branch Wyalusing Creek. Application received: May 4, 2018. Permit issued: October 4, 2019.

Permit No. PAM118019. Powers Stone, Inc. (15644 SR 267, Montrose, PA 18801), General NPDES Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 58182502 in Middletown Township, **Susquehanna County**, receiving stream: no discharge to unnamed tributary to North Branch Wyalusing Creek. Application received: May 4, 2018. Permit issued: October 4, 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

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 35194112. Hayduk Enterprises, Inc. (257 Riverside Drive, Factoryville, PA 18419), construction blasting for Jessup Crossing Senior Housing Development in Jessup Borough, **Lackawanna County** with an expiration date of September 30, 2019. Permit issued: October 1, 2019.

Permit No. 36194149. Keystone Blasting Service (15 Hopeland Road, Lititz, PA 17543), construction blasting for Stillwater Retreat in West Earl Township, **Lancaster County** with an expiration date of December 31, 2019. Permit issued: October 1, 2019.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, 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.

E39022-564. Black Creek Group (IPT Acquisitions, LLC), 301 Route 17 North, Suite 206, Rutherford, NJ 07070, Upper Macungie and South Whitehall Townships, **Lehigh County**, U.S. Army Corps of Engineers, Philadelphia District.

To construct and maintain the following water obstructions and encroachments associated with the Crackersport and Eck Road Warehouses and Roadway Improvements Project:

1) A roadway crossing of isolated PSS wetlands consisting of a 42-foot wide asphalt access road adjoining the western shoulder of Eck Road. This crossing will permanently impact 0.066-acre of PSS wetlands.

2) To place fill within 0.005-acre of isolated PSS wetlands for the purpose of grading associated with the northern berm of a 42-foot wide asphalt access road adjoining the western shoulder of Eck Road.

3) To place fill within a 0.043-acre pond (HQ-CWF, MF) for the purpose of constructing a 51-space parking lot located directly west of Warehouse "A."

4) A stream enclosure of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 635-LF, 24-inch diameter HDPE culvert pipe having a 6-inch invert depression, a concrete headwall, a concrete endwall, and a 20-foot long, 9-foot wide R-3 riprap apron blended with streambed material. The purpose of this impact is to construct a 68-foot wide asphalt access road adjoining Warehouse "A" and Warehouse "B" and a 30-space parking lot located directly northeast of Warehouse "B."

5) A utility line crossing of an enclosed portion of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 1.25-inch diameter, PVC irrigation line. The crossing is located directly west of Warehouse "A."

6) A utility line crossing of an enclosed portion of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a

36-inch diameter, HDPE stormwater pipe. The crossing is located directly southwest of Warehouse "A."

7) A utility line crossing of an enclosed portion of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 36-inch diameter, HDPE stormwater pipe. The crossing is located directly southeast of Warehouse "A."

8) A stormwater outfall within the floodway of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 20-foot wide, trapezoidal vegetated swale. This outfall is located directly north of Warehouse "B."

9) A stream crossing consisting of the abandonment of a 135-LF reach of a UNT to Little Cedar Creek (HQ-CWF, MF) resulting in the construction of a 12-foot wide, 20-LF channel change and the construction of an 81-LF, 36-inch diameter reinforced concrete pipe having a 6-inch invert depression, concrete wingwalls, and a 21-foot long, 17-foot wide R-5 riprap apron. The purpose of this impact is to construct a 55-foot wide asphalt access road adjoining the western shoulder of Eck Road and Warehouse "C."

10) A utility line crossing of an enclosed portion of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of an 18-inch diameter, HDPE stormwater pipe. The crossing is located within the footprint of a proposed 55-foot wide asphalt access road adjoining the western shoulder of Eck Road and Warehouse "C."

11) A utility line crossing of an enclosed portion of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 4-inch diameter ductile iron water pipe and an 8-inch diameter ductile iron water pipe. The crossing is located within the footprint of an existing 55-foot wide asphalt access road adjoining the western shoulder of Eck Road and Warehouse "C."

12) An extension of an existing stream crossing of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 53-LF, 24-inch diameter reinforced concrete pipe having a 6-inch invert depression, a concrete endwall, a concrete manhole, and an 80-ft long, 20-foot wide R-4 riprap apron. The purpose of this impact is for roadway widening proposed along the western shoulder of Eck Road.

13) A utility line crossing of an enclosed portion of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 1.25-inch diameter, PVC irrigation line. The crossing is located along the western shoulder of Eck Road.

14) A utility line crossing of an enclosed portion of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 12-inch diameter, HDPE stormwater pipe. The crossing is located along the western shoulder of Eck Road.

15) A utility line crossing of an enclosed portion of UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 14-inch × 23-inch elliptical reinforced concrete pipe. The crossing is located along the western shoulder of Eck Road.

16) A stormwater outfall structure within the floodway of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of a 17-foot wide concrete energy dissipator consisting of three (3) 14-inch × 23-inch elliptical reinforced concrete pipes and two (2) 15-inch diameter reinforced concrete pipes and a 15-foot long, 24-foot long R-8 riprap apron.

17) A stormwater outfall structure within the floodway of a UNT to Little Cedar Creek (HQ-CWF, MF) consisting of an 8-foot wide concrete energy dissipator consisting of a 14-inch × 23-inch elliptical reinforced concrete pipe and a 22-foot wide, 15-foot long R-8 riprap apron.

18) To place fill within a 0.001-acre pond (HQ-CWF, MF) for the purpose of roadway widening proposed along the western shoulder of Crackersport Road directly southwest of Warehouse "C."

19) To place fill within 0.002-acre of the floodway of Little Cedar Creek (HQ-CWF, MF) for the purpose of roadway widening along the western shoulder of Crackersport Road and grading associated with a 22-foot wide asphalt access road located directly southwest of Warehouse "C."

The permittee is required to provide 0.14 acre of replacement wetlands.

The project is located directly north of Crackersport Road and directly west of Eck Road, approximately 0.49 mile northwest of the intersection of S.R. 22 (Lehigh Valley Thruway) and I-476 (PA Turnpike) (Rutherford, NJ Quadrangle Latitude: 40° 36' 3"; Longitude: -75° 34' 33") in Upper Macungie and South Whitehall Townships, Lehigh County.

E5202219-003. UGI Utilities, Inc., 1 UGI Drive, Denver, PA 17517. Dingman Township and Milford Borough, **Pike County**, Army Corps of Engineers Philadelphia District.

To install and maintain a 2-inch, PE3408 medium pressure gas main crossing 114 linear feet of Sawkill Creek (EV, MF) and 89 linear feet of floodway. The proposed gas main will replace the existing pipeline that is located on the Wycoff Lane Bridge over Sawkill Creek and is associated with the Sawkill Avenue Gas Main Replacement Project. The new location will be 50-feet south of the bridge and tie back into the existing UGI facilities.

The project is located approximately 0.1 mile southwest of the intersection of Broad Street and East Harford Street on the left of Sawkill Avenue (Milford, PA Quadrangle, Latitude: 41° 19' 17.58"; Longitude: -74° 48' 19.97") in Milford Borough & Dingman Township, Pike County.

E5402219-003. Pine Grove Township, 175 Oak Grove Road, Pine Grove, PA 17963, Pine Grove Township, **Schuylkill County**, U.S. Army Corps of Engineers, Baltimore District.

To construct and maintain the following water obstructions and encroachments associated with the Swopes Valley Road (T-649) Bridge Replacement project:

1) A stream crossing of Swope Valley Run (CWF, MF) consisting of the removal of an existing structure and the construction of a 58.0-foot long, 28.0-foot span, single cell, precast, open-bottom concrete arch culvert having a 7.0-foot underclearance, an R-8 riprap apron blended with R-4 riprap and natural streambed material, and concrete wingwalls. This crossing will permanently impact 0.01 acre of PEM Wetlands (EV).

2) An outfall extending into Swope Valley Run (CWF, MF) consisting of the removal of an existing structure and the construction of a stormwater outfall having a concrete endwall, an 18-inch diameter concrete pipe, and a 10-foot long, 4.8-foot wide R-4 riprap apron.

The project is located directly west of the intersection of Swopes Valley Road (T-649) and Geary Wolfe Road (S.R. 645) (Pine Grove, PA Quadrangle, Latitude: 40° 31' 25.65"; Longitude: -76° 23' 9.1") in Pine Grove Township, Schuylkill County.

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ed Muzic, Section Chief, 717.705.4802.

E36-978: Mr. Martin Murray, Conewago Industrial Park Association, P.O. Box 332, Lemoyne, PA 17043 in West Donegal Township, **Lancaster County**, U.S. Army Corps of Engineers Baltimore District.

To place and maintain fill in the floodway of a UNT to Conewago Creek (TSF, MF) and palustrine emergent (PEM) wetlands, permanently impacting 0.05 acre of the floodway of a UNT to Conewago Creek (TSF, MF) and 0.072 acre of PEM wetlands, for the purpose of constructing a 7,500-square-foot building and associated parking. The project is located along Industrial Drive (Middletown, PA Quadrangle, Latitude: 40.163051, Longitude: -76.651629) in West Donegal Township, Lancaster County. To compensate for the wetland impacts, 0.073 acre of replacement wetlands will be constructed onsite. The permit was issued on October 3, 2019.

District Oil and Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA 17701.

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' 27"N, 76° 38' 15"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' 36"N, 76° 38' 09"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 previously 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.

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering and Wetlands, Rachel Carson State Office Building, Floor 2, 400 Market Street, P.O. Box 8460, Harrisburg, PA 17105-8460.

D07-039EA. Richard Mingle, Chair, Hollidaysburg Borough Authority, 401 Blair Street, Hollidaysburg, PA 16648, Frankstown Township, **Blair County**, USACOE Baltimore District.

Project proposes to remove the Intake Dam to eliminate a threat to public safety and to restore approximately 120 feet of stream channel to a free-flowing condition. The project is located across Brush Creek (WWF, MF) (Frankstown, PA Quadrangle, Latitude: 40.4655; Longitude: -78.3637).

D11-093EA. Donna Dunegan, Secretary/Treasurer, P.O. Box 175, 800 Fourth Avenue, Patton, PA 16668, Borough of Patton, **Cambria County**, USACOE Baltimore District.

Project proposes to remove the Patton Dam to eliminate a threat to public safety and to restore approximately 1,050 feet of stream channel to a free-flowing condition.

The project is located across Chest Creek (CWF/TSF, MF) (Hastings, PA Quadrangle, Latitude: 40.6284; Longitude: -78.6472).

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.

Eastern Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

ESCGP-3 # ESG294119015-00

Applicant Name ARD Operating LLC

Contact Person Stephen Barondeau

Address 33 W Third St, Suite 300

City, State, Zip Williamsport, PA 17701

County Lycoming

Township(s) Cogan House Twp.

Receiving Stream(s) and Classification(s) Lick Run and

Tribs (EV); UNT to Larrys Ck (EV); Wendell Run and

Tribs (HQ-CWF); Wolf Run and Tribs (EV)

Secondary: Larrys Ck (EV) and Little Pine Ck (EV)

ESCGP-3 # ESG295719005-00

Applicant Name Chief Oil & Gas LLC

Contact Person Jeff Deegan

Address 1720 Sycamore Rd

City, State, Zip Montoursville, PA 17754

County Sullivan

Township(s) Cherry

Receiving Stream(s) and Classification(s) Lick Ck (EV);

Mill Ck (EV)

ESCGP-3 # ESG294119022-00

Applicant Name ARD Operating LLC

Contact Person Stephen Barondeau

Address 33 W Third St, Suite 300

City, State, Zip Williamsport, PA 17701

County Lycoming

Township(s) Cogan House Twp.

Receiving Stream(s) and Classification(s) Wolf Run and

Tribs (EV)

Secondary: Larrys Ck (EV)

ESCGP-3 # ESG291219002-00
 Applicant Name Seneca Resources Co LLC
 Contact Person Cindy Jones
 Address 51 Zents Blvd
 City, State, Zip Brookville, PA 15825-2701
 County Cameron
 Township(s) Shippen Twp
 Receiving Stream(s) and Classification(s) Nichols Run
 (EV, MF), UNT to Elk Fork (EV, MF), Elk Fork (EV,
 MF);
 Secondary: Elk Fork (EV, MF), Elk Fork (EV, MF),
 Driftwood Branch Sinnemahoning Creek (EV, MF)

**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:

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Sunoco Facility Duns # 0364-000, Storage Tank Facility ID # 36-24119, 1204 Lititz Pike, Lancaster, PA 17601, Lancaster City, **Lancaster County**, Enviro Trac, Ltd., 176 Thorn Hill Road, Warrendale, PA 15086 on behalf of Evergreen Resources, LLC, 2 Righter 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.

Claysburg Garage, Storage Tank Facility ID # 07-61263, 1512 Park Road, Claysburg, PA 16625, Greenfield Town-

ship, **Blair County**, Letterle & Associates, Inc., 2022 Axemann Road, Suite 201, Bellefonte, PA 16823 on behalf of A&M Transit, P.O. Box 331, Ebensburg, PA 15931, 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:

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

7 Eleven 28225, Storage Tank Primary Facility ID # 01-35890, 1975 Baltimore Pike, Gettysburg, PA 17325-0713, Mount Joy Township, **Adams County**, AECOM, 625 West Ridge Pike, Suite E-100, Conshohocken, PA 19428, on behalf of 7 Eleven, P.O. Box 711, Dallas, TX 75221-0711 submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with unleaded gasoline short list constituents. The Remedial Action Plan was acceptable to meet the Nonresidential Statewide Health Standard and was approved by the Department on October 7, 2019.

[Pa.B. Doc. No. 19-1557. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Aggregate Advisory Board; Regulatory, Legislative and Technical Committee Meeting

The Aggregate Advisory Board's (Board) Regulatory, Legislative and Technical Committee will meet on Wednesday, November 6, 2019, at 1 p.m. in the 10th Floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The meeting will follow the full meeting of the Board. The meeting will also be offered in a conference call format.

Questions concerning the November 6, 2019, meeting can be directed to Daniel E. Snowden at dsnowden@pa.gov or (717) 783-8846. The agenda and materials for the meeting 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 "Mining Advisory Committees," then "Aggregate Advisory Board").

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Daniel E. Snowden at (717) 783-8846 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. 19-1558. Filed for public inspection October 18, 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.eibrary.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 contact the person whose name and phone number are listed with each document.

Draft Technical Guidance: Substantive Revision

DEP ID: 250-3100-001. **Title:** Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities. **Description:** This guidance assists the regulated community with the development of Radiation Protection Action Plans as required in regulation. The primary revisions amend the document to include guidance for the oil and gas industry in response to new provisions in 25 Pa. Code Chapter 78a (relating to unconventional wells) requiring unconventional oil and gas operators to comply with this technical guidance. Additionally, outdated and redundant information is being removed; guidance is being provided for non-solid waste recycler operations; environmental modeling guidance is being improved; and radiation protection standards are being compiled in one place for subject facilities.

Written Comments: Interested persons may submit written comments on this draft TGD through Monday, November 18, 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 be mailed 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 Kristina Hoffman at krihoffman@pa.gov or (717) 787-2480.

Effective Date: Upon publication of notice as final in the *Pennsylvania Bulletin*.

PATRICK McDONNELL,
Secretary

[Pa.B. Doc. No. 19-1559. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Oil and Gas Technical Advisory Board Meeting Rescheduled

The November 6, 2019, meeting of the Oil and Gas Technical Advisory Board is rescheduled to Wednesday, December 18, 2019. The meeting will begin 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 Todd M. Wallace, Office of Oil and Gas Management, at twallace@pa.gov or (717) 783-9438. The agenda and meeting materials will be available through the Public Participation tab on the Department of Environmental Protection's (Department) web site at <http://www.dep.pa.gov> (select "Public Participation," then "Advisory Committees," then "Oil and Gas Advisory Committees," then "Oil and Gas Technical Advisory Board").

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Todd M. Wallace at (717) 783-9438, or through the

Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD), or (800) 654-5988 (voice users) to discuss how the Department may accommodate their needs.

PATRICK McDONNELL,
Secretary

[Pa.B. Doc. No. 19-1560. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Proposed State Implementation Plan Revision; Second Maintenance Plan for the Clearfield/ Indiana 1997 8-Hour Ozone Nonattainment Area; Public Hearing

The Department of Environmental Protection (Department) is seeking public comment on a proposed revision to the State Implementation Plan (SIP) concerning a second maintenance plan demonstrating that the Clearfield/Indiana Area continues to maintain the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Department intends to submit this proposed SIP revision to the United States Environmental Protection Agency (EPA) to satisfy sections 107(d)(3)(E)(iv) and 175A(b) of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7407(d)(3)(E)(iv) and 7505a(b)).

Ground-level ozone concentrations above the Federal health-based standard pose a serious human health threat. On April 30, 2004, the EPA designated the Clearfield/Indiana Area as a nonattainment area for the 1997 8-hour ozone NAAQS. See 69 FR 23857 (April 30, 2004). On March 19, 2009, the Clearfield/Indiana Area was redesignated to attainment. See 74 FR 11674 (March 19, 2009). Air quality in the Clearfield/Indiana Area has improved since the EPA's original designations.

On March 6, 2015, the EPA published the final implementation rule for the 2008 8-hour ozone NAAQS. See 80 FR 12264 (March 6, 2015). This final rule revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (maintenance areas) for the 1997 standard no longer needed to submit second 10-year maintenance plans under section 175A(b) of the CAA. See 80 FR 12302 (March 6, 2015). See also, 40 CFR 51.1105(d)(1) (relating to transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS and anti-backsliding). The EPA's 2008 final rule was challenged in *South Coast Air Quality Management Distr. v. EPA et al.*, 882 F.3d. 1138 (D.C. Cir. 2018).

This proposed SIP revision addresses that case. Specifically, the Court vacated the EPA's final implementation rule for the 2008 ozone NAAQS to the extent that it waived the requirement under section 175A(b) of the CAA for states to submit a second 10-year maintenance plan SIP revisions for "orphan maintenance areas" under the 1997 standard (areas that had been redesignated to attainment for the 1997 ozone NAAQS and were designated attainment for the 2008 ozone NAAQS). In doing so, the Court characterized the language of section 175A(b) of the CAA as unambiguous and rejected the EPA's reasoning in the 2008 ozone NAAQS final rule that second maintenance plans were not needed for orphan maintenance areas because the 1997 standard had been revoked. *Id.* at 1156-57.

States with these "orphan maintenance areas" under the 1997 8-hour ozone NAAQS, including this Commonwealth, must submit maintenance plans for the second maintenance period. The Department intends to submit this proposed second maintenance plan SIP revision for the Clearfield/Indiana Area to the EPA for approval.

This proposed SIP revision is available on the Department's web site at <http://www.ahs.dep.pa.gov/eComment>.

The Department will provide the opportunity for a public hearing to receive comments regarding the proposed SIP revision on November 22, 2019, at 10 a.m. at the Moshannon District Office, West Branch Conference Room, 186 Enterprise Drive, Philipsburg, PA.

Persons wishing to present testimony should contact Amanda Rodriguez at 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 12 p.m. on Monday, November 18, 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 the Department to find out if the hearing is cancelled by contacting Amanda Rodriguez at amarodrigu@pa.gov or (717) 787-9702.

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 amarodrigu@pa.gov or (717) 787-9702. 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 Monday, November 25, 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 at ecomment@pa.gov. Written comments can be submitted by mail to the Policy Office, Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2563. Use "Clearfield/Indiana Area Ozone" as the subject line in written communication.

PATRICK McDONNELL,
Secretary

[Pa.B. Doc. No. 19-1561. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF HUMAN SERVICES

Inpatient Hospitals Qualifying for Medical Assistance Disproportionate Share Payments

On July 1, 1988, the Department of Human Services (Department) implemented a disproportionate share payment system. The Department is required to annually publish the names of each inpatient acute care general hospital, rehabilitation hospital and private psychiatric hospital qualifying for a disproportionate share payment and their respective disproportionate share payment per-

centage as set forth in 55 Pa. Code §§ 1151.54(i), 1163.67(k) and 1163.459(j) (relating to disproportionate share payments).

A. Disproportionate Share for Acute Care General Hospitals, Rehabilitation Hospitals and Private Psychiatric Hospitals.

The following lists identify the inpatient acute care general hospitals, psychiatric units, drug and alcohol units and rehabilitation units of acute care general hospitals, rehabilitation hospitals, private psychiatric hospitals and private drug and alcohol hospitals eligible for disproportionate share payments for the period of July 1, 2018, through June 30, 2019, and their respective payment percentages. For all inpatient facilities, disproportionate share payments are calculated as a percentage of projected Medical Assistance (MA) inpatient income.

Payment period July 1, 2018, to June 30, 2019, disproportionate share payment percentages:

ALBERT EINSTEIN MEDICAL CENTER	4.92%
ALFRED I. DUPONT HOSPITAL FOR CHILDREN	7.64%
BARNES KASSON HOSPITAL	1.43%
BRADFORD REGIONAL MEDICAL CENTER	10.00%
CHARLES COLE MEMORIAL HOSPITAL	1.00%
CHILDREN'S HOSPITAL OF PHILADELPHIA	7.19%
CROZER CHESTER MEDICAL CENTER	3.10%
DELAWARE COUNTY MEMORIAL HOSPITAL	2.18%
GEISINGER MEDICAL CENTER	6.84%
GUTHRIE TOWANDA MEMORIAL HOSPITAL	3.36%
HAHNEMANN UNIVERSITY HOSPITAL	4.52%
HIGHLANDS HOSPITAL	4.56%
J.C. BLAIR HOSPITAL	4.78%
KENSINGTON HOSPITAL	14.00%
LEHIGH VALLEY HOSPITAL SCHUYLKILL	6.68%
LOCK HAVEN HOSPITAL	3.16%
MERCY FITZGERALD HOSPITAL	2.69%
MERCY PHILADELPHIA HOSPITAL	5.19%
MILLCREEK COMMUNITY HOSPITAL	5.00%
PENN HIGHLANDS DUBOIS	9.00%
PENN PRESBYTERIAN MEDICAL CENTER	2.88%
PENNSYLVANIA HOSPITAL	3.66%
ST. CHRISTOPHER'S HOSPITAL FOR CHILDREN	15.00%
SOLDIERS AND SAILORS MEMORIAL HOSPITAL	8.75%
SUNBURY COMMUNITY HOSPITAL	6.26%
TEMPLE UNIVERSITY HOSPITAL	6.66%
THOMAS JEFFERSON UNIVERSITY HOSPITAL	2.60%
TITUSVILLE HOSPITAL	2.84%
TROY COMMUNITY HOSPITAL	3.98%
UNIONTOWN HOSPITAL	1.84%
UNIVERSITY OF PENNSYLVANIA HOSPITAL	3.13%
UPMC BEDFORD MEMORIAL	2.96%
UPMC CHILDREN'S HOSPITAL OF PITTSBURGH	9.14%
UPMC MAGEE WOMEN'S HOSPITAL	5.55%
UPMC MERCY	1.65%
UPMC PRESBYTERIAN SHADYSIDE	2.48%
VALLEY FORGE MEDICAL CENTER AND HOSPITAL	5.05%
WEST VIRGINIA UNIVERSITY HOSPITALS	5.76%
WILLIAMSPORT HOSPITAL	5.54%
WPAHS ALLEGHENY GENERAL HOSPITAL	1.37%

WPAHS WESTERN PENNSYLVANIA HOSPITAL 2.44%

Psychiatric Units of Inpatient Hospitals

ALBERT EINSTEIN MEDICAL CENTER	2.97%
BRADFORD REGIONAL MEDICAL CENTER	2.81%
CROZER CHESTER MEDICAL CENTER	2.02%
DIVINE PROVIDENCE HOSPITAL	3.30%
EAGLEVILLE HOSPITAL	1.74%
GEISINGER MEDICAL CENTER	2.06%
GIRARD MEDICAL CENTER	2.98%
HAHNEMANN UNIVERSITY HOSPITAL	2.76%
HIGHLANDS HOSPITAL	2.78%
J.C. BLAIR HOSPITAL	1.63%
LEHIGH VALLEY HOSPITAL SCHUYLKILL	2.03%
MERCY FITZGERALD HOSPITAL	1.80%
MERCY PHILADELPHIA HOSPITAL	3.11%
MILLCREEK COMMUNITY HOSPITAL	3.02%
PENN HIGHLANDS DUBOIS	2.52%
PENN PRESBYTERIAN MEDICAL CENTER	1.90%
PENNSYLVANIA HOSPITAL	2.31%
SUNBURY COMMUNITY HOSPITAL	1.94%
TEMPLE UNIVERSITY HOSPITAL	3.89%
THOMAS JEFFERSON UNIVERSITY HOSPITAL	1.75%
UPMC MERCY	1.26%
UPMC PRESBYTERIAN SHADYSIDE	1.69%

Drug and Alcohol Units of Acute Care Hospitals

PENN PRESBYTERIAN MEDICAL CENTER	1.95%
VALLEY FORGE MEDICAL CENTER AND HOSPITAL	3.63%

Medical Rehabilitation Units of Acute Care Hospitals

ALBERT EINSTEIN MEDICAL CENTER	3.53%
ALFRED I. DUPONT HOSPITAL FOR CHILDREN	5.65%
CHILDREN'S HOSPITAL OF PHILADELPHIA	5.29%
CROZER CHESTER MEDICAL CENTER	2.12%
DELAWARE COUNTY MEMORIAL HOSPITAL	1.41%
MERCY FITZGERALD HOSPITAL	1.80%
PENN HIGHLANDS DUBOIS	2.87%
TEMPLE UNIVERSITY HOSPITAL	4.88%
THOMAS JEFFERSON UNIVERSITY HOSPITAL	1.73%
UNIVERSITY OF PENNSYLVANIA HOSPITAL	2.14%
UPMC MERCY	1.00%
UPMC PRESBYTERIAN SHADYSIDE	1.64%

Freestanding Rehabilitation Hospitals

CHILDREN'S HOME OF PITTSBURGH	10.00%
CHILDREN'S INSTITUTE OF PITTSBURGH	6.33%

Private Psychiatric Hospitals

BELMONT BEHAVIORAL HOSPITAL	3.97%
BROOKE GLEN BEHAVIORAL HOSPITAL	3.09%
CLARION PSYCHIATRIC CENTER	5.81%
DEVEREUX CHILDREN'S BEHAVIORAL HEALTH CENTER	10.00%
FAIRMOUNT BEHAVIORAL HEALTH SYSTEM	4.70%
FIRST HOSPITAL WYOMING VALLEY	4.73%
FOUNDATIONS BEHAVIORAL HEALTH	5.27%
FRIENDS BEHAVIORAL HEALTH SYSTEM	4.01%
HORSHAM CLINIC	4.15%
KIDSPEACE HOSPITAL	7.48%
KIRKBRIDE CENTER	4.27%
MEADOWS PSYCHIATRIC CENTER	5.95%

MONTGOMERY COUNTY EMERGENCY SERVICES	4.90%
ROXBURY PSYCHIATRIC HOSPITAL	1.00%
SOUTHWOOD PSYCHIATRIC HOSPITAL	9.00%
WELLSPAN PHILHAVEN	4.04%

Private Drug and Alcohol Hospitals

EAGLEVILLE HOSPITAL	1.72%
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B. Additional Disproportionate Share Payments

Additional disproportionate share payments are made to inpatient facilities with a Medicaid inpatient utilization rate of not less than 1%, which have provided services to Title XIX beneficiaries 21 years of age or older but under 65 years of age, who have been determined to be low income by meeting the income and resource standards for the Commonwealth's MA Program. The payment adjustments are paid directly proportional to the payment received for services rendered by institutions for mental diseases under the fee-for-service and capitation programs.

The following hospitals are eligible for this payment adjustment:

Acute Care General Hospitals

ABINGTON MEMORIAL HOSPITAL
 ADVANCED SURGICAL HOSPITAL
 ALBERT EINSTEIN MEDICAL CENTER
 ALFRED I. DUPONT HOSPITAL FOR CHILDREN
 ALLE KISKI MEDICAL CENTER
 AMERICAN ONCOLOGIC HOSPITAL
 ARIA HEALTH HOSPITAL
 ARMSTRONG COUNTY MEMORIAL HOSPITAL
 BARNES KASSON HOSPITAL
 BERWICK HOSPITAL CENTER
 BRADFORD REGIONAL MEDICAL CENTER
 BRANDYWINE HOSPITAL
 BRYN MAWR HOSPITAL
 BUCKTAIL MEDICAL CENTER
 BUTLER MEMORIAL HOSPITAL
 CANONSBURG GENERAL HOSPITAL
 CHAMBERSBURG HOSPITAL
 CHARLES COLE MEMORIAL HOSPITAL
 CHESTER COUNTY HOSPITAL
 CHESTNUT HILL HOSPITAL
 CHILDREN'S HOSPITAL OF PHILADELPHIA
 CLARION HOSPITAL
 CONEMAUGH MEMORIAL MEDICAL CENTER
 CONEMAUGH MEYERSDALE MEDICAL CENTER
 CONEMAUGH MINERS MEDICAL CENTER
 CONEMAUGH NASON MEDICAL CENTER
 COORDINATED HEALTH HOSPITAL OF ALLENTOWN
 COORDINATED HEALTH ORTHOPEDIC HOSPITAL
 CORRY MEMORIAL HOSPITAL
 CROZER CHESTER MEDICAL CENTER
 DELAWARE COUNTY MEMORIAL HOSPITAL
 DOYLESTOWN HOSPITAL
 EASTON HOSPITAL
 EINSTEIN MEDICAL CENTER MONTGOMERY
 ELLWOOD MEDICAL CENTER
 ENDLESS MOUNTAINS HEALTH SYSTEM
 EVANGELICAL COMMUNITY HOSPITAL
 FRICK HOSPITAL
 FULTON COUNTY MEDICAL CENTER
 GEISINGER BLOOMSBURG HOSPITAL
 GEISINGER COMMUNITY MEDICAL CENTER
 GEISINGER LEWISTOWN HOSPITAL
 GEISINGER MEDICAL CENTER
 GEISINGER WYOMING VALLEY MEDICAL CENTER

GOOD SAMARITAN HOSPITAL
 GRAND VIEW HOSPITAL
 GROVE CITY MEDICAL CENTER
 GUTHRIE TOWANDA MEMORIAL HOSPITAL
 HAHNEMANN UNIVERSITY HOSPITAL
 HERITAGE VALLEY BEAVER
 HERITAGE VALLEY SEWICKLEY
 HIGHLANDS HOSPITAL
 HOLY REDEEMER HOSPITAL
 HOLY SPIRIT HOSPITAL
 INDIANA REGIONAL MEDICAL CENTER
 J.C. BLAIR HOSPITAL
 JEANES HOSPITAL
 JEFFERSON REGIONAL MEDICAL CENTER
 JENNERSVILLE HOSPITAL
 JERSEY SHORE HOSPITAL
 KANE COMMUNITY HOSPITAL
 KENSINGTON HOSPITAL
 LANCASTER GENERAL HOSPITAL
 LANSDALE HOSPITAL
 LATROBE AREA HOSPITAL
 LEHIGH VALLEY HOSPITAL
 LEHIGH VALLEY HOSPITAL HAZLETON
 LEHIGH VALLEY HOSPITAL MUHLENBERG
 LEHIGH VALLEY HOSPITAL POCONO
 LEHIGH VALLEY HOSPITAL SCHUYLKILL
 LOCK HAVEN HOSPITAL
 LOWER BUCKS HOSPITAL
 MAIN LINE HOSPITAL LANKENAU
 MEADVILLE MEDICAL CENTER
 MERCY FITZGERALD HOSPITAL
 MERCY PHILADELPHIA HOSPITAL
 MILLCREEK COMMUNITY HOSPITAL
 MILTON S. HERSHEY MEDICAL CENTER
 MONONGAHELA VALLEY HOSPITAL
 MOSES TAYLOR HOSPITAL
 MOUNT NITTANY MEDICAL CENTER
 MUNCY VALLEY HOSPITAL
 NAZARETH HOSPITAL
 OHIO VALLEY GENERAL HOSPITAL
 OSS ORTHOPAEDIC HOSPITAL
 PAM SPECIALTY HOSPITAL OF WILKES BARRE
 PAOLI MEMORIAL HOSPITAL
 PENN HIGHLANDS BROOKVILLE
 PENN HIGHLANDS CLEARFIELD
 PENN HIGHLANDS DUBOIS
 PENN HIGHLANDS ELK
 PENN PRESBYTERIAN MEDICAL CENTER
 PENNSYLVANIA HOSPITAL
 PHOENIXVILLE HOSPITAL
 PHYSICIANS CARE SURGICAL HOSPITAL
 PINNACLE HEALTH CARLISLE REGIONAL MEDICAL CENTER
 PINNACLE HEALTH HEART OF LANCASTER MEDICAL CENTER
 PINNACLE HEALTH HOSPITALS
 PINNACLE HEALTH LANCASTER REGIONAL MEDICAL CENTER
 PINNACLE HEALTH MEMORIAL HOSPITAL
 POTTSTOWN HOSPITAL
 PUNXSUTAWNEY AREA HOSPITAL
 READING HOSPITAL
 REGIONAL HOSPITAL OF SCRANTON
 RIDDLE MEMORIAL HOSPITAL
 ROBERT PACKER HOSPITAL
 ROXBOROUGH MEMORIAL HOSPITAL
 SACRED HEART HOSPITAL
 SAINT VINCENT HEALTH CENTER
 SELECT SPECIALTY CENTRAL PENNSYLVANIA

SELECT SPECIALTY DANVILLE
 SELECT SPECIALTY ERIE
 SELECT SPECIALTY JOHNSTOWN
 SELECT SPECIALTY LAUREL HIGHLANDS
 SELECT SPECIALTY MCKEESPORT
 SELECT SPECIALTY PITTSBURGH UPMC
 SHARON REGIONAL MEDICAL CENTER
 SHRINERS HOSPITALS FOR CHILDREN
 SOLDIERS AND SAILORS MEMORIAL HOSPITAL
 SOMERSET COMMUNITY HOSPITAL
 ST. CHRISTOPHER'S HOSPITAL FOR CHILDREN
 ST. CLAIR MEMORIAL HOSPITAL
 ST. JOSEPH REGIONAL HEALTH NETWORK
 ST. LUKE'S HOSPITAL ANDERSON CAMPUS
 ST. LUKE'S HOSPITAL OF BETHLEHEM
 ST. LUKE'S HOSPITAL GNADEN HUETTEN CAMPUS
 ST. LUKE'S HOSPITAL MONROE CAMPUS
 ST. LUKE'S HOSPITAL PALMERTON CAMPUS
 ST. LUKE'S HOSPITAL QUAKERTOWN
 ST. LUKE'S MINERS MEMORIAL HOSPITAL
 ST. MARY MEDICAL CENTER
 SUBURBAN COMMUNITY HOSPITAL
 SUNBURY COMMUNITY HOSPITAL
 SURGERY CENTER AT EDGEWOOD PLACE
 SURGICAL INSTITUTE OF READING
 TEMPLE UNIVERSITY HOSPITAL
 THOMAS JEFFERSON UNIVERSITY HOSPITAL
 TITUSVILLE HOSPITAL
 TROY COMMUNITY HOSPITAL
 TYLER MEMORIAL HOSPITAL
 TYRONE HOSPITAL
 UNIONTOWN HOSPITAL
 UNIVERSITY OF PENNSYLVANIA HOSPITAL
 UPMC ALTOONA
 UPMC BEDFORD MEMORIAL
 UPMC CHILDREN'S HOSPITAL OF PITTSBURGH
 UPMC EAST
 UPMC HAMOT
 UPMC HORIZON
 UPMC JAMESON
 UPMC MAGEE WOMEN'S HOSPITAL
 UPMC MCKEESPORT
 UPMC MERCY
 UPMC NORTHWEST
 UPMC PASSAVANT HOSPITAL
 UPMC PINNACLE HANOVER
 UPMC PRESBYTERIAN SHADYSIDE
 UPMC ST. MARGARET
 VALLEY FORGE MEDICAL CENTER AND HOSPITAL
 WARREN GENERAL HOSPITAL
 WASHINGTON HEALTH SYSTEM GREENE
 WASHINGTON HOSPITAL
 WAYNE MEMORIAL HOSPITAL
 WAYNESBORO HOSPITAL
 WELLSPAN EPHRATA COMMUNITY HOSPITAL
 WELLSPAN GETTYSBURG HOSPITAL
 WELLSPAN SURGERY AND REHABILITATION
 HOSPITAL
 WEST VIRGINIA UNIVERSITY HOSPITALS
 WESTMORELAND REGIONAL HOSPITAL
 WILKES BARRE GENERAL HOSPITAL
 WILLIAMSPORT HOSPITAL
 WPAHS ALLEGHENY GENERAL HOSPITAL
 WPAHS FORBES REGIONAL CAMPUS
 WPAHS WESTERN PENNSYLVANIA HOSPITAL
 YORK HOSPITAL

Psychiatric Units of Inpatient Hospitals
 ABINGTON MEMORIAL HOSPITAL

ALBERT EINSTEIN MEDICAL CENTER
 ALLE KISKI MEDICAL CENTER
 ARMSTRONG COUNTY MEMORIAL HOSPITAL
 BERWICK HOSPITAL CENTER
 BRADFORD REGIONAL MEDICAL CENTER
 BRANDYWINE HOSPITAL
 BRYN MAWR HOSPITAL
 BUTLER MEMORIAL HOSPITAL
 CHAMBERSBURG HOSPITAL
 CONEMAUGH MEMORIAL MEDICAL CENTER
 CROZER CHESTER MEDICAL CENTER
 EAGLEVILLE HOSPITAL
 GEISINGER BLOOMSBURG HOSPITAL
 GEISINGER COMMUNITY MEDICAL CENTER
 GEISINGER LEWISTOWN HOSPITAL
 GEISINGER MEDICAL CENTER
 GIRARD MEDICAL CENTER
 HAHNEMANN UNIVERSITY HOSPITAL
 HERITAGE VALLEY BEAVER
 HERITAGE VALLEY SEWICKLEY
 HIGHLANDS HOSPITAL
 HOLY SPIRIT HOSPITAL
 INDIANA REGIONAL MEDICAL CENTER
 J.C. BLAIR HOSPITAL
 JEFFERSON REGIONAL MEDICAL CENTER
 LANCASTER GENERAL HOSPITAL
 LATROBE AREA HOSPITAL
 LEHIGH VALLEY HOSPITAL
 LEHIGH VALLEY HOSPITAL POCONO
 LEHIGH VALLEY HOSPITAL SCHUYLKILL
 LOWER BUCKS HOSPITAL
 MEADVILLE MEDICAL CENTER
 MERCY FITZGERALD HOSPITAL
 MERCY PHILADELPHIA HOSPITAL
 MILLCREEK COMMUNITY HOSPITAL
 MONONGAHELA VALLEY HOSPITAL
 MOSES TAYLOR HOSPITAL
 MOUNT NITTANY MEDICAL CENTER
 OHIO VALLEY GENERAL HOSPITAL
 PENN HIGHLANDS CLEARFIELD HOSPITAL
 PENN HIGHLANDS DUBOIS
 PENN HIGHLANDS ELK
 PENN PRESBYTERIAN MEDICAL CENTER
 PENNSYLVANIA HOSPITAL
 PINNACLE HEALTH LANCASTER REGIONAL
 MEDICAL CENTER
 POTTSTOWN HOSPITAL
 READING HOSPITAL
 ROBERT PACKER HOSPITAL
 SACRED HEART HOSPITAL
 SAINT VINCENT HEALTH CENTER
 SHARON REGIONAL MEDICAL CENTER
 SOMERSET COMMUNITY HOSPITAL
 ST. CLAIR MEMORIAL HOSPITAL
 ST. LUKE'S HOSPITAL OF BETHLEHEM
 ST. LUKE'S HOSPITAL GNADEN HUETTEN CAMPUS
 ST. LUKE'S HOSPITAL PALMERTON
 ST. LUKE'S HOSPITAL QUAKERTOWN
 SUNBURY COMMUNITY HOSPITAL
 TEMPLE UNIVERSITY HOSPITAL
 THOMAS JEFFERSON UNIVERSITY HOSPITAL
 UPMC ALTOONA
 UPMC MCKEESPORT
 UPMC MERCY
 UPMC NORTHWEST
 UPMC PRESBYTERIAN SHADYSIDE
 WARREN GENERAL HOSPITAL
 WASHINGTON HEALTH SYSTEM GREENE
 WASHINGTON HOSPITAL

WELLSPAN EPHRATA COMMUNITY HOSPITAL
 WESTMORELAND REGIONAL HOSPITAL
 WILLIAMSPORT HOSPITAL
 WPAHS FORBES REGIONAL CAMPUS
 YORK HOSPITAL

Drug and Alcohol Units of Inpatient Hospitals

BUTLER MEMORIAL HOSPITAL
 MEADVILLE MEDICAL CENTER
 NPHS ST. JOSEPH'S HOSPITAL
 PENN PRESBYTERIAN MEDICAL CENTER
 VALLEY FORGE MEDICAL CENTER AND HOSPITAL

Medical Rehabilitation Units of Inpatient Hospitals

ABINGTON MEMORIAL HOSPITAL
 ALBERT EINSTEIN MEDICAL CENTER
 ALFRED I. DUPONT HOSPITAL FOR CHILDREN
 CANONSBURG GENERAL HOSPITAL
 CHAMBERSBURG HOSPITAL
 CHILDREN'S HOSPITAL OF PHILADELPHIA
 CONEMAUGH MEMORIAL MEDICAL CENTER
 CROZER CHESTER MEDICAL CENTER
 DELAWARE COUNTY MEMORIAL HOSPITAL
 EASTON HOSPITAL
 GEISINGER WYOMING VALLEY MEDICAL CENTER
 GOOD SAMARITAN HOSPITAL
 HERITAGE VALLEY BEAVER
 HERITAGE VALLEY SEWICKLEY
 INDIANA REGIONAL MEDICAL CENTER
 JEFFERSON REGIONAL MEDICAL CENTER
 LEHIGH VALLEY HOSPITAL HAZLETON
 MERCY FITZGERALD HOSPITAL
 MONONGAHELA VALLEY HOSPITAL
 NAZARETH HOSPITAL
 OHIO VALLEY HOSPITAL
 PENN HIGHLANDS DUBOIS
 PHOENIXVILLE HOSPITAL
 PINNACLE HEALTH CARLISLE REGIONAL MEDICAL
 CENTER
 PINNACLE HEALTH LANCASTER REGIONAL
 MEDICAL CENTER
 READING HOSPITAL
 SAINT VINCENT HEALTH CENTER
 ST. LUKE'S HOSPITAL GNADEN HUETTEN CAMPUS
 ST. LUKE'S HOSPITAL OF BETHLEHEM
 TEMPLE UNIVERSITY HOSPITAL
 THOMAS JEFFERSON UNIVERSITY HOSPITAL
 UNIVERSITY OF PENNSYLVANIA HOSPITAL
 UPMC CHILDREN'S HOSPITAL OF PITTSBURGH
 UPMC EAST
 UPMC HORIZON
 UPMC JAMESON
 UPMC MCKEESPORT
 UPMC MERCY
 UPMC NORTHWEST
 UPMC PASSAVANT HOSPITAL
 UPMC PRESBYTERIAN SHADYSIDE
 UPMC ST. MARGARET
 WASHINGTON HOSPITAL
 WELLSPAN SURGERY AND REHABILITATION
 HOSPITAL
 WESTMORELAND HOSPITAL
 WILLIAMSPORT HOSPITAL
 WPAHS FORBES REGIONAL CAMPUS
 WPAHS WESTERN PENNSYLVANIA HOSPITAL

Freestanding Rehabilitation Hospitals

ALLIED SERVICES INSTITUTE OF REHABILITATION
 MEDICINE
 BRYN MAWR REHABILITATION HOSPITAL

CHILDREN'S HOME OF PITTSBURGH
 CHILDREN'S INSTITUTE OF PITTSBURGH
 GOOD SHEPHERD REHABILITATION HOSPITAL
 HEALTHSOUTH ALTOONA
 HEALTHSOUTH ERIE
 HEALTHSOUTH HARMARVILLE
 HEALTHSOUTH MECHANICSBURG
 HEALTHSOUTH NITTANY VALLEY
 HEALTHSOUTH PENN STATE GEISENGER
 HEALTHSOUTH READING
 HEALTHSOUTH SEWICKLEY
 HEALTHSOUTH YORK
 HELEN M SIMPSON REHABILITATION HOSPITAL
 JOHN HEINZ INSTITUTE
 LANCASTER REHABILITATION HOSPITAL
 MAGEE MEMORIAL HOSPITAL
 PENN STATE HERSHEY REHABILITATION HOSPITAL
 ST. MARY REHABILITATION HOSPITAL

Private Psychiatric Hospitals

BELMONT BEHAVIORAL HOSPITAL
 BROOKE GLEN BEHAVIORAL HOSPITAL
 CLARION PSYCHIATRIC CENTER
 DEVEREUX CHILDREN'S BEHAVIORAL HEALTH
 CENTER
 FAIRMOUNT BEHAVIORAL HEALTH SYSTEM
 FIRST HOSPITAL WYOMING VALLEY
 FOUNDATIONS BEHAVIORAL HEALTH
 FRIENDS BEHAVIORAL HEALTH SYSTEM
 HAVEN BEHAVIORAL HOSPITAL OF EASTERN
 PENNSYLVANIA
 HAVEN BEHAVIORAL HOSPITAL OF PHILADELPHIA
 HORSHAM CLINIC
 KIDSPACE HOSPITAL
 KIRKBRIDE CENTER
 MEADOWS PSYCHIATRIC CENTER
 MONTGOMERY COUNTY EMERGENCY SERVICES
 PENNSYLVANIA PSYCHIATRIC INSTITUTE
 ROXBURY PSYCHIATRIC HOSPITAL
 SOUTHWOOD PSYCHIATRIC HOSPITAL
 WELLSPAN PHILHAVEN

Private Drug and Alcohol Hospitals

EAGLEVILLE HOSPITAL

C. Additional Class of Disproportionate Share Payments

Effective March 1, 1998, the Department established a new class of disproportionate share payments to hospitals which render uncompensated care and which the Department has determined are experiencing significant revenue loss as a result of MA Program revisions under the act of May 16, 1996 (P.L. 175, No. 35).

Effective January 15, 1999, the Department established a new class of disproportionate share payments to include a Charity Care component of the Community Access Fund. A disproportionate share payment will be made to qualifying hospitals based on each hospital's percentage of charity care cost to the total charity care costs of all qualifying hospitals. The Department also established a disproportionate share payment for those hospitals which the Department has determined advanced its goal of enhanced access to multiple types of medical care in economically distressed areas of this Commonwealth.

The following hospitals qualify for this payment:

ALFRED I. DUPONT HOSPITAL FOR CHILDREN
 ABINGTON MEMORIAL HOSPITAL
 ALBERT EINSTEIN MEDICAL CENTER
 ARIA HEALTH HOSPITAL

BARNES KASSON HOSPITAL
 CHARLES COLE MEMORIAL HOSPITAL
 CHILDREN'S HOSPITAL OF PHILADELPHIA
 CLARION HOSPITAL
 CROZER CHESTER MEDICAL CENTER
 DOYLESTOWN HOSPITAL
 EAGLEVILLE HOSPITAL
 EASTON HOSPITAL
 EVANGELICAL COMMUNITY HOSPITAL
 FULTON COUNTY MEDICAL CENTER
 GEISINGER MEDICAL CENTER
 GUTHRIE TOWANDA MEMORIAL HOSPITAL
 HAHNEMANN UNIVERSITY HOSPITAL
 INDIANA REGIONAL MEDICAL CENTER
 J.C. BLAIR HOSPITAL
 LEHIGH VALLEY HOSPITAL
 LEHIGH VALLEY HOSPITAL HAZLETON
 LOCK HAVEN HOSPITAL
 MAIN LINE HOSPITAL LANKENAU
 MEADVILLE MEDICAL CENTER
 MERCY FITZGERALD HOSPITAL
 MERCY PHILADELPHIA HOSPITAL
 MILTON S. HERSHEY MEDICAL CENTER
 PENN HIGHLANDS CLEARFIELD HOSPITAL
 PENN HIGHLANDS DUBOIS
 PENN PRESBYTERIAN MEDICAL CENTER
 PENNSYLVANIA HOSPITAL
 PUNXSUTAWNEY AREA HOSPITAL
 READING HOSPITAL
 SOLDIERS AND SAILORS MEMORIAL HOSPITAL
 ST. LUKE'S HOSPITAL OF BETHLEHEM
 TEMPLE UNIVERSITY HOSPITAL
 THOMAS JEFFERSON UNIVERSITY HOSPITAL
 TITUSVILLE AREA HOSPITAL
 UNIVERSITY OF PENNSYLVANIA HOSPITAL
 UPMC ALTOONA
 UPMC BEDFORD
 UPMC HAMOT
 UPMC JAMESON
 UPMC MAGEE WOMEN'S HOSPITAL
 UPMC MERCY
 UPMC PRESBYTERIAN SHADYSIDE
 VALLEY FORGE MEDICAL CENTER & HOSPITAL
 WAYNE MEMORIAL HOSPITAL
 WEST VIRGINIA UNIVERSITY HOSPITAL
 WPAHS ALLEGHENY GENERAL HOSPITAL
 WPAHS WESTERN PENNSYLVANIA HOSPITAL
 YORK HOSPITAL

Public Comment

Interested persons are invited to submit written comments regarding these payments to the Department of Human Services, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

TERESA D. MILLER,
Secretary

Fiscal Note: 14-NOT-1369. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 19-1562. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF HUMAN SERVICES

Managed Care Assessment Program

The Department of Human Services (Department) is providing final notice of an adjustment to the managed care assessment fixed fee effective January 1, 2020. The Department published notice of its intent to adjust the managed care assessment fixed fee to \$24.95 per member per month effective January 1, 2020, at 49 Pa.B. 3412 (June 29, 2019). The Department received no comments during the 30-day comment period and will implement the change as described in the notice of intent.

Fiscal Impact

The Department estimates that the annual aggregate fiscal impact of this change in Fiscal Year 2019-2020 will be an additional \$177.291 million in assessment revenue.

TERESA D. MILLER,
Secretary

Fiscal Note: 14-NOT-1368. (1) General Fund;

(7) Medical Assistance—Capitation; (2) Implementing Year 2019-20 is \$172,290,000; (3) 1st Succeeding Year 2020-21 through 5th Succeeding Year 2024-25 are \$344,581,000; (4) 2018-19 Program—\$3,303,000,000; 2017-18 Program—\$3,106,000,000; 2016-17 Program—\$3,657,000,000;

(7) Medical Assistance—Community HealthChoices; (2) Implementing Year 2019-20 is \$4,066,000; (3) 1st Succeeding Year 2020-21 through 5th Succeeding Year 2024-25 are \$8,131,000; (4) 2018-19 Program—\$693,766,000; 2017-18 Program—\$0; 2016-17 Program—\$0;

(7) CHIP; (2) Implementing Year 2019-20 is \$935,000; (3) 1st Succeeding Year 2020-21 through 5th Succeeding Year 2024-25 are \$1,870,000; (4) 2018-19 Program—\$12,725,000; 2017-18 Program—\$10,674,000; 2016-17 Program—\$9,453,000;

(8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 19-1563. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Public Comment on the Proposed Vocational Rehabilitation Services Portion of the Commonwealth's Workforce Innovation and Opportunity Act Combined State Plan for 2020—2024

The Department of Labor and Industry (Department), Office of Vocational Rehabilitation (OVR) announces a period of public comment on its proposed Federal Fiscal Year 2020 Combined State Plan (Plan) for 2020—2024. The Plan is the blueprint for the provision of Vocational Rehabilitation (VR) services to persons with disabilities in this Commonwealth. This notice is provided under the Rehabilitation Act of 1973, as amended in the Workforce Innovation and Opportunity Act (WIOA) of 2014.

Every 4 years, OVR is required to develop and implement its VR Services Portion as part of the Commonwealth's WIOA Plan. The current WIOA Plan is in effect from July 1, 2016, to June 30, 2020, and is a compliance document on file with the United States Department of Education, Rehabilitation Services Administration and United States Department of Labor. In addition, OVR must obtain public input prior to the submission of the VR Services Portion of the Plan under 34 CFR 361.20 (relating to public participation requirements). Public meetings are being held throughout this Commonwealth in all OVR district office locations. "Public meeting" means a gathering of people in a physical or virtual (as in the case of videoconference or teleconference) location to gather valuable input from individuals with disabilities, community rehabilitation programs and other stakeholders.

This comment period provides individuals, advocates and other interested parties or organizations, or both, opportunities to present their views and recommendations regarding VR services for persons with disabilities. In this Commonwealth, these services are provided by OVR through a network of 21 district offices and the Hiram G. Andrews Center. Comments are being solicited regarding the following:

- Input and recommendations of the Pennsylvania Rehabilitation Council.
- Coordination with education officials.
- Coordination with employers.
- Statewide assessment.
- Comprehensive system of personnel development.
- Annual estimate of individuals to be served and costs of services.
- OVR's goals and priorities.
- Order of selection.
- Goals and plans for distribution of Title VI funds.
- Supported employment services.
- Innovation and expansion activities.

In addition, the agency's Bureau of Blindness and Visual Services (BBVS) will accept public comment on:

- The Business Enterprise Program.
- Specialized services for children and adults.
- Independent living services for older persons who are blind.

The OVR public meetings will be held concurrently in each OVR district office on Thursday, November 7, 2019, from 1 p.m. to 2:30 p.m., and then repeated from 5 p.m. to 6:30 p.m. A list of the OVR district offices and contact information is provided. The duplicate sessions are intended to allow more flexibility for public participation. It is not necessary to attend both sessions. For those unable to attend in person, a conference line is available:

Date: 11/07/19
Time: 1—2:30 p.m.
Line: (800) 260-0712
Access Code: 472711

Date: 11/07/19
Time: 5—6:30 p.m.
Line: (800) 260-0712
Access Code: 472712

All meeting sites are accessible and interpreters for people who are deaf or hard of hearing will be available.

For additional information, reasonable accommodation requests or alternative format requests, call the OVR district office conducting the public meeting you wish to attend. Written comments may be submitted by mail to the appropriate district office serving the area in which the individual/organization member resides or by e-mail to OVRFeedback@pa.gov.

All written comments must be received no later than 5 p.m. on Tuesday, November 12, 2019.

To obtain a copy of the proposed 2020—2024 VR Portion of the Plan visit OVR's web site at www.dli.pa.gov/ovr and click on Publications.

Additionally, a copy of the WIOA Plan for 2016—2020 is available at <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/state-plans/index.html>.

OFFICE OF VOCATIONAL REHABILITATION DISTRICT OFFICE

STATE PLAN MEETING INFORMATION

Allentown BVRs District Office
(Carbon, Lehigh, Monroe and Northampton Counties)
45 North Fourth Street
Allentown, PA 18102
(800) 922-9536 (Voice), (888) 377-9207 (TTY)
Contact Person: Susan Storm (610) 821-6441

Altoona BBVS District Office
(Bedford, Blair, Centre, Clinton, Columbia, Fulton, Huntingdon, Juniata, Lycoming, Mifflin, Montour, Northumberland, Snyder, Somerset and Union Counties)
1130 12th Avenue
Fourth Floor Conference Room
Altoona, PA 16601
(866) 695-7673 (Voice), (844) 242-1060 (TTY)
Contact Person: Anne Strollo (814) 946-7330

Altoona BVRs District Office
(Bedford, Blair, Centre, Fulton and Huntingdon Counties)
1130 12th Avenue
Fourth Floor Conference Room
Altoona, PA 16601
(800) 442-6343 (Voice), (814) 414-4707 (Video Phone)
Contact Person: Colleen Woodring (814) 946-7240

DuBois BVRs District Office
(Cameron, Clearfield, Elk, Jefferson and McKean Counties)
199 Beaver Drive
DuBois, PA 15801
(800) 922-4017 (Voice), (814) 371-7505 (TTY)
Contact Person: Christina Palmer (814) 371-7340

Erie BBVS District Office
(Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Potter, Venango and Warren Counties)
4200 Lovell Place
Erie, PA 16503
(866) 521-5073 (Voice), (888) 884-5513 (TTY)
Contact Person: Dawn Sokol (814) 871-4401

Erie BVRs District Office
(Clarion, Crawford, Erie, Forest, Mercer, Venango and Warren Counties)
3200 Lovell Place
Erie, PA 16503
(800) 541-0721 (Voice), (888) 217-1710 (TTY), (814) 240-2477 (Video Phone)
Contact Person: Jack Hewitt (814) 871-4551

Harrisburg BBVS District Office
 (Adams, Cumberland, Dauphin, Franklin, Lancaster,
 Lebanon, Perry and York Counties)
 Forum Place
 8th Floor
 555 Walnut Street
 Harrisburg, PA 17101
 (866) 375-8264 (Voice), (888) 575-9420 (TTY)
 Contact Person: Nicole Wade (717) 787-7500

Harrisburg BVRs District Office
 (Cumberland, Dauphin, Juniata, Lebanon, Mifflin and
 Perry Counties)
 Forum Place
 8th Floor
 555 Walnut Street
 Harrisburg, PA 17101
 (800) 442-6352 (Voice), (877) 497-6545 (TTY)
 Contact Person: Tracie Maille (717) 787-7834

Johnstown BVRs District Office
 (Cambria, Indiana, Somerset and Westmoreland Coun-
 ties)
 Hiram G. Andrews Center
 Seminar Theater
 727 Goucher Street
 Johnstown, PA 15905
 (800) 762-4223 (Voice), (814) 255-5510 (TTY)
 Contact Person: Margie Duranko (814) 255-6771

New Castle BVRs District Office
 (Armstrong, Beaver, Butler and Lawrence Counties)
 1745 Frew Mill Road
 Suite 1
 New Castle, PA 16101
 (800) 442-6379 (Voice), (888) 870-4476 (TTY)
 Contact Person: Gail Steck (724) 656-3070

Norristown BVRs District Office
 (Bucks, Chester, Delaware and Montgomery Counties)
 1875 New Hope Street
 Norristown, PA 19401
 (800) 221-1042 (Voice), (888) 616-0470 (TTY)
 Contact Person: Stephanie Perry (484) 250-4340

Philadelphia BBVS District Office
 (Bucks, Chester, Delaware, Montgomery and Philadelphia
 Counties)
 801 Market Street
 Suite 6034
 Philadelphia, PA 19107
 (866) 631-3892 (Voice)
 Contact Person: Alexander Shay (215) 560-5700

Philadelphia BVRs District Office
 (Philadelphia County)
 801 Market Street
 Suite 6034
 Philadelphia, PA 19107
 (800) 442-6381 (Voice)
 Contact Person: Shari Brightful (215) 560-1900

Pittsburgh BBVS District Office
 (Allegheny, Armstrong, Beaver, Butler, Fayette, Greene,
 Indiana, Washington and Westmoreland Counties)
 531 Penn Avenue
 Pittsburgh, PA 15222
 (866) 412-4072 (Voice), (888) 870-4474 (TTY)
 Contact Person: Lawrence Shock (412) 565-5240

Pittsburgh BVRs District Office
 (Allegheny County)
 531 Penn Avenue
 Pittsburgh, PA 15222
 (800) 442-6371 (Voice), (888) 870-4474 (TTY)
 Contact Person: Marci Katona (412) 392-4950

Reading BVRs District Office
 (Berks and Schuylkill Counties)
 3602 Kutztown Road
 Suite 200
 Reading, PA 19605
 (800) 442-0949 (Voice), (484) 334-4494 (Video Phone)
 Contact Person: Carole Homolash (610) 621-5800

Washington BVRs District Office
 (Fayette, Greene and Washington Counties)
 201 West Wheeling Street
 Washington, PA 15301
 (800) 442-6367 (Voice), (866) 752-6163 (TTY), (724)
 705-0341 (Video Phone)
 Contact Person: Darla Openbrier (724) 223-4430

Wilkes-Barre BBVS District Office
 (Berks, Bradford, Carbon, Lackawanna, Lehigh, Luzerne,
 Monroe, Northampton, Pike, Schuylkill, Sullivan, Sus-
 quehanna, Tioga, Wayne and Wyoming Counties)
 8 West Market Street
 Suite 200
 Wilkes-Barre, PA 18701
 (866) 227-4163 (Voice), (570) 820-4848 (TTY)
 Contact Person: Maureen Taylor (570) 826-2361

Wilkes-Barre BVRs District Office
 (Bradford, Columbia, Lackawanna, Luzerne, Pike, Sulli-
 van, Susquehanna, Wayne and Wyoming Counties)
 8 West Market Street
 Suite 200
 Wilkes-Barre, PA 18701
 (800) 634-2060 (Voice), (570) 820-4848 (TTY)
 Contact Person: Heather Nelson (570) 826-2011

Williamsport BVRs District Office
 (Clinton, Lycoming, Montour, Northumberland, Potter,
 Snyder, Tioga and Union Counties)
 The Grit Building
 Suite 102
 208 West 3rd Street
 Williamsport, PA 17701
 (800) 442-6359 (Voice), (800) 654-5984 (TTY)
 Contact Person: Susan Swartz (570) 327-3600

York BVRs District Office
 (Adams, Franklin, Lancaster and York Counties)
 2550 Kingston Road
 Suite 101
 York, PA 17402
 (800) 762-6306 (Voice), (717) 666-7301 (Video Phone)
 Contact Person: Susan Richeson (717) 771-4407

Hiram G. Andrews Center
 727 Goucher Street
 Seminar Theater
 Johnstown, PA 15905
 (800) 762-4211 (Voice), (814) 225-5873 (TTY)
 Contact Person: Jill Moriconi (814) 225-8200

W. GERARD OLEKSIK,
 Secretary

[Pa.B. Doc. No. 19-1564. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Ghostly Green Fast Play Lottery Game 5069; Change to Game Rules; Amended Notice

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 changes to the Pennsylvania Ghostly Green Fast Play lottery game rules that were published at 49 Pa.B. 5661 (September 28, 2019).

The Pennsylvania Lottery intends to clarify the operation of the Howl-O-Ween Second-Chance Drawing. The Pennsylvania Lottery has determined that additional clarification is required for the Entry Doubler Prize and for the iLottery Bonus Money awarded as part of the Second-Chance Drawing. The correct version of this document is as follows, with ellipses referring to the existing text as it appeared at 49 Pa.B. 5661—5667:

* * * * *

9. *Second-Chance Drawing*: Pennsylvania Lottery’s Howl-O-Ween Second-Chance Drawing for qualifying Fast Play lottery game tickets (hereafter, the “Drawing”).

(a) *Qualifying Tickets*: Non-winning PA-5068 Pumpkin Patch Payout (\$5) and PA-5069 Ghostly Green (\$1) Fast Play lottery game tickets (“Qualifying Tickets”) are eligible for entry in the Drawing.

(b) *Participation and entry*:

(1) Entrants must be members of the Pennsylvania Lottery VIP Players Club to participate in the Drawing. To join the VIP Players Club, visit <http://www.palottery.state.pa.us/vipplayersclub/login.aspx>. Becoming a VIP Players Club member is free.

(2) To enter the Drawing, entrants must submit the identifying information from at least one Qualifying Ticket via the Drawing’s promotional web site, available at <http://www.palottery.com>, or the Pennsylvania Lottery’s official mobile application during the entry period. The identifying information from a Qualifying Ticket may be submitted only once in the Drawing. Entries will automatically be awarded at the time of successful submission of a Qualifying Ticket. No other method of submission will be accepted. Entries submitted using any other method, including entries mailed or hand-delivered to the Pennsylvania Lottery, are not valid and will be disqualified.

(3) Each entry must be complete and the information supplied by the entrant must be accurate. Incomplete entries cannot be accepted.

(4) Only one claimant per entry allowed.

(5) Entrants must be 18 years of age or older.

(6) Players may submit the identifying information from an unlimited number of Qualifying Tickets in the Drawing.

(7) Once an entry has been submitted it cannot be withdrawn or changed.

(c) *Drawing description*:

(1) The Lottery will conduct one Howl-O-Ween Second-Chance Drawing for qualifying Fast Play lottery game tickets. All time references are Eastern Prevailing Time.

(2) All entries received after 11:59:59 p.m. September 30, 2019, through 11:59:59 p.m. November 7, 2019, will be entered into the Drawing to be held between November 8, 2019 and November 20, 2019.

(3) The entry period for the Drawing will be posted to the Pennsylvania Lottery’s publicly accessible web site.

(4) When a Qualifying Ticket is entered into the Drawing, the entry has a chance to be multiplied by two (hereafter the “Entry Doubler Prize”). Each Qualifying Ticket will have a predetermined ticket file assigned at the time the ticket is printed that will determine whether an entry will be multiplied. If an entry is multiplied, the entrant will be notified during the entry process.

(5) The number of entries an entrant will receive for the Drawing is determined by the purchase price of the Qualifying Ticket entered and the Entry Doubler Prize, if applicable. The respective purchase price and corresponding number of entries for the Qualifying Ticket is as follows: PA-5068 Pumpkin Patch Payout (\$5) = five entries, PA-5069 Ghostly Green (\$1) = one entry.

(6) Players may review prizes won and their entries for the Drawing via the Drawing’s promotional web site.

(d) *Prizes available to be won, determination of winners, and odds of winning*:

(1) The prize entitlements described below are subject to all restrictions and limitations described in section 9(e), or mentioned anywhere else in these rules.

(2) The following table sets forth the approximate number of Entry Doubler Prizes and the approximate odds of winning an Entry Doubler Prize:

<i>Qualifying Tickets:</i>	<i>Approximate Number of Entry Doubler Prizes</i>	<i>Approximate Odds of Winning a 2x Multiplier Are 1 In:</i>
Pumpkin Patch Payout	85,565	20
Ghostly Green	364,340	5

(3) The Lottery will conduct one Drawing from among all the entries received during the entry period as described in section 9(c)(2).

(i) The first and the second entries selected in the Drawing will be a winning entry and the entrants who submitted the winning entry shall each be entitled to a prize of \$31,000, less required income tax withholding.

(ii) The third through the sixth entries selected in the Drawing will be a winning entry and the entrants who

submitted the winning entry shall each be entitled to a prize of \$1,000.

(iii) The seventh through the thirty-seventh entries selected in the Drawing will be winning entries and the entrants who submitted the winning entries shall each be entitled to a prize of \$500.

(iv) The thirty-eighth through the eighty-seventh entries selected in the Drawing will be winning entries and

the entrants who submitted the winning entries shall each be entitled to a prize of \$100 iLottery Bonus Money.

(4) All prizes will be paid as lump-sum cash payments or uploaded to a winning player's Lottery Account.

(5) Winners of iLottery Bonus Money are not required to claim a prize. Winners of iLottery Bonus Money will have the iLottery Bonus Money credited to their Lottery Account and will receive an email notifying them that they won a prize.

(6) The number of winning entries to be selected for the Drawing will be posted to the Pennsylvania Lottery's publicly accessible web site.

(7) The odds of winning in the Drawing depend upon the number of entries received for the Drawing.

(8) A computer-generated randomizer will be used to select the Drawing winners.

(e) *Drawing restrictions:*

(1) To be eligible to participate in the Drawing, entrants must have complied with the requirements of these rules.

(2) The Lottery is not responsible for late, lost or misdirected entries not entered into the Drawing. The Lottery is not responsible for entries that are not entered into the Drawing because of incompatible internet browsers, mobile lottery application failure or other technical issues. If an entry is selected as a winner and rejected or otherwise disqualified during or following the Drawing, the Lottery will select another entry to replace the rejected or otherwise disqualified entry in accordance with these rules and Lottery procedure.

(3) If any discrepancy exists between these rules and any material describing the Drawing, these rules shall govern.

(4) Employees of the Pennsylvania Lottery, MARC USA, Scientific Games International Inc., MDI Entertainment, LLC, and their subcontractors, or a spouse, child, brother, sister or parent residing as a member of the same household in the principle place of residence of any such person are not eligible to participate in the Drawing. Offer void where prohibited or restricted.

(5) The Pennsylvania Lottery reserves the right, in its sole discretion, to cancel or suspend the Drawing and change these rules if the Drawing cannot be conducted as planned due to errors in these rules or advertising, unauthorized intervention, tampering, fraud, technical errors, viruses, worms, bugs, or any other cause beyond the control of the Pennsylvania Lottery that, in the Pennsylvania Lottery's sole judgment, could corrupt or impair the administration, security, fairness, integrity, or proper conduct of the Drawing.

(6) All entries shall be subject to verification by the Pennsylvania Lottery.

(7) The Pennsylvania Lottery reserves the right, in its sole discretion, to disqualify an entrant found to be tampering with the operation of the Drawing or to be acting in violation of these rules or applicable law.

(8) The Drawing is governed by the laws of the Commonwealth of Pennsylvania. Applicable laws and regulations apply.

(9) Prizes must be claimed within 1 year of the drawing date of the drawing in which the prize was won. If no claim is made within 1 year of the drawing date of the drawing in which the prize was won, the right of an entrant to claim the prize won, if any, will expire and the

prize money will be paid into the State Lottery Fund and used for purposes provided by statute.

(10) Final determination of winners will be made by the Secretary, whose judgment will be final and binding.

(11) A prize awarded in the Drawing to a person who dies before receiving the prize shall be paid according to 61 Pa. Code § 811.16 (relating to prizes payable after death of a prize winner).

(12) A winner is responsible for all taxes arising from or in connection with any prize won.

(13) A player may only win the prize for which the player is first selected in the Drawing. Subsequent entries, from the same individual, selected in the Drawing will be disqualified and a replacement entry will be selected.

(14) Winners of iLottery Bonus Money must abide by the iLottery Terms and Conditions, the iLottery Bonus Policy and these rules. iLottery Bonus Money will expire 90 days from the date on which the winner was notified, via email, of the prize win, as further detailed in section 9(d)(5). iLottery Bonus Money has a five times play through requirement in order to convert the iLottery Bonus Money into cash. For example, if a player wins \$100 of iLottery Bonus Money, the player is required to place \$500 in wagers before the iLottery Bonus Money awarded is converted into cash, which may be withdrawn from the player's Lottery Account.

(15) Prizes are not transferrable.

(16) Other restrictions may apply.

* * * * *

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 19-1565. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Pumpkin Patch Payout Fast Play Lottery Game 5068; Change to Game Rules; Amended Notice

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 changes to the Pennsylvania Pumpkin Patch Payout Fast Play lottery game rules that were published at 49 Pa.B. 5667 (September 28, 2019).

The Pennsylvania Lottery intends to clarify the operation of the Howl-O-Ween Second-Chance Drawing. The Pennsylvania Lottery has determined that additional clarification is required for the Entry Doubler Prize and for the iLottery Bonus Money awarded as part of the Second-Chance Drawing. The correct version of this document is as follows, with ellipses referring to the existing text as it appeared at 49 Pa.B. 5667—5673:

* * * * *

9. *Second-Chance Drawing:* Pennsylvania Lottery's Howl-O-Ween Second-Chance Drawing for qualifying Fast Play lottery game tickets (hereafter, the "Drawing").

(a) *Qualifying Tickets:* Non-winning PA-5068 Pumpkin Patch Payout (\$5) and PA-5069 Ghostly Green (\$1) Fast

Play lottery game tickets (“Qualifying Tickets”) are eligible for entry in the Drawing.

(b) *Participation and entry:*

(1) Entrants must be members of the Pennsylvania Lottery VIP Players Club to participate in the Drawing. To join the VIP Players Club, visit <http://www.palottery.state.pa.us/vipplayersclub/login.aspx>. Becoming a VIP Players Club member is free.

(2) To enter the Drawing, entrants must submit the identifying information from at least one Qualifying Ticket via the Drawing’s promotional web site, available at <http://www.palottery.com>, or the Pennsylvania Lottery’s official mobile application during the entry period. The identifying information from a Qualifying Ticket may be submitted only once in the Drawing. Entries will automatically be awarded at the time of successful submission of a Qualifying Ticket. No other method of submission will be accepted. Entries submitted using any other method, including entries mailed or hand-delivered to the Pennsylvania Lottery, are not valid and will be disqualified.

(3) Each entry must be complete and the information supplied by the entrant must be accurate. Incomplete entries cannot be accepted.

(4) Only one claimant per entry allowed.

(5) Entrants must be 18 years of age or older.

(6) Players may submit the identifying information from an unlimited number of Qualifying Tickets in the Drawing.

(7) Once an entry has been submitted it cannot be withdrawn or changed.

(c) *Drawing description:*

(1) The Lottery will conduct one Howl-O-Ween Second-Chance Drawing for qualifying Fast Play lottery game tickets. All time references are Eastern Prevailing Time.

(2) All entries received after 11:59:59 p.m. September 30, 2019, through 11:59:59 p.m. November 7, 2019, will be entered into the Drawing to be held between November 8, 2019 and November 20, 2019.

(3) The entry period for the Drawing will be posted to the Pennsylvania Lottery’s publicly accessible web site.

(4) When a Qualifying Ticket is entered into the Drawing, the entry has a chance to be multiplied by two (hereafter the “Entry Doubler Prize”). Each Qualifying Ticket will have a predetermined ticket file assigned at the time the ticket is printed that will determine whether an entry will be multiplied. If an entry is multiplied, the entrant will be notified during the entry process.

(5) The number of entries an entrant will receive for the Drawing is determined by the purchase price of the Qualifying Ticket entered and the Entry Doubler Prize, if applicable. The respective purchase price and corresponding number of entries for the Qualifying Ticket is as follows: PA-5068 Pumpkin Patch Payout (\$5) = five entries, PA-5069 Ghostly Green (\$1) = one entry.

(6) Players may review prizes won and their entries for the Drawing via the Drawing’s promotional web site.

(d) *Prizes available to be won, determination of winners, and odds of winning:*

(1) The prize entitlements described below are subject to all restrictions and limitations described in section 9(e), or mentioned anywhere else in these rules.

(2) The following table sets forth the approximate number of Entry Doubler Prizes and the approximate odds of winning an Entry Doubler Prize:

<i>Qualifying Tickets:</i>	<i>Approximate Number of Entry Doubler Prizes</i>	<i>Approximate Odds of Winning a 2x Multiplier Are 1 In:</i>
Pumpkin Patch Payout	85,565	20
Ghostly Green	364,340	5

(3) The Lottery will conduct one Drawing from among all the entries received during the entry period as described in section 9(c)(2).

(i) The first and the second entries selected in the Drawing will be a winning entry and the entrants who submitted the winning entry shall each be entitled to a prize of \$31,000, less required income tax withholding.

(ii) The third through the sixth entries selected in the Drawing will be a winning entry and the entrants who submitted the winning entry shall each be entitled to a prize of \$1,000.

(iii) The seventh through the thirty-seventh entries selected in the Drawing will be winning entries and the entrants who submitted the winning entries shall each be entitled to a prize of \$500.

(iv) The thirty-eighth through the eighty-seventh entries selected in the Drawing will be winning entries and the entrants who submitted the winning entries shall each be entitled to a prize of \$100 iLottery Bonus Money.

(4) All prizes will be paid as lump-sum cash payments or uploaded to a winning player’s Lottery Account.

(5) Winners of iLottery Bonus Money are not required to claim a prize. Winners of iLottery Bonus Money will have the iLottery Bonus Money credited to their Lottery Account and will receive an email notifying them that they won a prize.

(6) The number of winning entries to be selected for the Drawing will be posted to the Pennsylvania Lottery’s publicly accessible web site.

(7) The odds of winning in the Drawing depend upon the number of entries received for the Drawing.

(8) A computer-generated randomizer will be used to select the Drawing winners.

(e) *Drawing restrictions:*

(1) To be eligible to participate in the Drawing, entrants must have complied with the requirements of these rules.

(2) The Lottery is not responsible for late, lost or misdirected entries not entered into the Drawing. The Lottery is not responsible for entries that are not entered into the Drawing because of incompatible internet browsers, mobile lottery application failure or other technical

issues. If an entry is selected as a winner and rejected or otherwise disqualified during or following the Drawing, the Lottery will select another entry to replace the rejected or otherwise disqualified entry in accordance with these rules and Lottery procedure.

(3) If any discrepancy exists between these rules and any material describing the Drawing, these rules shall govern.

(4) Employees of the Pennsylvania Lottery, MARC USA, Scientific Games International Inc., MDI Entertainment, LLC, and their subcontractors, or a spouse, child, brother, sister or parent residing as a member of the same household in the principle place of residence of any such person are not eligible to participate in the Drawing. Offer void where prohibited or restricted.

(5) The Pennsylvania Lottery reserves the right, in its sole discretion, to cancel or suspend the Drawing and change these rules if the Drawing cannot be conducted as planned due to errors in these rules or advertising, unauthorized intervention, tampering, fraud, technical errors, viruses, worms, bugs, or any other cause beyond the control of the Pennsylvania Lottery that, in the Pennsylvania Lottery's sole judgment, could corrupt or impair the administration, security, fairness, integrity, or proper conduct of the Drawing.

(6) All entries shall be subject to verification by the Pennsylvania Lottery.

(7) The Pennsylvania Lottery reserves the right, in its sole discretion, to disqualify an entrant found to be tampering with the operation of the Drawing or to be acting in violation of these rules or applicable law.

(8) The Drawing is governed by the laws of the Commonwealth of Pennsylvania. Applicable laws and regulations apply.

(9) Prizes must be claimed within 1 year of the drawing date of the drawing in which the prize was won. If no claim is made within 1 year of the drawing date of the drawing in which the prize was won, the right of an entrant to claim the prize won, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided by statute.

(10) Final determination of winners will be made by the Secretary, whose judgment will be final and binding.

(11) A prize awarded in the Drawing to a person who dies before receiving the prize shall be paid according to 61 Pa. Code § 811.16 (relating to prizes payable after death of a prize winner).

(12) A winner is responsible for all taxes arising from or in connection with any prize won.

(13) A player may only win the prize for which the player is first selected in the Drawing. Subsequent entries, from the same individual, selected in the Drawing will be disqualified and a replacement entry will be selected.

(14) Winners of iLottery Bonus Money must abide by the iLottery Terms and Conditions, the iLottery Bonus Policy and these rules. iLottery Bonus Money will expire 90 days from the date on which the winner was notified, via email, of the prize win, as further detailed in section 9(d)(5). iLottery Bonus Money has a five times play through requirement in order to convert the iLottery Bonus Money into cash. For example, if a player wins \$100 of iLottery Bonus Money, the player is required to place \$500 in wagers before the iLottery Bonus Money

awarded is converted into cash, which may be withdrawn from the player's Lottery Account.

(15) Prizes are not transferrable.

(16) Other restrictions may apply.

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C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 19-1566. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Contemplated Sale of Land No Longer Needed for Transportation Purposes

The Department of Transportation (Department), under the Sale of Transportation Lands Act (71 P.S. §§ 1381.1—1381.3), intends to sell certain land owned by the Department.

The following property is available for sale by the Department.

Richmond Township, Berks County. The parcel contains 1.48 acres of unimproved land located on the southwest corner of State Route 0222 and State Route 0662. The estimated fair market value is \$384,800.

Interested public entities are invited to express their interest in purchasing the site within 30 calendar days from the date of publication of this notice to the Department of Transportation, Engineering District 5-0, Attn: Right-of-Way, 1002 Hamilton Street, Allentown, PA 18101.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 19-1567. Filed for public inspection October 18, 2019, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Green Light—Go: Pennsylvania's Municipal Signal Partnership Program; Invitation to Submit Appli- cations

Under 74 Pa.C.S. Chapter 92 (relating to traffic signals) and 75 Pa.C.S. § 9511(e.1) (relating to allocation of proceeds), the Department of Transportation (Department) established the Green Light—Go: Pennsylvania's Municipal Partnership Program, also known as the Green Light—Go Program. The Green Light—Go Program is a competitive application and reimbursement grant program whereby municipalities and metropolitan or rural planning organizations can request financial assistance for existing traffic signal maintenance and operations activities identified in 75 Pa.C.S. § 9511(e.1).

The act of July 20, 2016 (P.L. 861, No. 101) amended 74 Pa.C.S. Chapter 92, 75 Pa.C.S. §§ 3112 and 3117 (relating to traffic-control signals; and automated red light enforcement systems in certain municipalities) and 75 Pa.C.S. § 9511 and made several changes impacting the Green Light—Go Program. Those amendments in-

clude, inter alia, changes to the definition of a “municipality” under 74 Pa.C.S. § 9201 (relating to definitions) and a change to the local match requirements. A 20% match from grantees is required under 75 Pa.C.S. § 9511(e.1)(4).

During Fiscal Year 2020-2021, it is anticipated approximately \$10 million will be available to municipalities and metropolitan or rural planning organizations for upgrading traffic signals to light-emitting diode technology and intelligent transportation applications, such as autonomous and connected vehicle-related technology, performing regional operations such as retiming, developing special event plans and monitoring traffic signals and for maintaining and operating traffic signals.

Additional information on eligible Green Light—Go Program projects and guidelines can be found on the Department’s Traffic Signal web site at <http://www.dot.state.pa.us/signals/>.

The Department invites municipalities and metropolitan or rural planning organizations to submit electronic applications using the application form at https://www.dotgrants.penndot.gov/GLG/Module/PADOT/BOMO_GLG_Default.aspx. The Department will be accepting Green Light—Go Program applications between October 21, 2019, and January 10, 2020. Prior to application submission, applicants must complete and submit a Pre-Application Project Scoping Form to the appropriate Department Engineering District in accordance with the Green Light—Go Program guidelines. In addition to the electronic application, applicants must update information in the Department’s Traffic Signal Asset Management System as indicated in the Green Light—Go Program guidelines posted on the Department’s Traffic Signal web site.

If municipalities or metropolitan or rural planning organizations are awarded funding, all grant agreements and requests for reimbursement will be processed through the Department’s dotGrants system.

Questions should be directed to Stephen Gault, PE, PTOE, Statewide Traffic Signal Operations Engineer, Bureau of Maintenance and Operations, Department of Transportation, 400 North Street, 6th Floor, Harrisburg, PA 17120, (717) 787-6988, GLG@pa.gov.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 19-1568. Filed for public inspection October 18, 2019, 9:00 a.m.]

LEGISLATIVE REFERENCE BUREAU

Documents Filed But Not Published

The Legislative Reference Bureau (Bureau) accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of *Bulletin*). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection or a statement that no documents have been received. For questions concerning or copies of documents filed, but not published, call (717) 783-1530.

Executive Board

Resolution No. CB-19-003, Dated September 18, 2019. Approves a collective bargaining agreement between the

Commonwealth and the Fraternal Order of Police # 114, Representing the Waterways Conservation Officers unit within the Fish and Boat Commission.

Resolution No. CB-19-004, Dated September 18, 2019. Approves a memorandum of understanding between the Commonwealth and the Fraternal Order of Police # 114, Representing the Assistant Regional Supervisors unit within the Fish and Boat Commission.

Resolution No. CB-19-005, Dated September 18, 2019. Authorizes the Collective Bargaining Agreement between the Commonwealth of Pennsylvania and AFSCME Council 13. The Collective Bargaining Agreement provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2019, through June 30, 2023.

Resolution No. CB-19-006, Dated September 18, 2019. Authorizes the Memorandum of Understanding between the Commonwealth of Pennsylvania and AFSCME. The Memorandum of Understanding provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2019, through June 30, 2023.

Governor’s Office

Management Directive No. 105.1—Allocation and Allotment of Funds, Amended September 20, 2019.

Administrative Circular No. 19-09—Holidays—2020, Dated September 19, 2019.

DUANE M. SEARLE,
Director
Pennsylvania Code and Bulletin

[Pa.B. Doc. No. 19-1569. Filed for public inspection October 18, 2019, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Service

A-2019-3013365. Columbia Gas of Pennsylvania, Inc. Application of Columbia Gas of Pennsylvania, Inc. for approval of the abandonment of natural gas service to one residential customer in Clarion County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before November 4, 2019. Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120, with a copy served on the applicant. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission’s web site at www.puc.pa.gov and at the applicant’s business address.

Applicant: Columbia Gas of Pennsylvania, Inc.

Through and By Counsel: Theodore J. Gallagher, Esquire, Meagan B. Moore, Esquire, 121 Champion Way, Suite 100, Canonsburg, PA 15317; Amy E. Hirakis, Esquire, 800 North Third Street, Suite 204, Harrisburg, PA 17102

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 19-1570. Filed for public inspection October 18, 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. 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 November 4, 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-2019-3013143. Immaculate Home Healthcare Agency, LLC (79 Gridiron Road, Levittown, Bucks County, PA 19057) for the right to transport, as a common carrier, by motor vehicles, persons in paratransit service, between points in the Counties of Adams, Allegheny, Armstrong, Beaver, Bucks, Cameron, Chester, Clearfield, Cumberland, Dauphin, Delaware, Elk, Erie, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Monroe, Montgomery, Northumberland, Perry, Pike, Somerset, Susquehanna, Tioga, Union, Venango, Westmoreland, Wyoming and York, and the City and County of Philadelphia.

A-2019-3013162. JC Allen, LLC (1635 Harrison Street, Philadelphia, Philadelphia County, PA 19124) for the right to begin to transport, as a common carrier, by motor vehicles, persons in paratransit service, from points in the City and County of Philadelphia to correctional facilities in Pennsylvania, and return.

A-2019-3013294. Hernandez Transportation, LLC (817 Van Reed Road, Wyomissing, Berks County, PA 19610) persons in paratransit service, restricted to transportation for mobility challenged people, utilizing wheelchair and stretcher vans, between points in the Counties of Berks, Carbon, Lehigh, Northampton and Schuylkill.

A-2019-3013330. Colonial Liberty Cab Co., LLC, t/a Colonial Liberty Limo (1902 Johnson Road, Plymouth Meeting, PA 19462) persons in group and party service, in vehicles seating 11 to 15 passengers, including the driver, between points in the Counties of Bucks, Chester, Delaware and Montgomery.

A-2019-3013335. Lucky Driver, LLC (9728 Walley Avenue, Philadelphia, PA 19115) persons in limousine service, between points in the Counties of Bucks, Chester, Delaware and Montgomery.

A-2019-3013376. Taxi El Chapin, LLC (409 Chester-ville Road, Landenberg, Chester County, PA 19350) for the right to begin to transport, as a common carrier, by motor vehicle, persons in call or demand service, between points in Chester County.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 19-1571. Filed for public inspection October 18, 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 November 4, 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. Kensington Capital Group, LLC; Docket No. C-2019-3012582

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 Kensington Capital Group, LLC, (respondent) is under suspension effective August 21, 2019 for failure to maintain evidence of insurance on file with this Commission.
2. That respondent maintains a principal place of business at 5200 Hilltop Drive M-13, Brookhaven, PA 19015.
3. That respondent was issued a Certificate of Public Convenience by this Commission on March 25, 2019, at A-6221492.
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-6221492 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: 9/3/2019

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. 19-1572. Filed for public inspection October 18, 2019, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule

Public Meeting held
October 3, 2019

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; David W. Sweet, Vice Chairperson; Andrew G. Place; John F. Coleman, Jr.

*Universal Service and Energy Conservation Plan
(USECP) Filing Schedule and Independent Evaluation
Filing Schedule; M-2019-3012601*

Order

By the Commission:

With this Order, the Public Utility Commission (Commission) hereby implements a pilot universal service and energy conservation plan (USECP) filing schedule and universal service impact evaluation filing schedule. This pilot supersedes the existing filing schedules and extends the duration of USECPs from three (3) years to five (5) years. The changes were informed as part of, *inter alia*, (1) the Commission's ongoing broader review of the effectiveness of residential universal service programs and policies; and (2) best practices identified through the Commission's review of utility-specific triennial USECPs.

I. Introduction

"Universal service and energy conservation" is a collective term for the "policies, protections and services that help low-income customers^[1] to maintain service" as mandated by the Electric Competition Act and the Gas Competition Act.² The four universal service programs are: (1) Customer Assistance Programs (CAPs),³ which may provide discounted pricing, arrearage forgiveness, and/or other benefits for enrolled low-income residential customers; (2) Low Income Usage Reduction Programs (LIURPs),⁴ which provide weatherization and usage reduction services to help customers reduce their energy utility bills; (3) Customer Assistance and Referral Evaluation Services (CARES), which provide information and referral services for low-income, special needs customers; and (4) Hardship Fund programs, which provide grants to help customers address utility debt, restore service, or stop a service termination. Electric distribution companies (EDCs) and natural gas distribution companies (NGDCs) are required to offer these universal service programs in each distribution territory⁵ and to submit updated USECPs every three years for Commission approval.⁶ Independent impact evaluations are due every six years.⁷

¹ A low-income customer is one with a household income at or below 150% of the Federal Poverty Income Guidelines (FPIG).

² Section 2801 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801–2816 (1997), and Section 2202 of the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201–2212 (1999), (respectively Electric Competition Act and Natural Gas Competition Act; collectively Competition Acts).

³ The Commission's CAP Policy Statement at 52 Pa. Code §§ 69.261–69.267 provides guidance for utilities in the operation of CAPs. Additionally, the CAP Policy Statement is being revised at Docket No. M-2019-3012599.

⁴ The Commission's LIURP regulations at 52 Pa. Code §§ 58.1–58.18 provide directions for utilities in the operation of CAPs. A utility may spend up to 20% of its annual LIURP budget on customers having an arrearage and whose household income is at or below 200% of FPIG. See 52 Pa. Code §§ 58.1, 58.2, and 58.10. Additionally, there is an on-going proceeding at Docket No. L-2016-2557886 to revise the LIURP regulations.

⁵ 66 Pa.C.S. §§ 2203(8) (natural gas) and 2804(9) (electric).

⁶ 52 Pa. Code §§ 54.74 (electric) and 62.4 (natural gas).

⁷ 52 Pa. Code §§ 54.76(a-b) (electric) and 62.6(a-b) (natural gas).

In May 2017, the Commission initiated separate proceedings to conduct a comprehensive review of the policies, practices, and procedures of Pennsylvania's universal service programs, including the impact on energy affordability for low-income customers.⁸ Based upon this review, the Commission has identified several opportunities to improve consistency in universal service requirements and to enhance the benefits of these programs. Policy changes related to CAPs are being addressed in the 2019 Amendments to CAP Policy Statement proceeding at Docket No. M-2019-3012599.

Based upon the justifications described herein, the Commission hereby adopts a pilot period with a staggered schedule in which EDC and NGDC USECPs would be effective for five (5) years from the date of Commission approval of a given USECP for approximately one cycle. Third-party impact evaluations would be due approximately one (1) year prior to the next USECP filing.

II. Background

EDCs and NGDCs are directed by 52 Pa. Code § 54.74 and § 62.4, respectively, to file triennial USECPs every three years on a staggered schedule.⁹ They are also directed by 52 Pa. Code § 54.76 and § 62.6, respectively, to file independent third-party impact evaluations every six (6) years. The USECP schedule, due to many factors, including mergers, appeals, and other delays, is no longer effectively staggered among the utilities, and the impact evaluation schedule is no longer coordinated with the USECP intervals. The Commission has previously confirmed an adjusted filing schedule only through May 2020.¹⁰

By ordered entered on May 5, 2017, in the Energy Affordability proceeding at Docket No. M-2017-2587711, the Commission initiated a study of energy affordability for low-income customers in Pennsylvania. By ordered entered on May 10, 2017, in the Review proceeding at Docket No. M-2017-2596907, the Commission initiated a comprehensive review of the universal service and energy conservation model.¹¹ The Commission has indicated its intention to modify its CAP Policy Statement at Docket No. M-2019-3012599 and that a proceeding to address universal service regulations will be commenced at Docket No. L-2019-3012600. Additionally, there is an on-going LIRUP rulemaking at Docket No. L-2016-2557886.

The May 10 Order invited interested parties to provide input on their priorities, concerns, and suggestions for amending and improving any or all aspects of universal service programs. Approximately 65 parties, including EDCs and NGDCs, separately or jointly, filed comments and/or reply comments. In addition, the Commission's Bureau of Consumer Services (BCS) coordinated a stakeholder meeting on September 13-14, 2017, to gather feedback on the previously submitted comments and any other priorities, concerns, or suggested changes pertaining to the universal service programs. Approximately 24

⁸ Energy Affordability for Low-Income Customers at Docket No. M-2017-2587711 (Energy Affordability proceeding) and Review of Universal Service and Energy Conservation Programs at Docket No. M-2017-2596907 (Review proceeding).

⁹ The utilities file and serve their proposed USECPs approximately one year before a new USECP is slated for implementation.

¹⁰ See Secretarial Letter issued June 27, 2014. <http://www.puc.pa.gov/pdocs/1294169.docx>.

¹¹ EDCs that participated were Duquesne Light Co. (Duquesne), Metropolitan Edison Co. (Met-Ed), PECO Energy Co. (PECO Electric), Pennsylvania Electric Co. (Penelec), Pennsylvania Power Co. (Penn Power), PPL Electric Utilities Corp. (PPL), and West Penn Power Co. (WPP). NGDCs that participated were Columbia Gas of Pennsylvania (Columbia), PECO Energy Co. (PECO Gas), National Fuel Gas Distribution Corp. (NFG), Peoples Natural Gas Co. (Peoples), Peoples-Equitable Division (Peoples Equitable), Philadelphia Gas Works (PGW), UGI Utilities Inc.—Gas (nka UGI South), and UGI Penn Natural Gas (nka UGI North).

organizations participated in the stakeholder meetings, either in-person or by telephone.

On March 28, 2018, the Commission issued a Secretarial Letter releasing the Staff Report Summarizing Public Comments, Feedback and Suggestions Regarding Universal Service and Energy Conservation Programs. The Secretarial Letter also established a Universal Service Working Group (USWG) to further explore universal service policies and practices. The USWG has convened four times¹² and discussed, inter alia, revising the USECP filing schedule.

III. USECP and Impact Evaluation Filing Pilot

Each EDC and NGDC is required by regulation to submit an updated USECP every three (3) years detailing, inter alia, a description of its universal service programs, eligibility criteria, a needs assessment, and projected budgets/enrollments over the next three years. Sections 54.74 and 62.4, respectively. The EDCs and NGDCs are also required pursuant to regulation to have an independent third-party conduct an impact evaluation of its universal service programs and provide a report of “findings and recommendations” to the Commission at least once every six years. Sections 54.76(a-b) and 62.6(a-b), respectively.

During the Review proceeding, many utilities and other stakeholders expressed support for extending the USECP review timeframes:

Duquesne, the Energy Association of Pennsylvania (EAP), FirstEnergy, PECO, PGW, and UGI individually recommended making changes to the USECP filing schedule. Suggested filing timeframes ranged from four (4) to six (6) years. Duquesne Comments at 8; EAP Comments at 9; FirstEnergy Comments at 8; PECO Comments at 17-18; PGW Comments at 7-8; and UGI Comments at 6.

EAP and PGW also separately recommended that, if the Commission maintains a three-year filing schedule, a utility should not be required to file its next triennial USECPs until three years after the date of the most recent USECP approval. EAP Comments at 8 and PGW Comments at 7.

Other stakeholders raised additional points in justifying their recommendations to extend the USECP filing schedule, including:

- Needing time for utilities to evaluate a USECP’s effectiveness before proposing a new USECP;
- Having flexibility in implementing pilot programs;
- Noting that the USECP approval process is lengthy and USECP approvals are sometimes delayed past the intended starting date;
- Providing BCS with sufficient time for initial review prior to formal Commission action;
- Changing a utility’s almost constant state of “planning” for the next USECP;
- Allowing USECPs to be effective for a certain time period after approval before resubmitting the next proposed USECP; and
- Per PECO, “reduc[ing] the Commission’s overall workload.”

¹² The USWG met on May 7, 2018, July 18, 2018, September 27, 2018, and February 6, 2019.

PGW Comments at 7-8; PPL Comments at 9; PECO Comments at 17-18; FirstEnergy Comments at 8; UGI Comments at 6; Duquesne Comments at 8; Duquesne Reply Comments at 14; EAP Reply Comments at 12; PGW Reply Comments at 25; PECO Reply Comments at 9-10; and NFG Reply Comments at 6.

Peoples, however, opposed a mandatory lengthening of the period between USECP filings, as the current timeframe allows Peoples to introduce changes to universal service programs on a more frequent basis. Peoples Reply Comments at 8.

The Low Income Advocates¹³ would not object to extending the current triennial USECP review cycle if a more thorough exchange of data and information were part of the process or discoverable in the context of a USECP review. They asserted that expanded due process would become even more important if the Commission were to extend the USECP review cycle to once every four, five, or six years. Low Income Advocates Reply Comments at 20-21.

Discussion

Evaluations of EDC and NGDC USECPs have become much more comprehensive since the triennial review process was first established. Early Commission reviews of USECPs focused primarily on whether a plan had the requisite regulatory and policy elements rather than on how effective they were. Prior to 2010, USECPs were often approved by Commission order without exploring issues on the record or seeking input from entities other than the utility.¹⁴

Current USECP reviews now also focus on, inter alia, the effectiveness of the EDCs’ and NGDCs’ universal service policies and procedures. Issues explored in recent USECP review proceedings have included: CAP outreach and enrollment; CAP application process; energy burdens for CAP participants; CAP payment structures; interplay between CAP and LIHEAP; LIURP eligibility criteria; needs assessment determinations; arrearage forgiveness; tracking of CARES referrals; and Hardship Fund policies and funding. These reviews also address informal complaints that have been received by BCS that may indicate universal service program deficiencies, such as utility policies resulting in unaffordable CAP bills or utility requirements inhibiting program enrollment.

The typical USECP review process can take up to eight months from start to finish, depending on the complexity of the issues raised in the proceeding. A number of situations can arise that could also add additional months to this process. This includes (1) BCS requesting new information or more detailed explanations of issues raised in the Tentative Order or other stakeholder comments;^{15,16} (2) requests for extensions of time to provide

¹³ The Low Income Advocates are the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Tenant Union Representative Network (TURN); and Action Alliance of Senior Citizens of Philadelphia (Action Alliance).

¹⁴ For example, see Dominion Peoples USECP, Docket No. M-00021616 (order entered on September 26, 2002); Met-Ed & Penelec USECP, Docket No. M-00021602 (order entered on May 14, 2002); and Columbia USECP, Docket No. M-00051881 (order entered on January 13, 2006). (The captions for early USECPs did not reflect the applicable duration of the USECPs.)

¹⁵ Proposed USECPs are now routinely served on the Office of Consumer Advocate, the Commission’s Bureau of Investigation and Enforcement, and the low-income advocates, as well as other known stakeholders such as entities that may have participated in the utility’s prior USECP.

¹⁶ For example, see PGW 2014-2016 USECP proceeding at Docket No. M-2013-2366301 (Secretarial Letter issued June 27, 2014); and PPL 2017-2019 USECP proceeding at Docket No. M-2016-2554787 (Secretarial Letter issued May 3, 2017). The Secretarial Letter often provides a new comment/reply comment period to allow parties a chance to respond to any new information provided by the utility.

supplemental information, comments, or reply comments;¹⁷ (3) challenges to compliance filings; (4) petitions for reconsideration of Commission approval of a USECP,¹⁸ and (5) appeals to Commonwealth Court. Due to the length of the approval process and implementation periods, as well as time BCS staff spends on other Commission proceedings/priorities, backlogs in USECP reviews are not uncommon; it can be months after a USECP is filed before BCS can begin its review.¹⁹

We find that a systematic review of utility universal service programs, through the comprehensive and collaborative process described above, is necessary and appropriate. Numerous improvements to universal service policies and procedures have resulted from the Commission's review of USECPs.²⁰ However, conducting such a comprehensive review on a triennial basis can be problematic for a number of reasons, many of which were raised, as noted above, by stakeholders in the Review proceeding.

Extending the period between the filing of proposed USECPs would give a utility the opportunity to measure the impact of program changes implemented as a result of its prior approved USECP. Timing the independent third-party reviews to coordinate with the filing of USECPs would ensure that the reviews are evaluating the appropriate utility program impacts. A utility could use its internal evaluation—as well as findings and recommendations from its third-party impact evaluation—to inform the development of its next proposed USECP. Changes to universal service programs approved or directed through a USECP proceeding can take up to a year to implement, especially if they involve significant system design changes. Due to the triennial USECP filing deadlines, a utility often has to file its new proposed USECP without having the time to evaluate the impact of changes implemented pursuant to the prior approved USECP.

It does not benefit the utilities and other stakeholders, the Commission, or low-income customers if a proposed USECP is not based on analysis of the utility's current universal service policies and practices that have been in place for a sufficient time upon which to base the analysis.

Extending the length of time between USECP reviews or the duration of USECPs does not prohibit an EDC or NGDC from proposing to implement changes to its universal service programs at more frequent intervals. A utility can file and serve a petition to amend its current USECP at any time, regardless of the filing schedule. Such petitions allow the Commission and all stakeholders to focus only on the impact of the proposed program change(s)—rather than a comprehensive review of the utility's entire universal service portfolio—and take significantly less time for the Commission to review and render a decision.

Between USECP filings, interested parties will also have the opportunity to raise concerns and request information from utilities through regularly scheduled Universal Service Advisory Committee (USAC) meetings. USAC meetings can provide regular updates on universal service program performance and encourage constructive dialogue between the utility, low-income advocates, OCA, Commission staff, and other interested parties. Further, USACs could develop metrics and a timeframe for meeting milestones to evaluate the utility's performance during the five-year period between plan submissions.

We acknowledge the validity of the need for enhanced production of utility data in conjunction with longer intervals between USECP proceedings. We encourage the utilities to be as forthcoming and responsive to requests from Commission staff and other stakeholders for universal service data in the USECP proceedings and in USAC processes. We note that improvements to access to universal service data is also being considered in two on-going proceedings: Fully Projected Future Test Year Regulations at Docket No. L-2012-2317273 and Universal Service Reporting Requirements at Docket No. M-2019-3011814.

Accordingly, to evaluate the impact of an extended period between USECP evaluations, the Commission will implement a pilot period during which a utility USECP shall be effective for at least five (5) years from the date of approval.²¹ Due dates for a utility's next proposed USECP and for its independent third-party impact evaluation will be set as part of the USECP approval process.

Resolution: The Commission shall temporarily waive the remaining triennial USECP filing schedule,²² which requires NFG and PGW to file their 2021–2023 USECPs on November 1, 2019,²³ and May 1, 2020, respectively. Eliminating these two USECP filing dates will provide Commission staff with additional time to address the pending USECPs already on file from Peoples,²⁴ PECO,²⁵ and Duquesne²⁶ as well as the addendums due pursuant to pending amendments to the CAP Policy Statement at Docket No. M-2019-3012599.²⁷

The Commission shall also temporarily waive, for the duration of the pilot, the USECP filing timeline in Section 54.74 and the impact evaluation filing timeline for third-party impact evaluations in Section 54.76 for EDCs as well as the USECP filing timeline in Section 62.4 and the impact evaluation filing timeline for third-party impact evaluations in Section 62.2 for NGDCs.

Instead, the Commission shall implement a pilot in which USECPs shall be effective for at least five (5) years after they are approved. Table 1 identifies the filing schedule for proposed USECPs and the impact evaluation filing schedule for this pilot period.²⁸ This schedule shall be posted on the Commission's website.

²¹ While USECPs are currently captioned as having a three-year span, the USECPs do not specify an actual end date; they are effective until a new USECP is approved by the Commission.

²² Established via Secretarial Letter issued June 27, 2014. <http://www.puc.pa.gov/pedocs/1294169.docx>

²³ On July 19, 2019, at Docket No. M-2016-2573847, NFG filed a petition to extend its 2018–2020 USECP through December 31, 2021, and to delay the November 1, 2019, filing date for its next proposed USECP until May 3, 2020.

²⁴ Peoples Proposed 2019–2021 USECP, Docket No. M-2018-3003177 (filed on July 2, 2018).

²⁵ PECO Proposed 2019–2021 USECP, Docket No. M-2018-3005795 (filed on November 1, 2018).

²⁶ Duquesne Proposed 2020–2022 USECP, Docket No. M-2019-3008227 (filed on February 28, 2019).

²⁷ Peoples, PECO, and Duquesne have been encouraged to amend their proposed USECPs, consistent with the pending CAP Policy Statement amendments.

²⁸ The Commission may, however, shorten or lengthen the effective period of USECPs or the interval between impact evaluations, if warranted.

¹⁷ For example, see NFG 2017–2020 USECP proceeding at Docket No. M-2016-2573847. In this proceeding, the Commission granted extensions to the filing of utility supplemental information, the comment period, and the reply comment period via Secretarial Letters issued August 18, 2017, September 18, 2017, and November 15, 2017, respectively.

¹⁸ For example, see NFG 2014–2016 USECP proceeding at Docket No. M-2013-2366232. On June 6, 2014, the Pennsylvania Utility Law Project (PULP) filed a petition for reconsideration of the Commission's final order (entered on May 22, 2014). The petition was followed by comments and/or reply comments from the Department of Public Welfare (nka DHS), NFG, OCA, and PULP. NFG also filed a motion to exclude DPW's comments. The Commission addressed the petition and subsequent filings in an order entered on February 12, 2015.

¹⁹ Additionally, the Law Bureau is involved in many of the USECP review and implementation processes.

²⁰ Many of which are being incorporated into the Commission's amended CAP Policy Statement by virtue of our on-going proceeding at Docket No. M-2019-3012599.

Table 1
USECP and Impact Evaluation²⁹
Filing Schedules 2020—2025

<i>Filing Date</i>	<i>Utility USECPs/Evaluations</i>
3/1/2020	PPL Impact Evaluation ³⁰
9/2/2020	NFG Impact Evaluation ³¹
4/1/2021	NFG 2022—2026 USECP
11/1/2021	PGW 2023—2027 USECP
4/1/2022	PPL 2023—2027 USECP
11/1/2022	FirstEnergy 2024—2028 USECP
4/1/2023	Columbia 2024—2028 USECP
11/1/2023	Peoples 2025—2029 USECP, Duquesne Impact Evaluation
4/1/2024	PECO 2025—2029 USECP, UGI Impact Evaluation
11/1/2024	Duquesne 2026—2030 USECP
4/1/2025	UGI 2026—2030 USECP

As part of the USECP approval process based on this filing schedule, the Commission will set deadlines for the filing of each utility's next proposed USECP and third-party universal service impact evaluation.³² An existing USECP will remain in effect until a new one is approved and implemented.

EDCs and NGDCs have been directed to file addendums to their existing and pending proposed USECPs (if applicable) indicating how (with timelines) they will comply with the CAP Policy Statement amendments adopted at Docket No. M-2019-3012599. The addendums are due within 60 days of the entry date of the order at Docket No. M-2019-3012599. As part of their compliance with this scheduling Order, utilities are directed to provide enrollment and budgetary projections based on any additional years added to their current USECPs and pending proposed USECPs (if applicable) consistent with the filing schedule in Table 1. These two compliance requirements should be included as part of the USECP addendum, which is due within 60 days of the entry date of the order in the CAP Policy Statement docket.³³

V. Conclusion

Consistent with the above discussion, EDCs and NGDCs are directed to file proposed USECPs and impact evaluations pursuant to the pilot filing schedule in Table 1.

Having addressed the USECP and impact evaluation schedule aspects as presented by utilities and other stakeholders in the Review proceeding, we note that any issue, comment, or reply comment requesting a further change to the USECP and impact evaluation filing schedules or USECP review process, but which we may not have specifically delineated herein, shall be deemed to have been duly considered and denied at this time

²⁹ With the exception of the 2020 universal service impact evaluations of PPL and NFG, which are currently ongoing, the Commission finds it reasonable to delay further impact evaluation filings until late 2023 so that the impact of any changes the utilities make to their CAPs as a result of Docket No. M-2019-3012599 can be measured and evaluated.

³⁰ PPL's impact evaluation filing deadline of March 1, 2020, was established via Secretarial Letter issued on February 28, 2019, at Docket No. M-2016-2554787.

³¹ NFG's impact evaluation filing deadline of September 2, 2020, was established via Secretarial Letter issued on January 10, 2019, at Docket No. M-2016-2573847.

³² The third-party impact evaluations will be due approximately one year prior to a utility filing its next proposed USECP. With the extended time between USECP reviews, these evaluations should provide a useful assessment of the impacts of any changes implemented since the prior USECP review.

³³ USECPs should include customer outreach and education plans as an appendix/attachment, as described in Docket No. M-2019-3012599.

without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); see also, generally, *U. of PA v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984); *Therefore*,

It Is Ordered That:

1. The pilot filing schedule for universal service and energy conservation plans and universal service impact evaluations through 2025 is hereby approved:

USECP and Impact Evaluation
Filing Schedules³⁴ 2020—2025

<i>Filing Date</i>	<i>Utility USECPs/Evaluations</i>
3/1/2020	PPL Impact Evaluation
9/2/2020	NFG Impact Evaluation
4/1/2021	NFG 2022—2026 USECP
11/1/2021	PGW 2023—2027 USECP
4/1/2022	PPL 2023—2027 USECP
11/1/2022	FirstEnergy 2024—2028 USECP
4/1/2023	Columbia 2024—2028 USECP
11/1/2023	Peoples 2025—2029 USECP
11/1/2023	Duquesne Impact Evaluation
4/1/2024	PECO 2025—2029 USECP
4/1/2024	UGI Impact Evaluation
11/1/2024	Duquesne 2026—2030 USECP
4/1/2025	UGI 2026—2030 USECP

2. This Order be served on the following entities:

a. *Natural Gas Distribution Companies:* Columbia Gas of Pennsylvania, PECO Energy Co., National Fuel Gas Distribution Corp., Peoples Natural Gas Co., Peoples-Equitable Division, Philadelphia Gas Works, and UGI Utilities, Inc.

b. *Electric Distribution Companies:* Duquesne Light Co., Metropolitan Edison Co., PECO Energy Co., Pennsylvania Electric Co., Pennsylvania Power Co., PPL Electric Utilities Inc., and West Penn Power Co.

c. *Other Parties of Record:* The Commission's Bureau of Investigation and Enforcement; Office of Consumer Advocate; Office of Small Business Advocate; Industrial Energy Consumers of Pennsylvania; Met-Ed Industrial Users Group; Penelec Industrial Customer Alliance; Penn Power Users Group; Philadelphia Area Industrial Users Group; PP&L Industrial Customer Alliance; West Penn Power Industrial Intervenors; Pennsylvania Utility Law Project; the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania; Energy Association of Pennsylvania; Dollar Energy Fund; Community Legal Services; Community Action Association of Pennsylvania; Tenant Union Representative Network; Commission on Economic Opportunity; Action Alliance of Senior Citizens of Greater Philadelphia; Pennsylvania Department of Community and Economic Development; Utility Emergency Service Fund; Philadelphia Housing Authority; and the Pennsylvania Department of Human Services. Any parties to Docket Nos. M-2017-2587711 and M-2017-2596907 not listed above.

3. Each electric distribution company and natural gas distribution company in Ordering Paragraph No. 2 above

³⁴ The Commission may, however, shorten or lengthen the effective period of USECPs or the interval between impact evaluations, if warranted.

shall file and serve enrollment and budgetary projections based on additional years added to its current USECP and proposed USECP, if applicable, consistent with the filing schedule in Ordering Paragraph No. 1 above. These filings should be included as part of the USECP addendums, which are due 60 days after the entry date of the order amending the CAP Policy Statement at Docket M-2019-3012599.

4. The remainder of the universal service and energy conservation plan and third-party impact evaluation filing schedule, established by Secretarial Letter issued June 27, 2014, is waived.

5. The electric distribution companies and natural gas distribution companies listed in Ordering Paragraph No. 2 are granted temporary partial limited waivers of 52 Pa. Code §§ 54.74, 54.76(a-b), 62.4, and 62.6(a-b) for the purposes of adhering to the 2020–2025 universal service and energy conservation plan and universal services impact evaluation filing schedule in Ordering Paragraph No. 1.

6. The universal service and energy conservation plans filed according to the schedule established in Ordering Paragraph No. 1 shall be effective for at least five years after they are approved, unless otherwise specified by the Commission. Concurrent with approval of a universal service and energy conservation plan, the Commission shall set deadlines for the filing of the next proposed universal service and energy conservation plan and third-party universal service impact evaluation.

7. The universal service and energy conservation plan and universal service impact evaluation schedule designated in Ordering Paragraph No. 1 shall be published on the Commission's website.

8. The Secretary's Bureau shall deposit this Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

9. The contact person regarding policy and technical issues for this proceeding is Joseph Magee, Bureau of Consumer Services, jmagee@pa.gov. The contact person regarding legal issues for this proceeding is Assistant Counsel Louise Fink Smith, Law Bureau, finksmith@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 19-1573. Filed for public inspection October 18, 2019, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September Meeting

As part of its regular business meeting held on September 6, 2019, in Big Flats, NY, the Susquehanna River Basin Commission (Commission) approved the applications of certain water resources projects, and took additional actions, as set forth in the following Supplementary Information.

The business meeting was held on September 6, 2019.

For further information contact Jason E. Oyler, General Counsel and Secretary, (717) 238-0423, Ext. 1312, fax (717) 238-2436, joyler@srbc.net. Regular mail inquiries may be sent to the Susquehanna River Basin Commis-

sion, 4423 North Front Street, Harrisburg, PA 17110-1788. Also see the Commission web site at www.srbc.net.

Supplementary Information

In addition to the actions taken on projects identified in the previous summary and the listings as follows, the following items were also presented or acted upon at the business meeting: (1) informational presentation of interest to the upper Susquehanna River region; (2) proposed rulemaking on consumptive use regulation; (3) approval of three grant agreements; (4) a report on delegated settlements; (5) an emergency certificate extension; (6) Regulatory Program projects; and (7) approval of a settlement with Sunoco Pipeline, LP.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Eagle Rock Utilities Water System, North Union Township, Schuylkill County, PA. Application for groundwater withdrawal of up to 0.163 mgd (30-day average) from Well ER-8.

2. Project Sponsor and Facility: Chief Oil & Gas, LLC (Loyalsock Creek), Forksville Borough, Sullivan County, PA. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20150903).

3. Project Sponsor and Facility: Dillsburg Area Authority, Carroll Township, York County, PA. Application for groundwater withdrawal of up to 0.220 mgd (30-day average) from Well 4.

4. Project Sponsor: Dover Township. Project Facility: Dover Township Water Department, Dover Township, York County, PA. Application for renewal of groundwater withdrawal of up to 0.350 mgd (30-day average) from Well 9 (Docket No. 19880205).

5. Project Sponsor and Facility: Duncannon Borough, Penn Township, Perry County, PA. Application for groundwater withdrawal of up to 0.037 mgd (30-day average) from Well 7.

6. Project Sponsor and Facility: Elk Mountain Ski Resort, Inc. (Unnamed Tributary to East Branch Tunkhannock Creek), Herrick Township, Susquehanna County, PA. Modification to change from peak day to 30-day average for surface water withdrawal and consumptive use limits (Docket No. 20031003).

7. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC. (Loyalsock Creek), Plunketts Creek Township, Lycoming County, PA. Application for surface water withdrawal of up to 2.000 mgd (peak day).

8. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Wappasening Creek), Windham Township, Bradford County, PA. Application for renewal of surface water withdrawal of up to 1.000 mgd (peak day) (Docket No. 20150910).

9. Project Sponsor and Facility: Rockdale Marcellus, LLC (Lycoming Creek), McIntyre Township, Lycoming County, PA. Application for surface water withdrawal of up to 2.000 mgd (peak day).

10. Project Sponsor and Facility: Seneca Resources Company, LLC (Marsh Creek), Delmar Township, Tioga County, PA. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20150908).

11. Project Sponsor and Facility: XTO Energy, Inc. (West Branch Susquehanna River), Chapman Township,

Clinton County, PA. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20150911).

Project Applications Tabled

1. Project Sponsor and Facility: Chester Water Authority, East Nottingham Township, Chester County, PA. Application for an out-of-basin diversion of up to 60.000 mgd (peak day) from the Susquehanna River and Octoraro Reservoir.

2. Project Sponsor and Facility: Pennsylvania State University, College Township, Centre County, PA. Application for renewal of consumptive use of up to 2.622 mgd (peak day) (Docket No. 19890106).

3. Project Sponsor and Facility: Pennsylvania State University, College Township, Centre County, PA. Application for renewal of groundwater withdrawal of up to 1.728 mgd (30-day average) from Well UN-33 (Docket No. 19890106).

4. Project Sponsor and Facility: Pennsylvania State University, College Township, Centre County, PA. Applica-

tion for renewal of groundwater withdrawal of up to 1.678 mgd (30-day average) from Well UN-34 (Docket No. 19890106).

5. Project Sponsor and Facility: Pennsylvania State University, College Township, Centre County, PA. Application for renewal of groundwater withdrawal of up to 1.728 mgd (30-day average) from Well UN-35 (Docket No. 19890106).

6. Project Sponsor and Facility: Chester Water Authority, East Nottingham Township, Chester County, PA. Application for an out-of-basin diversion of up to 60.000 mgd (peak day) from the Susquehanna River and Octoraro Reservoir.

Authority: Pub.L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808

Dated: September 12, 2019

ANDREW D. DEHOFF,
Executive Director

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Part II

This part contains the
State Horse Racing Commission's
Temporary Regulations Rulemaking



RULES AND REGULATIONS

Title 7—AGRICULTURE

STATE HORSE RACING COMMISSION

[7 PA. CODE CHS. 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 301, 303, 305, 307, 401, 403, 405 AND 407]

State Horse Racing Commission; Temporary Regulations

The State Horse Racing Commission (Commission), as established and reconfigured under authority set forth in 3 Pa.C.S. §§ 9311(a), (e) and (h)(3) and 9312 (relating to State Horse Racing Commission; and additional powers of commission) hereby adopts the following temporary regulations to facilitate the implementation of the act of October 28, 2016 (P.L. 913, No. 114) (act) (3 Pa.C.S. §§ 9301—9374 (relating to Race Horse Industry Reform Act)). These temporary regulations shall expressly supersede and replace existing regulations of the former State Horse Racing Commission and the former State Harness Racing Commission set forth in 58 Pa. Code, Parts IV and V (relating to Horse Racing Commission; and Harness Racing Commission). However, to the extent these temporary regulations do not cover or address a particular aspect of racing, the regulations in 58 Pa. Code, Parts IV and V shall control. The Commission will thereafter replace these temporary regulations with permanent regulations promulgated in accordance with the act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law (CDL) (45 P.S. §§ 1101—1208), the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506) and the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act (71 P.S. §§ 745.1—745.15).

These temporary regulations are necessary for the Commission to continue its statutory jurisdiction and oversight over all pari-mutuel racing and wagering activities conducted within this Commonwealth thereby carrying out its legislative mandate to enhance the integrity of the industry, protect the health, safety and welfare of the horse and participants and to protect the interests of the general betting public.

Furthermore, these temporary regulations are necessary to update and modernize the existing “rules of racing” and bring them into uniformity and consistency with surrounding racing jurisdictions in the Mid-Atlantic region. To that end, the Commission utilized, as a general regulatory template, the Model Rules of Racing adopted by the Association of Racing Commissioners International, the Rules and Regulations of the United States Trotting Association and, where appropriate, provisions of the Commission’s existing regulations at 58 Pa. Code, Parts IV and V.

Explanation of Temporary Rulemaking

The Commission’s temporary regulations will be codified in 7 Pa. Code (relating to Agriculture) as Part VIII (relating to State Horse Racing Commission). Specifically, Subpart A (relating to general provisions) contains Chapters 171—179. This subpart provides defined terms, general guidance as to the form, function and operations of the Commission, the standardbred and thoroughbred

racing offices and contains the rules of practice and procedure for administrative hearings.

Subpart B (relating to licensing) focuses primarily on the standards for licensing and the application process for those racetrack facilities conducting racing operations and for individuals engaged in their occupational racing activities within this Commonwealth. Specifically, Subpart B contains Chapters 181—189.

Subpart C (relating to pari-mutuel wagering) focuses on the general conduct, methodology and various types of pari-mutuel wagering activities offered by racetrack operators, secondary pari-mutuel organizations and racing vendors to the general public both inside and outside of this Commonwealth. Specifically, Subpart C contains Chapters 191—199.

Subpart D (relating to Standardbred Rules of Racing (Harness)) includes Chapters 201 contains general provisions; Chapter 203 contains specific licensing provisions, duties and responsibilities of Standardbred owner, trainers, drivers and other licensees; and Chapter 205 contains the rules associated with and governing the actual conduct of live harness racing.

Subpart E (relating to Thoroughbred Rules of Racing (Horse)) includes Chapter 301 contains general provisions; Chapter 303 contains specific licensing provisions, duties and responsibilities of Thoroughbred owners, trainers, jockeys and other licensees; Chapter 305 contains the rules associated with and governing the actual conduct of live Thoroughbred racing; and Chapter 307 governs the provisions relating to the Thoroughbred breeding program with the Commonwealth.

Subpart F (relating to foreign substances, medications, drugs and equine veterinary practices) pertains to the detection, confirmation and prevention of the use of illegal drugs. It also includes chapters implementing practices and procedures governing the lawful and proper use of equine medications by veterinarians and other licensed individuals to ensure the health and welfare of racehorses. Subpart F contains Chapters 401—407.

Regulatory Review

Section 9311(h) of 3 Pa.C.S. provides the Commission authority to adopt and publish temporary regulations to implement the provisions and purposes of the act.

In accordance with 3 Pa.C.S. § 9311(h)(3) (relating to temporary regulations), the Commission may adopt temporary regulations that are exempt from and not subject to sections 201—205 of the CDL (45 P.S. §§ 1201—1205), sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P.S. §§ 732-204(b) and 732-301(10)) or the Regulatory Review Act. To facilitate the prompt implementation of the act, regulations promulgated by the Commission shall be deemed temporary regulations which shall not expire for a period of 3 years following publication.

Under 3 Pa.C.S. § 9311(h)(4) of the act, the Commission’s authority to promulgate these and other temporary regulations will expire 3 years after the effective date of the act.

While this rulemaking will be effective upon publication, the Commission invites interested persons to submit written comments regarding the temporary regulations to Jorge M. Augusto, Assistant Counsel, Department of

Agriculture, Room 201, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 787-8744.

Findings

The Commission finds that:

(1) Under 3 Pa.C.S. § 9311(h) of the act, the temporary regulations are exempt from the requirements of the Regulatory Review Act and sections 201—205 of the CDL.

(2) The adoption of the temporary regulations provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

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

(a) The Commission by order issued at its September 24, 2019, Commission meeting, acting under the authority of the act, approves and adopts these temporary regulations as set forth in Annex A. These temporary regulations govern the general administrative practice and procedure before the Commission and specific provisions relating to Commission operations, licensing, medication/drug enforcement, pari-mutuel wagering and applicable rules of racing for the Standardbred and Thoroughbred breeds.

(b) The following temporary regulations of the Commission are adopted at 7 Pa. Code, Part VIII: Chapters 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 301, 303, 305, 307, 401, 403, 405 and 407 by adding §§ 171.1—171.5, 173.1—173.12, 175.1—175.8, 177.1—177.8, 179.1—179.18, 179.21—179.43, 179.51—179.73, 179.91—179.98, 179.101—179.106, 181.1—181.19, 181.21, 181.31—181.41, 181.51—181.62, 181.71—181.78, 183.1—183.9, 185.1—185.20, 187.1—187.9, 189.1—189.3, 189.11—189.17, 189.21—189.24, 189.31—189.36, 191.1, 191.2, 193.1—193.15, 195.1—195.4, 197.1—197.4, 199.1—199.10, 201.1—201.4, 203.1—203.5, 203.11—203.17, 203.21—203.32, 203.51, 203.52, 203.71—203.75, 203.91, 203.101, 203.102, 203.111—203.113, 205.1—205.9, 205.21—205.26, 205.31—205.37, 205.51—205.63, 205.71, 205.91, 205.101, 205.111—205.113, 205.121—205.124, 205.131, 205.151, 205.171—205.173, 205.191, 205.201—205.205, 205.211—205.218, 205.221—205.231, 205.251, 205.252, 205.271—205.287, 205.301—205.305, 205.311—205.332, 205.351, 205.371—205.389, 205.401—205.422, 205.431—205.436, 205.451—205.464, 205.471, 205.501—205.510, 301.1, 301.2, 303.1—303.22, 303.31—303.38, 303.51—303.53, 303.71—303.73, 305.1—305.4, 305.11—305.18, 305.31—305.36, 305.51—305.63, 305.71—305.74, 305.91, 305.101, 305.111, 305.121, 305.131—305.135, 305.151, 305.152, 305.171, 305.191—305.193, 305.201—305.203, 305.221, 305.222, 305.231—305.243, 305.251—305.257, 305.271—305.299, 305.301—305.303, 305.401—305.412, 307.1—307.6, 401.1—401.6, 401.11—401.17, 401.21—401.29, 401.41—401.47, 401.51—401.53, 401.61, 401.62, 403.1—403.18, 405.1—405.9 and 407.1—407.8 as set forth in Annex A.

(c) These temporary regulations are effective upon publication in the *Pennsylvania Bulletin*.

(d) These temporary regulations shall be posted in their entirety on the Department of Agriculture, State Horse Racing Commission web site.

(e) These temporary regulations shall be subject to amendment as deemed necessary by the Commission in accordance with the purpose of the act and to further the intent and administration of the act.

(f) The Chairperson of the Commission shall certify the preceding order and deposit these temporary regulations with the Legislative Reference Bureau as required by law.

RUSSELL C. REDDING,
Chairperson

Pennsylvania State Horse Racing Commission

Fiscal Note: 127-1. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VIII. STATE HORSE RACING COMMISSION

Subpart

- A. GENERAL PROVISIONS
- B. LICENSING
- C. PARI-MUTUEL WAGERING
- D. STANDARDBRED RULES OF RACING (HARNESS)
- E. THOROUGHBRED RULES OF RACING (HORSE)
- F. FOREIGN SUBSTANCES, MEDICATIONS, DRUGS AND EQUINE VETERINARY PRACTICES

Subpart A. GENERAL PROVISIONS

Chap.

- 171. PRELIMINARY PROVISIONS—TEMPORARY REGULATIONS
- 173. COMMISSION OPERATIONS AND ORGANIZATION—TEMPORARY REGULATIONS
- 175. BUREAU OF STANDARDBRED HORSE RACING—TEMPORARY REGULATIONS
- 177. BUREAU OF THOROUGHBRED HORSE RACING—TEMPORARY REGULATIONS
- 179. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE—TEMPORARY REGULATIONS

CHAPTER 171. PRELIMINARY PROVISIONS—TEMPORARY REGULATIONS

Sec.

- 171.1. Purpose.
- 171.2. Construction of the regulations.
- 171.3. Jurisdiction.
- 171.4. General powers of the Commission.
- 171.5. General definitions.

§ 171.1. Purpose.

The purpose of this part is to facilitate the implementation of the Race Horse Industry Reform Act (act of October 28, 2016) (P.L. 913, No. 114), 3 Pa.C.S. §§ 9301—9374 (relating to race horse industry reform).

§ 171.2. Construction of the regulations.

(a) The Commission's regulations shall be liberally construed to secure the just, speedy and efficient determination of every action, proceeding or issue presented to which it is applicable. The Commission or its presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of a party.

(b) The Commission or its presiding officer at any stage of an action or proceeding may waive or temporarily suspend a requirement of this part when necessary or appropriate, if the waiver or temporary suspension does not adversely affect a substantive right of a party.

(c) These liberal construction provisions apply with particularity in proceedings involving pro se litigants.

(d) Section (a) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

§ 171.3. Jurisdiction.

(a) The General Assembly has declared that the Commission has exclusive jurisdiction and regulatory authority over all racing related matters within the scope of its powers under the Race Horse Industry Reform Act (act of October 28, 2016) (P.L. 913, No. 114), 3 Pa.C.S. §§ 9301—9374 (relating to race horse industry reform).

(b) The sport of horse racing, including pari-mutuel wagering and racing activities is heavily regulated and nothing contained in this part shall be construed to limit the powers, authority and duties of the Commission as provided in the act.

§ 171.4. General powers of the Commission.

(a) Under the Race Horse Industry Reform Act (act) (act of October 28, 2016) (P.L. 913, No. 114), 3 Pa.C.S. §§ 9301—9374 (relating to race horse industry reform), the Commission will have the power to supervise all horse race meetings in this Commonwealth at which pari-mutuel wagering and racing activities are conducted. The Commission shall have the power to enact appropriate rules and regulations necessary to effectuate the purposes and provisions of the act and to prevent circumvention or evasion thereof.

(b) The rules of racing, as set forth in this part apply to all persons, whether licensed or not, who conduct horse race meetings, operate pari-mutuel wagering systems within this Commonwealth, conduct business operations associated with horse racing and breeding or who otherwise engage directly or indirectly in pari-mutuel wagering and racing activities within this Commonwealth. All persons shall be charged with knowledge of and be conclusively bound by the provisions hereof.

(c) The rules of racing shall also apply to every participant in or patron of a licensed horse meeting and each shall be charged with notice of and be conclusively bound by the provisions of these regulations.

(d) Each license issued by the Commission is specifically granted upon the condition that the licensee shall accept, observe and obey the rules and regulations of the Commission. All licensees are charged with the responsibility of reporting apparent violations of these rules to the Commission and cooperating in an investigation into the same.

(e) The Commission or its designee may rescind or modify a penalty or decision regarding an infraction of the rules imposed or issued by the Board of Judges or the Board of Stewards and may institute investigative or adjudicative proceedings on the Commission's own motion to properly exercise and discharge its statutory responsibilities.

§ 171.5. General definitions.

(a) The following words and phrases, when used in this part, shall have the following meanings given to them, unless the context clearly indicates otherwise:

Account—An account for account wagering with a specific identifiable record of deposits, wagers and withdrawals established by an account holder and managed by the licensed racing entity or secondary pari-mutuel organization.

Account holder—An individual who successfully completed an application and for whom the licensed racing entity or the secondary pari-mutuel organization has opened an account.

Act—The Race Horse Industry Reform Act (act of October 28, 2016) (P.L. 913, No. 114), 3 Pa.C.S. §§ 9301—9374 (relating to race horse industry reform).

Advance deposit account wagering system—A system by which wagers are debited and payouts are credited to an advance deposit account held by a licensed racing entity or secondary pari-mutuel organization on behalf of a person.

Advance deposit wagering—ADW—A form of gambling on the outcome of horse races in which bettors must fund their account before being allowed to place bets. ADW may be conducted outline or by phone.

Appeal—A request for the Commission or its designee to investigate, consider and review any decisions or rulings of the Board of Stewards or Board of Judges, Bureau Directors or other Commission staff.

Applicant—A person who, on his own behalf or on behalf of another, applies for permission to engage in an act or activity which is regulated under the provisions of this part. If the applicant is a person other than an individual, the Commission shall determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

Arrest—Detaining, holding or taking into custody by police or other law enforcement authorities for the alleged commission of an offense.

Authorized agent—A person licensed by the Commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

Backside area—An area of the racetrack enclosure that is not generally accessible to the public and which includes, but is not limited to, a facility commonly referred to as a barn, paddock enclosure, track kitchen, recreation hall, backside employee quarters and training track and roadways providing access to the area. The term does not include an area of the racetrack enclosure which is generally accessible to the public, including the various buildings commonly referred to as the grandstand or the racing surface and walking ring.

Breakage—The odd cents of redistributions to be made on contributions to pari-mutuel pools exceeding a sum equal to the next lowest multiple of ten.

Bureau Director—The Director of the Bureau of Standardbred Horse Racing and the Director of the Bureau of Thoroughbred Horse Racing.

Carryover—The non-distributed pool moneys which are retained and added to a corresponding pool in accordance with these rules.

Clean letter of credit—A letter of credit which is available to the beneficiary against presentation of a draft or receipt.

Commission—The State Horse Racing Commission.

Commission staff—Employees of the Commission, under the direct supervision of Bureau Directors, who perform various administrative, licensing, enforcement and investigative duties and functions. This term may include licensing staff, investigative staff or enforcement staff.

Commissioner—An individual appointed to and sworn in as a member of the Commission in accordance with section 9311(b) of the act, 3 Pa.C.S. § 9311(b) (relating to State Horse Racing Commission).

Confidential information—Materials that are not available to the public.

Contest—A competitive racing event on which pari-mutuel wagering is conducted.

Controlled substance—Any substance included in the five classification schedules under section 811 of the Controlled Substance Act of 1970 (21 U.S.C.A. § 811).

Conviction—A finding of guilt or a plea of guilty or nolo contendere, whether or not a judgment of sentence has been imposed as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction that has been expunged or overturned or for which an individual has been pardoned or an order of accelerated rehabilitative disposition.

Department—The Department of Agriculture.

Ejection or refusal of admission—The ejection or refusal of admission by a licensed racing entity or the Commission from the racetrack enclosure or any other area under the jurisdiction of the Commission.

Electronic wagering—A method of placing or transmitting a legal wager by an individual in this Commonwealth through telephone, electromechanical, computerized system or any other form of electronic media approved by the Commission and accepted by a secondary pari-mutuel organization or a licensed racing entity or the licensed racing entity's approved off-track betting system located in this Commonwealth.

Evergreen clause—A term in a letter of credit providing for automatic renewal of the letter of credit.

Ex parte communication—An off-the-record communication engaged in or received by a Commissioner of the Commission regarding the merits of, or any fact in issue relating to, a pending matter before the Commission or which may reasonably be expected to come before the Commission in a contested on-the-record proceeding. The term shall not include:

(1) An off-the-record communication by a Commissioner, the Department of Revenue, Pennsylvania State Police, Attorney General or other law enforcement official, prior to the beginning of the proceeding solely for the purpose of seeking clarification or correction to evidentiary materials intended for use in the proceedings.

(2) A communication between the Commission or a Commissioner and legal counsel.

Exhibition race—A race on which no wagering is permitted or conducted.

Felony—An offense under the laws of the Commonwealth or the laws of another jurisdiction, punishable by imprisonment for more than 5 years.

Final order—One of the following:

(1) An action by the Commission which approves, issues, renews, revokes, suspends, conditions, or denies issuance or renewal of a license.

(2) An action by the Commission which affects personal or property rights, privileges, immunities, duties, liabilities or obligations and disposes of all proper claims by or against parties before the Commission.

(3) An action by the Commission which is designated by the Commission as final.

Financial interest—An ownership, property, leasehold or other beneficial interest in an entity. The term shall not include an interest which is held or deemed to be held in any of the following:

(1) Securities that are held in a pension plan, profit-sharing plan, individual retirement account, tax-sheltered annuity, a plan established under section 457 of the Internal Revenue Code of 1986 (Pub.L. No. 99-514) (26 U.S.C.A. § 457), or any successor provision, deferred compensation plan whether qualified or not qualified under the Internal Revenue Code of 1986, or any successor provision or other retirement plan that:

(i) Is not self-directed by the individual.

(ii) Is advised by an independent investment adviser who has sole authority to make investment decisions with respect to contributions made by the individual to these plans.

(2) A tuition account plan organized and operated under section 529 of the Internal Revenue Code of 1986 (Pub.L. No. 99-514) (26 U.S.C.A. § 529) that is not self-directed by the individual.

(3) A mutual fund where the interest owned by the mutual fund in a licensed racing entity does not constitute a controlling interest as defined in 4 Pa.C.S. § 1103 (relating to definitions).

Forfeit—A specified amount of money due from a licensee because of error, fault, neglect of duty, breach of contract or a penalty imposed by the Board of Judges or the Board of Stewards or the Commission.

Horse race meeting—A specified period and dates each year during which a licensed racing entity is authorized to conduct live racing or pari-mutuel wagering as approved by the Commission.

Horse racing—Standardbred horse racing and thoroughbred horse racing.

Horsemen's organization—A trade association which represents the majority of owners and trainers who own and race horses at a racetrack.

Immediate family—A spouse, parent, brother, sister or child.

Irrevocable clean letter of credit—A clean letter of credit which cannot be canceled or amended unless there is an agreement to cancel or amend among all parties to the letter of credit.

Judges or Stewards—Shall refer to the Board of Judges for the Standardbred racing industry or Board of Stewards for the Thoroughbred racing industry respectively.

Land mile—A unit of distance equal to 1,609.3 meters or 5,280 feet, as measured in a straight line.

Licensed racetrack or racetrack—

(1) The physical facility and grounds for which a person has obtained a license from the Commission to conduct live thoroughbred or standardbred race meetings with pari-mutuel wagering or

(2) The physical land-based location at which live horse racing is conducted, even if not owned by the person.

Licensed racing entity—Any person that has obtained a license to conduct live thoroughbred or harness horse race meetings with pari-mutuel wagering from the Commission.

Licensee—The holder of a license issued under this part.

Nominal change in ownership—The sale, pledge, encumbrance, execution of an option agreement or other transfer of less than 5% of the equity securities or other ownership interest of a person whose percentage ownership does not affect the decisions of the licensed racing entity.

Nonprimary location—Any facility in which pari-mutuel wagering is conducted by a licensed racing entity under this part other than the racetrack where live racing is conducted. Also known as an off-track wagering location.

On-the-record proceedings—A matter that comes before the Commission or its presiding officer by way of applica-

tion, complaint, petition, appeal, decision or other proceeding for which a formal record is created and upon which the Commission bases its order and adjudication.

Ownership interest—Owning or holding, or being deemed to hold, debt or equity securities or other ownership interest or profit interest.

Pari-mutuel wagering—A form of wagering, including manual, electronic, computerized and other forms as approved by the Commission, on the outcome of a horse racing event in which all wagers are pooled and held by a licensed racing entity or secondary pari-mutuel organization for distribution of the total amount, less the deductions authorized by law, to holders of winning tickets.

Person—Any natural person, corporation, foundation, organization, business trust, estate, limited liability company, license corporation, trust, partnership, limited liability partnership, association or any other form of legal business entity.

Primary market area of a racetrack—The land area included in a circle drawn with the racetrack as the center and a radius of 35 land miles.

Principal—Any of the following individuals associated with a partnership, trust association, limited liability company or corporation:

- (1) The chairman and each member of the board of directors of a corporation.
- (2) Each partner of a partnership and each participating member of a limited liability company.
- (3) Each trustee and trust beneficiary of an association.
- (4) The president or chief executive officer and each other officer, manager and employee who has policy-making or fiduciary responsibility within the organization.
- (5) Each stockholder or other individual who owns, holds or controls, either directly or indirectly, 5% or more of stock or financial interest in the collective organization.
- (6) Any employee, agent, guardian, personal representative, lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

Racetrack enclosure—With respect to each licensed racing entity, shall be deemed to include at least one primary racetrack location at which horse race meetings authorized to be conducted, including the grandstand, frontside and backside facilities and all primary, non-primary, contiguous and noncontiguous locations of the licensed racing entity which are specifically approved by the Commission for conducting the pari-mutuel system of wagering on the results of horse racing held at the meetings or race meetings conducted by another licensed racing entity or transmitted to these locations by simulcasting.

Racing vendor—A person who provides goods or services to a licensed racing entity or other licensed racing entity directly related to racing or the racing product, as determined by the Commission.

Secondary market area of a racetrack—The land area included in a circle drawn with the racetrack as the center and a radius of 50 land miles, not including the primary market area of the racetrack.

Secondary pari-mutuel organization—SPMO—A licensed entity, other than a licensed racing entity, that offers and accepts pari-mutuel wagers. A person or entity that provides to a licensed racing entity hardware, soft-

ware, equipment, content or services used to manage, conduct, operate or record pari-mutuel wagering activity by or from residents of this Commonwealth shall not be deemed to be a secondary pari-mutuel organization solely by virtue of the provision of the assets or services.

Simulcast—Live video and audio transmission of a race and pari-mutuel information for the purpose of pari-mutuel wagering at locations other than the racetrack where the race is run.

Standardbred horse racing or harness racing—A form of horse racing in which the horses participating are attached "in harness" to a sulky or other similar vehicle and race at a specific gait, either a trot or pace.

Substantial change in ownership—The sale, pledge, encumbrance, execution of an option agreement or another transfer of 5% or more of the equity securities or other ownership interest of a person whose percentage ownership affects the decisions of the licensed racing entity.

Thoroughbred horse racing—The form of horse racing in which each participating horse is mounted by a jockey, is duly registered with The Jockey Club of New York and engages in horse racing on the flat, which may include a steeplechase or hurdle race.

Totalisator—A computer system used to pool wagers, record sales, calculate payoffs and display wagering data on a display device that is located at a pari-mutuel facility or nonprimary location.

CHAPTER 173. COMMISSION OPERATIONS AND ORGANIZATION—TEMPORARY REGULATIONS

Sec.	
173.1.	Establishment of the Commission.
173.2.	Meetings.
173.3.	Participation at meetings and voting.
173.4.	Delegation of powers.
173.5.	Commission docket.
173.6.	Commission office hours.
173.7.	Contact information and public information.
173.8.	Confidential information.
173.9.	Annual report.
173.10.	Mechanical and electronic records.
173.11.	Adoption of National standards.
173.12.	Reporting violations to the Commission.

§ 173.1. Establishment of the Commission.

(a) Under section 9311 of the act (relating to State Horse Racing Commission), the Commission is established as a Commission within the Department to independently regulate the operations of horse racing, the conduct of pari-mutuel wagering and the promotion and marketing of horse racing in this Commonwealth. The Commission shall consist of nine Commissioners appointed under in accordance with section 9311(b) of the act.

(b) *Term of office.* A Commissioner's term of office shall be governed by the provisions of the act.

(c) *Chairperson.* The Governor shall appoint the Chairperson of the Commission.

§ 173.2. Meetings.

(a) *Public sessions.* The Commission's public meetings shall take place at a location designated by the Chairperson and approved by the Commission and shall be conducted in accordance with 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(b) *Regularly scheduled meetings.* The Commission shall meet at least once a month and at other times as the Chairperson deems necessary. Meetings may be cancelled with appropriate public notice.

(c) *Participation by means of telephone or video teleconference.* A Commissioner may participate in a meeting by means of telephone or video teleconference when it is impractical for the Commissioner to attend the meeting in person.

(d) *Record of proceedings.* The Commission shall cause to be made and shall keep the minutes of the public meetings of the Commission. The Commission shall also make a verbatim transcript of those proceedings which will be the property of the Commission and will be retained for a period to be determined by the Commission in its records retention policy. Copies of verbatim transcript may be obtained directly from the court reporting service.

§ 173.3. Participation at meetings and voting.

(a) *Majority vote.* Except as provided in subsection (b), an action by the Commission to suspend, revoke, or to refuse to renew any license previously issued by the Commission or its staff, to impose a fine or penalty for violation of the rules of racing or to take any other administrative action as deemed necessary and appropriate by the Commission will require a majority vote of all the Commissioners.

(b) *Qualified majority vote.*

(1) *Thoroughbred matters.* A qualified majority vote consisting of the two Commissioners appointed under section 9311(b)(1)(i) and (ii) of the act (relating to State Horse Racing Commission) and as many votes of the remaining voting Commissioners as necessary to constitute a majority of those Commissioners voting shall be required to:

(i) Approve, issue, deny or condition a license to conduct thoroughbred horse race meetings under section 9318 of the act (relating to licenses for horse race meetings).

(ii) Adopt regulations governing thoroughbred horse race meetings under this section.

(iii) Employ a director of the Bureau of Thoroughbred Horse Racing under section 9311(d)(2) of the act.

(2) *Standardbred matters.* A qualified majority vote consisting of the two Commissioners appointed under section 9311(b)(1)(iii) and (iv) of the act and as many votes of the remaining voting Commissioners as necessary to constitute a majority of those Commissioners voting shall be required to:

(i) Approve, issue, deny or condition a license to conduct standardbred horse race meetings under section 9318 of the act.

(ii) Adopt rules and regulations governing standardbred horse race meetings under this section.

(iii) Employ a director of the Bureau of Standardbred Horse Racing under section 9311(d)(2) of the act.

(3) Commissioners appointed under section 9311(b)(1)(i) and (ii) of the act shall be disqualified and must abstain from voting on any Standardbred matter under paragraph (2).

(4) Commissioners appointed under section 9311(b)(1)(iii) and (iv) of the act shall be disqualified and must abstain from voting on any Thoroughbred matter under paragraph (1).

(c) *Participation.* A Commissioner may not participate in a hearing, proceeding or other matter in which the Commissioner or the immediate family thereof, has a financial interest in the subject matter of the hearing or

proceeding or other interest that could be substantially affected by the outcome of the hearing or proceeding, without first fully disclosing the nature of the interest to the Commission and other persons participating in the hearing or proceeding.

(d) *Disqualifying interest.* If a Commissioner has a disqualifying interest in a voting matter, the Commissioner shall disclose the nature of the disqualifying interest, disqualify himself or herself and abstain from voting in a proceeding in which the Commissioner's objectivity, impartiality, integrity or independence of judgment may be reasonably questioned, including instances where the Commissioner knows that the Commissioner possesses a substantial financial interest in the subject matter of the proceeding or an interest that could be substantially affected by the outcome of the proceeding.

(e) *Commissioner abstention.* When disqualified, the Commissioner's abstention from voting will apply only to the singular voting matter that led to the disqualification and not apply to other matters under consideration by the Commission for which the Commissioner is otherwise qualified.

§ 173.4. Delegation of powers.

(a) The Commission may, by simple majority vote and consistent with the act and this part, delegate its authority to perform any of its administrative or adjudicatory functions to a Commissioner, a bureau director, a presiding officer or any other member of the Commission's staff.

(b) A delegation of Commission authority may be effectuated by promulgation of a regulation or the adoption of an order or a resolution at a public meeting of the Commission. The regulation, order or resolution will specify:

(1) The specific authority delegated.

(2) The Commissioner, bureau director or Commission staff member to whom the authority is delegated.

(3) Limitations or conditions imposed on the authority delegated.

(c) Delegations of authority made under this section will remain in effect indefinitely unless otherwise specified in the implementing regulation, order or resolution.

(d) A delegation of authority adopted by the Commission may be modified or rescinded by the Commission through promulgation of a regulation or the adoption of a subsequent order or resolution at a public meeting of the Commission by a simple majority vote.

§ 173.5. Commission docket.

(a) *Administrative Docket.* The Commission shall designate an Administrative Clerk who shall:

(1) Maintain a complete docket of administrative orders, resolutions or directives issued by the Commission.

(2) Maintain all formal records, documents, annual reports and record of meetings proceedings, including verbatim transcripts of the Commission's public meetings as specifically set forth in section 9311 of the act and § 173.2 (relating to meetings).

(b) *Public Records.* By October 1 of each year, the Commission shall post on its internet web site a final report of all the itemized expenses, for the preceding fiscal year, of employees and Commissioners that were or are to be reimbursed from the State Racing Fund. The list shall identify the nature of the expense, the employee, member or the agency and employee of the agency to

which an expense is attributable. Information posted on the internet web site under this subsection shall be considered financial records for the purposes of and subject to redaction under the Right-to-Know Law (65 P.S. §§ 67.101—67.3104).

(1) A request for access to public information will be addressed in accordance with the Right-to-Know Law and in coordination with the Department's Right to Know Officer.

(2) Nonconfidential information in formal records will be available for inspection during normal Commission business hours at the Commission's executive offices.

(c) *Records Retention Policy.* The Commission may adopt a records retention policy consistent with the record retention policies of the Commonwealth, the Department or the Commission may establish and publish its own retention policy in the *Pennsylvania Bulletin*.

§ 173.6. Commission office hours.

The Commission office will be open from 8 a.m. to 4 p.m. on business days except Saturdays, Sundays, legal holidays and Commonwealth office closures declared by the Governor, unless otherwise directed by the Commission.

§ 173.7. Contact information and public information.

Requests for Commission information, documents and administrative matters may be directed to:

Administrative Clerk
 State Horse Racing Commission
 Department of Agriculture Building
 Executive Offices—Room 301
 2301 North Cameron Street
 Harrisburg, PA 17110
 (717) 787-5196
 horseracing@pa.gov

§ 173.8. Confidential information.

Under section 9311(g)(1) of act (relating to State Horse Racing Commission), the following documents and records are designated as confidential.

(1) Information submitted by an applicant or licensee relating to applications, renewals or both, to conduct horse race meetings under sections 9318, 9323 and 9353 of the act (relating to licenses for horse race meetings; occupational licenses for individuals; and license application procedures), including but not limited to electronic wagering applications/petitions, SPMO, Racing Vendor, totalisator applications or any other application or petition designated by the Commission and other information obtained by the Commission as part of a background or other investigation from any source shall be confidential and withheld from public disclosure:

(i) All information relating to character, honesty and integrity, including family, habits, reputation, history of criminal activity, business activities, financial affairs and business, professional and personal associations submitted under sections 9318, 9323 or 9353 of the act or otherwise obtained by the Commission.

(ii) Nonpublic personal information, including home addresses, telephone numbers and other personal contact information, Social Security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed compensation, financial account records, creditworthiness or financial condition relating to an applicant, licensee or permittee or the immediate family thereof.

(iii) Information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies, which may include customer-identifying information or customer prospects for services subject to competition.

(iv) Security information, including risk prevention plans, detection and countermeasures, location of count rooms, emergency management plans, security and surveillance plans, equipment and usage protocols and theft and fraud prevention plans and countermeasures.

(v) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy of any individual as determined by the Commission.

(vi) Records of an applicant or licensee not required to be filed with the Securities and Exchange Commission by issuers that either have securities registered under section 12 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78l) or are required to file reports under section 15(d) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 780).

(vii) Records considered nonpublic matters or information by the Securities and Exchange Commission as provided by 17 CFR 200.80 (relating to Securities and Exchange Commission records and information).

(viii) Financial information or records submitted by the applicant or licensee.

(2) No claim of confidentiality shall be made regarding any criminal history record information that is available to the public under 18 Pa.C.S. § 9121(b) (relating to general regulations).

(3) No claim of confidentiality shall be made regarding any record in possession of the Commission that is otherwise publicly available from a Commonwealth agency, local agency or another jurisdiction.

(4) The information made confidential under this section shall be withheld from public disclosure in whole or in part, except that any confidential information may be released upon the order of a court of competent jurisdiction or, with the approval of the Attorney General, to a duly authorized law enforcement agency or shall be released to the public, in whole or in part, to the extent that the release is requested by an applicant or licensee and does not otherwise contain confidential information about another person.

(5) The Commission may seek a voluntary waiver of confidentiality from an applicant or licensee but may not require any applicant or licensee to waive any confidentiality provided for in this subsection as a condition for the approval of an application, renewal of a license or any other action of the Commission.

(6) No current or former member and no current or former employee, agent or independent contractor of the Commission, who has obtained confidential information in the performance of duties under the act shall intentionally and publicly disclose the information to any person, knowing that the information being disclosed is confidential under this policy, unless the person is authorized by law to receive it.

§ 173.9. Annual report.

The Commission, through the Department, shall issue its annual report in accordance with the provisions of the act. Copies of the annual report shall be posted on the

Commission's web site or available for public inspection during normal office hours at the Commission's executive offices.

§ 173.10. Mechanical and electronic records.

The Commission may prohibit the use of mechanical and electronic recording or video recording devices at its public meetings if the use of the devices will disrupt or otherwise interfere with the orderly conduct of the proceedings.

§ 173.11. Adoption of National standards.

Under section 9312(6) of the act (relating to additional powers of commission), the Commission may adopt by order and publication in the *Pennsylvania Bulletin*, National, State or regional standards from other racing jurisdictions or the Association of Racing Commissioners International, the USTA or similar Commission-approved trade organizations to establish:

- (1) Uniform drug threshold levels.
- (2) Consistent sanctions for drug testing violations.
- (3) A system to monitor advanced deposit wagering and online pari-mutuel wagering company activities.

§ 173.12. Reporting violations to the Commission.

A person licensed by the Commission and properly brought before it, in the course of an investigative, adjudicative or rulemaking proceeding, who may be in possession of information regarding a solicitation, an attempt or a completed act violating the rules of racing, shall promptly report the information to the applicable Board of Stewards, Board of Judges or the Commission. Failure to report the information may result in the imposition of disciplinary action by the Commission.

CHAPTER 175. BUREAU OF STANDARDBRED HORSE RACING—TEMPORARY REGULATIONS

Sec.

- | | |
|--------|--|
| 175.1. | Director of the Bureau of Standardbred Horse Racing. |
| 175.2. | Authority of the Bureau Director. |
| 175.3. | Powers and duties of the Bureau Director. |
| 175.4. | Subpoena powers. |
| 175.5. | Date of filing appeals. |
| 175.6. | Contents of petition for stay. |
| 175.7. | Circumstances affecting grant or denial. |
| 175.8. | Waiver of hearings. |

§ 175.1. Director of the Bureau of Standardbred Horse Racing.

The Commission shall assign the Bureau Director duties and responsibilities as required to fulfill the Commission's statutory obligations under the act specifically related to the Standardbred industry. The Commission may, by order, delegate certain duties and responsibilities to the Bureau Director as the Commission determines necessary to discharge the day-to-day licensing, enforcement and administrative operations of the Commission.

§ 175.2. Authority of the Bureau Director.

(a) The Bureau Director shall have authority to enter and issue the orders of the Commission and to certify copies of papers and documents which are part of the files or records of the Commission.

(b) The Bureau Director, in addition to the powers set forth in this part, shall be responsible for the efficient and orderly discharge of administrative matters including the keeping of Commission records, annual reports, minutes of Commission meetings and the keeping of the dockets, files and other records of the Commission.

§ 175.3. Powers and duties of the Bureau Director.

(a) The Bureau Director shall have the following powers and duties:

(1) Evaluate, review and issue all applicants and applications for a Standardbred horse racing license in accordance with the standards set forth in the act. The Bureau Director shall be prohibited from disclosing any portion of an investigation or evaluation of an applicant to a Commissioner prior to the decision relating to the applicant's suitability for licensure if that determination is to be rendered by the Commission.

(2) Inspect and monitor licensees and other persons regulated under this part for noncriminal violations, including potential violations of racing referred to the Bureau Director and the bureau by the Commission or any other person.

(3) Monitor horse racing operations and racing activities by all licensees to ensure compliance with the act and these regulations.

(4) Inspect, review, examine and investigate licensees, including the physical spaces and facilities in which licensees engage in racing activities, including stalls, barns, administrative offices, front-side, and back-side areas of the licensed racing facility and racetrack enclosure.

(i) The Bureau Director's powers and duties may include the review and reproduction of any document or record.

(ii) Examinations may include the review of accounting, administrative and financial records, management control systems, procedures and other records.

(5) Refer possible criminal violations to law enforcement entities.

(6) Cooperate in the investigation and prosecution of any criminal violation by criminal law enforcement entities.

(7) Begin any racing related investigation as deemed necessary and appropriate under the general jurisdiction of the Commission.

(8) Implement, with the approval of the Commission and publication in the *Pennsylvania Bulletin*, a complete racing penalty matrix to be utilized by the Bureau Director, the Board of Judges or the Commission for violations of the rules of racing and administrative regulations.

(b) Upon the Bureau Director's own motion or upon written request of a licensee, the Bureau Director may review, for consistency and appropriateness, any administrative penalty issued by the Board of Judges. Based upon the Bureau Director's review and analysis of the underlying matter, the Bureau Director may enforce the consistency of penalties imposed by the Board of Judges, up to and including, the dismissal of the underlying ruling, or increasing or decreasing the imposed penalty.

§ 175.4. Subpoena powers.

Under section 9311(d)(3) of the act (relating to State Horse Racing Commission), the Bureau Director or designee, shall have the authority to issue administrative or documentary subpoenas to compel the attendance of witnesses and production of all relevant and material reports, books, papers, documents, correspondence and other evidence related to regulation and enforcement of horse racing matters under the act and these regulations. The procedures for the issuance and enforcement of subpoena powers are governed by Chapter 179 (relating to Rules of Administrative Practice and Procedure—temporary regulations).

§ 175.5. Date of filing appeals.

Appeals from the actions or rulings of the Board of Judges shall be prepared and filed with the Bureau Director in accordance the provisions set forth in §§ 179.3 and 179.7 (relating to filings and appeals; and request for hearing by applicant or licensee). The date of filing of an appeal requesting a hearing shall be the date the written petition or request was physically received and date-stamped in the Executive Offices of the Commission.

§ 175.6. Contents of petition for stay.

(a) In addition to the provisions of § 179.7 (relating to request for hearing by applicant or licensee), a party seeking a stay of an underlying ruling or determination by the Board of Judges or other Commission staff shall comply with the following:

(1) A petition for a stay must be in writing, contain numbered paragraphs and must plead facts with particularity and be supported by affidavits and specific evidence of those facts.

(2) A petition for stay must state with particularity the citations of legal authority the petitioner believes form the basis for the grant of a stay.

(b) A petition for stay may be summarily denied by the Bureau Director for failure to comply with the following reasons:

(1) Lack of particularity of the facts pleaded.

(2) Lack of particularity or inapplicability of the legal authority cited as the basis for the grant of the supersedeas.

(3) Failure to provide an affidavit supporting the facts alleged in the petition.

(4) Failure to state grounds sufficient for the granting of a supersedeas.

§ 175.7. Circumstances affecting grant or denial.

(a) The Bureau Director, in granting or denying a stay, will be guided by prevailing case law and precedent. The factors to be weighed include the following:

(1) The applicant is likely to prevail at the ultimate hearing on the merits;

(2) The applicant will sustain irreparable harm without the stay;

(3) The issuance of the stay will not substantially harm other interested parties in the proceedings.

(4) The issuance of a stay will not adversely affect the public interest.

(b) A stay will not be issued if injury to the health, safety and welfare of a horse, licensee or other racing participant exists or is threatened during the period when the stay would be in effect.

(c) In granting a stay, the Bureau Director may impose specific conditions in the stay that are reasonably warranted by the circumstances.

§ 175.8. Waiver of hearings.

A hearing need not be held if any of the following occurs:

(1) The appellant waives the right to a hearing and elects to proceed under the alternative procedures governing documentary hearings as set forth in Subchapter E (relating to documentary hearings).

(2) The appellant enters into a negotiated resolution of the underlying ruling of the Board of Judges with the Bureau Director.

(3) The Bureau Director determines, after reviewing the appeal and/or stay documents, that there are no material facts in dispute.

(4) Subsections (a)—(c) supersede 1 Pa. Code § 35.101 (relating to waiver of hearing).

CHAPTER 177. BUREAU OF THOROUGHBRED HORSE RACING—TEMPORARY REGULATIONS

Sec.

- 177.1. Director of the Bureau of Thoroughbred Horse Racing.
- 177.2. Authority of the Bureau Director.
- 177.3. Powers and duties of the Bureau Director.
- 177.4. Subpoena powers.
- 177.5. Date of filing appeals.
- 177.6. Contents of petition for stay.
- 177.7. Circumstances affecting grant or denial.
- 177.8. Waiver of hearings.

§ 177.1. Director of the Bureau of Thoroughbred Horse Racing.

The Commission shall assign the Bureau Director duties and responsibilities as required to fulfill the Commission's statutory obligations under the act specifically related to the Thoroughbred industry. The Commission may, by order, delegate certain duties and responsibilities to the Bureau Director as the Commission determines necessary to discharge the day-to-day licensing, enforcement and administrative operations of the Commission.

§ 177.2. Authority of the Bureau Director.

(a) The Bureau Director shall have authority to enter and issue the orders of the Commission and to certify copies of papers and documents which are part of the files or records of the Commission.

(b) The Bureau Director, in addition to the powers set forth in this part, shall be responsible for the efficient and orderly discharge of administrative matters including the keeping of Commission records, annual reports, minutes of Commission meetings and the keeping of the dockets, files and other records of the Commission.

§ 177.3. Powers and duties of the Bureau Director.

(a) The Bureau Director shall have the following powers and duties:

(1) Evaluate, review and issue all applicants and applications for a thoroughbred horse racing license in accordance with the standards set forth in the act. The Bureau Director shall be prohibited from disclosing any portion of an investigation or evaluation of an applicant to a Commissioner prior to the decision relating to the applicant's suitability for licensure if that determination is to be rendered the Commission.

(2) Inspect and monitor licensees and other persons regulated under this part for noncriminal violations, including potential violations of racing referred to the bureau by the Commission or any other person.

(3) Monitor horse racing operations and racing activities by all licensees to ensure compliance with the act and these regulations.

(4) Inspect, review, examine and investigate licensees, including the physical spaces and facilities in which licensees engages in racing activities, including stalls, barns, administrative offices, front-side and back-side areas of the licensed racing facility and racetrack enclosure.

(i) The Bureau Director's powers and duties may include the review and reproduction of any document or record.

(ii) Examinations may include the review of accounting, administrative and financial records, management control systems, procedures and other records.

(5) Refer possible criminal violations to law enforcement entities.

(6) Cooperate in the investigation and prosecution of any criminal violation by criminal law enforcement entities.

(7) Begin any racing related investigation as deemed necessary and appropriate under the general jurisdiction of the Commission.

(8) Implement, with the approval of the Commission and publication in the *Pennsylvania Bulletin*, a complete racing penalty matrix to be utilized by the Director, the Board of Judges or the Commission for violations of the rules of racing and administrative regulations.

(b) Upon the Bureau Director's own motion or upon written request of a licensee, the Bureau Director may review, for consistency and appropriateness, any administrative penalty issued by the Board of Stewards. Based upon the Bureau Director's review and analysis of the underlying matter, the Bureau Director may enforce the consistency of penalties imposed by the Board of Stewards, up to and including, the dismissal of the underlying ruling, or increasing or decreasing the imposed penalty.

§ 177.4. Subpoena powers.

Under section 9311(d)(3) of the act (relating to State Horse Racing Commission), the Bureau Director or designee, shall have the authority to issue administrative or documentary subpoenas to compel the attendance of witnesses and production of all relevant and material reports, books, papers, documents, correspondence and other evidence related to regulation and enforcement of horse racing matters under the act and these regulations. The procedures for the issuance and enforcement of subpoena powers are governed by Chapter 179 (relating to Rules of Administrative Practice and Procedure—temporary regulations).

§ 177.5. Date of filing appeals.

Appeals from the actions or rulings of the Board of Stewards shall be prepared and filed with the Bureau Director in accordance with the provisions set forth in §§ 179.3 and 179.7 (relating to filings and appeals; and request for hearing by applicant or licensee). The date of filing of an appeal or request for hearing shall be the date the written petition or request was physically received and date-stamped in the Executive Offices of the Commission.

§ 177.6. Contents of petition for stay.

(a) In addition to the provisions of § 179.7 (relating to request for hearing by applicant or licensee), a party seeking a stay of an underlying ruling or determination by the Board of Stewards or other Commission staff shall comply with the following:

(1) A petition for a stay must be in writing, contain numbered paragraphs and must plead facts with particularity and be supported by affidavits and specific evidence of those facts.

(2) A petition for stay must state with particularity the citations of legal authority the petitioner believes form the basis for the grant of a stay.

(b) A petition for stay may be summarily denied by the Bureau Director for failure to comply with the following reasons:

(1) Lack of particularity of the facts pleaded.

(2) Lack of particularity or inapplicability of the legal authority cited as the basis for the grant of the supersedeas.

(3) Failure to provide an affidavit supporting the facts alleged in the petition.

(4) Failure to state grounds sufficient for the granting of a supersedeas.

§ 177.7. Circumstances affecting grant or denial.

(a) The Bureau Director, in granting or denying a stay, will be guided by prevailing case law and precedent. The factors to be weighed include the following:

(1) The applicant is likely to prevail at the ultimate hearing on the merits;

(2) The applicant will sustain irreparable harm without the stay;

(3) The issuance of the stay will not substantially harm other interested parties in the proceedings;

(4) The issuance of a stay will not adversely affect the public interest.

(b) A stay will not be issued if injury to the health, safety and welfare of a horse, licensee or other racing participant exists or is threatened during the period when the stay would be in effect.

(c) In granting a stay, the Bureau Director may impose specific conditions in the stay that are reasonably warranted by the circumstances.

§ 177.8. Waiver of hearings.

A hearing need not be held if any of the following occurs:

(1) The appellant waives the right to a hearing and elects to proceed under the alternative procedures governing documentary hearings set forth in Subchapter E (relating to documentary hearings).

(2) The appellant enters in a negotiated resolution of the underlying ruling of the Board of Stewards with the Bureau Director.

(3) The Bureau Director determines, after reviewing the appeal and/or stay documents, that there are no material facts in dispute.

(4) Subsections (a)—(c) supersede 1 Pa. Code § 35.101 (relating to waiver of hearing).

CHAPTER 179. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE—TEMPORARY REGULATIONS

Subchap.

- A. GENERAL PROVISIONS
- B. JUDGES AND STEWARDS HEARINGS
- C. COMMISSION HEARINGS
- D. EJECTION MATTERS EXPEDITED HEARING PROCEDURES
- E. DOCUMENTARY HEARINGS

Subchapter A. GENERAL PROVISIONS

- | | |
|--------|---|
| Sec. | |
| 179.1. | Generally. |
| 179.2. | Definitions. |
| 179.3. | Filings and appeals. |
| 179.4. | Computation of time. |
| 179.5. | Investigation and special procedures. |
| 179.6. | Commission action without prior hearing. |
| 179.7. | Request for hearing by applicant or licensee. |

- 179.8. Commission original action with prior hearing.
- 179.9. Service by the Commission.
- 179.10. Subpoena powers and procedures.
- 179.11. Computation of time.
- 179.12. Extensions of time and continuances.
- 179.13. Complaints and other pleadings.
- 179.14. Answers to complaints, petitions, motions and other filings requiring a response.
- 179.15. Motions to protect confidential information.
- 179.16. Limited discovery.
- 179.17. Intervention.
- 179.18. Offers of settlement.

§ 179.1. Generally.

This chapter governs the practice and procedure before the Commission, its Bureau Directors or other Commission staff authorized to take necessary and appropriate licensing action and is intended to supersede specific provisions of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 179.2. Definitions.

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

Adjudication—An order, decree, decision, determination or ruling by the Commission affecting the personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

Complaint—A written statement of verified allegations submitted by a Bureau Director, Commission staff or other licensed person setting forth the violation of law or of rules and regulations promulgated thereunder.

Documentary evidence—Any document or paper which is presented and accepted as evidence in a proceeding.

Documentary hearing—A proceeding limited to a review of documentary evidence submitted by the parties, including pleadings, documents, affidavits and transcripts.

Electronic mail—A means of dispatching or receiving a submittal in relation to a Commission matter through electronic means.

Formal investigation—A matter initiated by the Commission, the Bureau Directors or Commission staff which results in a formal review of possible violations of the act or the rules and regulations promulgated by the Commission. An investigation may be initiated through or arising from written complaints, oral allegations, anonymous tips, video tape surveillance or other information collected or presented to the Commission.

Hearing—A proceeding, documentary or oral, initiated by the filing of a complaint, petition, motion, ruling of the Board of Judges or Board of Stewards or by order of the Commission.

Hearing Notice—A notice of the time and place of a hearing.

Intervener—A person who petitioned to intervene in a proceeding and has properly demonstrated an effected interest sufficient to create standing in the matter and who has been admitted by the Commission as a participant to the proceeding.

Oral hearing—A proceeding wherein the parties may present sworn testimony, documents or other evidence and of which a verbatim record is made.

Party—A person who is named in or admitted to a proceeding before the Commission and who has a direct interest in the subject matter of the proceeding.

Prehearing conference—A proceeding to establish a schedule, discuss offers of settlement and identify other issues the Commission, the Bureau Directors or presiding officer may direct.

Presiding officer—

(i) A member of the Commission or other person designated by the Commission to conduct a proceeding.

(ii) This definition supersedes 1 Pa. Code § 31.3 (relating to the definitions).

Proceeding—A matter intended to produce a formal record.

Respondent—A person subject to the jurisdiction of the Commission to whom an order or notice is issued by the Commission or Bureau Directors instituting a proceeding or investigation.

Subpoena—

(i) *Administrative subpoena*. An order of the Commission or designee directing a licensee or other person or witness to attend and present testimony and documents at a particular time, place and proceeding;

(ii) *Investigatory subpoena (Duces Tecum)* An order of the Commission or designee compelling a licensee to produce certain records, documents or other things related to an investigation which may be in the possession, custody or control of that person. (This definition supersedes 1 Pa. Code § 35.142 (relating to subpoenas).)

(b) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

§ 179.3. Filings and appeals.

(a) *Initial Appeals*. Appeals from an action of the Judges or Stewards, Bureau Directors or other Commission staff, must comply with the provisions set forth in § 179.7 (relating to request for hearing by applicant or licensee), within the prescribed 10-day time period for appeals and must be physically received and date-stamped by the Commission’s Executive Office by first-class mail or in person at:

State Horse Racing Commission
Docket Clerk
Department of Agriculture Building
Room 301
2301 North Cameron Street
Harrisburg, PA 17110

(1) Whether an appeal is considered timely shall be determined by the date of receipt by the Commission at the previous address and not the date of deposit in the mail system.

(2) No initial appeals shall be accepted by email or facsimile.

(3) The Commission or the Bureau Directors may order redundant, immaterial, impertinent or scandalous matters stricken from documents filed with it.

(b) *Acceptance of Appeal or Stay, or both*. The Bureau Directors or the Commission’s staff shall review the initial appeal request for compliance with § 179.7. A formal ruling granting or denying the appeal or the stay, or both, if properly requested shall be issued under signature of the Bureau Directors as soon as practicable.

(c) *Subsequent Filings*. Once an appeal has been granted and a matter is pending before the Commission, hearing notices shall be generated by and issued from the Hearings and Appeals Clerk, Office of Chief Counsel. All

subsequent correspondence, filings, pleadings or briefs relating to the proceeding filed by the parties shall be filed with the Hearings and Appeals Docket Clerk at the following address in one of the following methods:

(1) *First class mail.* Service may be made by mailing a copy to each party, properly addressed with postage prepaid.

(2) *Personal.* Service may be made personally.

(3) *Electronic.* With the specific authorization of the Commission or the presiding officer and if expedited relief is required, service may be made by either electronic mail or telefacsimile. In either manner, the parties shall specifically identify the type of document, the docket number and a brief description of the document.

Hearings and Appeals Docket Clerk
Office of Chief Counsel
Department of Agriculture Building
Room 201
2301 North Cameron Street
Harrisburg, PA 17110

(d) If a hearing officer has been assigned, all subsequent motions, pleadings, correspondence or requests for continuances shall be filed with the hearing officer and served upon the parties to the proceedings as determined by the hearing officer.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 31.5 (relating to communications and filings generally) and 1 Pa. Code § 31.11 (relating to timely filing required).

§ 179.4. Computation of time.

(a) In computing a period of time prescribed or allowed by the act or this part, the day of the event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which case the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

§ 179.5. Investigation and special procedures.

(a) The Commission, its Bureau Directors or Commission staff shall have the right at any time to initiate, conduct and convene investigatory meetings, interviews or hearings as deemed necessary and appropriate to oversee and regulate the proper administration of the act and the horse racing industry. Notice of the general scope of the inquiry or investigation may be given to the person(s) in the investigatory meetings, interviews or hearings, if disclosure will not compromise the investigatory process.

(b) Except for racing disqualifications and non-disqualifications matters, the Commission shall have the right to supersede the decisions or rulings of the Bureau Directors, its Judges or Stewards or other Commission staff at any time either, upon its own motion or upon written request. The action may be upon an interim or final basis and the Commission may make a partial adjudication and remand the remaining issues to the Bureau Directors, Judges, Stewards and Commission staff or the Commission may assume full and complete jurisdiction for all further purposes as it alone may deem appropriate and necessary.

(c) Where administrative action is to be taken on a license application, or a previously issued license, the

Commission, the Bureau Directors, or Commission staff, may take the necessary action either without a prior hearing being conducted under § 179.6 (relating to Commission action without prior hearing) or with a prior hearing being conducted under § 179.7 (relating to request for hearing by applicant or licensee).

§ 179.6. Commission action without prior hearing.

(a) *New License.* When an application for an occupational license is to be refused by the Bureau Director(s) or Commission staff, the same may be done without prior hearing. Notice of the denial and the specific grounds for the denial, as set forth in section 9323(g) and (g.1) of the act (relating to occupational licenses for individuals), shall be given to the applicant or applicant's attorney, if applicable, at the address set forth in the license application.

(b) *Temporary License.* When a temporary license is to be suspended or revoked by the Bureau Director(s) or Commission staff, after issuance, the same may be done without a prior hearing, provided that the temporary license holder is given notice of the decision immediately and the licensee may demand, within 10 days of the notice, either an oral hearing to be conducted before the Judges/Stewards or a documentary hearing before the specific Bureau Director in accordance with provisions of Subchapter E (relating to documentary hearings).

(c) *Conditional License.* When a licensee, who has entered into a conditional license agreement with the Commission, has engaged in behavior or conduct which is expressly prohibited by the agreement and is of a nature that would warrant an immediate suspension or revocation, the Commission or its Bureau Director shall issue a Rule to Show Cause to the licensee.

(1) Within 10 days from the date of service of the Rule to Show Cause, the person against whom it is directed shall file a verified answer responding to the allegations, showing good cause why the occupational license should not be immediately suspended or revoked based solely upon the provisions of the fully executed conditional license agreement and setting forth whether a hearing is desired.

(2) Averments set forth in the Rule to Show Cause, which are not specifically denied by way of verified answer shall be deemed to have been admitted. Failure to file a proper and timely answer shall constitute a sufficient basis for the entry of a default order.

(3) If the matter proceeds to a hearing on the Rule to Show Cause, the Commission or duly appointed presiding officer will issue a written adjudication and order solely based upon the record.

(d) *Emergency action.* In emergency circumstances or in matters involving the clear and present danger to the integrity of racing, the health, safety and welfare of a racing participant or the health and welfare of a horse, the privilege of a permanent occupational license may be temporarily suspended or revoked by the Bureau Director or Commission staff without a prior hearing. Except that, the licensee shall be immediately notified, in writing, of the reasons supporting the emergency license suspension or revocation. In the event of a revocation, the licensee shall, if timely and appropriately requested, receive a hearing within 10 days of the temporary revocation in accordance with section 9323(i) and (j) of the act.

(e) *Content of Notices.* A written notice or Commission ruling relating to action taken without a prior hearing, including a license denial, refusal, conditional license

suspension or and emergency suspension or revocation shall include sufficient detail of the underlying facts as to reasonably inform the applicant or licensee of the basis for the action taken. The notice or ruling shall specifically advise the applicant or licensee of the right to appeal the matter to the Commission. The written notice or ruling shall be served upon the applicant or licensee in accordance with § 179.9 (relating to service by the Commission), except that if service is made by certified mail, the date of mailing will be deemed to be the date of service.

(f) *Failure to use license.* If a person holding a duly issued occupational license shall cease to actively pursue that occupation for a period in excess of 90 days, the license may be temporarily suspended by the Bureau Directors or licensing staff until the holder of the license submits satisfactory evidence of the anticipated resumption of active participation in racing. Instead of providing the information, a licensee may, at any time, surrender any or all occupational licenses previously issued by the Commission.

(g) *Finality.* In the event an applicant or licensee shall not timely or appropriately request a hearing, the matter shall be deemed final and unappealable to the Commission.

(h) Subsections (a)—(g) supersede 1 Pa. Code § 31.13 (relating to issuance of agency orders).

§ 179.7. Request for hearing by applicant or licensee.

(a) *Request for hearing.* A person aggrieved by actions taken by the Bureau Directors, Commission staff without a prior hearing or the actions of the Board of Judges or Board of Stewards, may appeal the action to the Commission. The appeal and request for a hearing must be made in writing to the respective Bureau Director and must be filed in accordance with the provisions of § 179.3(a) (relating to filings and appeals). A request for a hearing not properly filed shall be denied.

(1) The written request shall be sworn to before a notary public and shall set forth in numbered paragraphs a concise statement of all the factual and legal grounds upon which the hearing is requested.

(2) The hearing, if granted, shall be limited to matters or issues expressly set forth in the written appeal. All matters not expressly set forth in the initial appeal request shall be deemed waived.

(b) *Timeliness.* A request for a hearing, to be considered timely, must actually be received in the Commission's Administrative Office in Harrisburg and date-stamped within 10 days from the written or oral notice of the decision or ruling, license denial, suspension or revocation in accordance with § 179.3. Any appeal not filed in accordance with these provisions may be deemed incomplete, untimely or improperly filed and shall be denied.

(c) *Appeal bond.*

(1) *Purpose.* The posting of an appeal bond is designed to ensure that appellants engage in a thoughtful and accurate assessment of the underlying merits of their matter prior to requesting an administrative hearing before the Commission. The Commission finds that many appellants file appeals simply to delay the imposition of the ultimate penalty and, in many instances, withdraw their respective appeals at the very last minute or fail to appear at a duly scheduled hearing after the Commission has undertaken expenses associated with scheduling and conducting the hearing.

(2) *Amount.* In addition to all other requirements to timely and properly appeal decisions, determinations and rulings by the Board of Judges or Board of Stewards, Bureau Directors or Commission staff, all appellants must submit an appeal bond in the amount of \$750, in the form of a check or money order, along with their written request for a hearing or stay, or both. The amount of the appeal bond may be modified by the Commission and published in the *Pennsylvania Bulletin*.

(i) No appeal or request for a hearing shall be considered without the submission of the applicable appeal bond.

(ii) The appeal or request for a hearing shall be rescinded if the check upon which the appeal bond is written is dishonored.

(iii) No cash may be used as the appeal bond.

(3) *Forfeiture of bond.* The Bureau Directors or the Commission may withhold the appeal bond, either in whole or in part, if:

(i) The Commission expressly makes a finding and determination in its written adjudication that the underlying appeal was frivolous or without any factual or legal foundation.

(ii) Appellant fails (without due cause shown) to appear at the duly scheduled hearing, notwithstanding receipt of proper notice of the hearing.

(iii) Appellant withdraws or settles the appeal 3 days prior to the scheduled hearing date.

(d) *Payment of fines.* An appeal or request for a hearing from an underlying action or ruling shall not relieve the person of the requirement to pay the issued fine. If the appeal is disposed of in favor of the appellant, the Commission shall refund the amount of the fine.

(e) *Request for stay.* The underlying action or ruling to deny a license, suspend or revoke a license shall remain in full force and effect pending the final determination on the hearing demanded unless a party has requested and received a stay. Applications for a stay shall conform to the standards set forth in §§ 175.6 and 177.6 (relating to contents of petition for stay) of the Commission's regulations.

(1) If the underlying actions or determinations were taken by the Bureau Director, the request for a stay shall be ruled upon by the Commission or designee under the applicable standards for granting the relief.

(2) If the underlying actions were taken by Commission staff, the request for a stay shall be ruled upon by the respective Bureau Director, who for good cause shown, may grant a stay of the action or ruling until the final determination by the Commission in accordance with the applicable standards for granting the relief requested.

(3) The decision to grant or refuse a request for a stay shall be based upon a balancing of the pertinent facts sworn to by applicant and upon the sound discretion of the specific Bureau Director to whom the application is addressed.

§ 179.8. Commission original action with prior hearing.

(a) Upon receipt of a complaint filed under § 179.13 (relating to complaints and other pleadings) or upon its independent investigation or any other information the Commission may deem sufficient, the Commission may begin original action against a licensee. Prior to the original action taking effect, the Commission shall pro-

vide the licensee a written Notice of Violation and Proposed Administrative Penalties setting forth the applicable violations of the rules of racing, the applicable findings of fact and underlying administrative authority. The Notice of Violation shall also inform the licensee of the opportunity to request a hearing in the matter. A request for a hearing shall comply with § 179.7 (relating to request for hearing by applicant or licensee).

(b) Where a hearing is to be scheduled under any section of this chapter, the notice of hearing shall be served upon the parties at least 10 days prior to the date of the hearing unless the Commission, for cause stated, shall specify a lesser period, or the respondents shall agree to a lesser period or another section of this chapter shall explicitly provide for a hearing upon shorter notice. The notice of hearing shall provide:

- (1) The time, place and nature of the hearing.
- (2) The legal authority and jurisdiction under which the hearing is to be held with specific designation of the statutory or regulatory provisions alleged to have been violated.
- (3) A clear and concise factual statement sufficient to inform each party with reasonable definitiveness of the type of acts or practices alleged to be in violation of the act or regulations promulgated thereunder.

§ 179.9. Service by the Commission.

(a) *Applicability.* This section applies to service of an order, notice, complaint or other similar document originating from the Commission, except when the Commission specifically requires a different form of service.

(b) *Forms of Service.*

(1) *Registered or certified mail.* Service may be made by registered or certified mail, return receipt requested, to the person to be served, addressed to the person designated in the initial pleading, submittal or notice of appearance at the person's residence, principal office or place of business.

(2) *First Class Mail.* If time is of the essence, instead of registered or certified mail, service may be made by regular first-class mail, postage prepaid, to the last known address previously provided by the party to the Commission.

(3) *Personal.* Service may be made personally by anyone authorized by the Commission. Service will be made by personally delivering a copy:

- (i) Directly to the person named in the notice, pleading or order or to an attorney representing said person.
- (ii) At the residence of the person named in the notice, pleading or order, or to an adult member of the family with whom the person named resides. If no adult member of the family is found, then to an adult person in charge of the residence.

(iii) At the licensed facility at which the person named is stabled, employed, licensed in connection therewith or routinely participates in racing at the facility.

(4) *Trainer of Record.* Service may be made upon the trainer of record as agent for and on behalf of the owner of a horse, who shall be solely responsible to notify the owner(s) of any notice, pleading or order. Service upon the trainer of record shall be deemed adequate and reasonable notice to the listed owner.

(5) *Service upon attorneys.* When an attorney enters an appearance under § 179.63 (relating to representation before the Commission) service must be directed to the

attorney in the same manner as prescribed for the client. Service upon the attorney shall be deemed service upon the party.

(c) *Proof of service.* Proof of service shall be evidenced by a return of service filed with the Hearing and Appeals Docket Clerk as set forth in § 179.3 (relating to filings and appeals).

(d) *Subsequent service.* Service of any subsequent document or correspondence in a proceeding may be made by electronic mail or first-class mail, or both, to the last known address previously provided by the party to the Commission.

(e) *Change of address.* It is the duty of a party to apprise the Commission of changes to the party's current address. Failure of a party to maintain an updated address with the Commission shall not be form a basis for an allegation of lack of service.

(f) Subsections (a)—(c) supersede 1 Pa. Code § 33.31 (relating to service by the agency).

§ 179.10. Subpoena powers and procedures.

(a) *Authority.* In accordance with the provisions of the act, the Commission is vested with exclusive jurisdiction and authority to regulate the horse-racing industry, including the operations of horse racing, the conduct of pari-mutuel wagering activities and all licensed persons engaged in pari-mutuel horse racing activities within this Commonwealth. A properly issued investigatory or administrative subpoena issued under the authority of the act is considered an order of the Commission and shall have the same effect of any properly issued order, which may be enforced by the Commission by and through the licensing and enforcement provisions set forth in section 9323 of the act (relating to occupational licenses for individuals).

(b) *Investigatory Subpoena (Duces Tecum).* To effectuate its statutory authority and in furtherance of racing related investigations, the Commission, its Bureau Directors or Commission staff, under section 9312(4) of the act (relating to additional powers of commission), shall have the power to issue investigatory subpoenas necessary for the inspection, investigation and proper review of suspected or actual racing violations and other racing related matters.

(1) The production of documents, records, books, financial records and other documentary information sought by the investigatory subpoena shall be sufficiently limited in scope and purpose to not be unreasonably burdensome and shall be related to the initiation of an investigation or the furtherance of an ongoing investigation regarding suspected or actual violations of the rules of racing and pari-mutuel racing activities within this Commonwealth.

(2) Probable cause is not necessary for the issuance of the investigatory subpoena.

(3) Investigatory subpoenas shall be served in accordance with the provisions set forth in § 179.9 (relating to service by the Commission).

(4) The Commission, Bureau Directors or Commission staff, in the course of an investigation or racing matter, may conduct personal interviews of licensees and take written witness statements under oath from the licensees. They may administer oaths, take testimony and record the proceeding as necessary for the proper conduct of the investigation.

(c) *Form of investigatory subpoena.* The subpoena shall include all of the following:

(1) A brief written statement of the general relevance relating to the initial or ongoing racing-related investigation, the scope of the documentary evidence sought and specify, as nearly as possible, the documents desired and time period associated with the particular investigation.

(2) A notice that a response or objection to the subpoena must be filed with the Commission or the Bureau Director within 20 days of service of the subpoena.

(3) A notice advising of the licensee of potential licensing consequences for failure to timely respond, object or produce the requested documents.

(4) A certificate of service.

(d) *Refusal to comply with investigatory subpoena.* All licensees shall fully comply with a properly issued and served subpoena in accordance with the previous provisions. The Commission, Bureau Director or other designee shall make every reasonable effort to coordinate with the licensee the production and receipt of the required documents. The Commission and the subpoenaed parties may agree to provide documents on an ongoing basis which may be deemed substantial compliance. Any party failing to timely object, respond or produce the requested documents may be subject to a fine, license suspension or any other penalty provided for in the act.

(1) *Show Cause.* If a licensee fails or refuses to comply with the investigatory subpoena, the Commission or Bureau Directors shall issue a Rule to Show Cause directed to the licensee to show good cause for failing or refusing to comply with the properly issued subpoena. The Show Cause hearing shall be conducted in accordance with the hearing provisions set forth in Subchapter C (relating to Commission hearings).

(2) *Penalty.* The Commission shall issue an adjudication and order. Any subsequent licensing action taken by the Commission for failure or refusal to comply with the subpoena, after the show cause hearing, shall be based upon its authority to enforce racing related orders as set forth in section 9323(g.1) of the act.

(3) Subsection (d) supersedes 1 Pa. Code §§ 35.14 (relating to orders to show cause).

(e) *Administrative Subpoena (Ad Testificandum).* Under section 9311(d)(3)(vii) of the act (relating to State Horse Racing Commission), the Bureau Director or presiding officer shall have the power to issue an administrative subpoena to compel the attendance of witnesses and production of relevant, material reports, books, papers, documents, correspondence and other similar evidence at a hearing.

(1) Administrative subpoenas, authorized under the act and this section shall be signed and issued over the seal of the Commission to any party, upon proper written application to the Commission or presiding officer at least 10 days prior to the hearing or proceeding. The written application, shall be set forth in numbered paragraphs, the general relevance, materiality and scope of the testimony of the witness and the documentary evidence sought. Failure to provide adequate grounds for the necessity of the subpoena shall be sufficient reason for the denial of the subpoena. Each party shall be responsible for the service of the requested subpoena.

(2) Witness and mileage fees shall be paid to the witness subpoenaed to appear at a proceeding before the Commission or the presiding officer and shall be paid by the party at whose instance the witness is called at the rate specified by the courts of common pleas.

(3) A proposed subpoena must be attached to the written application for said subpoena addressed to the presiding officer.

(f) *Duty of licensee.* The issuance of a subpoena under this part will not be required to secure the cooperation of a person who is an applicant for or the holder of a license issued by the Commission or to secure the voluntary cooperation of any person.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.139 and 35.142 (relating to fees of witnesses; and subpoenas).

§ 179.11. Computation of time.

(a) In computing a period of time involving the date of the issuance of a ruling or order by the Commission, the Bureau Directors or other Commission staff authorized to issue orders, the day of issuance of an order will be the date the ruling or order is entered. An order will not be made public prior to its entry, except when, in the Commission's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Commission.

(b) The date of issuance of an order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Commission action.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.13 (relating to issuance of agency orders).

§ 179.12. Extensions of time and continuances.

(a) Extensions of time will be governed by the following:

(1) When an act is otherwise required to be done at a specified time or within a specified time, the date or period of time prescribed may be extended by the Commission, for good cause, upon a motion made before expiration of the period originally prescribed. An extension for time to comply with the specified time period after the expiration date shall be at the sole discretion of the Commission.

(2) Written requests for an extension of time in which to file motions, briefs or other pleadings within a proceeding shall be filed at least 5 days before the time fixed for filing the documents unless the Commission or presiding officer, for good cause shown allows a shorter time. Concurrence or denial of extension of time shall be reported to the presiding officer in the request.

(3) Requests for a continuance of a hearing shall be made in writing at least 96 hours prior to the time fixed for hearing to the presiding officer, specifically setting forth the facts upon which the request for continuance rests. An application received by the presiding office within the 96-hour period will not be granted, except upon extreme cause. A verification of the facts shall accompany the written request for continuance. No more than two continuances may be approved to any party.

(b) Subsection (a) supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

§ 179.13. Complaints and other pleadings.

(a) *Pleadings.* Only the following pleadings shall be permitted:

- (1) Complaints.
- (2) Petitions.
- (3) Motions.
- (4) Applications for licensure.

(5) Answers to pleadings.

(b) *Fees.* Fees for copies and other administrative requests, if any, will be in accordance with a fee schedule adopted by the Commission published in the *Pennsylvania Bulletin* and posted on the Commission's web site.

(c) *Complaints.* A person complaining of an act done or failed to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of the statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission.

(1) Complaints may be filed by the Bureau and other persons authorized by the Commission.

(2) With respect to complaints filed against the Commission, no answer need be filed. The issues in the proceeding may be determined by prehearing conference memoranda or as specified by the presiding officer.

(3) Complaints will be served in accordance with § 179.9 (relating to service by the Commission).

(d) *Content of formal complaint.* A formal complaint must set forth the following:

(1) The name, mailing address, telephone number, telefacsimile number and electronic mailing address, if applicable, of the complainant.

(2) If the complainant is represented by an attorney, the name, mailing address, telephone number, telefacsimile number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

(3) The name, mailing address and certificate or license number of the respondent complained against, if known, and the nature and character of its business.

(4) The interest of the complainant in the subject matter—for example, trainer, owner, licensed racing entity, and the like.

(5) A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.

(6) A clear and concise statement of the relief sought.

(7) Except for the documents referenced within § 179.13 (relating to complaints and other pleadings), a document or the material part thereof, must be attached when a claim is based upon that particular document, the material part thereof. A copy of the document or the material part thereof shall be attached to the pleading.

(e) This section supplements 1 Pa. Code §§ 35.9—35.11 (relating to formal complaints).

§ 179.14. Answers to complaints, petitions, motions and other filings requiring a response.

(a) Answers to complaints, petitions, motions and other filings requiring a response and are subject to a proceeding, shall be filed with the Commission or its presiding officer, if applicable, and a copy shall be filed with the Hearings and Appeals Docket Clerk and served upon all other parties within 30 days after the date of service of the complaint, petition, motion or other pleading, unless a different time is prescribed elsewhere in the Commission's regulations.

(b) Failure to file a timely answer to a complaint or petition will constitute an admission of all matters and facts contained in the filing and may result in the waiver of the right to a hearing. This subsection shall not apply to petitions or motions made to the Commission.

(c) Answers may contain the following:

(1) Admissions of the matter complained of and the alleged facts, in whole or in part.

(2) New matter or explanation by way of defense.

(3) Legal objections.

(4) Affirmative defenses.

(5) A request for a hearing.

(d) Answers shall be in writing and shall specifically and in detail admit or deny each allegation in the pleading.

(e) Sections (a)—(d) supersede 1 Pa. Code §§ 35.35—35.40 (relating to answers).

§ 179.15. Motions to protect confidential information.

(a) A party or individual may designate information as confidential under § 173.8 (relating to confidential information) in any papers filed with the Commission by filing a Motion to Protect Confidential Information.

(b) A Motion to Protect Confidential Information must:

(1) Set forth the specific reasons why the information should be deemed to be confidential information and, therefore, protected.

(2) Label as confidential all documents or portions of documents in the filing containing the confidential information that the party or individual is seeking to protect.

(c) Upon the filing of the Motion to Protect Confidential Information, the Bureau Director or presiding officer, if one has been assigned, will review the motion and accompanying filings and, upon determining that a substantial basis exists, shall issue an interim order to protect the information, whether in the motion or the accompanying filings, from disclosure until the Commission considers the final matter in accordance with 65 Pa.C.S. §§ 701—716 (relating to open meetings). At all times during the pendency of the motion, the information in the motion and the accompanying filings shall be treated as confidential.

§ 179.16. Limited discovery.

(a) The ability to obtain discovery in an administrative proceeding before the Commission or presiding officer is committed to the discretion of the Commission or presiding officer and unless otherwise privileged or unavailable, discovery may be granted but limited to the following:

(1) Production of documents previously introduced at a Judges/Stewards hearing, if applicable.

(2) Production of documents or things to be introduced at the proceeding or hearing, including a list of witnesses.

(b) Requests for the limited discovery above, shall be in writing and shall set forth, with particularity, the information, documents and names of witnesses sought. The written request shall be filed with the presiding officer, if appointed and served upon the Commission's attorney or the opposing party in sufficient time to allow completion of discovery prior to the hearing.

(c) The Commission or presiding officer may grant the limited request for discovery if the request will serve to facilitate the efficient and expeditious hearing process, and will not unduly prejudice or burden the responding party.

(d) Discovery is not permitted which is sought in bad faith, would cause unreasonable delay, annoyance, embarrassment, burden or expense to the Commission or opposing party.

(e) Each party shall attempt to determine the witnesses they intend to call at the hearing and the names shall be exchanged between parties no later than 3 work days in advance of the hearing. Calling a witness whose name does not appear on the list may be permitted at the discretion of the Commission or presiding officer.

(f) Confidential information, as determined by the Commission, which is furnished to or obtained by the Commission from any source will not be discoverable under this subsection.

(g) Notwithstanding subsections (a)—(f), the parties to the proceeding are encouraged and may, by agreement, and informal basis provide or exchange, or both, the applicable documentation before the proceeding.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

§ 179.17. Intervention.

(a) *Generally.* The decision to grant a petition to intervene in a proceeding before the Commission or a presiding officer is within the sole discretion of the Commission or presiding officer.

(b) *Petition.* Petitions to intervene must be in writing and set forth, in numbered paragraphs, the specific facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds for the proposed intervention and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Commission of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the petition, complaint or application initiating the proceeding and citing by appropriate reference provisions or other authority relied upon. The petition to intervene shall be filed with the Commission and served upon the named parties to the underlying proceeding in accordance with § 179.3 (relating to filings and appeals).

(c) *Determination.* The Commission or the presiding officer, if appointed, will issue a decision on the petition to intervene as soon as practicable, after the expiration of the time for filing answers to the petition, if it is determined that:

(1) The person has an interest in the proceeding which is substantial, direct and immediate.

(2) The interest is not adequately represented by a party to the proceeding.

(3) The person may be bound by the action of the Commission in the proceeding.

(d) *Notice of matters subject to intervention.* The Commission shall publish in the *Pennsylvania Bulletin*, on its web site or announce at a regularly scheduled public meeting receipt of a timely, complete and properly filed application, petition or complaint submitted to the Commission for authorization or permission to engage in certain licensed racing activities under the act. Applications or petitions for authorization or permission to do any of the following shall be noticed as set forth above:

(1) Application for a license to conduct horse race meetings.

(2) Petition to transfer a license of a licensed racing entity.

(3) Petition to change ownership of a licensed racing entity.

(4) Petition to engage in or operate an electronic wagering system or otherwise offer electronic wagering to individuals within this Commonwealth regarding to a SPMO.

(5) Application for a license to operate as a totalisator system or racing vendor.

(e) *Timing.* Petitions to intervene may be filed no later than 30 days after due notice by the Commission as set forth above, unless in extraordinary circumstances and for good cause shown, the Commission authorizes a later filing. No petitions to intervene may be filed or will be acted upon during a hearing unless permitted by the Commission or presiding officer after opportunity for all parties to object thereto.

(f) *Answer to petition.* A party, including the Commission's representatives, may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition to intervene. Answers shall be filed within 10 days after the date of filing of the petition to intervene, unless for cause the Commission prescribes a different time.

(g) *Participation of intervenor.* Except when the Commission determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a proceeding will be limited to the presentation of evidence through the submission of verified written statements attested to under oath. At the discretion of the Commission, the written statements may become part of the evidentiary record.

(1) Where there are two or more intervenors having substantially like interests and positions, the Commission or presiding officer may, to expedite the hearing, set appropriate limitations on the number of attorneys who will be permitted to cross-examine and make and argue motions and objections on behalf of the intervenors.

(h) Sections (a)—(g) supersede 1 Pa. Code §§ 35.27—35.32 and 35.36 (relating to intervention; and answers to petitions to intervene).

§ 179.18. Offers of settlement.

(a) It is the policy of the Commission to encourage settlements or resolutions of underlying matters pending before the Bureau Directors, the Commission or a presiding officer.

(b) Nothing contained in this chapter shall preclude a party in a proceeding from submitting, at any time, offers of settlement or proposals for resolution to the Bureau Directors.

(c) If the parties settle or resolve a matter prior to the issuance of a Commission adjudication and order, the appellant shall submit a written withdrawal of the appeal to the Hearings and Appeals Docket Clerk as set forth in § 179.3 (relating to filings and appeals) and Commission staff shall issue a modified ruling or order, as applicable.

(d) Appeals withdrawn and matters settled between the appellants and the Bureau Directors are final and not appealable to the Commission.

(e) Offers of settlement, of adjustment or resolution not agreed to by the parties, will not be admissible in evidence against the party claiming the privilege.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.115 (relating to offers of settlement).

Subchapter B. JUDGES AND STEWARDS HEARINGS

Sec.

179.21.	Scope.
179.22.	General power of the Judges and Stewards.
179.23.	Jurisdiction of Judges and Stewards.
179.24.	Rights of the licensee.
179.25.	Notice required.
179.26.	Contents of notice.
179.27.	Continuances.
179.28.	Power to subpoena witnesses.
179.29.	Presence of Judges and Stewards at hearing.
179.30.	Testimony.
179.31.	Hearing.
179.32.	Evidence.
179.33.	Duty to testify.
179.34.	Votes of Judges or Stewards.
179.35.	Records.
179.36.	Matters referred to the Commission.
179.37.	Original record.
179.38.	Ruling.
179.39.	Effective date of decisions.
179.40.	Summary suspension available.
179.41.	Review and appeal.
179.42.	Request for stay.
179.43.	Non-disqualifications not appealable.

§ 179.21. Scope.

(a) This subchapter governs the practice and procedure before the respective Board of Judges and the Board of Stewards of the Commission.

(b) This subchapter shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. Judges and Stewards may disregard an error or defect of procedure which does not affect the substantive rights of the parties, especially when the proceeding is related to a pro se licensee.

(c) This subchapter is intended to supersede the applicability of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to practice and procedures before the Judges/Stewards.

(d) Subsection (b) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

§ 179.22. General power of the Judges and Stewards.

The Board of Judges and the Board of Stewards shall have the power to enforce the breed-specific rules and procedures of Standardbred racing or Thoroughbred racing, and otherwise resolve conflicts, disputes and impose penalties for violations of the rules and regulations of the Commission. The Judges and Stewards, in the best interests of racing, shall also have the power and jurisdiction over racing matters which are not expressly covered by this chapter. In all cases, the Judges and Stewards shall render their respective determinations in accordance with the generally accepted customs and usages of racing in conformity with equitable standards of justice.

§ 179.23. Jurisdiction of Judges and Stewards.

(a) Jurisdiction and powers of the Judges and Stewards shall begin at the time when entries are taken for the first day of a racing meeting and shall terminate with the completion of their official business pertaining to the meeting. If a dispute or matter is unresolved at the time of completion of the meet, it may be heard later or disposed of by other Judges or Stewards or referred to the Commission. This section does not limit the power of the Judges or Stewards to impose sanctions continuing beyond the end of the race meeting. If there are succeeding

meets at a racetrack facility, the power of the Judges and Stewards is deemed to be continuing and sustaining.

(b) On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the Judges/Stewards may conduct a preliminary inquiry into a suspected violation of the rules of racing, but thereafter, shall refer the matter to Commission investigators for final investigation and disciplinary proceedings.

(c) A matter coming before the Judges or Stewards shall be decided within 15 days of the first formal action taken thereon, unless continued by agreement of the Judges or Stewards. No matter may be continued for more than an additional 15 days.

§ 179.24. Rights of the licensee.

A person who is the subject of an evidentiary hearing conducted by the Judges or Stewards is entitled to proper notice of all charges, entitled to confront the evidence presented at the hearing and shall be afforded the following:

- (1) the right to counsel at the person's expense;
- (2) the right to examine all evidence to be presented against him/her;
- (3) the right to present a defense;
- (4) the right to call witnesses;
- (5) the right to cross examine witnesses; and
- (6) the right to waive any of the previous rights.

§ 179.25. Notice required.

(a) Before any penalty may be imposed by the Judges or Stewards under the provisions of the act and this part, written notice must be given to the party to be charged with a violation. Unless the matter is an emergency, before holding the disciplinary hearing, the Judges or Stewards shall provide written notice to the party to be charged with a violation at least 5 days before the hearing.

(b) If possible, the Judges or Stewards or Commission investigators shall hand deliver the written notice previously mentioned in subsection (a) to the person who is the subject of the disciplinary hearing. If hand delivery is not possible, the Judges or Stewards shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested.

(c) If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of the horse, notice of the hearing provided to the trainer of record, as set forth above, shall also be deemed adequate and reasonable notice to owner of the horse. It shall be the trainer's sole responsibility, as agent of the owner, to notify the owner of the medication hearing. The owner of the horse may attend and participate in the hearing to the extent the underlying matter may affect the interest of the horse.

(d) The failure of the summoned person to appear, after proper notice, shall be construed as a waiver of the right to a hearing before the Judges or Stewards and the Judges or Stewards shall issue a ruling as a default. The Judges or Stewards may impose an additional fine or suspension to the person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent.

§ 179.26. Contents of notice.

The written notice required by § 179.25 (relating to notice required) shall:

- (a) Informally and generally describe the nature of the infraction or violation charged.
- (b) A reference to the particular provisions of the statutes or rules potentially involved.
- (c) State the time and place of hearing.
- (d) Notify the party of his right to have counsel or an observer of his choice and that he bears the sole responsibility for securing and insuring the presence of the same.
- (e) Provide for the right to waive transcription of testimony at the hearing.

§ 179.27. Continuances.

Upon receipt of a hearing notice, a person may request a continuance of the hearing from the Judges or Stewards, who may, in their sole discretion, grant a continuance for good cause shown. The Judges or Stewards may at any time order a continuance on their own motion.

§ 179.28. Power to subpoena witnesses.

The Judges and Stewards may require, by subpoena, the personal attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents relevant to the proceeding before them.

§ 179.29. Presence of Judges and Stewards at hearing.

At least the Presiding Judge or Presiding Steward and one Associate Judge or Associate Steward shall be present at all times throughout the hearing.

§ 179.30. Testimony.

Testimony at a hearing shall be given under affirmation or oath and a record shall be made of the hearing, either by use of a tape recorder or by the transcript of the court reporter. Except that: Judges or Stewards shall not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race. The party may request a viewing of the film in the presence of the Judges or Stewards at the hearing and be given an opportunity to state his own interpretation of the same.

§ 179.31. Hearing.

(a) *Hearing.* No final determination may be made by the Judges or Stewards until the hearing is completed and the evidence has been received and the party charged has been given the opportunity to hear the evidence presented and the opportunity to defend. If a subpoenaed or noticed party fails to appear, an order or ruling may be entered by default.

(b) *Order of Hearing.* Judges and Stewards shall have the discretion to conduct the hearing in accordance with the following:

(1) The Judges or Stewards shall open the hearing by indicating the date and time, make a concise statement of its scope and purposes and announce that a record of the hearing is being made. All witnesses shall be sworn by the Judges or Stewards.

(2) When a hearing has begun, a party or a party's representative may make an opening statement only if necessary or permitted by the Judges/Steward.

(3) A party, a party's representative or any other person or witness who may testify at the hearing shall be identified on the record.

(4) The Judges or Stewards may receive and review any preliminary relevant motions and afford each party of record the opportunity to submit a subsequent written motion. They may render a decision on the motion immediately or take that matter under consideration.

(5) The Commission investigators shall have the burden of proceeding in the matter first. At the discretion of the Judges or Stewards, they may change the order of testimony of the party or witness. A party who asserts a particular fact or issue shall have the burden of proof of that matter.

(6) The Judges or Stewards shall afford each party the opportunity to present the party's direct case and witnesses. Each party, as well as the Judges or Stewards may cross examine each witness.

(7) In the course of the hearing, the Judges or Stewards may receive all relevant documentary evidence, including investigative reports, video tapes, lab reports or other similar records.

(8) At the conclusion of all evidence and cross examination, at the discretion of the Judges or Stewards, closing statements may be allowed and the evidentiary record shall be closed.

(c) *Behavior.* Each party, witness, attorney or other representative shall, at all times, behave in the Judge or Steward's proceedings with dignity, courtesy and respect for the Judges or Stewards and all other parties and participants. An individual who violates this section may be excluded from a hearing by the Judges or Stewards.

§ 179.32. Evidence.

The Judges or Stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the Judges or Stewards may disallow evidence that is irrelevant or unduly repetitive of other evidence. They shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence or testimony, or both. The Judges or Stewards may admit hearsay evidence if in the opinion of the Judges or Stewards it is the type of evidence that is commonly relied on by reasonably prudent people.

§ 179.33. Duty to testify.

It shall be the duty of all persons to make full and complete disclosure to the Judges or Stewards of a fact or knowledge the person may possess regarding violations or possible violations of a rule of racing or of the law. No person may refuse to testify before the Judges or Stewards on a relevant matter except upon proper exercise of a legal privilege, nor may a person testify falsely or incompletely to the Judges or Stewards. If a person refuses to testify or falsely testifies as set forth, that matter may be referred to the Commission for a licensing action.

§ 179.34. Votes of Judges or Stewards.

The Judges or Stewards shall decide all matters coming before them by majority vote. Should a Judge or Steward vote in the minority, that Judge or Stewards shall immediately make full report thereof to the Commission. Judges or Stewards so voting shall have the right to file a separate opinion thereof to the Commission. The ruling of the Judges or Stewards shall be generally in the form approved by the Commission. All rulings must be signed by the majority of the Judges or Stewards.

§ 179.35. Records.

A written report concerning formal orders, rulings and other matters coming before the Judges or Stewards shall

be kept by them and copies of the same shall be transmitted to the Commission.

§ 179.36. Matters referred to the Commission.

Judges or Stewards shall have the power to refer a matter within their jurisdiction or powers directly to the Commission either before or after holding a hearing thereon. The Judges or Stewards may refer a matter for initial hearing to the Commission whenever it is deemed by them to be impossible or impracticable to hold the initial hearings, or because of the ending of a meet or for other good and substantial reason.

§ 179.37. Original record.

Upon request by the Commission or the Bureau Directors, the original record of the hearing of the Judges or Stewards shall be delivered by them to the Commission. The record shall properly reflect whether the notice of the penalty, order, ruling or determination has been issued orally or in writing. If oral notice was given, the record shall reflect the date, time and place when it was given. If written notice was given, the record shall reflect the date and manner that written notice thereof was given.

§ 179.38. Ruling.

(a) In cases involving a penalty, fine, suspension or sanction of any nature, the ruling of the same shall be given in writing to the adversely affected party, in the format adopted and approved by the Commission and must include the following:

- (1) the full name, Social Security number, date of birth, last record address, license type and license number of the person who is the subject of the hearing;
- (2) a statement of the charges against the person, including a reference to the specific section of the act or rules of the Commission that the licensee is found to have violated;
- (3) the date of the hearing and the date the ruling was issued;
- (4) the penalty imposed;
- (5) any changes in the order of finish or purse distribution; and
- (6) other information required by the Commission.

(b) At the time the Judges or Stewards inform a person who is the subject of the proceeding of the ruling, the Judges or Stewards shall inform the person of the person's right to appeal the ruling to the Commission.

(c) All fines imposed by the Judges or Stewards shall be paid to the Commission within 10 days after the issuance of the ruling, unless otherwise ordered by the Judges or Stewards.

§ 179.39. Effective date of decisions.

A decision rendered by the Judges or Stewards shall only become effective 10 days after the ruling is served personally on the affected party or 10 days after the ruling has been sent by certified mail to the address given by the affected party in his license application, unless the Judges or Stewards find the delay to be contrary to the public interest. An affected party shall have the right to waive the delay in the effective date of the ruling and may, by writing, consent to immediate imposition of the sanction or order.

§ 179.40. Summary suspension available.

(a) If the Judges or Stewards determine that a licensee's actions constitute an immediate danger to the public

health, safety or welfare or the health and safety of a horse, the Judges or Stewards may summarily suspend the license pending an emergency hearing.

(b) A licensee whose license has been summarily suspended is entitled to an emergency hearing on the summary suspension within 3 days after the license was summarily suspended. The licensee may waive the right to an emergency hearing on the summary suspension.

(c) The Judges or Stewards shall conduct the emergency hearing on the summary suspension in the same manner as other disciplinary hearings. At an emergency hearing on a summary suspension, the sole issue is whether the person's license should remain suspended pending a final disciplinary hearing and ruling.

§ 179.41. Review and appeal.

A person aggrieved by a ruling of the Judges or Stewards may appeal the matter to the Commission, except as provided in § 179.43 (relating to non-disqualifications not appealable) of this part. The appeal from the decision of Judges or Stewards must be made in writing and must conform to all the requirements set forth in § 179.3 (relating to filings and appeals). All appeals shall also be accompanied by an appeal bond made payable to the Commission in the amount as determined by the Commission as set forth in § 179.7 (relating to request for hearing by applicant or licensee).

§ 179.42. Request for stay.

(a) The final determination or ruling by Judges or Stewards shall remain in full force and effect pending the final determination on the hearing, if granted. An aggrieved party, in addition to the written requirements set forth above for an appeal, may separately request a stay of the Judges' or Stewards' ruling or decision pending a final determination by the Commission. In accordance with § 175.6 or § 177.6 (relating to contents of petition for stay), the Bureau Director may, for good cause shown, grant a stay of the Judges'/Stewards' ruling until the final determination by the Commission provided that sufficient facts are presented by affidavit to warrant the stay.

(b) Applications for a stay shall conform to the standards set forth in § 175.6 and § 177.6 of the Commission's regulations. The decision to grant or refuse a request for a stay shall be based upon a balancing of the pertinent facts sworn to by applicant but shall be based upon the sound discretion of the Bureau Director to whom the application is addressed.

§ 179.43. Non-disqualifications not appealable.

The decision by the Judges or Stewards not to disqualify a horse after the running of a race has been declared official is final and may not be appealed to the Commission. This subsection is not applicable to disqualifications of horses resulting from medication or drug violations.

Subchapter C. COMMISSION HEARINGS

Sec.	
179.51.	Generally.
179.52.	Nature of Commission hearings.
179.53.	Commission hearings.
179.54.	Scheduling of hearing.
179.55.	Hearing notices.
179.56.	Failure to attend hearing.
179.57.	Waiver of hearing.
179.58.	Consolidation.
179.59.	Presiding officers.
179.60.	Prehearing and other conferences.
179.61.	Hearing procedure.
179.62.	Commission official notice.
179.63.	Representation before the Commission.

- 179.64. Contemptuous conduct.
- 179.65. Suspension and disbarment.
- 179.66. Briefs and oral argument.
- 179.67. Transcript.
- 179.68. Contents and close of the record.
- 179.69. Proposed adjudication of the presiding officer.
- 179.70. Commission decisions.
- 179.71. Reopening of record.
- 179.72. Rehearing or reconsideration.
- 179.73. Appeals.

§ 179.51. Generally.

(a) A hearing calendar of all matters set for hearing will be maintained by the Hearings and Appeals Docket Clerk as set forth in § 179.3(b) (relating to filings and appeals) and will be in order of assignment as far as practicable. All matters will be heard before the Commission in Harrisburg, Pennsylvania.

(b) The Commission may designate a Commissioner or other qualified person to serve as presiding officer in a particular matter or proceeding. The Commissioner, presiding officer or other duly appointed person shall conduct the proceeding in an impartial manner. All appearances will be entered upon the record, with a notation on whose behalf each appearance is made. A notation will be made in the record of the names of the members of the staff of the Commission participating, if any, including accountants and other experts who are assisting in the investigation of the matter.

(c) In oral hearings, neither the Commission, nor the presiding officer will be bound by technical rules of evidence and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hearings. If a party does not testify on his own behalf, the party may be called and examined as if under cross-examination.

(d) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.102, 35.123 and 35.124 (relating to hearing calendar; conduct of hearings; and appearances).

§ 179.52. Nature of Commission hearings.

(a) *Appeals from Judges or Stewards.* An appeal to the Commission from a decision or ruling of the Board of Judges or the Board of Stewards, as set forth in Subchapter B (relating to Judges and Stewards hearings), shall be limited to the underlying evidentiary record created by the parties and Commission investigators at the hearing before the Judges or Stewards and shall not be considered a hearing de novo.

(1) The Commission's review of the Judges' or Stewards' rulings shall be limited to a review for errors of law and whether the findings or conclusions set forth by the Judges or Stewards are supported by appropriate evidence contained in the hearing record.

(2) Issues not raised by appellant in the notice of appeal will be deemed waived.

(b) *Original action.* An appeal from a determination, decision or ruling by the Bureau Directors, the Commission's licensing or investigative staff, or a matter specifically referred to the Commission by the Board of Judges or Board of Stewards shall be a de novo hearing.

(c) Subsection (b) supersedes 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

§ 179.53. Commission hearings.

(a) Unless the Commission hears the matter directly, all matters shall be assigned to a presiding officer or other duly qualified person to serve as a presiding officer in the particular proceeding.

(b) Hearings will be public unless a party invokes protection afforded to the party under § 173.8 (relating to confidential information).

(c) Matters proceeding under the provisions of § 179.52(b) (relating to nature of Commission hearings) may provide for:

(1) Receipt of sworn testimony, including testimony from the original matter before the Bureau Director or Commission staff.

(2) Receipt of all relevant oral or documentary evidence used in the original determination or decision.

(3) Opportunity to be heard.

(4) A complete evidentiary record, including other pleadings, motions or briefs submitted.

(d) Unless required by this part or authorized by law, a party may not engage in an ex parte communication with the Commission or the presiding officer.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.121—35.126 (relating to hearing).

§ 179.54. Scheduling of hearing.

(a) On behalf of the Commission, the Hearings and Appeals Docket Clerk, will schedule the appropriate hearing in chronological order of receipt and will maintain a hearing calendar of all proceedings, with assigned docket numbers set for hearing.

(b) Proceedings pending on the hearing calendar will be heard so far as practicable, in their order of assignment to the calendar at the times and places fixed in the hearing notices, giving due regard to the convenience and necessity of the parties and their attorneys, where possible.

(c) The Commission or the presiding officer in the exercise of discretion, for cause, may advance or postpone proceedings on the hearing calendar with notice to the parties.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.102 (relating to hearing calendar).

§ 179.55. Hearing notices.

(a) *Notices.* Notice of a hearing will be provided to the appellant or counsel in writing and issued by the Hearings and Appeals Docket Clerk, by any of the following methods: certified mail (return receipt requested), first class mail, personal service or by email, if agreed upon by the parties and their counsel as set forth in § 179.9 (relating to service by the Commission).

(b) The written hearing notice to appellant shall include, the time, date and location of the hearing and indicate the method of service used. The notice shall also contain a general factual statement of the underlying matter and grounds for appeal.

(c) Notices may also provide information relating to:

- (1) Applicable regulations and conduct of the hearing;
- (2) The grant or denial of Supersedeas;
- (3) Representation and continuances; and
- (4) The procedure for interpreters (if requested).

(d) *Notice to persons other than appellant.* Service of the written hearing notice upon the horse owner, corporation, partnership, limited liability company or other entity who has an interest in the horse, shall be deemed proper and complete when service of the written hearing notice is made upon the licensed trainer of record. In accordance

with all other duties and obligations of a licensed trainer, it shall be the sole duty, responsibility and obligation of the licensed trainer to inform or otherwise notify the horse's owner or ownership entity, as applicable, regarding an upcoming proceeding in which the owner or ownership entity interests in the horse in question may be impacted.

§ 179.56. Failure to attend hearing.

(a) If, at the time and place scheduled for hearing, parties who have received due notice are not in attendance, whether in person or by counsel, the appeal shall be dismissed and the underlying decision shall be entered by and upon default.

(b) In accordance with § 179.7(c) (relating to request for hearing by applicant or licensee), to offset administrative costs associated with the proceeding, the Commission may retain a portion or all of the appeal bond posted by the appellant for failure to appear.

§ 179.57. Waiver of hearing.

A party to a proceeding may waive the right to a hearing before the Commission by filing with the Bureau Directors and the Hearings and Appeals Docket Clerk a written Notice of Waiver of Hearing, with copies to the presiding officer and other parties. A waiver shall constitute an admission of all the underlying charges or matters contained in the ruling or determination appealed from and shall be deemed an acceptance of the underlying action. The Hearing and Appeals Docket Clerk shall cancel the proceeding and close out the matter on the hearing calendar. This section supersedes 1 Pa. Code § 35.101 (relating to waiver of hearing).

§ 179.58. Consolidation.

(a) The Commission, the Hearings and Appeals Docket Clerk or the presiding officer, with or without motion, may consolidate proceedings involving a common question of law or fact.

(b) The section supersedes 1 Pa. Code § 35.45 (relating to consolidation).

§ 179.59. Presiding officers.

(a) When evidence is to be taken in a hearing, the Commission's duly appointed presiding officer may conduct the hearing in the absence of the Commission itself. A person presiding at a hearing may not consult a party on any fact in issue unless upon notice and opportunity for all parties to participate.

(b) A presiding officer shall have the power and authority to:

(1) Regulate the course and conduct of hearings, including the scheduling of continuances thereof, and the recessing, reconvening and the adjournment thereof, unless otherwise provided by the Commission.

(2) Administer oaths and affirmations and compel the attendance of witnesses.

(3) Issue subpoenas authorized by law.

(4) Rule upon the admissibility of evidence, offers of proof and receive evidence.

(5) Schedule and conduct pre-hearing conferences as set forth in § 179.60 (relating to prehearing and other conferences).

(6) Dispose of preliminary procedural matters.

(7) Examine witnesses.

(8) Submit proposed findings of facts and conclusions of law to the Commission in accordance with this subpart.

(9) Take other action appropriate to the discharge of their duties as may be designated by the Commission and authorized by the act.

(c) Presiding officers will conduct fair and impartial hearings and maintain order.

(d) If parties or counsel engage in disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the presiding officer may take action as set forth in § 179.64 (relating to contemptuous conduct).

(e) This section supersedes 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers).

§ 179.60. Prehearing and other conferences.

(a) A prehearing conference may be scheduled at the sole discretion of the Commission or the presiding officer, if in the opinion of the Commission or the presiding officer, the matter warrants a conference. The Commission or a presiding officer may, upon petition, also schedule a prehearing conference at the request of one party and by agreement of the parties.

(b) When the Commission or the presiding officer directs that a prehearing conference be held, all parties shall appear at the time and place designated. Notice of the time and place of the conference will be given to all parties. If time is of the essence, a prehearing conference may be conducted by means of telephone conference call.

(c) Any of the following matters may be considered at a prehearing conference:

(1) Discuss the possibilities for settlement of the underlying matter or proceeding, or both.

(2) The amount of hearing time which will be required to dispose of the proceeding.

(3) Designating parties.

(4) Setting the order of procedure at a hearing.

(5) Resolve procedural matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of the public interest.

(d) Failure of a party to attend the conference, after being served with notice of the time and place thereof, without good cause shown, shall constitute a waiver of all objections to the order, ruling or underlying matter appealed.

(e) The presiding officer shall record the action taken at the prehearing conference and commit to writing the agreed upon disposition of the previous matters.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

§ 179.61. Hearing procedure.

(a) *Order of hearing.* In a proceeding, the party having the burden of proof shall generally go forward, open and close, unless otherwise directed by the presiding officer. The order of testimony may be modified at the discretion of the hearing officer. In determining this order, the presiding officer shall take into consideration the right of the respective party to present the case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct a cross-examination as may be required for a full and true disclosure of the facts.

(1) In proceedings when the evidence is peculiarly within the knowledge or control of another party, the

order of presentation set forth in subsection (a) may be varied by the presiding officer.

(2) Intervenors shall follow the party on whose behalf the intervention is made. If the intervention is not in support of an original party, the presiding officer will designate at what stage the intervenor will be heard.

(3) The presiding officer may direct the order of parties for purposes of cross-examination. Subsection (a) supersedes 1 Pa. Code § 35.125 (relating to order of procedure).

(b) *Burden of proof.* Preponderance of the evidence shall be the standard and shall mean that the evidence demonstrates a fact is more likely to be true than not. Proponents of any issue shall have the burden of proof thereof.

(c) *Evidence.* Neither the Commission, nor the presiding officer will be bound by the technical rules of evidence and all relevant, material and competent evidence may be received in either oral or documentary form, provided, that the Commission or the presiding officer acting hereunder may exclude evidence if:

- (1) It is repetitious or cumulative.
- (2) Its probative value is outweighed by:
 - (i) The danger of unfair prejudice;
 - (ii) Confusion of the issues; or
 - (iii) Considerations of undue delay or waste of time.
- (3) It is hearsay evidence.

(d) *Hearsay evidence.* Hearsay evidence properly objected to is not competent evidence to support a finding of the Commission. However, hearsay evidence admitted without objection will be given its natural probative effect and may support a finding by the Commission, if it is corroborated by other competent evidence in the record.

(e) *Commission public documents or business records.* Tape recordings of Judges' or Stewards' hearings, as well as of recordings of investigative interviews or similar proceedings may be received in evidence, if the recordings were made a part of the underlying Judges' or Stewards' evidentiary record and are relevant and material to the appeal. Investigative reports of Commission investigative or licensing staff, racetrack security personnel or of authorized agents of the Thoroughbred Racing Protective Bureau shall be received by the presiding officer and deemed to be a part of the official records of the Commission in a relevant proceeding, but the affected party shall have the right to examine the same insofar as they may pertain to matters directly and immediately in issue.

(f) *Control of evidence.* The Commission or the presiding officer shall have all necessary authority to control the receipt of evidence, including ruling on the admissibility of evidence, confining the evidence to the issues in the proceedings and impose, where appropriate, limitations to the number of witnesses to be heard, the time and scope of direct and cross-examinations and the production of further evidence.

(g) *Motion and objections.* Motions and objections made during a hearing shall be stated orally and shall be included in the stenographic record of the hearing.

(h) *Cross-examination.* Parties shall be entitled to cross-examine and to present rebuttal evidence as may be necessary for a full and fair hearing, but shall be limited to matters on direct and at the discretion of the Commission or presiding officer.

(i) Subsection (c) supersedes 1 Pa. Code § 35.161 (relating to form and admissibility of evidence); Subsection (e) supersedes 1 Pa. Code §§ 35.165 and 35.166 (relating to public documents; and prepared expert testimony); Subsection (f) supersedes 1 Pa. Code § 35.162 (relating to reception and ruling on evidence).

§ 179.62. Commission official notice.

(a) Official notice or judicial notice of facts may be taken by the Commission or the presiding officer on its own or upon request by a party, but only if the party supplies the necessary information.

(b) The Commission or the presiding officer may notice a fact that is not subject to reasonable dispute because it:

- (1) Is generally known by the Commission or is within its jurisdiction; or
- (2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) The Commission or the presiding officer may take official or judicial notice at any stage of the proceeding.

(d) On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.173 (relating to official notice of facts).

§ 179.63. Representation before the Commission.

(a) *Appearance in person.* An individual who is a party in a proceeding before the Commission or presiding officer may represent himself. Attendance at the proceeding without an attorney will be deemed a waiver of this privilege.

(1) A party, other than an individual appearing on his own behalf, in an adversarial proceeding before the Commission shall be represented by an attorney authorized to appear before the Commission in accordance with subsection (b).

(2) Subsection (a) supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

(b) *Appearance by attorney.* A party in a proceeding before the Commission or presiding officer who elects to be represented by an attorney or is otherwise required to be represented by an attorney in the proceeding, shall be represented by:

- (1) An attorney at law admitted to practice before the Pennsylvania Supreme Court.
- (2) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which permits attorneys licensed in this Commonwealth to practice before its courts and agencies.
- (3) An attorney authorized in accordance with subsection (c) to appear in connection with the proceeding.

(c) *Admission Pro Hac Vice.* An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which does not permit attorneys licensed in this Commonwealth to appear before its courts and agencies may, at the discretion of the Commission or the presiding officer, be authorized to appear in connection with a particular proceeding. The Commission or the presiding officer will determine whether to grant the authorization upon the filing of a motion by an attorney admitted to practice law before the Pennsylvania Supreme Court and in good standing with the Court, which contains the information required to satisfy the written notice provision of Pa.B.A.R. 301 (relating to admission

pro hac vice) and provided that the attorney filing the motion shall be and remain the attorney of record in the proceeding and further provided that both the attorney of record and the attorney admitted under this subsection shall both sign all documents submitted or filed in connection with the proceeding.

(d) Subsections (b) and (c) supersede 1 Pa. Code § 31.22 (relating to appearance by attorney).

(e) *Other representation prohibited at hearings.* Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Commission or presiding officer except, as provided in subsections (b) and (c) or as otherwise permitted by the Commission in a specific case.

(f) Subsection (e) supersedes 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).

§ 179.64. Contemptuous conduct.

(a) Contemptuous conduct by any person at a hearing before the Commission or a presiding officer will be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing. Further action may be taken by the Commission imposing a temporary or permanent denial of the privilege of appearing or practicing before the Commission.

(b) Subsection (a) supplements 1 Pa. Code § 31.27 (relating to contemptuous conduct).

§ 179.65. Suspension and disbarment.

(a) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to a person who is found by the Commission, after notice and opportunity for hearing on the matter, to have done one or more of the following:

(1) Lacked the requisite qualifications to represent others.

(2) Engaged in unethical, contemptuous, disruptive or improper conduct before the Commission or presiding officer.

(3) Repeatedly failed to follow Commission directives or orders.

(4) Repeatedly failed to follow Commission rules and regulations in the representation of the client before the Commission or presiding officer.

(b) For the purposes of subsection (a), practicing before the Commission includes the following:

(1) Transacting business on behalf of licensees with the Commission.

(2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Commission in a pleading or other document with the consent of the attorney, accountant, engineer or other expert.

(3) Appearances at a hearing or other proceeding or public meeting before the Commission.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.28 (relating to suspension and disbarment).

§ 179.66. Briefs and oral argument.

(a) *Briefs.* Unless waived by the parties, at the close of the taking of testimony in the hearing, the presiding officer shall provide the parties with the opportunity to submit briefs. The presiding officer shall fix the time for the filing and service of briefs, giving due consideration to the nature of the proceeding, the parties involved, the

magnitude of the record and the complexity of the issues involved. Copies of the brief shall be served with the presiding officer, the Appeals and Hearings Clerk and upon the respective parties.

(b) *Content and form of briefs.* Briefs shall contain the following:

(1) A concise statement of the case.

(2) Reference to the exact pages of the record or exhibits where the evidence relied upon by the filing party appear.

(3) An argument preceded by a summary. The argument shall, to the extent possible, address all issues raised by the relief sought and the evidence adduced at the hearing.

(4) As directed by the presiding officer, the brief shall also contain:

(i) A statement of the questions involved.

(ii) Proposed findings of fact with references to the transcript pages or exhibits where evidence appears, together with proposed conclusions of law.

(iii) Proposed paragraphs identifying the relief sought.

(c) *Untimely briefs.* Briefs not filed and served on or before the date fixed by the presiding officer will not be accepted for review or consideration by the presiding officer or the Commission.

(d) *Oral Argument.* No oral argument shall be heard by the Commission or presiding officer at any time.

(e) *No exceptions to be filed.* No party shall be entitled to file exceptions to a proposed adjudication and order of the Commission or of the presiding officer. This subsection supersedes 1 Pa. Code §§ 35.211—35.214 (relating to exceptions to proposed reports).

(f) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.191 and 35.192 (relating to proceedings in which briefs are to be filed; and content and form of briefs).

§ 179.67. Transcript.

Hearings shall be stenographically recorded and a verbatim transcript of the record will be prepared as soon as practicable after the hearing. The parties may obtain a copy of the transcript directly from the court reporting service. This section supersedes 1 Pa. Code §§ 35.131 and 35.133 (relating to recording of proceedings; and copies of transcripts).

§ 179.68. Contents and close of the record.

(a) The record shall be considered closed upon receipt of the transcript of the record and briefs, if any, and the hearing shall be deemed concluded at that time. After the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

(b) The Commission's record shall consist of a transcript of the testimony and exhibits of record, the party's briefs, if submitted, together with any other the papers, written motions and requests filed in the proceedings and relevant official records.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.231 and 35.232 (relating to reopening on application of party; and reopening by presiding officer).

§ 179.69. Proposed adjudication of the presiding officer.

(a) The presiding officer or other Commission designated person shall prepare a proposed adjudication and

order as a decision of the Commission. The proposed written adjudication shall include:

(1) Findings and conclusions, as well as the reasons or basis therefore, for all the material issues of fact, law or discretion presented on the record.

(2) The appropriate statutory provision, regulation, order, sanction, relief or denial thereof.

(3) Facts officially noticed under § 179.62 (relating to Commission official notice) relied upon in the decision.

(4) Previous adjudications or matters which the Commission relies upon as precedent.

(b) The presiding officer or designated person shall transmit the proposed adjudication to the Hearings and Appeals Docket Clerk as soon as practicable, unless directed to expedite the matter by the Commission.

(c) The proposed written adjudication and order shall not be made available to the parties, including Commission counsel or intervenors until the Commission has reviewed, considered and properly voted upon the adjudication under § 179.70 (relating to Commission decisions).

§ 179.70. Commission decisions.

(a) *Decisions.* The Commission shall consider and vote upon a proposed adjudication and order at its public meeting in accordance with the voting provisions of the act and Chapter 173 (relating to Commission operations and organization—temporary regulations) of the regulations. The final order and adjudication shall be based solely upon a review and consideration of the entire record and shall be supported by reliable, probative evidence contained in the record. The Commission may adopt, modify or reject some or all of the proposed adjudication, remand all or part of the matter to the presiding officer for the taking of additional evidence or clarification of issues.

(b) *Single signature.* A final adjudication and order may be signed by the Chairman of the Commission or by any other delegated Commissioner on behalf of the entire Commission. Minority opinions regarding the final adjudication may be submitted and these shall become part of the record.

(c) The final adjudication and order shall be served upon the all parties and intervenors or their counsel personally, by regular United States mail or by certified mail by the Hearings and Appeals Docket Clerk. If service is made by mail, the date of mailing will be the date of service for purposes of a subsequent appeal.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.226 (relating to final orders).

§ 179.71. Reopening of record.

(a) *Petition to reopen.* At any time after the record is closed, but before a final decision is issued, a party may file a petition with the Commission or the presiding officer for the purpose of taking additional evidence. A petition to reopen must set forth clearly the fact claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Responses.* Within 10 days following the service of the petition, another party may file an answer thereto.

(c) *Action of petition.* As soon as practicable after the filing or responses to the petition, the presiding officer or the Commission shall grant or deny the petition based upon a review of the averments set forth in the petition.

(d) The Commission may, at any time, in its discretion and upon its own motion reopen a hearing upon due notice to the parties.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

§ 179.72. Rehearing or reconsideration.

(a) A party to a proceeding may file an application for rehearing or reconsideration by filing a petition within 15 days after the final order of the Commission.

(b) Filing a petition for rehearing or reconsideration does not toll or stay the 30-day appeal period.

(c) The petition must state concisely the alleged errors in the adjudication or other order of the Commission. If a final order or other order of the Commission is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner must be set forth in the petition.

(d) Answers to petitions for rehearing or reconsideration will not be entertained by the Commission. If the Commission grants the rehearing or reconsideration, an answer may be filed by a participant within 15 days after the issuance of the order granting rehearing or reconsideration. The response will be confined to the issues upon which rehearing or reconsideration has been granted.

(e) If the Commission does not act upon the petition for rehearing or reconsideration within 30 days after it is filed, the petition will be deemed to have been denied.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 179.73. Appeals.

(a) Within 30 days after the receipt of a written adjudication or the entry of a final order or decision of the Commission, a party shall have the right to appeal therefrom to the Commonwealth Court under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

(b) The filing of an appeal with the Commonwealth Court will not stay enforcement of the decision or final order of the Commission unless a separate stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure or the Commission grants a stay prior to the filing of the appeal upon request.

Subchapter D. EJECTION MATTERS EXPEDITED HEARING PROCEDURES

Sec.	
179.91.	General purpose.
179.92.	Definitions.
179.93.	Written ejection notices.
179.94.	Request for a hearing.
179.95.	Notice and location of hearing.
179.96.	Conduct of hearing.
179.97.	Appeals to Commonwealth Court.
179.98.	Disinterested party status on appeal to Commonwealth Court.

§ 179.91. General purpose.

The sections set forth below are intended to govern the expedited practice and procedures before the Commission solely regarding the ejection from or the refusal of admission to a licensed racetrack facility or a racetrack enclosure. An ejection or refusal of admission are governed by section 9326(a) of the act (relating to admission to racetrack). The following sections are intended to supersede the applicability of 1 Pa. Code Part II (relating

to General Rules of Administrative Practice and Procedure) to practice and procedure before the Commission.

§ 179.92. Definitions.

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

Adjudication—The written order, decree, decision, determination or ruling by the Commission affecting the personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

Commissioner or Presiding Officer—A member of the Commission or other person designated by the Commission to conduct the proceeding.

Decision—The determination from the bench by the Commission affirming, reversing or modifying the ejection or refusal, or both, of admission action immediately upon the closing of the evidentiary record of the proceeding.

Ejectee—An individual ejected from or refused admission to, or both, the racetrack enclosure under section 9326 of the act.

Ejection or Refusal of Admission—The action taken by a licensed racing entity to refuse admission to the grounds of the racetrack enclosure or the physical removal of a licensee from the grounds of the racetrack enclosure as provided by section 9326 of the act (relating to admission to racetrack).

Ejection Notice—Written notification issued by a licensed racing entity to an individual licensed by the Commission of the ejection or refusal, or both, of admission of that individual from the racetrack enclosure, the enumerated reasons for this action and the term of ejection.

Licensed Racing Entity—A person that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from the Commission.

Party—A person who is named in or admitted to the proceeding and who has a direct interest in the subject matter of the proceeding.

Term of ejection—The specific period of time set forth by the licensed racing entity in the written notice of ejection/denial of admission for which the ejectee is prohibited from entering the licensed racetrack facility.

§ 179.93. Written ejection notices.

(a) A licensed racing entity may refuse admission to or eject, or both, from the racetrack enclosure operated by the licensed racing entity, any person licensed by the Commission and employed at an occupation at the racetrack, if the person's presence is deemed detrimental to the best interests of horse racing and after citing the reasons for the determination in writing.

(b) The written notice shall also advise the ejectee of that person's right to request a hearing before the Commission no later than 48 hours following receipt of the written ejection notice. The written ejection notice shall include the address of the Commission and the address of the licensed racing entity.

(c) Failure by the licensed racing entity to provide written notice of the refusal of admission or ejection of the licensed individual shall be grounds for the Commission to issue a show cause order requiring a response and justification by the licensed racing entity.

§ 179.94. Request for a hearing.

(a) The person ejected or refused admission to the racetrack enclosure may request a hearing before the Commission, if the request:

(1) Is in writing;

(2) Is received by the Bureau Director in the Executive Office of the Commission (Office of the Clerk) within 48 hours of receipt of the written notice of ejection or refusal of admission, or both; and

(3) Sets forth a concise statement of all grounds upon which a hearing is requested.

(b) Each Bureau Director shall review the timeliness and appropriateness of the request for a hearing. Any appeal deemed untimely shall be dismissed.

(c) A request for a stay, if any, shall be granted by the respective Bureau Director, unless the Bureau Director finds that the stay is not in the best interest of racing or presents a threat to public safety. Any stay granted shall continue until the time that the Commission renders a final written decision in the matter.

(1) An ejectee who requests a stay must provide notice of the request to the licensed racing entity that issued the notice of ejection/refusal of admission and provide proof of service of the notice to the respective Bureau Director. No stay request may be granted until 24 hours after the Bureau Director's receipt of proof of service under this paragraph.

(2) The licensed racing entity may submit a written answer and supporting documentation in opposition to the request for a stay to the Bureau Director.

(3) All written notices, proof of service or answers to stay referenced in this subsection may be electronically filed with the Bureau Director after the initial appeal request.

(d) No appeal shall be granted or heard regarding the purported denial of horse entries by a licensed racing entity.

§ 179.95. Notice and location of hearing.

(a) All ejection or refusal of admission hearings shall be scheduled for and conducted at the next duly scheduled public meeting of the Commission subject to the notice provision under subsection (b). The hearing shall take place at the location of the Commission's public meeting. If scheduling the hearing for the next duly scheduled public meeting of the Commission does not afford the appropriate notice, the hearing shall be scheduled for the following duly scheduled public meeting.

(b) The parties to the proceedings shall be provided at least 5 days written notice of the specific location, date and time of the Commission public meeting at which the ejection hearing will take place.

(c) Hearings will not be continued except for compelling reasons, as determined by the Commission, in its sole discretion. Any request for a continuance must be submitted in writing setting forth the compelling reasons to the Commission.

§ 179.96. Conduct of hearing.

(a) The Commission shall preside over the course and conduct of the matter directly. The Commission may, however, in its discretion, designate or appoint a Commissioner or other qualified person to serve as the presiding officer in the particular matter.

- (b) Hearings may provide for:
 - (1) Receipt of sworn testimony.
 - (2) Receipt of all relevant oral or documentary evidence.
 - (3) Opportunity for parties to be heard.
 - (4) A complete evidentiary record.
- (c) The Commissioners or the presiding officer, or both, shall have the power and authority to do the following:
 - (1) Regulate the course of the hearing, including processing, reconvening or adjournment thereof.
 - (2) Administer oaths and affirmations.
 - (3) Issue subpoenas.
 - (4) Rule upon offers of proof and receive evidence.
 - (5) Dispose of motions made during the hearing to dismiss the proceedings or other motions which involve the final determination of the proceedings.
 - (6) Take any other action necessary and appropriate to discharge their duties as may be designated by the Commission.
 - (7) Affirm, reverse or modify the term of ejection based upon the underlying factors for the ejection and the evidence of record.
- (d) All ejection/refusal of admission hearings shall be stenographically recorded.
- (e) Given the expedited nature of the proceeding and limited duration of a stay, if applicable, the parties shall not be afforded the opportunity to submit written briefs, except upon extraordinary circumstances presented and in the Commissioners' sole discretion.
- (f) An oral decision and order shall be made and entered immediately by the Commission upon the closing of the evidentiary record as introduced at the hearing.
- (g) Within 15 days from the issuance of the Commission's oral decision and receipt of the hearing transcript, a written adjudication supporting its decision and order shall be issued to the parties. The Commission's evidentiary record will be closed upon the receipt of the hearing transcript.
- (h) Any stay of enforcement previously granted by the Commission under § 179.34(c) (relating to votes of Judges or Stewards) shall terminate upon the issuance of the Commission's written adjudication.
- (i) This section supersedes 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers) and 1 Pa. Code Chapter 35, Subchapter B (relating to hearings and conferences).

§ 179.97. Appeals to Commonwealth Court.

- (a) A party may appeal the final order and written adjudication of the Commission to the Commonwealth Court within 30 days of the receipt of the written determination in accordance with the provisions of Rules of Appellate Procedure.
- (b) The filing of a Petition for Review with the Commonwealth Court will not automatically stay enforcement of the decision or final order of the Commission unless a separate stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure.

§ 179.98. Disinterested party status on appeal to Commonwealth Court.

The Commission is not an aggrieved party as contemplated by 2 Pa.C.S. § 702 (relating to Administrative

Agency Law) and shall be deemed a disinterested party in ejection or refusal of admission matters subsequently appealed, by either party, to the Commonwealth Court under § 179.97(a) (relating to appeals to Commonwealth Court). In accordance with Pa.R.A.P. 1513(a), as a disinterested party, the Commission shall not be named in the caption or listed as the Respondent on Appellant's Petition for Review.

Subchapter E. DOCUMENTARY HEARINGS

- Sec.
- 179.101. Expedited documentary hearing.
 - 179.102. Election of documentary hearing.
 - 179.103. Waiver of oral hearing.
 - 179.104. Documentary hearing procedures.
 - 179.105. Evidentiary documents.
 - 179.106. Verification.

§ 179.101. Expedited documentary hearing.

(a) *Purpose.* To control administrative costs for all parties, to expedite and streamline the formal hearing process and to promote judicial economy, an individual who appeals a decision of the Judges or Stewards regarding certain racing matters may waive the right to an oral hearing as provided in Subchapter C (relating to Commission hearings) and elect to have the matter proceed under the expedited process and resolved solely by the submission of documents.

(b) *Matters for documentary hearing.* Among other racing related matters, the expedited documentary hearing may be utilized by an appellant or party when time is of the essence or where the health, safety and welfare of a horse is involved, including but not limited to claiming disputes, horse transfers and other similar matters.

§ 179.102. Election of documentary hearing.

(a) An individual who elects to proceed under the expedited documentary hearing process, instead of a formal oral hearing, must provide written notice to the Bureau Directors of the individual's decision to proceed under the expedited hearing process within 2 days of the approval of the initial appeal request. A written waiver of oral hearing, in accordance with § 179.103 (relating to waiver of oral hearing), must be submitted along with the individual's notification of election to proceed under the expedited documentary hearing procedure.

(b) If there is more than one party in the matter, all parties must agree to proceed under the expedited documentary hearing process and must provide the necessary waiver form. If there is no agreement by the parties, the matter will proceed under the Commission's oral hearing process set forth in Subchapter C (relating to Commission hearings).

§ 179.103. Waiver of oral hearing.

- (a) The appellant and other parties, if applicable, shall execute a written waiver specifically acknowledging that:
 - (1) They are knowingly and voluntarily proceeding under the expedited documentary hearing process;
 - (2) They will timely submit all necessary documents or records properly sworn to or affirmed and based upon personal knowledge; and
 - (3) That as a condition of proceeding through the expedited documentary hearing process, they will abide by the decision of the Bureau Director and no appeal will be taken to the Commission or to a subsequent court.
- (b) The appellant and other parties must promptly submit the fully executed waiver form to the respective Bureau Director.

(c) Subsections (a)—(b) supersede 1 Pa. Code § 35.101 (relating to waiver of hearing).

§ 179.104. Documentary hearing procedures.

(a) The appellant and other parties, if applicable, shall submit to the Bureau Director a complete package of documents setting forth the factual or legal, or both, basis to support their position, including, but not limited to records, pleadings, witness affidavits, supporting briefs and legal argument.

(b) The Bureau Director's review of the underlying issues shall be limited solely to a review of the documentary evidence submitted by the parties to the hearing and the underlying determination by the Judges/Stewards. No in-person testimony or depositions shall be taken in these proceedings.

(c) Once the supporting documentation has been submitted to the Bureau Director, an appellant or a party may not communicate directly or indirectly, with the Bureau Director in connection with any issue of law or any matter of fact relating to the matter in dispute.

(d) The Bureau Director shall issue a limited written decision in the form of a ruling within 5 days of the receipt of the documents from the appellant or parties. The ruling shall briefly set forth the facts, conclusion and the legal basis for the Bureau Director's decision.

(e) The Bureau Director shall provide a copy of the applicable ruling to the appellant or parties in the matter.

§ 179.105. Evidentiary documents.

(a) The records, pleadings, briefs, affidavits and other documents to be submitted to the Bureau Director shall be signed and verified by the appellant, the parties or their respective counsel as set forth below.

(b) The signature of the person subscribing a document filed with the Commission constitutes a certificate by the individual that:

(1) The person has read the document being subscribed and filed and knows the contents thereof.

(2) The document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(3) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the person's knowledge, information and belief formed after reasonable inquiry.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.11 (relating to execution).

§ 179.106. Verification.

(a) Pleadings or other documents containing an averment of fact not appearing of record in the underlying action or containing a denial of fact shall be personally verified by the appellant or party thereto. Verification means a signed, written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

(b) The verification form should comply substantially with the following:

VERIFICATION

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief). 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: _____
(Signature)

(c) When an affidavit is used, the form should comply substantially with the following:

AFFIDAVIT

I, _____, being duly sworn do hereby affirm according to law, depose and say that the facts above set forth are true and correct to the best of my knowledge, information and belief.

(Signature of affiant)

Sworn and subscribed before me this _____
day of _____, 20__.

(Notary Public)

(d) An individual who executes a pleading or other document knowing that it contains a false statement and who causes it to be filed with the Bureau Director or Commission shall be subject to prosecution of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.12 (relating to verification).

Subpart B. LICENSING

Chap.	
181.	LICENSED RACING ENTITIES—TEMPORARY REGULATIONS
183.	SECONDARY PARI-MUTUEL ORGANIZATIONS—TEMPORARY REGULATIONS
185.	OCCUPATIONAL LICENSES—TEMPORARY REGULATIONS
187.	RACING VENDORS AND TOTALISATORS—TEMPORARY REGULATIONS
189.	NONPRIMARY LOCATIONS—TEMPORARY REGULATIONS

CHAPTER 181. LICENSED RACING ENTITIES—TEMPORARY REGULATIONS

Sec.	
181.1.	General provisions.
181.2.	Number of licensed racing entities.
181.3.	Race meeting license required.
181.4.	Race meeting application and procedures.
181.5.	Conditions for approval.
181.6.	Commission action on horse race meeting licenses.
181.7.	Denial, suspension or revocation.
181.8.	Racing days.
181.9.	Electronic wagering by licensed racing entity.
181.10.	Gratuities prohibited.
181.11.	Possession of firearms.
181.12.	Racetrack financial responsibility.
181.13.	Books and records of pari-mutuel wagering.
181.14.	Bond or letter of credit requirements.
181.15.	Filing of certain agreements with Commission.
181.16.	Horse entries prohibited.
181.17.	Fines and penalties.
181.18.	Searches within track premises.
181.19.	Commission office space.

ANNUAL OR PRE-MEET SUBMISSIONS

181.21. Submission of information to the Commission.

RACETRACK FACILITIES—STANDARD BRED

181.31.	General provisions.
181.32.	Judges' stand.
181.33.	Audio and visual equipment.

- 181.34. Photo finish.
- 181.35. Videotaping system.
- 181.36. Starting gates.
- 181.37. Distance markers.
- 181.38. Saddle pad colors.
- 181.39. Lighting.
- 181.40. Equine ambulance.
- 181.41. Barns.

RACETRACK FACILITIES—THOROUGHBRED

- 181.51. Thoroughbred facilities and equipment.
- 181.52. Concussion protocol program.
- 181.53. Stewards' stands.
- 181.54. Audio and visual equipment.
- 181.55. Photo finish.
- 181.56. Videotaping system.
- 181.57. Racetrack surface.
- 181.58. Starting gates.
- 181.59. Distance markers.
- 181.60. Lighting.
- 181.61. Human and equine ambulances.
- 181.62. Barns.

OPERATIONS

- 181.71. Test barn.
- 181.72. Enforcement.
- 181.73. Licensed racing entity security personnel.
- 181.74. Admission to premises and security.
- 181.75. Admission and removal of horses.
- 181.76. Fire prevention.
- 181.77. Admission of minors.
- 181.78. Health certificate.

§ 181.1. General provisions.

(a) *Purpose.* The purpose of this part is to set forth the requirements for individuals seeking to obtain a license to conduct horse race meetings, describe the duties, responsibilities, facilities, equipment and operations of the license racing entities, consistent with the provisions of section 9318 of the act (relating to licenses for horse race meetings).

(b) *Knowledge of rules.* All licensed racing entities, their directors, officers, officials and employees are responsible for the conduct of their horse race meeting, including but not limited to all live racing, simulcasted racing and pari-mutuel wagering activities within their facilities and racetrack enclosure.

(c) *General duty.* All licensed racing entities, their directors, officers, officials and employees shall be familiar with, abide by and enforce the provisions of the act and the rules, regulations and orders of the Commission or the Board of Judges and Board of Stewards.

(d) *Exemption.* A licensed racing entity may request an exemption from a requirement in this chapter to utilize new technology or innovative construction or design of the racetrack facilities. The Commission may grant an exemption if the Commission determines that:

- (1) the licensed racing entity's proposal substantially satisfies the purpose of the requirement; and
- (2) the exemption is in the best interests of the racing industry, the citizens of this Commonwealth and health, safety and welfare of horses.

§ 181.2. Number of licensed racing entities.

(a) *Standardbred horse racing.* No more than five persons shall be licensed to conduct a horse race meeting. No person licensed under this chapter to conduct standardbred horse racing with pari-mutuel wagering shall be licensed to conduct thoroughbred horse racing with pari-mutuel wagering.

(b) *Thoroughbred horse racing.* No more than six persons shall be licensed by the Commission to conduct a horse race meeting. No person licensed under this chapter to conduct thoroughbred horse racing with pari-mutuel

wagering shall be licensed to conduct standardbred horse racing with pari-mutuel wagering.

§ 181.3. Race meeting license required.

In accordance with the provisions of the act, no person shall conduct or operate a horse race meet with pari-mutuel wagering within this Commonwealth without first obtaining the appropriate license from the Commission. The purchase of a licensed racing entity, the change of ownership in the licensed racing entity or a transfer of a horse race meeting license shall be reviewed and approved by the Commission in accordance with the provisions of the Racing Act and these regulations.

§ 181.4. Race meeting application and procedures.

(a) Applications to conduct horse race meetings shall be in the form prescribed by the Commission and must contain information as required by the provisions of the Racing Act or as required by the Commission. The Commission may require the following forms or documentation:

- (1) Entity Application and Organizational Chart;
- (2) Multi-Jurisdictional History Disclosure Forms for applicable Directors, Officers and Principals;
- (3) Breed specific occupational license applications;
- (4) Recent fingerprints; or
- (5) Any other applicable information upon which to make a suitability determination.

(b) A license to conduct horse race meetings shall be issued for a period of 3 years.

(c) A licensed racing entity shall have the privilege to conduct a horse race meeting at which pari-mutuel wagering is permitted. A license to conduct a horse race meeting shall not be a property right and may not be used as collateral or be encumbered.

(d) The Commission may revoke or suspend the license of a licensed racing entity if the Commission finds that the licensed racing entity, or its directors, owners, officers, managers or agents, have not complied with the act and the regulations promulgated thereunder.

(e) A licensed racing entity may not sell, change ownership or transfer a license without the specific prior approval of the Commission as set forth in section 9357 of the act (relating to transfers of licenses).

§ 181.5. Conditions for approval.

Each horse race meeting license, if granted, shall be issued and remain in effect so long as the licensed racing entity, its subsidiaries, affiliates, agents or vendors comply with each condition, rule, regulation or order of the Commission and the provisions of the act, including the following conditions:

- (1) A horse race meeting at which pari-mutuel wagering and racing related activities is conducted shall be regulated by the Commission.
- (2) The conduct of pari-mutuel wagering and racing related activities shall also be regulated by the Department of Revenue.
- (3) The licensed racing entity shall print in its racing programs the procedure for filing a complaint with the Commission.

§ 181.6. Commission action on horse race meeting licenses.

The following shall apply:

(1) The Commission shall be prohibited from issuing a license to conduct a horse race meeting at which pari-mutuel wagering is permitted to an individual or applicant or an owner, officer, director or manager of the applicant who has been convicted of:

- (i) A felony in any jurisdiction.
- (ii) A misdemeanor gambling offense in any jurisdiction, unless 15 years has elapsed from the date of conviction.
- (iii) Fraud or misrepresentation in any jurisdiction related to horse racing or horse breeding, unless 15 years has elapsed from the date of conviction.
- (iv) An offense under 18 Pa.C.S. Subchapter B, §§ 5531—5561 (relating to cruelty to animals) (as amended).
- (v) An offense related to fixing or rigging horse races, including 18 Pa.C.S. § 4109 (relating to rigging publicly exhibited contest) or § 7102 (relating to administering drugs to race horses), or any similar crime in another jurisdiction, unless the conviction has been overturned on appeal under the laws of the jurisdiction of the original finding or a pardon has been issued.

(2) Following expiration of any period applicable to an applicant under paragraph (1)(ii) or (iii), in determining whether to issue a horse racing license to an applicant, the Commission shall consider the following factors:

- (i) The individual or a principal of the applicant's position with the applicant.
 - (ii) The nature and seriousness of the offense or conduct.
 - (iii) The circumstances under which the offense or conduct occurred.
 - (iv) The age of the applicant when the offense or conduct occurred.
 - (v) Whether the offense or conduct was an isolated or a repeated incident.
 - (vi) Any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received and the recommendations of persons who have substantial contact with the applicant.
- (3) If, in the judgment of the Commission, the applicant has demonstrated by clear and convincing evidence that the participation of the applicant in horse racing or related activities is not:
- (i) Inconsistent with the public interest or best interests of horse racing;
 - (ii) Interfering with the effective regulation of horse racing; or
 - (iii) Creating or enhancing the danger of unsuitable, unfair or illegal practices, methods or activities in the conduct of horse racing.

§ 181.7. Denial, suspension or revocation.

(a) The Commission may deny an application for a license or revoke, suspend or refuse to renew the license of any applicant or licensed racing entity, if the Commission finds by a preponderance of the evidence that:

(1) The applicant or licensed racing entity, or any of its owners, officers, director, managers, employees or agents:

(i) Has not complied with the conditions, rules, regulations and provisions of this chapter and that it would be in the public interest, convenience or necessity to deny, revoke, suspend or not renew the license.

(ii) Has been convicted of a violation or attempt to violate a horse racing law, rule or regulation of a horse racing jurisdiction.

(iii) Has furnished the Commission with false or misleading information relating to the application or license renewal.

(iv) Has failed to provide all requested documentation relating to an application or license renewal, change of ownership or transfer of license.

(v) Has been convicted of a crime involving moral turpitude.

(vi) Has been convicted of a misdemeanor gambling offense in any jurisdiction.

(vii) Has been convicted in any jurisdiction of fraud or misrepresentation related to horse racing or horse breeding.

(viii) Has engaged in or continues to engage in unlicensed or unlawful pari-mutuel wagering activities in or outside of this Commonwealth which violates the laws of the Commonwealth or the rules of racing.

(2) The applicant or licensed racing entity does not have the use of a racetrack or racetrack enclosure in accordance with the provisions of 4 Pa.C.S. Part II (relating to gaming).

(3) The licensed racing entity has commingled horsemen's organization funds in violation of section 9345(c) (relating to commingling) or has refused to place on deposit a letter of credit under section 9346 of the act (relating to standardbred horse racing purse money).

(4) The Commission determines that the licensed racing entity has failed to properly maintain its racetrack and racetrack enclosure in good condition under this chapter or to provide adequate capital improvements to the racetrack and racetrack enclosure as required under this chapter and 4 Pa.C.S. § 1404 (relating to distributions from licensee's revenue receipts).

(5) The applicant or licensed racing entity, its owners, officers, directors, managers, employees or agents have been convicted in any jurisdiction of an offense related to fixing or rigging horse races, including 18 Pa.C.S. § 4109 (relating to rigging publicly exhibited contest) or § 7102 (relating to administering drugs to race horses), or any similar crime in another jurisdiction, unless the conviction has been overturned on appeal under the laws of the jurisdiction of the original finding or a pardon has been issued.

(6) The experience, character or general fitness of an officer, director, principle or employee of the applicant is that the participation of that person in Standardbred or Thoroughbred horse racing and the related activities would be inconsistent with the public interest, convenience or necessity or with the best interest of racing generally.

(b) If a revocation or failure to renew a license under this chapter occurs, the licensee's authorization to conduct previously approved activity shall immediately cease, subject to the licensee's hearing rights as set forth in the Commission's regulations. In the case of a suspension, the licensee's authorization to conduct previously approved activity shall immediately cease until the Commission has notified the licensee that the suspension is no longer

in effect. After request for a hearing by a licensee, the Commission may grant a supersedeas, pending the final determination of the suspension.

(c) A horse race meeting license shall be renewed every 3 years upon application and, shall not be transferred except as provided for under section 9357 of the act (relating to transfers of licenses). Renewals of horse race meeting licenses shall not be granted automatically.

§ 181.8. Racing days.

(a) The Commission, consistent with the provisions of the Racing Act, its regulations and 4 Pa.C.S. § 1303 (relating to additional Category 1 slot machine license requirements), shall approve the specific number of race days requested by the licensed racing entity for the race meet. The required racing days under this section and 4 Pa.C.S. § 1303(a)(2) and (b) may be waived or modified by the Commission if the waiver or modification has been agreed to by the horsemen's organization and the licensed racing entity at the racetrack where the racing days are to be scheduled or raced.

(b) The provisions of 4 Pa.C.S. § 1303(d) shall not apply if the reason for noncompliance with that section by a licensed racing entity is the cancellation of racing days due to the Commission's inability to properly regulate and oversee the conduct of horse racing in this Commonwealth due to inadequate funding.

(c) The Commission shall submit to the Secretary of Revenue the approved number of racing days for each licensed racing entity, including the following information:

- (1) The names and addresses of the licensed racing entity;
- (2) The names and addresses of the owners, officers and general managers of the licensed racing entity; and
- (3) Any other information the Commission deems appropriate.

(d) If a racing day is canceled by a licensed racing entity for reasons beyond the licensed racing entity's control, the Commission shall grant the licensed racing entity the right to conduct that racing day in the same or the next ensuing calendar year, if schedules permit. The Standardbred or Thoroughbred Horse Racing Bureau Directors, after consultation with the licensed racing entity and the horsemen's organization at the racetrack, may also cancel a race if it is determined that fewer than six horses have entered the race.

§ 181.9. Electronic wagering by licensed racing entity.

(a) *New Application.* In accordance with the applicable provisions of Subchapter C of the act, a license racing entity seeking to offer all forms of electronic wagering, including advanced deposit wagering to individuals within this Commonwealth must apply to the Commission for the applicable license by submitting the following:

- (1) A completed electronic wagering license application, in the form approved by the Commission.
- (2) A Petition, in numbered paragraphs, containing the requested information as set forth in sections 9353 and 9355 of the act and setting forth any other information supporting its petition and request for an electronic wagering license.

(3) Applicable licensing costs and fees as set forth in section 9352 (relating to licensing costs and fees) of the act.

(b) *Renewal Application/Petition.* An electronic wagering license issued to a licensed racing entity shall be renewed annually. An electronic wagering renewal application and renewal petition shall be submitted on or before 120 days before the expiration of the license term along with the applicable costs and fees as set forth in section 9352 of the act.

(1) The renewal application and petition, with the approval of the Commission or its designated staff may be limited to information updated or changed from the previous application or renewal.

(c) A licensed racing entity seeking to utilize a racing vendor to operate its advanced deposit wagering system shall submit the appropriate notification and petition for review and approval by the Commission. The racing vendor entity shall simultaneously submit an application to operate the advanced deposit wagering system on behalf of the licensed racing entity under the provisions of Subchapter C of the act.

§ 181.10. Gratuities prohibited.

No director, owner, officer, manager or employee of an applicant or licensed racing entity or their immediate family shall accept gifts, gratuities or anything of value from horse breeders, owners, trainers or other individuals in connection with racing related activities at any facility within this Commonwealth.

§ 181.11. Possession of firearms.

No person, licensee, employee of a licensed racing entity, a secondary pari-mutuel organization, or their racing vendors and concessionaires shall possess a firearm within the racetrack enclosure unless that person has obtained a valid permit for the firearm from an appropriate criminal law enforcement authority and the firearm has been registered in writing with the Commission's security office at the racetrack and the director of security of the licensed racing entity.

§ 181.12. Racetrack financial responsibility.

(a) Approval of a race meeting by the Commission does not establish the Commission as the insurer or guarantor of the safety of any participant or the physical condition of the racetrack facilities or the purse of any race.

(b) A licensed racing entity shall agree to indemnify, save and hold harmless the Commission from any liability, if any, arising from unsafe conditions of the racetrack grounds or in the default in payment of purses.

(c) If requested, a licensed racing entity shall provide to the Commission a copy of a certificate of liability insurance.

(d) A licensed racing entity and its managing officers shall ensure that all purse moneys, disbursements and appropriate nomination race moneys are available to make timely distribution in accordance with the act, Commission rules, licensed racing entity rules and race conditions.

(e) In accordance with section 9334 of the act (relating to State Racing Fund and tax rate) and the laws of the Commonwealth, a licensed racing entity and its managing officers shall pay to the Department of Revenue all necessary and proper taxes due. Upon request by the Commission, the license racing entity shall provide copies of the records of the payments.

§ 181.13. Books and records of pari-mutuel wagering.

(a) Every licensed racing entity that conducts a horse race meeting at which pari-mutuel wagering is authorized

shall maintain books and records that clearly show, by separate record, the total amount of money contributed to every pari-mutuel pool. The Commission and the Department of Revenue or their authorized representatives shall have access to examine all books and records and ascertain whether the proper amount due to the Commonwealth is being paid by the licensed racing entity.

(b) The Commission may require periodic audits to determine that the licensed racing entity has funds available to meet those distributions for the purposes required by the act, Commission rules, the conditions of the race meeting and the obligations incurred in the daily operations of the race meeting. In its audit reports to the Commission, the licensed racing entity shall include file a copy of all tax returns, a balance sheet and a profit and loss statement. The confidentiality of the audits and reports may be the subject of a request for confidentiality as set forth in the Commission's regulations.

(c) The Commission may request that a licensed racing entity file an unaudited balance sheet and profit and loss statement. Those submissions must be in a format which conforms with the requirements set out in the licensed racing entity's license application.

(d) An association shall file an annual audit with the Commission within the time period prescribed by the Commission. The Commission, upon good cause shown, may extend the time for filing. These annual audit reports shall include all operations for the calendar or fiscal year of the licensed racing entity and shall be:

(1) Verified under oath by at least two of the principal officers of the association.

(2) Submitted by persons preparing the reports.

(3) Separate records of each bank reconciliation must be maintained by the association in a manner which will clearly indicate all reconciling items between the balance per the bank statement and the balance per the books of the association at the date of reconciliation.

§ 181.14. Bond or letter of credit requirements.

If applicable or required under section 9345 or section 9346 of the act (relating to commingling; and Standard-bred horse racing purse money), a licensed racing entity shall file with the Commission a bond or letter of credit payable to the Commission for an amount determined by the provisions of the act.

§ 181.15. Filing of certain agreements with Commission.

At the request of the Commission, a licensed racing entity shall promptly file with the Commission any purchase or change of ownership agreements, live racing agreements, or SPMO, racing vendor agreements or any other contract or agreement as the Commission may determine. In the event approval of the agreement is not obtained by the licensed racing entity prior to its execution, the agreement shall contain an express provision which states that the agreement will not be operative unless approved by the Commission.

§ 181.16. Horse entries prohibited.

No director, officer, principle or employee of the licensed racing entity engaged in the active management of the racetrack facility or member of that person's immediate family, shall race or permit or cause to be raced any horse in which that person has either direct or indirect interest, at any meeting conducted by that licensed racing entity.

§ 181.17. Fines and penalties.

(a) *General rule.* The Commission may impose administrative fines upon any licensed or unlicensed racing

entity, association or person participating in horse racing at which pari-mutuel wagering is conducted, other than as a patron, for a violation of any provision of this chapter or rule or regulation of the Commission, not exceeding \$10,000 for each violation. Each day may be considered a separate violation. Fines shall be deposited in the State Racing Fund and may be appropriated for the enforcement of this chapter.

(b) *Interests.*

(1) No owner, officer or employee of a licensed racing entity or their immediate family shall have any direct or indirect interest in a race horse that is participating in a horse race meeting at which the person or relative listed under this paragraph holds any interest in the licensed racing entity conducting the horse race meeting or in the racetrack facility.

(2) The Commission may impose a fine upon any person for a violation of this subsection in accordance with subsection (a).

§ 181.18. Searches within track premises.

To assist in detection of illegal pari-mutuel betting by racing personnel, effectively prevent the use of improper racing devices, restrict the possession of dangerous weapons on racing premises, control the expanded traffic in unlawful drugs and drug related paraphernalia, maintain proper and adequate supervision of racing and enforce the laws of the Commonwealth, the Commission or its representatives, shall have the right and privilege to conduct a search within the areas of the track premises which any owner, trainer, driver, groom, vendor of racing equipment and service or other licensee acting in their behalf, may occupy and to control including all personal property and effects and as a result of the search, the Commission or its representatives, shall have the power and authority to seize an article, within the areas, which may be forbidden or be in violation of the rules and regulations of the Commission.

§ 181.19. Commission office space.

A licensed racing entity shall provide adequate office and administrative space for the use of the Judges, Stewards and other Commission personnel as required by the Commission. The location and size of the office space, furnishings and equipment required under this section must be approved by the Commission.

ANNUAL OR PRE-MEET SUBMISSIONS

§ 181.21. Submission of information to the Commission.

(a) At the beginning of each meeting or at any other time as requested by the Commission, every licensed racing entity shall furnish the following information to the Commission:

(1) The current name and experience of the licensed racing entity's management employees and racing officials;

(2) Racetrack facility maintenance records;

(3) A report and certificate by a duly licensed civil engineer, land surveyor or other racetrack consultant that the racetrack has been properly measured from wire to wire;

(4) A report and certificate by a duly licensed civil engineer, land surveyor or other racetrack consultant evidencing the accurate measurement and survey of the turns of the racetrack oval;

(5) Detailed information regarding the racetrack's surface, materials and depth, maintenance records and information relating to the drainage system for the racetrack;

(6) The design and construction of the pylons, including the use of the lightening lane or the removal of the pylons must be approved by the Commission;

(7) Names of the racetrack personnel hired to maintain the track surface and a list of the necessary equipment, including any back-up equipment for maintaining the track surface.

(b) Prior to the first day of a race meeting, a licensed racing entity shall deliver to the Commission a copy of the fire marshal's certification regarding the licensed racing entity's compliance with fire safety regulations or the fire marshal's plan of correction, if applicable. The certification or plan must be based on an inspection of the racetrack grounds conducted by the fire marshal not more than 30 days before the first day of a race meeting.

(c) All detailed security and operational plans for the upcoming meet.

RACETRACK FACILITIES—STANDARD BRED

§ 181.31. General provisions.

(a) The licensed racing entity shall ensure that the public areas of the racetrack grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by law.

(b) The licensed racing entity shall provide and maintain adequate restroom facilities for the patrons and licensees.

(c) The licensed racing entity shall provide an adequate supply of free drinking water.

(d) The licensed racing entity shall maintain all facilities on the racetrack grounds to ensure the safety and cleanliness of the facilities at all times.

(e) The licensed racing entity shall ensure the surface of the racetrack is designed, constructed and maintained to provide for the safety of the drivers and horses.

(f) The licensed racing entity shall maintain sufficient and adequate equipment and competent personnel for the purpose of continued maintenance of the racetrack surface and plant grounds and facility.

(g) During a race performance, the licensed racing entity shall also provide:

(1) A first aid room equipped with at least two beds and other appropriate equipment; and

(2) The services of at least one physician, a nurse practitioner or paramedic.

(h) *Human ambulance:* A licensed racing entity shall provide and maintain at least one properly equipped human ambulance to be present during qualifying races and during the regular racing program for participants, licensees and patrons.

(1) The ambulance shall be staffed with at least two Emergency Medical Technicians.

(2) If the ambulance is being used to transport an individual, the association may not conduct a race until the ambulance is replaced.

(i) At the beginning of each meet or at least annually, the licensed racing entity shall provide mandatory orientation of racing emergency procedures for all emergency response personnel as previously set forth.

§ 181.32. Judges' stand.

The licensed racing entity shall provide adequate stands and facility for the Judges and, as required, other officials to have a clear view of the racetrack. The location and design of the stands shall be reviewed and approved by the Commission.

§ 181.33. Audio and visual equipment.

(a) A licensed racing entity shall provide and maintain in good working order a communication system between the following:

(1) Judges' stand;

(2) Racing office;

(3) Tote room;

(4) Paddock;

(5) Test barn;

(6) Starting gate;

(7) Video camera locations;

(8) Commission Veterinarian;

(9) Track announcer;

(10) Location of the ambulances (equine and human); and

(11) Commission track office and other locations and persons designated by the Commission.

(b) The licensed racing entity shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

§ 181.34. Photo finish.

(a) A licensed racing entity shall provide an electronic photo finish device with mirror image to photograph the finish of each race and record the time of each horse in at least fifths of a second. The location and operation of the photo finish devices must be approved by the Commission before its first use in a race or in the meet.

(b) The licensed racing entity shall promptly post a photograph of each photo finish for win, place or show in an area accessible to the public.

(c) The licensed racing entity shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the Commission.

(d) On request by the Commission, the licensed racing entity shall provide, without cost, a print from a negative of a photo finish to the Commission. Photo finish negatives of each race shall be maintained by the association for not less than 6 months after the end of the race meeting or another period as may be requested by the Judges or the Commission.

§ 181.35. Videotaping system.

(a) A licensed racing entity shall provide a videotaping system approved by the Commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review shall be provided in the Judges' stand. The location and construction of video towers must be approved by the Commission.

(b) The Judges may, at their discretion, direct the video camera operators to videotape the activities of any horse or person handling horses prior to, during or following a race.

(c) All races must be recorded by at least three video cameras.

(d) The licensed racing entity shall, upon request, provide to the Commission, without cost, a copy of a videotape of a race.

(e) Videotapes recorded prior to, during and following each race shall be maintained by the licensed racing entity for not less than 6 months after the end of the race meeting or another period as may be requested by the Judges or the Commission.

(f) A licensed racing entity shall provide a viewing area in which, on approval by the Judges, an owner, trainer, driver or other interested individual may view a videotape recording of a race.

(g) Following any race in which there is an inquiry or objection, the licensed racing entity shall display to the public on designated monitors the videotaped replays of the incident in question which were utilized by the Judges in making their decision.

§ 181.36. Starting gates.

During the race meet and at racing hours, a licensed racing entity shall provide at least two operable starting gates, which have been approved by the Commission.

§ 181.37. Distance markers.

(a) A licensed racing entity shall provide starting point markers and distance poles in a size and position that is clearly seen from the Judges' stand.

(b) All poles and markers shall be positioned at least 10 feet off the inside rail.

(c) The starting point markers and distance poles must be marked as follows:

- (1) 3/4 pole—Red and white horizontal stripes
- (2) 1/2 pole—Red and white horizontal stripes
- (3) 1/4 pole—Red and white horizontal stripes
- (4) 1/8 poles—Green and white horizontal stripes
- (5) 1/16 poles—Black and white horizontal stripes

§ 181.38. Saddle pad colors.

(a) All pari-mutuel racetracks shall adopt the following color format for saddle pad colors for post positions in each race:

- (1) Post Position One—Red
- (2) Post Position Two—Blue
- (3) Post Position Three—White
- (4) Post Position Four—Green
- (5) Post Position Five—Black
- (6) Post Position Six—Yellow
- (7) Post Position Seven—Pink
- (8) Post Position Eight—Gray
- (9) Post Position Nine—Purple
- (10) Post Position Ten—Blue/Red
- (11) Post Position Eleven—Light Blue
- (12) Post Position Twelve—Red/White

(b) All saddle pad numbers, with the exception of post positions three and five, shall be white with a black border. The saddle pad numbers for post positions three and five shall be solid black and solid white, respectively.

§ 181.39. Lighting.

(a) A licensed racing entity shall provide lighting for the racetrack and the patron facilities that is adequate to ensure the safety and security of the patrons, licensees and horses.

(b) A licensed racing entity shall provide the necessary and appropriate lighting to ensure the proper operation of the videotape and photo finish equipment which must be approved by the Commission.

(c) The licensed racing entity shall provide adequate additional lighting in the stable area as required by the Commission and shall maintain a back-up lighting system that is sufficient to ensure the safety of race participants and patrons.

§ 181.40. Equine ambulance.

(a) A licensed racing entity shall provide a horse ambulance staffed by trained personnel available in the stable area of the racetrack grounds during training, qualifying and race days for the removal of injured animals.

(b) The Commission may establish the following requirements for the equine ambulance:

(1) It must be properly ventilated and kept at a proper location ready for immediate or emergency use.

(2) The ambulance must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The ambulance must be also be equipped with and be able to do the following:

- (i) Navigate on the racetrack during all weather conditions;
- (ii) Transport a horse off the association grounds;
- (iii) Large, portable screens to shield a horse from public view;
- (iv) Ramps to facilitate loading a horse;
- (v) Adequate means of loading a horse that is down;
- (vi) A rear door and a door on each side;
- (vii) A padded interior;
- (viii) A movable partition to initially provide more room to load a horse and to later restrict a horse's movement;
- (ix) A shielded area for the person who is attending to the horse; and
- (x) An adequate area for the storage of water and veterinary drugs and equipment.

(c) A licensed racing entity may not conduct a race unless an equine ambulance or other Commission-approved substitute is readily available.

(d) The equine ambulance, its supplies and attendants and the operating procedures for the equine ambulance must be approved by the Commission.

(e) The equine ambulance must be stationed at a location designated by the licensed racing entity immediately available for an emergency.

§ 181.41. Barns.

(a) A licensed racing entity shall provide barns containing a sufficient number of stalls to accommodate all horses approved to race and all other horses approved to

be on the grounds, unless the licensed racing entity has request and received approval by the Commission to provide a paddock area for horses being shipped in for races. At all times, as a condition of licensure, the licensed racing entity shall provide the barn/stable area configuration or if applicable the configuration of the paddock facility.

(b) A licensed racing entity shall ensure that the barns are kept clean and in good repair. Each barn, including the receiving barn, must have a hot and cold water supply available, be well-ventilated, have proper drainage and be constructed to be comfortable in all seasons.

(c) A licensed racing facility shall ensure that each horse is stabled in an individual box stall with minimum dimensions of 10 by 10 feet.

(d) A licensed racing entity shall provide an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area daily. The association shall ensure that refuse from the stalls and other refuse are kept separately.

(e) Licensed racing entities shall comply with all environmental, storage and disposal regulations as required by law.

RACETRACK FACILITIES—THOROUGHBRED

§ 181.51. Thoroughbred facilities and equipment.

(a) A licensed racing entity shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by Federal law.

(b) A licensed racing entity shall provide and maintain adequate restroom facilities for the patrons and licensees.

(c) A licensed racing entity shall provide an adequate supply of free drinking water.

(d) A licensed racing entity shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.

(e) The licensed racing entity shall ensure the surface of the racetrack is designed, constructed and maintained to provide for the safety of the jockeys and horses.

(f) The licensed racing entity shall maintain sufficient and adequate equipment and competent personnel for the purpose of continued maintenance of the racetrack surface and plant grounds and facility.

(g) During a race performance, the licensed racing entity shall provide:

(1) A first aid room equipped with at least two beds and other appropriate equipment; and

(2) The services of at least one physician, a nurse practitioner or paramedic.

(h) The licensed racing entity shall provide a properly equipped to human transport ambulance and equine ambulance as set forth in § 181.61 (relating to human and equine ambulances).

(i) At the beginning of each meet or at least annually, the licensed racing entity shall provide mandatory orientation of racing emergency procedures for all emergency response personnel set forth in these regulations.

§ 181.52. Concussion protocol program.

(a) A licensed racing entity may establish a concussion protocol program for the education, evaluation, diagnosis and management of concussion of jockeys at its racetrack.

A licensed racing entity seeking permission to adopt a concussion protocol program shall petition the Commission and provide all the necessary medical, procedural and enforcement information regarding the proposed program for review by the Commission.

(b) The approval of a program by the Commission shall not be construed to make the Commission or the Stewards the guarantor or insurer of the jockey's physical condition.

(c) The protocol procedures may include that:

(1) Each jockey shall acknowledge in writing that they have been made aware of the concussion protocols in place for the racetrack at which they are riding;

(2) A minimum assessment of the jockey which shall include the most current Sport Concussion Assessment Tool examination when necessary and be performed by a medical professional licensed within this Commonwealth to perform the evaluation;

(3) A return-to-ride guideline shall be established to clear a jockey who has been concussed or is believed to have been concussed once the jockey is declared fit-to-ride by a medical professional authorized to do so; and,

(4) If implemented, the Stewards at the racetrack shall be notified when a jockey is not permitted to ride and when the jockey has been authorized to return to riding.

§ 181.53. Stewards' stands.

A licensed racing entity shall provide adequate stands for Stewards and other officials to have a clear view of the racetrack. The location and design of the stands shall be reviewed and approved by the Commission.

§ 181.54. Audio and visual equipment.

(a) A licensed racing entity shall provide and maintain in good working order a communication system between the:

- (1) Stewards' stand;
- (2) racing office;
- (3) tote room;
- (4) jockeys' room;
- (5) paddock;
- (6) test barn;
- (7) starting gate;
- (8) weigh in scale;
- (9) video camera locations;
- (10) clocker's stand;
- (11) racing veterinarian;
- (12) track announcer;
- (13) location of the ambulances (equine and human); and
- (14) other locations and persons designated by the Commission.

(b) A licensed racing entity shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

§ 181.55. Photo finish.

(a) A licensed racing entity shall provide two electronic photo-finish devices with mirror image to photograph the finish of each race and record the time of each horse in at least hundredths of a second. The location and operation

of the photo finish devices must be approved by the Commission before its first use in a race or in the meet.

(b) The licensed racing entity shall promptly post a photograph of each photo finish for win, place or show in an area accessible to the public.

(c) The licensed racing entity shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the Commission.

(d) Upon request by the Commission, the licensed racing entity shall provide, without cost, a print of a photo finish to the Commission. Photo finish records of each race shall be maintained by the licensed racing entity for not less than 6 months after the end of the race meeting or another period as may be requested by the Stewards or the Commission.

§ 181.56. Videotaping system.

(a) A licensed racing entity shall provide a videotaping system approved by the Commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review shall be provided in the Stewards' stand. The location and construction of video towers must be approved by the Commission.

(b) One camera, designated by the Commission, shall videotape the pre-race loading of all horses into the starting gate and shall continue to videotape them until the field is dispatched by the Starter.

(c) One camera, designated by the Commission, shall videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted and the equipment has been removed from the horse.

(d) The Stewards may, at their discretion, direct the video camera operators to videotape the activities of any horses or persons handling horses prior to, during or following a race.

(e) Races run on an oval track must be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

(f) A licensed racing entity shall, upon request, provide to the Commission, without cost, a copy of a videotape of a race.

(g) Videotapes recorded prior to, during and following each race shall be maintained by the licensed racing entity for not less than 6 months after the end of the race meeting or another period as may be requested by the Stewards or the Commission.

(h) A licensed racing entity shall provide a viewing room in which, on approval by the Stewards, an owner, trainer, jockey or other interested individual may view a videotape recording of a race.

(i) Following any race in which there is an inquiry or objection, the licensed racing entity shall display to the public on designated monitors the videotaped replays of the incident in question which were utilized by the Stewards in making their decision.

§ 181.57. Racetrack surface.

(a) In addition to the provisions of § 181.21 (relating to submission of information to the Commission), the licensed racing entity shall ensure that the surface of a racetrack, including the cushion, subsurface and base, are

designed, constructed and maintained to provide for the safety of the jockeys and horses.

(b) Distances to be run shall be measured from the starting line at a distance 3 feet out from the inside rail.

(c) The surveyor's report must be approved by the Commission prior to the first race day of the meeting.

(d) A licensed racing entity shall provide an adequate drainage system for the racetrack.

(e) A licensed racing entity shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The licensed racing entity shall also provide back-up equipment for maintaining the track surface.

(f) A licensed racing entity that conducts races on a turf track shall:

(1) maintain an adequate stockpile of growing medium; and

(2) provide a system capable of adequately watering the entire turf course evenly.

§ 181.58. Starting gates.

(a) During racing hours, a licensed racing entity shall provide at least two operable padded starting gates, which have been approved by the Commission.

(b) A licensed racing entity shall make at least one starting gate and qualified starting gate personnel available for schooling during designated training hours.

(c) A licensed racing entity shall ensure that an assistant Starter is available for each horse in an official race.

(d) If a race is started at a place other than in a chute, the association shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

§ 181.59. Distance markers.

(a) A licensed racing entity shall provide starting point markers and distance poles in a size and position that is clearly seen from the Stewards' stand.

(b) The starting point markers and distance poles must be marked as follows:

(1) 1/4 poles—Red and white horizontal stripes

(2) 1/8 poles—Green and white horizontal stripes

(3) 1/16 poles—Black and white horizontal stripes

(4) 220 yards—Green and white

(5) 250 yards—Blue

(6) 300 yards—Yellow

(7) 330 yards—Black and white

(8) 350 yards—Red

(9) 400 yards—Black

(10) 440 yards—Red and white

(11) 550 yards—Black and white horizontal stripes

(12) 660 yards—Green and white horizontal stripes

(13) 770 yards—Black and white horizontal stripes

(14) 870 yards—Blue and white horizontal stripes

§ 181.60. Lighting.

(a) A licensed racing entity shall provide lighting for the racetrack and the patron facilities that is adequate to

ensure the safety and security of the patrons, licensees and horses. Lighting to ensure the proper operation of the videotape and photo finish equipment must be approved by the Commission.

(b) A licensed racing entity shall provide adequate additional lighting in the stable area as required by the Commission.

(c) If a licensed racing entity conducts racing at night, the association shall maintain a back-up lighting system that is sufficient to ensure the safety of race participants and patrons.

§ 181.61. Human and equine ambulances.

(a) A licensed racing entity shall provide and maintain at least one human ambulance and at least one horse ambulance during times horses are permitted to train or race.

(1) The human transport ambulance shall be supplied and equipped in accordance with the requirements set forth by the Department of Health and staffed with at least one certified paramedic during training and two certified paramedics during racing hours. The paramedics shall be dully certified in accordance with the standards set forth by the Department of Health.

(2) If the human ambulance is being used to transport an individual, the license racing entity may not conduct a race or allow horses with riders on the racetrack until the ambulance is replaced.

(b) Unless otherwise approved by the Commission or the Stewards, an ambulance shall follow the field at a safe distance during the running of races. If not following the field, the human ambulance shall be parked at an appropriate entrance to the racing strip to allow ease of access.

(c) A licensed racing entity shall provide an equine ambulance staffed by trained personnel on association grounds on each day that the racetrack is open for racing or training.

(d) The Commission may establish the following requirements for the equine ambulance:

(1) The ambulance must be properly ventilated and kept at an appropriate entrance ready for immediate or emergency response.

(2) The ambulance must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The ambulance must be also equipped with and be able to do the following:

- (i) navigate on the racetrack during all weather conditions;
- (ii) transport a horse off the association grounds;
- (iii) large, portable screens to shield a horse from public view;
- (iv) ramps to facilitate loading a horse;
- (v) adequate means of loading a horse that is down;
- (vi) a rear door and a door on each side;
- (vii) a padded interior;
- (viii) a movable partition to initially provide more room to load a horse and to later restrict a horse's movement;
- (ix) a shielded area for the person who is attending to the horse; and
- (x) an adequate area for the storage of water and veterinary drugs and equipment.

(e) A licensed racing entity may not conduct a race unless an equine ambulance or other Commission-approved substitute is readily available.

(f) The equine ambulance, its supplies and attendants and the operating procedures for the equine ambulance must be approved by the Commission.

(g) The equine ambulance must be stationed at a location designated by the licensed racing entity immediately available for an emergency.

§ 181.62. Barns.

(a) A licensed racing entity shall provide barns containing a sufficient number of stalls to accommodate all horses approved to race and all other horses approved to be on the grounds. The assignment of barns and stalls are within the sole authority and discretion of the licensed racing entity and determination relating to barns and stall may not be appealed to the Commission. The licensed racing entity's stable area configuration and facilities must be approved by the Commission.

(b) A licensed racing entity shall ensure that the barns are kept clean and in good repair. Each barn, including the receiving barn, must have a hot and cold water supply available, be well-ventilated, have proper drainage and be constructed to be comfortable in all seasons.

(c) A licensed racing entity shall ensure that each horse is stabled in an individual box stall with minimum dimensions of 10 by 10 feet.

(d) A licensed racing entity shall provide an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area daily. The licensed racing entity shall ensure that refuse from the stalls and other refuse are kept separately.

(e) Licensed racing entities shall comply with all environmental, storage and disposal regulations as required by law.

OPERATIONS

§ 181.71. Test barn.

In addition to the requirements set forth in Chapter 401 (relating to prohibited and unlawful practices—temporary regulations) and as a condition of its license, a licensed racing entity shall provide a test barn for taking, securing and storing specimens of urine, blood or other biological substances for pre-race or post-race testing. Access to the test barn shall be limited to authorized persons only. Entrances shall be locked or guarded at all times by licensed racing entity security.

§ 181.72. Enforcement.

Each licensed racing entity association shall be responsible for enforcing the provisions of this chapter subject to supervision by designated officials of the Commission.

§ 181.73. Licensed racing entity security personnel.

(a) Licensed racing entities shall employ an adequate number of persons as security guards to protect the health and safety of patrons, licensees and horses within the racetrack enclosure. Those designated security personnel shall maintain security controls over the racetrack grounds. All security controls and protocols are subject to the approval of the Commission.

(b) In addition to Commission licensure, a licensed racing entity may establish an internal system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its race meeting are licensed as required by these rules.

(c) A license racing entity shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed or who has not been issued a visitor's pass or other identifying credential or whose presence in the restricted area is unauthorized.

§ 181.74. Admission to premises and security.

(a) Unless otherwise authorized by the Commission, a licensed racing entity shall provide continuous security in the stable area during all times that horses are stabled on the grounds of the racetrack enclosure. Security personnel shall request that every person seeking entrance into the stable area provide a valid Commission license or racetrack credential or appropriate visitor's pass issued by the association.

(1) No person shall refuse to display or produce a valid Commission license, racetrack credential or other identification. Anyone refusing to display or produce a valid Commission license or credentials shall be refused entry and/or may be referred to the Judges or Stewards.

(b) A written record of all individuals admitted to the stable area between the hours of 12 a.m./midnight and 5 a.m. shall be maintained by the licensed racing entity and shall be produced upon request by the Commission.

(1) The written record shall, at a minimum, contain the name of the person admitted, the person's license number and the time admitted and reason for the person's presence.

(c) Upon request by the Commission, a licensed racing entity shall provide a list of the security personnel, including the name, qualifications, training, duties duty station and area supervised by each employee.

(d) Each day, the head of security for a licensed racing entity shall deliver a written report to the Stewards regarding any occurrences on the racetrack grounds on the previous day. Not later than 24 hours after an incident occurs requiring the attention of security personnel, the head of security shall deliver to the Stewards a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved.

§ 181.75. Admission and removal of horses.

(a) All horses entered to compete shall be present on racetrack grounds no less than 2 hours prior to the scheduled post time of the race for which the horse is entered to compete. Horses not arriving on racing association property at least 2 hours prior to the scheduled post time of the race on the day for which the horse is entered to compete are subject to scratch, with discretion given to Stewards to consider extenuating circumstances.

(b) A complete and accurate list of all horses, tattoo numbers and description of the horses entering the stable area shall be prepared by racetrack security personnel, who shall determine the identity of the trainer, owner, van driver or other designated person entering with the horses.

(c) All horses leaving the racetrack grounds must be registered with the licensed racing entity's security personnel, who shall prepare a detailed and accurate list of all horses, including tattoo numbers, description and the name/license number of those persons accompanying the horse.

(d) Once admitted onto the racetrack grounds to participate in a race, no horse shall be removed from the racetrack at any time without specific medical or veteri-

nary authorization and without approval from the Judges or Stewards and racetrack management.

§ 181.76. Fire prevention.

(a) An association shall develop and implement a program for fire prevention on association grounds. An association shall instruct employees working on association grounds of the procedures for fire prevention.

(b) No person shall:

(1) Smoke in stalls, feed rooms or under shed rows;

(2) Burn open fires or oil or gas lamps in the stable area;

(3) Leave unattended any electrical appliance that is plugged-in to an electrical outlet;

(4) Permit horses to come within reach of electrical outlets or cords;

(5) Store flammable materials such as cleaning fluids or solvents in the stable area; or

(6) Lock a stall which is occupied by a horse.

(c) An association shall post a notice in the stable area which lists the prohibitions outlined in subsections (a) and (b).

§ 181.77. Admission of minors.

Minors under 18 years of age shall not be admitted to the track. Any minor legally employed by any association, concessionaire or other person duly licensed by the Commission shall be admitted to the track for the sole purpose of performing his duties as an employee. A minor, accompanying a parent or natural guardian who is also a licensee and whose employment requires him to be present in the stable or paddock area, shall be admitted to the stable or paddock area with the licensee. In no event shall the minor be permitted to wager upon any race nor shall the minor be permitted to be in the area of the track other than that area in which his duties are to be performed.

§ 181.78. Health certificate.

No horse shall be admitted to any part of the plant or premises of any pari-mutuel racing association under the jurisdiction of the Commission unless a health certificate is presented when admission to the premises is sought. The Certificate must state the following regarding the health and physical condition of the horse:

(1) The horse was examined thoroughly within a 7-day period preceding the date admission is sought.

(2) The horse was free of any evidence of infectious, contagious or transmissible disease and was afebrile at the time of the examination.

(3) The horse was free of ectoparasites at the time of the examination.

(4) The horse has not, within the past 2 weeks, been exposed to other horses with any known infectious, contagious or transmissible diseases.

CHAPTER 183. SECONDARY PARI-MUTUEL ORGANIZATIONS—TEMPORARY REGULATIONS

Sec.	
183.1.	General provisions.
183.2.	License costs and fees.
183.3.	Application requirements.
183.4.	Review and approval.
183.5.	Good-faith cooperation.
183.6.	Waiver.
183.7.	Additional application information.
183.8.	SPMO operations.
183.9.	Penalties and enforcement.

§ 183.1. General provisions.

(a) *New application:* As set forth in sections 9322 and 9351 of the act, a SPMO seeking to engage in electronic wagering or otherwise offer ADW to individuals within this Commonwealth, as defined in the act, must apply to the Commission for an electronic wagering license by submitting a completed license application as approved by the Commission.

(1) An incomplete application shall not be reviewed or considered for licensure.

(2) A SPMO may not begin wagering operations until approved by the Commission or its designee.

(b) *Annual Renewal applications:* An electronic wagering license issued to a secondary pari-mutuel organization shall be renewed annually. An electronic wagering renewal application shall be submitted on or before 120 days before the expiration of the license term. If the renewal application is approved by the Commission, the license renewal shall take effect January 1.

(c) The following shall apply to a secondary pari-mutuel organization:

(1) Each SPMO employee directly or indirectly responsible for the acceptance of wagers on horse races or the transmittal of wagering information to and from the Commonwealth must be properly licensed.

(2) A secondary pari-mutuel organization must comply with each rule and regulation of the Commission.

§ 183.2. License costs and fees.

(a) The applicant shall submit, along with its license application, the applicable license fees set forth in section 9352 of the act (relating to licensing costs and fees). The applicant shall also pay all costs incurred by the Commission in reviewing an application for an initial license, including any legal and investigative costs and the cost of other necessary outside professionals and consultants.

(1) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within 20 days of the granting, withdrawal or rejection of the initial license application.

(3) To the extent additional costs will be necessary, the applicant shall reimburse the Commission in an amount reasonably requested by the Commission within 10 days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(b) For purposes of a renewal license, the SPMO shall submit a renewal application, along with the applicable renewal fee and costs for the review of the renewal license as set forth in the act.

§ 183.3. Application requirements.

(a) A SPMO application for an initial or renewal license shall be in the form and manner prescribed by the Commission in accordance with this chapter. The Commission may deny a license to an applicant that provides false or misleading information or omits material information from the application. The SPMO application shall include all of the following:

- (1) The applicant's legal name.
- (2) The location of the applicant's principal office.

(3) The name, address and date of birth of each principal with a 5% or greater share of ownership or beneficial interest in the applicant.

(4) Audited financial statements for the last 3 years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the Commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts.

(5) A detailed plan of how the wagering system will operate. The Commission may require changes in the proposed plan of operations as a condition of granting a license. There shall not be subsequent material changes in the plan of operations unless ordered by the Commission or until approved by the Commission after receiving a written request.

(6) A list of all personnel processing wagers on races made by residents of this Commonwealth. This list shall be kept current and be provided to the Commission upon request.

(7) Copies of all documents required under this subsection by the Commission.

(8) Certification of compliance with totalisator standards and licensing requirements adopted by the Commission.

(9) A type II SAS 70 report or other independent report in a form acceptable to the Commission completed within the preceding 12 months, to assure adequate financial controls are in place in the secondary pari-mutuel organization.

(10) An agreement to allow the Commission to inspect and monitor each facility used by the secondary pari-mutuel organization for accepting, recording or processing pari-mutuel wagers accepted in this Commonwealth.

(11) Certification of the use of a pari-mutuel system which meets all requirements for a pari-mutuel system utilized by a licensed racing entity in this Commonwealth.

(12) Written evidence of tax compliance as set forth in section 9361 of the act (relating to tax compliance requirement).

§ 183.4. Review and approval.

(a) The Commission shall determine the suitability, fitness and experience of a SPMO and its key employees, consistent with the public interest, convenience and necessity and the best interests of racing generally, including, the provisions set forth in section 9318(e) and (f) of the act (relating to licenses for horse race meetings) and the following:

(1) Meeting general industry standards for business and financial practices, procedures and controls.

(2) Possession of a wagering system that ensures that all wagering information is transmitted to and calculated in the appropriate host track pool.

(3) Utilization of a totalisator system that meets wagering-industry standards and certification criteria.

(4) Meeting general industry standards for physical security of computerized wagering systems, business records, facilities and patrons.

(5) Having no indications of improper manipulation of a secondary pari-mutuel organization's wagering system, including software.

(6) Having policies and procedures that ensure a secondary pari-mutuel organization's key individuals have applied and are eligible for all required occupational licenses.

(7) Having an annual independent audit with no audit opinion qualifications that reflect adversely on integrity.

(8) Having a system that verifies the identity of each person placing a wager and requires the person placing a wager to disclose each beneficial interest in a wager the secondary pari-mutuel organization accepts.

(9) Having a real-time independent monitoring system to monitor wagering activity to detect suspicious patterns, including any that might indicate criminal activity or regulatory violations. The system must verify each transaction performed by the totalisator system and provide expeditious notice of any discrepancies or suspicious activity to the host track, wagering site, due diligence investigating body and any affected regulatory agency.

(10) Having a satisfactory record of customer relations, including no excessive unresolved patron complaints concerning the secondary pari-mutuel organization's business practices.

(11) Holding required permits, licenses, certifications or similar documents that may be required by a racing, gaming or other pari-mutuel wagering jurisdiction.

(12) Having sufficient measures to protect customer funds from being commingled with other moneys.

(xiii) Publicizing and providing a sufficient program for customer self-exclusion and wagering limitation.

(13) Having expertise in pari-mutuel wagering and being technologically capable of participating in simulcast and wagering activities.

(b) As set forth in section 9353(b) of the act (relating to license application procedures), the Commission may also consider the following information in making a determination for a SPMO's initial license or renewal application:

(1) The integrity of the applicant and its principals, including:

(i) Whether the applicant or its principals are unsuitable.

(ii) Whether the applicant or its principals have been a party to litigation over business practices, disciplinary actions over a business license or refusal to renew a license.

(iii) Whether the applicant or its principals have been a party to proceedings in which unfair labor practices, discrimination or violation of government regulations pertaining to racing or gaming laws was an issue or bankruptcy proceedings.

(iv) Whether the applicant or its principals have failed to satisfy judgments, orders or decrees.

(v) Whether the applicant or its principals have been delinquent in filing tax reports or remitting taxes.

(2) The quality of physical facilities and equipment.

(3) The financial ability of the applicant to conduct wagering.

(4) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be commingled with other funds as required under this chapter.

(5) The management ability of the applicant and its principals.

(6) Compliance of the applicant with applicable statutes, charters, ordinances and administrative regulations.

(7) The efforts of the applicant to promote, develop and improve the horse racing industry in this Commonwealth.

(8) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in this Commonwealth.

(9) The economic impact of the applicant upon the Commonwealth.

(10) The secondary pari-mutuel organization and the secondary pari-mutuel organization's owners and sources of funds must have sufficient financial means to participate in simulcast and wagering activities, including sufficient assets and means to pay industry-related debts and obligations and to fund the operations of the secondary pari-mutuel organization.

§ 183.5. Good-faith cooperation.

The secondary pari-mutuel organization must be fully cooperative and act in good faith with all disclosure and other duties involved in a due diligence investigation, voluntarily submit to regulatory and investigating body oversight, permit inspection of each business record upon request by a regulatory authority or investigating body, promptly honor regulatory or investigating body requests for wagering patterns or other information and, after reasonable notice, permit full access to each facility and property by a regulatory authority or investigating body.

§ 183.6. Waiver.

(a) A due diligence investigation may rely on an investigation and oversight conducted by a Commission-approved entity.

(b) The Commission may not consent to the acceptance of an interstate off-track wager by a secondary pari-mutuel organization that has not been determined to be suitable under this section.

§ 183.7. Additional application information.

(a) The Commission may request additional information from an applicant if the additional information would assist the Commission in deciding whether to issue or renew a license, including all of the following:

(1) Copies of any documents used by the applicant in preparing the application.

(2) A list of each contract between the applicant and a third party related to operations. The Commission may review the contracts at any time upon request.

§ 183.8. SPMO operations.

(a) Before doing business in this Commonwealth all of the following are required of a SPMO licensee:

(1) Be qualified to do business in this Commonwealth.

(2) Submit a copy of each document required to be filed with the Department of Revenue and each document related to an audit or investigation by any Federal, State or local regulatory agency to the Commission.

(3) Remit to the Commission a copy of each document required to be filed with any Federal, State or local regulatory agency.

(b) *Operational Requirements:*

(1) A licensee shall submit quarterly reports to the Commission providing amounts wagered by residents in this Commonwealth and amounts wagered on races in this Commonwealth.

(2) A licensee shall contribute to the horsemen's purse account in accordance with section 9331(d) of the act (relating to pari-mutuel wagering at nonprimary locations) as directed by the Commission.

(3) A licensee shall not commingle account funds with other funds.

(4) A licensee shall provide quarterly financial statements to the Commission for the first calendar year of operation if the licensee does not have audited financial statements for the last 3 years as referenced in section 9353(a)(4) of the act (relating to license application procedures).

(5) A licensee shall use and communicate pari-mutuel wagers to a totalisator licensed by the Commission.

(6) A licensee shall operate and communicate with the totalisator in a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to individuals who wager at licensed racing entities or simulcast facilities.

(7) All personnel processing wagers made by residents of this Commonwealth shall be licensed by the Commission.

(8) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(9) Each account holder shall provide personal information as the licensee and the Commission require, including all of the following:

- (i) Name.
- (ii) Principal residence address.
- (iii) Telephone number.
- (iv) Social Security number.
- (v) Date of birth.
- (vi) Other information necessary for account administration.

(10) The information supplied by the account holder shall be verified by the licensee using means acceptable to the Commission.

(11) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(12) An employee or agent of the licensee shall not disclose any confidential information except as follows:

- (i) To the Commission.
- (ii) To the account holder as required by this chapter.
- (iii) To the licensee and its affiliates.
- (iv) To the licensed racing entity as required by the agreement between the licensee and the licensed racing entity.
- (v) As otherwise required by law.

(13) The licensee shall provide each account holder a copy of account holder rules and the terms of agreement and other information and materials that are pertinent to the operation of the account.

(14) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(15) Each account shall be administered in accordance with the account holder rules and the terms of agreement provided to account holders, including:

- (i) Placing of wagers.
- (ii) Deposits to accounts.
- (iii) Credits to accounts.
- (iv) Debits to accounts.
- (v) Refunds to accounts.
- (vi) Withdrawals from accounts.
- (vii) Minimum deposit requirements.
- (viii) Fees per wager.
- (ix) Rebates.

(16) Each licensee shall have protocols in place and shall publicize to its account holders when the wagers are excluded from a host racetrack's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's publicly accessible Internet web site.

(17) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus 2 additional years. A licensee shall also maintain complete records of the closing of an account for 2 years after closing. These records shall be provided to the Commission upon request.

(18) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates and earnings for 2 years. These records shall be provided to the Commission upon request.

(19) All wagering conversations, transactions or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media and the tapes or other records of the communications shall be kept by the licensee for a period of 2 years. These tapes and other records shall be made available to the Commission upon request.

(20) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalisator.

(21) A licensee shall not accept wagers if its recording system is not operable.

(22) The Commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by residents of this Commonwealth.

(23) A licensee may suspend or close any account for violation of the account holder rules and the terms of agreement or any other reason it deems sufficient, if the licensee returns to the account holder all money then on deposit within 7 calendar days.

§ 183.9. Penalties and enforcement.

All of the following apply:

(1) The Commission shall have all of the rights, powers and remedies necessary to carry out this chapter and to ensure compliance with this chapter, including revocation, suspension or modification of a license and the imposition of fines under section 9325 of the act (relating to power of commission to impose fines).

(2) With respect to an individual or entity that offers pari-mutuel wagering to residents of this Commonwealth without a license issued by the Commission, the Commission may take the measures deemed necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

(3) Upon the finding of a violation by a secondary pari-mutuel organization of this chapter or of a Commission regulation or order or upon the finding of unlicensed electronic or advanced deposit account wagering by an individual or entity, the Commission may impose a fine as authorized under section 9325 of the act.

CHAPTER 185. OCCUPATIONAL LICENSES—TEMPORARY REGULATIONS

Sec.	
185.1.	General provisions.
185.2.	Conduct of licensee.
185.3.	License is a privilege.
185.4.	Term of occupational license.
185.5.	Occupational license fees.
185.6.	Age requirement.
185.7.	Protection of horses.
185.8.	License application process.
185.9.	Fingerprinting and licensing reciprocity.
185.10.	License renewal.
185.11.	Licensing action.
185.12.	Grounds for refusal, denial, suspension or revocation of license.
185.13.	License restrictions, limitations and conditions.
185.14.	Employer responsibility.
185.15.	Workers' compensation insurance required.
185.16.	Misuse of license.
185.17.	Relationships with suspended or inactive persons prohibited.
185.18.	Association with undesirables.
185.19.	Wagering misconduct.
185.20.	Spousal disqualification.

§ 185.1. General provisions.

(a) Every person participating in pari-mutuel racing activities within this Commonwealth must be licensed by the Commission in accordance with the provisions set forth in section 9323 of the act (relating to occupational licenses for individuals) and with the Commission's specific regulations relating to the applicant's racing occupation.

(b) In addition to the provisions set forth in Chapters 203 and 303 (relating to licensing, duties and responsibilities of Standardbred licensees; and licensing, duties and responsibilities of Thoroughbred licensees) of the Commission's regulations, the filing of an application for a particular occupational license shall authorize the Commission to investigate criminal records and employment records, to conduct a thorough background investigation and to conduct interviews to determine if the applicant's character, experience and qualifications are consistent with the best interest of racing and the general public.

(c) By acceptance of a license, a licensee consents to search and inspection by the Commission or its agents of the licensee's person, personal property and areas under the licensee's possession, care or control. The licensee explicitly consents to the seizure of any prohibited medication, drugs, paraphernalia or other illegal devices or contraband in accordance with State and Federal law and with the applicable provisions of the act.

(d) Every license is granted upon the express condition that the licensee shall accept, observe and abide by the rules and regulations of the Commission. Licensees are presumed to have knowledge of the rules of racing and are charged with the responsibility, duty and obligation to report any apparent or actual violation of the rules of racing to the Commission.

(e) As a condition of licensure, every licensee shall fully cooperate with any ongoing administrative Commission action, investigation or background review and shall comply with a properly issued Commission subpoena for the attendance of the licensee at an administrative hearing or for the production of any relevant reports, papers, documents and correspondence related to an

investigation. Refusal to cooperate with a properly issued subpoena shall subject the licensee to a license suspension or revocation.

§ 185.2. Conduct of licensee.

A licensee shall not, alone or in concert with another person, engage in inappropriate, illegal or unethical conduct which violates the Commission's rules and regulations of racing, is inconsistent with the best interests and integrity of racing or otherwise undermines the general public's faith, public perception and confidence in the racing industry.

§ 185.3. License is a privilege.

While all licensees shall be afforded due process rights, in accordance with section 9323(a) of the act (relating to occupational licenses for individuals), a license is a privilege and shall not be deemed a property right.

§ 185.4. Term of occupational license.

Licenses, unless revoked for cause, shall be issued for the period of 3 years. To facilitate a convenient and orderly licensing process, the Commission may establish a staggered expiration period for occupational licenses.

§ 185.5. Occupational license fees.

In accordance with section 9312 of the act (relating to additional powers of commission), the Commission established and published a comprehensive fee schedule for all occupational licenses. Every 2 years the Commission shall review the fee schedule to determine whether to increase any fee, charge or cost associated with occupational licenses. The Commission by order, notice to the regulated community and publication in the *Pennsylvania Bulletin*, shall amend the fee schedule as deemed necessary.

§ 185.6. Age requirement.

All applicants for licensing shall be at least 18 years of age, unless otherwise specified in these rules and regulations or by specific exemption by the Commission. An applicant seeking an age exemption must file a written request with the Commission with supporting documentation to justify an age-related exemption. The decision not to grant an age-related exemption may not be appealed. An applicant may be required to submit a certified copy of the applicant's birth certificate or other proof of age and identification.

§ 185.7. Protection of horses.

(a) Each person licensed by the Commission shall do all that is reasonable and within the licensee's power and scope of duty to guard against and prevent any horse entered or to be entered in an official workout or race, from coming into contact with or be administered any drug, medication or other foreign substance, including a permissible medication in excess of the maximum allowable level.

(b) No licensee or other person under the jurisdiction of the Commission shall subject or permit any animal under the licensee's care, custody, control or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect, abuse or abandonment. No licensee shall injure, maim, kill, administer a noxious substance to or otherwise deprive any animal of necessary veterinary care, sustenance or shelter.

(c) In addition to any licensing action or penalty imposed by the Commission for the previous misconduct, the Commission shall immediately notify and refer the cruelty matter to the appropriate authorities for possible criminal prosecution.

§ 185.8. License application process.

(a) An applicant shall submit the appropriate occupational license application and shall agree to be fingerprinted, as may be required by the Commission and provide complete, accurate and truthful disclosure on the application. Based upon the submission of the application, the Commission or its staff shall conduct the appropriate investigation of all criminal and employment records.

(b) Applicants for any form of license or registration issuance receipt or renewal shall be required to complete the authorization for release of confidential or background information as may be required by the Commission. Refusal to complete the authorization shall be an automatic bar to license or registration issuance or renewal.

(c) The Commission shall require an applicant under this chapter to submit to fingerprinting for a report of Federal criminal history record information.

(1) The applicant must submit a full set of fingerprints to the Pennsylvania State Police or the Pennsylvania State Police's authorized agent for the purpose of a record check. The Pennsylvania State Police or the Pennsylvania State Police's authorized agent must then submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions.

(2) The Commission shall consider information obtained under this paragraph for the purpose of screening applicants for fitness and suitability for licensure in accordance with the provisions of the act or these regulations.

(3) National criminal history record information received by the Commission shall be handled and maintained in accordance with Federal Bureau of Investigation policy.

(4) Fingerprints obtained under this paragraph may be maintained by the Commission and Pennsylvania State Police to enforce this chapter and for general law enforcement purposes.

(5) In addition to any other fee or cost assessed by the Commission, an applicant must pay for the cost of the fingerprint process.

(6) The Commission may exempt applicants for positions not related to the care or training of horses, racing, wagering, security or the management of a licensed racing entity, from the provisions of this chapter.

§ 185.9. Fingerprinting and licensing reciprocity.

(a) The Commission may establish a modified or abbreviated application process and procedures for licensees who have been previously licensed and in good standing with another racing jurisdiction. In utilizing the reciprocal license process, the Commission may determine that a Federal Bureau of Investigation fingerprint check conducted within the previous 36 months or another period as approved by the Commission is adequate for its criminal background investigation. The Commission, for the reciprocal license process, require an abbreviated application form or affidavit, as may be required by the Commission and pay the required applicable fees prior to participating in racing in this Commonwealth.

(b) An applicant must be in good standing in each jurisdiction where they hold or have held a racing license.

(c) The applicant shall provide this jurisdiction with proof of licensure from another jurisdiction to which fingerprints were submitted.

(d) Provided the previous requirements have been met, the Commission may issue a valid occupational license in this jurisdiction.

§ 185.10. License renewal.

(a) All licenses shall be subject to renewal every 3 years upon application and review as determined by the Commission or its designee. Occupational license renewals shall not be considered automatic.

(b) The application for renewal shall be submitted at least 60 days prior to expiration of the license term and shall include:

(1) an update of the information contained in the initial application and any prior renewal application, if applicable;

(2) payment of the renewal fee required by the Commission.

(c) A license for which a completed renewal application and fee, if required, has been received by the Commission shall continue in effect unless and until the Commission sends written notification to the licensee that the Commission has denied the renewal of the license.

(d) Nothing in this chapter shall be construed to relieve a licensee of the affirmative duty to notify the Commission of any changes relating to the status of its license or to any other information contained in the application materials on file with the Commission.

§ 185.11. Licensing action.

(a) *Withdrawal of application:* The Commission, the Bureau Directors, the Director of Licensing or any other Commission designee may, instead of issuing a formal application denial, grant the applicant permission to withdraw the application without prejudice.

(b) *License approval:* The Commission may grant a license if, after a thorough background investigation, it finds that the experience, character and general fitness of the applicant are that the participation of the person in horse racing meets and pari-mutuel racing activities in this Commonwealth will be consistent with the public interest and with the best interests of racing in conformity with the purpose of the act.

(c) *License denial:* In addition to the provisions of section 9323 of the act (relating to occupational licenses for individuals), the Commission may formally deny an application in accordance with these rules and regulations. The applicant shall be notified of the reasons for the denial in writing. The license denial shall also be issued as a formal ruling which may be reported to the Association of Racing Commissioners International or the USTA or to any other racing jurisdiction.

§ 185.12. Grounds for refusal, denial, suspension or revocation of license.

(a) In accordance with the provisions of section 9323(g) of the act (relating to occupational licenses for individuals) the following shall apply:

(1) The Commission may not issue a license under this section to an individual who has been convicted in a jurisdiction of a felony offense, a misdemeanor gambling offense or a fraud or misrepresentation in connection with horse racing or breeding, unless 15 years has passed from the date of conviction of the offense.

(2) Following expiration of a period applicable to an applicant under paragraph (1), in determining whether to

issue a license to an applicant, the Commission shall consider the following factors:

- (i) The nature of the applicant's involvement with horse racing.
- (ii) The nature and seriousness of the offense or conduct.
- (iii) The circumstances under which the offense or conduct occurred.
- (iv) The age of the applicant when the offense or conduct occurred.
- (v) Whether the offense or conduct was an isolated or a repeated incident.
- (vi) Any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received and the recommendations of persons who have substantial contact with the applicant.

(b) The Commission may deny an application for a license or suspend, revoke or refuse to renew a license issued under this section if it determines that the applicant or licensee meets any of the following:

- (1) Has been convicted of any violation or attempts to violate any law, rule or regulation of horse racing in any jurisdiction.
- (2) Has been convicted of an offense under 18 Pa.C.S. Subchapter B, §§ 5531—5561 (relating to cruelty to animals) (as amended).
- (3) Has violated a rule, regulation or order of the Commission.
- (4) Has been convicted in any jurisdiction of an offense related to fixing or rigging horse races including 18 Pa.C.S. § 4109 (relating to rigging publicly exhibited contest) or § 7102 (relating to administering drugs to race horses) or any similar crime in any other jurisdiction, unless the conviction has been overturned on appeal under the laws of the jurisdiction of the original finding or a pardon has been issued.
- (5) Has not demonstrated by clear and convincing evidence that the applicant or licensee:
 - (i) Is a person of good character, honesty and integrity.
 - (ii) Is a person whose prior activities, criminal record, if any, reputation, habits and associations:
 - (A) do not pose a threat to the public interest or the effective regulation and control of horse racing.
 - (B) do not create or enhance the danger of unsuitable, unfair or illegal practices, methods and activities in the conduct of horse racing or the carrying on of the business and financial arrangements incidental to the conduct of horse racing.

§ 185.13. License restrictions, limitations and conditions.

(a) Based upon the Commission's background investigation of an applicant or licensee, the Commission may impose the following restrictions, limitations or conditions upon the licensee and the licensee's racing activities:

- (1) grant a temporary license for 4 months within a 12-month period pending a final determination. A temporary license shall expire at the end of 4 months with no expectation or guarantee of renewal.
- (2) grant a license upon the terms and conditions as deemed necessary and appropriate by the Commission or its designee to protect the integrity and best interest of the racing industry.

(b) A licensee having been granted a conditional license as set forth in subsection (a) shall abide by all the terms and conditions set forth in the license. As agreed upon by the licensee, a violation of the terms and conditions set forth in the conditional license shall be deemed separate grounds for suspension or revocation of the occupational license.

§ 185.14. Employer responsibility.

The employment or harboring of any unlicensed person at facilities under the jurisdiction of the Commission is prohibited. Every licensed racing entity, owner or trainer shall report, in writing, the discharge of a licensed employee to the Commission or its designee, including the person's name, occupation and reason for the discharge.

§ 185.15. Workers' compensation insurance required.

(a) All licensed employers shall carry workers' compensation insurance covering their employees as required by the laws of the Commonwealth. Owners and trainers shall provide a list of employees on the badge list and shall produce evidence of coverage on an ongoing basis.

(b) No licensed owner or trainer shall grant, give or provide an ownership interest in a horse to their employee to avoid the worker's compensation insurance requirement. An owner, trainer and the owner or trainer's employee shall file an affidavit and provide the documentation, as required by the Commission, to evidencing a true and proper ownership interest of the horse by the employee.

(c) Notwithstanding the language in subsections (a) and (b), licensed racing entities may establish their own guidelines, requirements and procedures governing worker's compensation insurance coverage.

§ 185.16. Misuse of license.

A person may not exercise or attempt to exercise the rights of an occupational license not otherwise properly authorized by the Commission through the appropriate licensing procedures set forth in this chapter. The Commission will exercise the power to regulate the conduct of persons holding licenses or who are participating in racing by the use of rights of a licensee.

§ 185.17. Relationships with suspended or inactive persons prohibited.

(a) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive or suspended person. This prohibition shall not prevent the partners in a veterinary practice from providing services to horses so long as the inactive person does not receive a pecuniary benefit from those services.

(b) An employee or associated person of a suspended or inactive person shall not:

- (1) Assume the suspended person's responsibilities at a location under the jurisdiction of the Commission;
- (2) Complete an entry form for a race on behalf of or for the suspended or inactive person or an owner or customer for whom the suspended or inactive person has worked; or
- (3) Pay or advance an entry fee on behalf of the suspended or inactive person or owner or customer for whom the inactive person has worked.

(c) An employee or associated person who assumes the responsibility for the care, custody or control of a horse

owned (fully or partially), leased or trained by a suspended or inactive person shall not:

(1) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(2) Receive a bonus or any other form of compensation in cash, property or other remuneration or consideration from the inactive person;

(3) Make a payment or give remuneration or other compensation or consideration to the suspended or inactive person; or

(4) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the Authority.

(d) A person who is responsible for the care, training or veterinarian services provided to a horse formerly under the care, training or veterinarian services of a suspended or inactive person shall:

(1) Bill customers directly for any services rendered at or in connection with any race meeting;

(2) Maintain a checking account totally separate from and independent of that of the suspended or inactive person to be used to pay expenses of and deposit income from an owner or client of the suspended inactive person;

(3) Not use the services, directly or indirectly, of current employees of the suspended or inactive person; and

(4) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for these expenses shall be retained for not less than 6 months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

§ 185.18. Association with undesirables.

If a person under the jurisdiction of the Commission shall be approached with an offer, promise, request or a suggestion for a bribe or for an improper, corrupt or fraudulent act in relation to racing or that a race shall be conducted otherwise than fairly and in accordance with the rules of this Commission, it shall be the duty of the person to immediately report the matter to the Commission or one of its appointed representatives.

§ 185.19. Wagering misconduct.

A licensee or employee of a licensed racing entity or its concessionaires may not knowingly, by false representation, attempt to cause another person to wager on a horse in a race to be run nor may he demand compensation as a reward for a racing prediction provided to a person or entity for wagering purposes. This does not apply to the vending of newspapers or to other publications approved by the Commission.

§ 185.20. Spousal disqualification.

Disqualification of one spouse applies to the other only if it can be demonstrated that the horses owned or controlled by the disqualified spouse are also under the ownership or control of the spouse who has not been disqualified. The Commission shall determine the necessary information, documentation and evidence to demonstrate separate and independent ownership or control of the horse by the non-disqualified spouse.

CHAPTER 187. RACING VENDORS AND TOTALISATORS—TEMPORARY REGULATIONS

Sec.	
187.1.	General provisions.
187.2.	License costs and fees.
187.3.	Application requirements.
187.4.	Review and approval.
187.5.	Good-faith cooperation.
187.6.	Waiver.
187.7.	Additional application information.
187.8.	Racing vendor or totalisator operations.
187.9.	Penalties and enforcement.

§ 187.1. General provisions.

(a) As set forth in section 9351(a.1) of the act (relating to general license requirements), racing vendors and totalisator companies, irrespective of their physical location and operation, seeking to provide racing related services to licensed racing entities within this Commonwealth, must be properly licensed by the Commission in accordance with this chapter.

(1) An incomplete application shall not be reviewed or considered for licensure.

(2) A racing vendor or totalisator system may not begin operations until approved by the Commission or its designee.

(b) In accordance with section 9351(b)(1) of the act, a racing vendor or totalisator license shall be renewed annually.

(1) Racing vendor or totalisator licenses shall not be renewed automatically. The appropriate renewal application shall be submitted on or before 120 days before the expiration of the license term.

(2) If the renewal application is approved by the Commission, the license renewal shall take effect January 1 thereafter.

§ 187.2. License costs and fees.

(a) The applicant shall submit, along with its initial license application, the applicable license fees set forth in section 9352(3)(ii) of the act (relating to licensing costs and fees). The applicant shall also pay all costs incurred by the Commission in reviewing an application for an initial license, including any legal and investigative costs and the cost of other necessary outside professionals and consultants as set forth in the act.

(1) Any portion of the payment not required to complete the investigation shall be refunded to the applicant as provided in the act.

(3) To the extent additional costs will be necessary, the applicant shall reimburse the Commission in an amount reasonably requested by the Commission within 10 days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(b) For purposes of a renewal license, a racing vendor or totalisator company shall submit a renewal application, along with the applicable renewal fee and costs as set forth in section 9352(4)(ii) for the review to the Commission.

§ 187.3. Application requirements.

(a) The application for an initial or renewal license for a racing vendor or totalisator company shall be in the form and manner prescribed by the Commission in accordance with the provisions of the act and this chapter. The Commission may deny a license to an applicant that provides false or misleading information or omits mate-

rial information from the application. The SPMO application shall include all of the following:

- (1) The applicant's legal name.
- (2) The location of the applicant's principal office.
- (3) The name, address and date of birth of each principal with a 5% or greater share of ownership or beneficial interest in the applicant.
- (4) Audited financial statements for the last 3 years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the Commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts.
- (5) A detailed plan of how the applicable racing, wagering or other system to be licensed will operate. The Commission may require changes in the proposed plan of operations as a condition of granting a license. There shall not be subsequent material changes in the plan of operations unless ordered by the Commission or until approved by the Commission after receiving a written request.
- (6) A list of all personnel assigned to work in this Commonwealth including processing wagers on races made by residents of this Commonwealth. This list shall be kept current and be provided to the Commission upon request.
- (7) Copies of all documents required under this subsection by the Commission.
- (8) Certification of compliance with totalisator standards and licensing requirements adopted by the Commission.
- (9) A type II SAS 70 report or other independent report in a form acceptable to the Commission completed within the preceding 12 months, to assure adequate financial controls are in place in the secondary pari-mutuel organization.
- (10) An agreement to allow the Commission, if requested, to inspect and monitor each facility used by the racing vendor or totalisator in the performance of its racing related duties within this Commonwealth.
- (11) Certification of the use of a pari-mutuel system which meets all requirements for a pari-mutuel system utilized by a licensed racing entity in this Commonwealth.
- (12) Written evidence of tax compliance as set forth in section 9361 of the act (relating to tax compliance requirement).

§ 187.4. Review and approval.

- (a) The Commission shall determine the suitability, fitness and experience of a racing vendor or totalisator company and their key employees, consistent with the public interest, convenience and necessity and the best interests of racing generally.
- (b) As set forth in section 9353(b) of the act (relating to license application procedures), the Commission may also consider the following information in making a determination for a racing vendor or totalisator initial license or renewal application:
 - (1) The integrity of the applicant and its principals, including:
 - (i) Whether the applicant or its principals are unsuitable.
 - (ii) Whether the applicant or its principals have been a party to litigation over business practices, disciplinary actions over a business license or refusal to renew a license.
 - (iii) Whether the applicant or its principals have been a party to proceedings in which unfair labor practices, discrimination or violation of government regulations pertaining to racing or gaming laws was an issue or bankruptcy proceedings.
 - (iv) Whether the applicant or its principals have failed to satisfy judgments, orders or decrees.
 - (v) Whether the applicant or its principals have been delinquent in filing tax reports or remitting taxes.
 - (2) The quality of physical facilities and equipment.
 - (3) The financial ability of the applicant to conduct wagering.
 - (4) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be commingled with other funds as required under this chapter.
 - (5) The management ability of the applicant and its principals.
 - (6) Compliance of the applicant with applicable statutes, charters, ordinances and administrative regulations.
 - (7) The efforts of the applicant to promote, develop and improve the horse racing industry in this Commonwealth.
 - (8) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in this Commonwealth.
 - (9) The economic impact of the applicant upon the Commonwealth.
 - (10) The racing vendor or totalisator organizations' owners and sources of funds must have sufficient financial means to participate in the applicable pari-mutuel racing related activities, including sufficient assets and means to pay industry-related debts and obligations and to fund the operations of the entity.

§ 187.5. Good-faith cooperation.

The applicant or licensed racing vendors and totalisators must be fully cooperative and act in good faith with all disclosure and other duties involved in a due diligence investigation, voluntarily submit to regulatory and investigating body oversight, permit inspection of each business record upon request by a regulatory authority or investigating body, promptly honor regulatory or investigating body requests for wagering patterns or other information and, after reasonable notice, permit full access to each facility and property by a regulatory authority or investigating body.

§ 187.6. Waiver.

A due diligence investigation may rely on an investigation and oversight conducted by a Commission-approved entity or other gaming regulator.

§ 187.7. Additional application information.

The Commission may request additional information from an applicant if the additional information would assist the Commission in deciding whether to issue or renew a license, including all of the following:

- (1) Copies of any documents used by the applicant in preparing the application.

(2) A list of each contract between the applicant and a third party related to operations. The Commission may review the contracts at any time upon request.

§ 187.8. Racing vendor or totalisator operations.

Before doing business in this Commonwealth may also require all of the following from either a racing vendor or totalisator licensee:

- (1) Be qualified to do business in this Commonwealth.
- (2) Submit a copy of each document required to be filed with the Department of Revenue and each document related to an audit or investigation by any Federal, State or local regulatory agency to the Commission.
- (3) Remit to the Commission a copy of each document required to be filed with any Federal, State or local regulatory agency.

§ 187.9. Penalties and enforcement.

The Commission shall have all rights, powers and remedies necessary to carry out the provisions of this chapter and to ensure the licensees' compliance with the act, including revocation, suspension or modification of a license and the imposition of fines under section 9325 of the act (relating to power of commission to impose fines).

**CHAPTER 189. NONPRIMARY LOCATIONS—
TEMPORARY REGULATIONS**

- Sec.
- 189.1. Definitions.
- 189.2. Applicability.
- 189.3. General provisions.

**RELOCATION OR REOPENING OF A
NONPRIMARY LOCATION**

- 189.11. Relocation or reopen petition and fees.
- 189.12. Filing of a petition; documentation required.
- 189.13. Review of petition.
- 189.14. Written public comment.
- 189.15. Public comment hearing.
- 189.16. Intervention in a nonprimary location petition.
- 189.17. Standards for approval.

**REQUIREMENTS FOR THE NONPRIMARY
LOCATION**

- 189.21. Concessionaires or vendors.
- 189.22. Display of races and race related information at a nonprimary location.
- 189.23. Wagering requirements.
- 189.24. Location mutuel manager.

OPERATION OF A NONPRIMARY LOCATION

- 189.31. Maintenance of a nonprimary location facility.
- 189.32. Impermissible conduct.
- 189.33. Power of eviction or ejection.
- 189.34. Inspection authorization.
- 189.35. Nondiscrimination.
- 189.36. Admission of minors.

§ 189.1. Definitions.

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

Applicant—A duly licensed racing entity seeking to relocate an existing operational nonprimary location or reopening of a previously operational nonprimary location with the Commission.

Architect—A person licensed to practice the profession of architecture.

Center of the racetrack—The point located at the center of the area circumscribed by the inside rail of the racetrack.

Charitable institution—A building occupied in whole or in part by an organization dedicated to the relief of a

certain class of persons either by financial assistance, education or care on a not-for-profit basis and exempt from taxation under the Internal Revenue Code (26 U.S.C.A. §§ 1—7872).

Church—A building occupied in whole or in part by an organization engaged in religious worship or instruction.

Engineer—A person licensed to practice the profession of engineering.

Facility—The buildings or internal areas of buildings under the lease, possession, ownership or control by a licensed racing entity.

Handle—The total amount of money wagered.

Hospital—A building used in whole or in part for the extended, overnight, medical care of ten or more sick, wounded, aged or infirm persons.

Local resident—A person whose residence is within 10 miles of a proposed nonprimary location.

Nonprimary location—A facility in which pari-mutuel wagering is conducted by a licensed racing entity in accordance with this chapter other than the racetrack where live racing is conducted. Commonly known as off-track wagering (OTW) facility.

Public park or playground—Land owned by the Commonwealth or a county, township, municipality, borough, school district or other governmental unit within this Commonwealth, open to the public for recreational purposes.

Race related information—Current odds, program changes, order of finish and other information typically displayed to patrons at the racetrack on the infield tote board, with respect to a race upon which patrons of a nonprimary location may wager.

School—A building used during the majority of the calendar year, in whole or in part, for educational or instructional purposes on a not-for-profit basis by an organization accredited by the Department of Education.

Relocation or Reopen Petition—shall mean a petition filed with the Commission by a licensed racing entity seeking to relocate an existing operational nonprimary location or to reopen a previously licensed and operational nonprimary location.

§ 189.2. Applicability.

(a) In accordance with section 9331(a) of the act (relating to pari-mutuel wagering at nonprimary locations), the Commission may approve a licensed racing entity to continue to operate a nonprimary location where it has previously conduct pari-mutuel wagering on horse races conducted by the licensed racing entity. This chapter applies to the relocation of existing operational nonprimary locations or to the reopening of a previously operational nonprimary location operated by a licensed racing entity.

(b) The chapter shall not apply to a petition by the licensed racing entity for the reconstruction, refurbishment or realignment of the physical facility, layout or floor space of an existing operational nonprimary location.

§ 189.3. General provisions.

(a) Only a licensed racing entity may apply for the relocation or reopening of a nonprimary location.

(b) A duly licensed racing entity corporation may seek approval by the Commission for the relocation of an existing operational nonprimary location or for the re-

opening of a previously operational nonprimary location by submitting a Relocation or Reopen Petition with the Commission.

**RELOCATION OR REOPENING OF A
NONPRIMARY LOCATION**

§ 189.11. Relocation or reopen petition and fees.

(a) A relocation or reopen petition, whichever is applicable, shall be in the form prescribed by the Commission and shall be accompanied by the necessary documents, information, architectural renderings, exhibits and any other information requested by the Commission.

(b) The Commission shall establish, adopt and publish the applicable relocation or reopen fee which must accompany the specific petition sought by the licensed racing entity. The licensed racing entity shall reimburse the Commission for any investigative, legal or administrative costs and fees associated with the review and approval of the petition.

§ 189.12. Filing of a petition; documentation required.

(a) A petition and the documentation required shall be submitted as follows:

(1) Part I requires the submission of the following information, exhibits and documentation:

- (i) The address of the location or physical location.
- (ii) The name, address and telephone number of the owner of the real estate upon which the location will be situated.
- (iii) A copy of the lease, purchase option or purchase agreement for the location.
- (iv) The zoning of the location.
- (v) A statement indicating whether the location is situated within 300 feet of a church, hospital, charitable institution, school, public park or playground.
- (vi) A pro forma financial statement projecting attendance, handle and revenue at the location.
- (vii) A statement of the projected cost of operation of the location.
- (viii) A statement of the sources of funds used to construct the location including a copy of the loan commitment letter, loan documents or other documents setting forth the terms relating to the financing of the location and a certification that the licensed corporation's State and local tax obligations are not in arrears.
- (ix) A statement of the projected revenue and taxes to be paid to the State and local government.
- (x) The anticipated impact on attendance, handle and purse structure at licensed facilities conducting live racing in this Commonwealth.
- (xi) The areas from which the applicant expects to attract patrons to the location.
- (xii) The population of the area within 35 air miles to the location.
- (xiii) The number and types of full-time and part-time jobs to be created at the location.
- (xiv) The number of jobs at the location to be filled by local residents.
- (xv) The number and types of jobs to be created by the construction or renovation of the location.

(xvi) The distance between the location and racetracks conducting live racing in this Commonwealth.

(xvii) The owner and description of other businesses or uses to be conducted at the location.

(2) Part II requires the submission of the following information, exhibits and documentation:

- (i) The number of floors, total square footage and seating capacity of the facility.
 - (ii) A description of the dining accommodations and concession areas to be contained in the facility, including the types of food and beverages to be available, the seating capacity and a description of the kitchen areas.
 - (iii) The number and location of fire escapes and emergency exits at the facility.
 - (iv) The number of rest rooms to be contained in the facility.
 - (v) A description of the general demeanor of the facility, including its decor and lighting, the type of seating to be provided and the areas of the facility where patrons can handicap races.
 - (vi) A description of the exterior and interior of the facility.
 - (vii) The architectural or engineering drawings of the physical location or internal facility.
 - (viii) A description of the heating, air conditioning, smoke removal and climate control equipment; and smoke and fire detectors to be used in the facility.
 - (ix) The provisions made to assure that the facility is accessible to the physically handicapped.
 - (x) A description of the parking areas to be provided at the location, including the name, address and telephone number of the owner of the parking facilities; a copy of lease agreements for parking; the number of parking spaces to be provided; the charge to be imposed for parking; and a description of traffic control to be provided.
 - (xi) A summary of any contracts relating to, and a complete description of, the pari-mutuel or totalisator equipment to be used in the facility and a statement describing the compatibility of that equipment with the equipment being used at the primary racetrack of the licensed corporation and the equipment in use at the other primary racetracks which will be transmitting their races to the facility. Copies of the contracts may be requested by the Commission.
 - (xii) A summary of contracts relating to, and a description of, the equipment to be used to include money wagered in common pari-mutuel pools, including the number of betting windows and stand-alone terminals to be provided. Copies of the contracts may be requested by the Commission.
 - (xiii) A summary of contracts relating to, and a description of, the equipment to be used for receiving transmissions of races and race related information. Copies of the contracts may be requested by the Commission.
 - (xiv) The name, address and telephone number of persons supplying equipment to the location.
 - (xv) A description of the procedures to be used to resolve patron complaints at the location.
- (3) Part III requires the submission of the following information, exhibits and documentation:

(i) The plan the applicant intends to institute to recruit, train and upgrade employees on an equal opportunity basis.

(ii) Copies of contracts for the provision of goods and services to the location, including a notation of which contracts are with minority or female-owned businesses.

(iii) The name, address and telephone number of the location mutual manager and whether that person is the holder of a license issued by the Commission.

(iv) The name, address and telephone number of the location director of security and whether that person is the holder of a license issued by the Commission.

(v) The name, address and telephone number of the general manager of the location and whether that person is the holder of a license issued by the Commission.

(vi) The names of the vendors and concessionaires providing goods or services, or both, to the location and whether the vendors or concessionaires hold a license issued by the Commission.

(vii) A description of the security plan for the location and a copy of the contracts relating to security at the location.

(viii) A copy of insurance policies applicable to the location.

(ix) A statement indicating whether an application has been made to the Liquor Control Board for a license or the transference of a license, permitting the sale or consumption of alcoholic beverages at the location and action taken on that application.

(x) A statement indicating whether the applicant has entered into an agreement for the simulcasting of races to the location.

(xi) The applicant's strategy for preserving the integrity of live racing in this Commonwealth.

(xii) A copy of building, fire, occupancy, health and sanitation or other permits required by the Commonwealth or a county, township or municipality in which the location is situated.

(b) The Commission and its staff shall make an initial assessment of the specific petition to determine if it is complete, accurate and in accordance with the previous provisions. An incomplete petition or if the appropriate fee is not included with the petition, shall not be reviewed or considered by the Commission.

(c) The Commission may employ the services of architects, engineers, accountants or other specialists to assist in the evaluation of a petition or to inspect work performed at a nonprimary location.

§ 189.13. Review of petition.

(a) Prior to granting approval of a petition for the relocation of an existing operational nonprimary location or the reopening of a previously operational nonprimary location by the licensed racing entity, the Commission, will conduct its due diligence and review of the proposed location and facility. To further its review, the Commission may:

(1) Require an oral presentation by the Petitioner as determined by the Commission;

(2) Receive and utilize documents, transcripts and information from other racing, gaming or zoning regulatory entities, in or outside of this Commonwealth;

(3) Seek written public comments from interested persons from the county in which the proposed facility will be located, as set forth in § 189.14 (relating to written public comment);

(4) Conduct a public comment hearing, if necessary, in accordance with the provisions set forth in § 189.15 (relating to public comment hearing); or

(5) Adopt any other procedure deemed necessary and appropriate to assist it in the review of the proposed facility.

§ 189.14. Written public comment.

(a) If the Commission determines, in its sole discretion, the need for written public comment relating to the relocation of an existing nonprimary facility or the reopening of a previously operational nonprimary location, the Commission may utilize the following procedures:

(1) The Commission shall provide notice of the licensed racing entity's submitted petition and location at its monthly public meeting immediately following receipt of the petition or it may publish the notification of the licensed racing entity's petition in the *Pennsylvania Bulletin*.

(2) There shall be a 30-day period following notice as set forth in subsection (1) during which written comments may be submitted by interested persons.

(3) Written public comment shall be limited to verifiable residents of the county in which the proposed facility will be relocated or reopened.

(4) Written comments submitted during the 30-day comment period will be retained and incorporated into the record to be reviewed and considered by the Commission.

(b) The purpose of the written public comments is to assist the Commission in assessing the impact the relocation of an existing nonprimary facility or the reopening of a previously operational nonprimary location may have on the local community.

§ 189.15. Public comment hearing.

(a) The Commission will provide an opportunity for the licensed racing entity or any other interested agency, person or group of persons within the county where the proposed facility will be located to submit a written request for a public comment hearing regarding the nonprimary location petition.

(b) The written request seeking a public comment hearing must:

(1) be filed within the 30-day time period set forth in § 189.14 (relating to written public comment);

(2) clearly and concisely identify the specific interest of the person filing the request, including name, address, telephone number, of the requesting person; and

(3) set forth the specific reasons why a hearing is warranted.

(c) The Commission shall review the written request for a public comment hearing to determine whether the public comment hearing would assist it in assessing and evaluating the proposed location and whether the petition is consistent with the best interests of racing and the standards for approval set forth in these regulations.

(d) If the Commission determines, in its sole discretion, the need for a public comment hearing relating to the licensed racing entity's petition, the Commission shall:

(1) Inform the requesting petitioner;

(2) Publish notice of the proposed public comment hearing in the *Pennsylvania Bulletin*, post it on the Commission's web site, and if practicable, publish notice of the public comment hearing in a newspaper of general circulation for the county in which the proposed nonprimary facility will be located;

(3) Identify and coordinate with the local municipality the proposed location and time for the public comment hearing;

(4) Designate a Commissioner, assign a hearing officer or appoint another Commission designee to conduct the public meeting and receive public comments;

(5) Develop and post on the Commission's web site the procedures that will be used to conduct the public comment hearings. At its discretion, the Commission may terminate, recess, reconvene and continue the public comment hearing.

§ 189.16. Intervention in a nonprimary location petition.

(a) This subsection pertains exclusively to intervention in a petition for the relocation of an existing nonprimary facility or the reopening of a previously operational nonprimary location under this section and is not applicable to other hearings before the Commission. The right to intervene in a hearing under this section is within the sole discretion of the Commission.

(1) A person wishing to intervene in the matter before the Commission shall file a petition to intervene in accordance with this subsection.

(2) A person may file a petition to intervene under this subsection if the person has an interest in the proceeding which is substantial, direct and immediate and if the interest is not adequately or otherwise represented in the matter.

(3) Petitions to intervene in nonprimary location matters shall be filed within 30 days from the date of published notice by the Commission of the receipt of the nonprimary location petition.

(4) Petitions to intervene must set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding. The petitioner shall fully and completely advise the licensed racing entity and the Commission of the specific issues of fact or law to be raised or controverted and cite provisions or other authority relied upon.

(5) The licensed racing entity seeking the relocation or reopening of the nonprimary location may file an Answer to a Petition to Intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. If made, answers shall be filed within 10 days after the date the petition to intervene is filed with the Commission, unless for cause the Commission prescribes a different time. A complete copy of the Answer to the Petition to intervene shall be served on the Commission and the petitioner who seeks to intervene.

(6) Except when the Commission determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in the nonprimary location matter will be limited to the presentation of evidence through the submission of written statements attested to under oath. The written statements shall be part of the evidentiary record.

(b) This section supersedes any conflicting provisions contained in the Commission's administrative regulations

relating to practice and procedure and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 189.17. Standards for approval.

(a) Under section 9331 (relating to pari-mutuel wagering at nonprimary locations) of the act, the Commission will consider the following in determining whether to grant or deny approval of a petition:

(1) Whether the proposed relocated or reopened facility contains or has access to amenities such as the restaurants and handicapping facilities required by the act.

(2) Whether the facility will create jobs in the construction and service industries as well as continue to create jobs within the racing and wagering industry.

(3) Whether the facility will have a positive, neutral or negative impact on the integrity of live racing, including its effect on the attendance, handle and purse structure of live racing.

(4) The anticipated impact on the local community, including the potential for job creation on an equal opportunity basis and the effect on local businesses.

(5) The quality of the physical facilities and services to be provided.

(6) The public interest.

(7) Whether the applicant plans to institute measures to ensure that employees are recruited and trained for positions on an equal opportunity basis and that contracting opportunities are open to all firms.

(8) Information, documents or exhibits submitted as part of a petition.

(b) No single factor will be paramount. In rendering a decision, the Commission will determine whether the proposed relocated or reopened nonprimary location is in the best interests of racing.

(c) Approval of a relocated or reopened nonprimary location is granted upon the condition that the licensed racing entity accept and continue to observe the rules of the Commission. The approval of a nonprimary location does not prevent the Commission from ordering modification of the facility or operations at the nonprimary location if the Commission finds evidence of noncompliance with the act, this chapter or that the construction or reconstruction of the facility is not being performed as set forth in the approved petition.

(d) Approval issued by the Commission will contain the following conditions:

(1) The Commission, its agents or employees will have immediate and complete access to the areas where activity is being or will be conducted under the act or this part, as necessary to determine compliance with the act and this part, upon presentation of appropriate credentials and without advance notice or a search warrant.

(2) Records and reports pertaining to activities conducted under the act or this part shall be produced for inspection upon demand by the Commission, its agents or employees.

REQUIREMENTS FOR THE NONPRIMARY LOCATION

§ 189.21. Concessionaires or vendors.

(a) A person, firm, concessionaire or vendor which holds a concession, right or privilege to perform a service

or sell an item at a nonprimary location operated by a licensed racing entity shall be licensed by the Commission.

(b) The licensed racing entity, if requested by the Commission, shall provide a copy of an audited financial statement reflecting its operations at each nonprimary location.

§ 189.22. Display of races and race related information at a nonprimary location.

(a) The following shall be offered to patrons at every nonprimary location:

(1) Audio and video coverage of every race upon which patrons of the nonprimary location are permitted to wager, including coverage of the horses in the paddock and while scoring.

(2) Video coverage of race related information for every race upon which patrons of the nonprimary location are permitted to wager.

(b) A nonprimary location shall be equipped with a system permitting the reception of transmissions of races and race related information without interference or interception.

(c) A licensed corporation operating a nonprimary location shall develop and implement a security system to protect the equipment being used to receive transmissions of races and race related information from tampering.

(d) If the reception of the video coverage of a race is interrupted, the audio coverage of the race shall continue to be presented.

(e) If the reception of the audio coverage off the race is interrupted, the video coverage of the race shall continue to be displayed.

(f) If the reception of the audio and video coverage of a race is interrupted during the running of the race, wagering being conducted on future races at the nonprimary location shall cease until the transmissions are restored. If the interruption of audio or video coverage, or both, prevent the display of a race at the nonprimary location, a replay of the race shall be displayed at the nonprimary location as soon after the restoration of coverage as possible.

(g) At least 30 minutes prior to the beginning of wagering at the nonprimary location, a test of the equipment used to receive and display races and race related information at the nonprimary location shall be conducted to ensure that the system is operating properly.

§ 189.23. Wagering requirements.

(a) Wagering on races at a nonprimary location shall be conducted using the pari-mutuel system of wagering.

(b) A nonprimary location shall be equipped with:

(1) A communication system that permits communication among the pari-mutuel department of the nonprimary location and the pari-mutuel department and Judges of racetracks conducting races on which patrons of the nonprimary location may wager.

(2) A system capable of ensuring that money wagered on a particular race is included in the pari-mutuel pool of the racetrack conducting the race.

(3) A system capable of ensuring that pari-mutuel machines at the nonprimary location lock upon the ringing of the bell or upon the closing of wagering for any reason.

(c) Pari-mutuel wagering on races shall be conducted using pari-mutuel tickets sold from machines approved by the Commission. No pari-mutuel machine will be approved unless it is compatible with the system required by subsection (b)(2).

(d) The transmission of wagering data between the nonprimary location and the racetrack conducting a race upon which wagering is permitted shall be independent of the transmission of audio and video coverage of the race and race related information. The system shall be tested at least 30 minutes prior to the beginning of wagering at the nonprimary location.

(e) Patrons at nonprimary locations shall be afforded the same wagering opportunities on a particular race as patrons at the racetrack. Patrons at the racetrack shall be afforded the same wagering opportunities on a particular race as patrons at nonprimary locations. Winning pari-mutuel tickets purchased at a facility within a racetrack enclosure shall be cashed at a facility within the racetrack enclosure.

(f) Persons employed in the pari-mutuel department of a nonprimary location operated by a licensed corporation of the Commission shall be considered pari-mutuel employees of the licensed corporation for purposes of reports to the Commission and the Department of Revenue.

(g) Reports of pari-mutuel wagering required by this part shall reflect the request information separately for each nonprimary location operated by the licensed corporation.

(h) The stop betting command shall be noted by the ringing of the bell at the nonprimary location or other device as approved by the Commission.

(i) A licensed corporation shall submit written notice of its intention to suspend or terminate operations at a nonprimary location at least 60 days prior to the suspension or termination. The 60-day notification period may be reduced by the Commission for good cause shown.

§ 189.24. Location mutuel manager.

An individual shall be designated as a location Mutuel Manager at each nonprimary location who shall:

(1) Oversee the pari-mutuel operations at the nonprimary location.

(2) Receive communications from the Mutuel Manager of each racetrack conducting races upon which patrons of the nonprimary location may wager.

(3) Oversee the operation of the equipment being used to include money wagered at the nonprimary location in the pari-mutuel pool at the racetrack conducting the race and suspend wagering at the nonprimary location if the money wagered is not being transmitted to the pari-mutuel pool at the racetrack conducting the race.

(4) Be responsible for ensuring that laws and regulations governing pari-mutuel wagering are observed at the nonprimary location.

(5) Be licensed by the Commission.

OPERATION OF A NONPRIMARY LOCATION

§ 189.31. Maintenance of a nonprimary location facility.

(a) A licensed racing entity that relocates or reopens a nonprimary location shall:

(1) maintain the grounds, premises, physical facility, internal or external, at the nonprimary location so as to be neat and clean, painted and in good repair, with

special consideration for the comfort and safety of patrons, employees and other persons whose business requires their attendance;

(2) maintain in good working order the equipment being used to transmit and receive audio and video signals, to display the audio and video signals and to include money wagered in common pari-mutuel pools.

(b) Plans for renovations, rehabilitations or changes to be made to a nonprimary location after the beginning of operations shall first be approved by the Commission before being implemented.

§ 189.32. Impermissible conduct.

(a) While at a nonprimary location, no person may:

(1) Use improper, profane or indecent language to a racing official, licensee or Commission employee.

(2) Disturb the peace or make himself obnoxious to others.

§ 189.33. Power of eviction or ejection.

The licensed racing entity may exercise its statutory authority and common law rights to evict a patron from a nonprimary location if the facility is also located within a licensed gaming facility. If a patron is ejected from the floor of the nonprimary location for lawful reasons, the patron shall not be entitled to a hearing.

§ 189.34. Inspection authorization.

(a) The Commission, its agents or employees will have access to, and require the production of, books and papers, documents and physical evidence pertinent to a matter being investigated under the act or this part.

(b) At least annually, the Commission, its agents or employees will inspect the nonprimary location to determine whether the licensed racing entity is maintaining its nonprimary location in good condition and whether adequate provision for rehabilitation and capital improvements has been made.

(c) Inspections of nonprimary locations shall be made during the normal business hours of the nonprimary location.

§ 189.35. Nondiscrimination.

A licensed racing entity may not discriminate against an employee, applicant for employment, independent contractor or other person because of race, color, religious creed, ancestry, National origin, age, sex or nonjob related handicap or disability.

§ 189.36. Admission of minors.

No licensed corporation may permit a person who is 21 years of age or younger to wager at a nonprimary location. Except that: This section does not prohibit persons 18 years of age or younger who are legally employed from being on the nonprimary location premises for the sole purpose of performing their duties as employees. If the relocated or reopened nonprimary location is constructed within a duly licensed gaming facility or casino, the licensed racing entity may exclude anyone from its facility under the age of 21.

Subpart C. PARI-MUTUEL WAGERING

Chap.	
191.	GENERAL PROVISIONS—TEMPORARY REGULATIONS
193.	PARI-MUTUEL WAGERING AND TICKETS—TEMPORARY REGULATIONS
195.	SIMULCASTING—TEMPORARY REGULATIONS
197.	ADVANCE DEPOSIT ACCOUNT WAGERING—TEMPORARY REGULATIONS
199.	COMMON POOL WAGERING—TEMPORARY REGULATIONS

CHAPTER 191. GENERAL PROVISIONS—TEMPORARY REGULATIONS

Sec.	
191.1.	General requirements.
191.2.	Definitions.

§ 191.1. General requirements.

(a) Pari-mutuel wagering utilizes a totalisator system to pool wagers. Totalisator companies or providers shall be duly licensed in accordance with the applicable provisions of the act and Chapter 187 (relating to racing vendors and totalisators—temporary regulations) of these regulations. The totalisator system may be located on property of a licensed racing entity or may, subject to compliance with the provisions of the act and these rules, reside at another location.

(b) Wagering subject to approval and compliance with applicable law and rules, may be accepted by separate totalisator systems in this or other jurisdictions, and combined by means of communication between totalisator systems.

(c) The Commission may, without specific reference in these rules, utilize a designee for the purposes of licensing, certification, verification, inspection, testing and investigation. A Commission designee may be another Commission or equivalent regulatory authority, a multi-jurisdictional group of regulatory authorities an association of regulatory authorities or auditing, consulting, security, investigation, legal services, or other qualified entities or persons.

(d) The Commission may enter into multijurisdiction agreements with other regulatory authorities to facilitate certification of compliance with requirements by, and licensing of, totalisator companies, entities providing services for simulcasting and common pool wagering, secondary pari-mutuel organizations, racing vendors and advance deposit account wagering systems. These agreements shall, at a minimum, ensure certification and licensing requirements comparable to this jurisdiction.

§ 191.2. Definitions.

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

Account—An account for account wagering with a specific identifiable record of deposits, wagers and withdrawals established by an account holder and managed by the licensed racing entity or secondary pari-mutuel organization.

Advance deposit account wagering system—ADW system—A system by which wagers are debited and payouts are credited to an advance deposit account held by a licensed racing entity or by its licensed racing vendor or secondary pari-mutuel organization on behalf of a person.

Authorized Pari-Mutuel Wagering Entity—APWE—A duly licensed racing entity, a licensed racing vendor or a licensed SPMO which engage in or conduct all forms of pari-mutuel wagering, including licensed advanced deposit wagering.

Carryover—The non-distributed pool moneys which are retained and added to a corresponding pool in accordance with these regulations.

Common Pool Wagering—A pari-mutuel wagering pool administered in one jurisdiction which includes legal wagers of a single type placed in more than one jurisdiction on a race or series of races.

Expired ticket—An outstanding ticket which was not presented for redemption within the required time period for which it was issued in accordance with the Commission's regulations.

Independent Real Time Monitoring System—A system approved by the Commission for the purpose of immediate and continuous analysis of wagering and other pari-mutuel systems data to detect suspect wagering transactions or other activity indicating a possible problem relating to the integrity of the pari-mutuel system and which transmits transactional level data to a wagering security database.

Interstate off-track wager—A legal wager placed or accepted in one state with respect to the outcome of a horse race taking place in another state and includes pari-mutuel wagers, where lawful in each state involved, placed or transmitted by an individual in one state by means of telephone or other electronic media and accepted by an off-track betting system in the same or another state, as well as the combination of any pari-mutuel wagering pools.

Licensed Racing Entity—Any person that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from the Commission.

Live Racing Event Host—A licensed racing entity where live horse racing is conducted and on which pari-mutuel wagering is conducted by secondary pari-mutuel organizations.

Net amount wagered—The amount wagered reduced by the retention imposed under the laws of the Commonwealth or another jurisdiction.

On-track wager—A wager with respect to the outcome of a horse race which is placed at the racetrack at which the horse race takes place.

Pari-Mutuel Cash Voucher—a document or card produced by a pari-mutuel system device on which a stored cash value is represented and the value of which is recorded in and redeemed through the pari-mutuel system.

Pari-Mutuel Pool Host—A licensed racing entity that operates and controls access of secondary pari-mutuel organizations to, a pari-mutuel pool.

Pari-Mutuel Ticket—A document printed or record produced by a pari-mutuel system device on which is represented a pari-mutuel wager or wagers that have been authorized and accepted for purposes of participation in a pari-mutuel pool.

Pari-Mutuel System—The hardware, software and communications equipment used to record wagers, calculate payouts for winning wagers, and transmits wagering transactions and pari-mutuel pool data for display to patrons and to communicate with other pari-mutuel systems linked to facilitate common pool wagering.

Pari-Mutuel Wagering—A form of wagering, including manual, electronic, computerized and other forms as approved by the Commission, on the outcome of a horse racing event in which all wagers are pooled and held by authorized pari-mutuel wagering entities for distribution of the total amount, less the deductions authorized by law, to holders of winning tickets.

Payout—The amount of money payable to winning wagers.

Real Time Transaction Monitoring System—An operating system that can respond to input immediately, within

the actual time in the real world during which an event takes place. The system must be able to react to a steady flow of new information without interruption and perform its tasks within the same time constraints as the totalisator system it monitors.

Simulcast—Live video and audio transmission of a race and pari-mutuel information for the purpose of pari-mutuel wagering at locations other than a licensed association where the race is run.

Takeout—The total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by section 9335 of the act.

Totalisator System Standards—Minimum standards for approval and operation of a pari-mutuel wagering system.

Wagering Transmission Protocol (WTP)—A pari-mutuel wagering system protocol that facilitates transmission of wagering transaction detail to a host totalisator.

CHAPTER 193. PARI-MUTUEL WAGERING AND TICKETS—TEMPORARY REGULATIONS

Sec.	
193.1.	Pari-mutuel wagering.
193.2.	Sale of pari-mutuel tickets.
193.3.	Payments.
193.4.	Daily Double.
193.5.	Perfecta (Exacta).
193.6.	Quiniela.
193.7.	Trifecta.
193.8.	Refunds.
193.9.	Information required by Commission and Department of Revenue.
193.10.	Record of unpaid tickets.
193.11.	Report of handle and attendance.
193.12.	Test of equipment.
193.13.	Personnel.
193.14.	Odds board.
193.15.	Creation of new betting pools.

§ 193.1. Pari-mutuel wagering.

(a) All licensed racing entities shall use a pari-mutuel ticket machine for the sale of pari-mutuel tickets, unless otherwise authorized by the Commission. All licensed racing entities or other approved entities shall be required to use totalisator systems licensed by the Commission.

(1) No electronic calculator may be deemed one of approved design unless it is capable of registering by automatic electronic or mechanical means on central aggregators all wagers made on each horse, entry, or the field, in each of the straight, place and show pools, and displaying the totals so registered in a way as to permit ready tabulation thereof by the representative of the Commission.

(b) The controls necessary to operate the Odds Board in the infield, relative to the way the horses finish, (if the finish is being contested, if there is a photo, dead-heat, time of race) are to be located in the Judges or Stewards' stand and controlled only by the Judges or Stewards.

§ 193.2. Sale of pari-mutuel tickets.

(a) The method of generating and selling pari-mutuel tickets by licensed racing entities or other approved entities shall be approved by the Commission.

(b) Bookmaking or wagering other than pari-mutuel wagering is strictly prohibited.

(c) No minor shall be allowed to wager.

(d) All wagering shall stop and all pari-mutuel machines shall be locked on post time or the actual start of all races, whichever shall first occur. These machines

shall be automatically locked by the control of the Starter or by the Judges or Stewards as either case shall require in each race.

(e) When the sale of pari-mutuel tickets has closed, it shall remain closed until after the race has finished.

(f) No pari-mutuel ticket shall be sold for less than \$2 except with specific approval by the Commission.

(h) The Manager of the Pari-Mutuel Department shall be properly and timely advised by the Judges or Stewards prior to the beginning of wagering on each race, of the horses that will compete in the race and any changes from those listed in the official program.

(i) If less than six interests qualify horses to start in a race, the Manager of the Pari-Mutuel Department, with the consent of the representative of the Commission, may prohibit Show wagering on that race.

(j) If less than five interests qualify horses to start in a race, the Manager, with the consent of the representative of the Commission, may prohibit both Place and Show wagering on that race.

(k) If less than three interests qualify horses to start in a race, the Manager, with the consent of the representative of the Commission may prohibit wagering on the race.

(l) The Manager, with the consent of the representative of the Commission, may prohibit wagering on any particular horse or entry in any race. The consent shall be sought by the Manager of the Pari-Mutuel Department from the representative of the Commission after the entries are closed on the day previous to that during which the races in which exclusions are desired are to be conducted. The exclusions, if consented to by the representative of the Commission, shall be clearly indicated on the program or score card and horses excluded shall be numbered so as to in no way infer that they are coupled in the field. Horses once excluded from the wagering shall remain excluded during the day or race in which they are scheduled to start.

(m) Coupled entries in Daily Double, Twin Double, or Perfecta races shall be allowed as provided in the Commission's regulations.

(n) When one or more horses representing separate interests are started in a race than the number of post positions on the infield tote board, all horses in excess of a number of interests one less than the total number of post positions on the infield tote board shall be grouped in the wagering as the field.

(o) A refund cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race which has been scratched or withdrawn before said horse has become a Starter in the race under the provisions of this part.

(p) No claims or assertions of any nature relating to any way to any alleged defect, misprint, or other form of error or mistake in the printing, imprinting, sale, or issuance or any pari-mutuel ticket will be entertained or allowed after the purchaser has left his place at the selling window. The act of removal from the selling window by any purchaser shall be conclusively deemed to be an acceptance of a ticket as actually printed and issued and to be an intentional, knowing waiver of any and all defects, mistakes, or errors thereon. Verification of the accuracy of all these tickets shall be the responsibility of the purchasers thereof.

(q) No person shall present or cause any pari-mutuel ticket to be presented or processed in return for payment of any commission, premium, discount, or other consideration of any nature other than the authorized pool payment to be distributed in full to the owner or owners thereof.

§ 193.3. Payments.

(a) Unless otherwise approved by the Commission, payments due on all wagers shall be made in conformity with the well-established practice and procedures of the pari-mutuel system. The practice is to work in dollars and not in the number of tickets. Money wagered on winning tickets is returned in full, plus the profits. In all cases of a winning mutuel pool, each licensed racing entity must redistribute not less than \$2.20 on each \$2 wager, except that in a race in which there is a minus pool, the licensed racing entity must distribute \$2.10 on each \$2 wager.

(b) Payments on all winning pari-mutuel tickets and tickets refundable according to rules shall be made only on presentation and surrender of the appropriate ticket. Mutilated tickets and those whose validity are questioned shall be submitted to the Commission for inspection and approval before payment.

(c) At the end of each race, the Placing Judges or other racing official shall advise the Manager of the Pari-mutuel Department and the representative of the Commission in writing of the official placement of the horses.

(d) If a horse wins and there is no money wagered on him to win, the win pool shall be apportioned among the holders of the place tickets on that horse, if any, otherwise, holders of the show tickets.

(e) If no money has been wagered to place on a horse which is placed first or second in a race, the place pool for that race shall be apportioned among the holders of the place tickets on the other horse which was placed first or second.

(f) If no money has been wagered to show on a horse which has placed first, second or third in a race, the show pool in that race shall be apportioned among the holders of show tickets on the other horses which are placed first, second or third in that race.

(g) In the event that only two horses finish in a race, the show pool shall be figured the same as the place pool and the moneys apportioned to the holders of show tickets on the two finishing horses. In the event only one horse finishes in a race, all three pools shall be figured separately as straight pools and all the moneys shall be awarded to the ticket holders of the finishing horse. In the event no horse finishes the race, then the entire pool shall be refunded to all ticket holders.

(h) If two horses finish in a dead heat for first place, the money in the win mutuel pool is divided between the two dead-heaters according to their proportionate shares in the pool.

(i) If two horses finish in a dead heat for second place, the division is made as follows: there shall be allotted to the pool of the winner of the race one-half of the place pool and the two dead-heaters one-half each of the remaining half of the place pool.

(j) If two horses coupled in the betting as an "entry" or "the field" finish first and second, first and third or second and third, the division of the net show pool shall be as follows: two-thirds of the net show pool shall be allotted to the pool of the entry and the balance one-third to the other horse.

(k) In the event that one horse of the entry or the field finishes first or second and the other part of the entry or field finishes in a dead heat for third with another horse, the division of the net show pool shall be as follows: one-half of the net show pool shall be allotted to the pool of the entry, one-third to the horse finishing first or second, and one-sixth to the horse finishing in the dead heat with the entry for third.

(l) If the entry or field horses should finish first, second and third, then the entire money in each pool goes to the entry or field tickets, no other tickets participating.

(m) If an error is made in posting pay off figures on the public board and no payments have been made, it shall be corrected promptly and a statement explaining the facts made over the public address system forthwith. In the event of an error resulting in overpayment, any payments already made shall be deemed final and the recipients shall be entitled to retain the same. In the event of an error in calculations which results in an under payment and payments have already been made the amount of the under payment shall be promptly ascertained and confirmed by the Commission. Upon the confirmation, the under payment shall be transferred to the next corresponding pool on the racing program of the same day. In the event the amount of the under payment cannot be ascertained and confirmed before the conclusion of the racing program of the day, the under payment shall be escrowed by the Association and distributed in the pools of all races on the daily program next run. No deferred redistribution of any under payment shall be undertaken without prior consent of the Commission. Under payments shall be promptly and fully reported to the Commission. An under payment not distributed or undistributable prior to the end of a meet shall be held in trust and transferred into the next corresponding pool of the next race meeting of the licensed racing entity in question.

(n) All winning pari-mutuel tickets must be presented for payment before April 1st of the year following the year of their purchase and failure to present any ticket within the prescribed period of time shall constitute a waiver of the right to participate in the award or dividend. After April 1st of the year following the year of their purchase, all licensees shall forward to the State Treasurer all funds so held for the uncashed tickets. The Commission shall be notified by the licensee of the amounts so forwarded.

(o) No mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall be accepted for payment.

(p) No person acting alone or in concert with any other party or entity shall deface, alter, change, or attempt to duplicate or reproduce any pari-mutuel ticket or attempt to effect a defacement, alteration, change, duplication or reproduction nor shall any person or persons in any manner attempt to present or negotiate any ticket for payment however or whenever the same may have been defaced, altered, changed, reproduced or duplicated.

(q) No claims for a pari-mutuel ticket which the holder alleges he has lost or claims for a pari-mutuel ticket which is not in the possession of the holder, shall be considered for payment by a licensed racing entity or by the Commission.

§ 193.4. Daily Double.

(a) No Daily Double shall be conducted without permission of the Commission. There shall be no exchange of

Daily Double tickets after the purchase thereof, all tickets on the Daily Double will be calculated in an entirely separate pool.

(b) To win a Daily Double, it is necessary for the purchaser of a Daily Double ticket to select the winners of each of the two races specified for the double. If either of his selections fails to win, his contract is void, except as hereafter provided.

(c) All tickets will be to win (Straight) only. Horses designated and listed as the "Field," race as one horse in the Daily Double. If two or more horses in a race are listed as "Field" on the same totalisator ticket, there shall be no refunds, unless all the horses so listed are excused before "off" time.

(d) Selections are to be made of one horse for each of two races in the Daily Double by "Tote" program numbers.

(e) If no ticket is sold combining the two winners of the Daily Double, the pool shall then be apportioned equally between those having tickets including the winner in the first race of the Daily Double and those having tickets including the winner in the second race of the Daily Double in the same manner in which a Place Pool is calculated and distributed.

(f) If no ticket is sold on the winner of the first race of the Daily Double on any combination, the entire pool is apportioned to the holder of tickets on the winner of the second race of the Daily Double. Likewise, if no ticket is sold on the winner of the second race of the Daily Double on any combination, the entire pool is apportioned to the holders of tickets on the winner of the first race of the Daily Double.

(g) If a dead heat to win should result in either the first or second race of the Daily Double, the total pool is calculated as a place pool. In case of a dead heat for the winner of the first race of the Daily Double, the posting of payoff prices will be made after winner of second race of the Daily Double is Official.

(h) If no ticket is sold containing the numbers of either winner on any combination, the pool shall be allotted to those having tickets on horses finishing second in each of the two contests, but if there are no wagers, then the entire pool shall be refunded on Double wagers for those contests.

(i) In the event any horse or horses in the first half of the Daily Double should be excused by the racing officials after the horses shall have left the paddock for the post, or after the betting on the Daily Double has been closed, or should any horse or horses in the first half of the Daily Double be prevented from racing because of failure of the starting gate to open, the money wagered on any horse or horses so excused or prevented from racing shall be deducted from the Daily Double Pool and refunded to the purchaser or purchasers of tickets on the horse or horses so excused or prevented from racing.

(1) Should any horse or horses be scratched, excused by the racing officials or prevented from racing because of the failure of the starting gate to open in the last half of the Daily Double, all tickets combining the horse or horses with the winner of the first race of the Daily Double shall become consolation tickets and shall be paid a price per dollar bet determined as follows: the net Daily Double Pool (the gross Daily Double Pool less tax) shall be divided by the total purchase price of all Daily Double tickets designating the winner of the first half of the Daily Double and the quotient attained shall constitute

the price to be paid. The total amount payable on consolation tickets shall be deducted from the net Daily Double Pool.

(j) The possible payoff prices shall be posted or announced to the public before the start of the last race of the Daily Double, and as soon as possible after the horses in the race of the last half of the Daily Double have entered upon the track on the way to the post.

(k) In case the second half of the Daily Double is not raced due to rain, or for any other cause, the entire pool shall be apportioned and paid, less commission, to the holders of tickets on the winner of the first race of the Daily Double.

(1) If a Daily Double is scheduled to be held, subsections (a)—(k) inclusive of this Rule shall be printed on the day's racing program and notice printed on said program as follows: "Retain your tickets until the result of the Daily Double has been posted."

§ 193.5. Perfecta (Exacta).

(a) No Perfecta (Exacta) wagering shall be conducted without permission of the Commission. The races in which Perfecta (Exacta) type pari-mutuel wagering will be permitted shall only be those designated by the Commission and separate pools shall be established therefor.

(b) To win a Perfecta (Exacta), it is necessary for the purchaser of a Perfecta (Exacta) ticket to select in order the horse declared the winner and the horse declared to have placed in the race in which Perfecta (Exacta) type wagering is permitted. If either of the selections made by the purchaser fails to be declared to have finished in the position designated by the purchaser when purchasing the Perfecta (Exacta) ticket, then the contract is void except as hereinafter provided.

(c) Should there be a dead heat to win in a Perfecta (Exacta) race, holders of tickets combining those two horses in either order will share in the Perfecta (Exacta) payoff. Should there be a dead heat for place, holders of tickets combining the horse declared the winner with either of the horses declared to have finished in the dead heat for place shall share in the Perfecta (Exacta) payoff. In both of the aforementioned instances, the net pool shall be distributed and calculated in the same manner as a Place Pool.

(d) As a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second, but if there are no wagers on one of those two finishers, then

(1) As a single price pool to those whose combination included the one covered betting interest to finish first or second in the correct sequence, but if there are no wagers, then

(i) The entire pool shall be refunded on Exacta wagers for that contest.

(e) In the event a horse or horses in the Perfecta (Exacta) should be excused by the racing officials after the horses have left the paddock for the post, or after the betting on the Perfecta (Exacta) has been closed, or should a horse or horses in the Perfecta (Exacta) be prevented from racing because of failure of the starting gate to open, the money wagered on the horse or horses so excused or prevented from racing shall be deducted from the Perfecta (Exacta) Pool and refunded to the

purchaser or purchasers of tickets on the horse or horses so excused or prevented from racing.

(f) In the event only one horse finishes the race and is declared the winner, the net pool shall be distributed to holders of Perfecta (Exacta) tickets designating to win the horse declared the winner.

(g) "Fields" are permitted in a Perfecta (Exacta) race. If two or more horses in a Perfecta (Exacta) race are listed as the "Field" on totalisator tickets they shall be counted as a single selection for determining the order of finish. In the event two field entries finish in first and second place, only the one finishing first shall be deemed a winning entry for Perfecta (Exacta) purposes and the next closest non-field entry shall be deemed the second place finisher for Perfecta (Exacta) wagers. There shall be no refunds for field entries, unless all the horses listed in the field are excused before "off" time.

§ 193.6. Quiniela.

(a) No Quiniela wagering shall be conducted without prior permission of the Commission. The races in which Quiniela-type pari-mutuel wagering will be permitted shall only be those designated by the Commission and separate pools shall be established therefor.

(b) The principle of a Quiniela is, in effect, a contract by the purchaser of a Quiniela ticket to select the first two horses to finish in a race. The order in which the horses finish is immaterial. The Quiniela is not a "parlay" and has no connection with or relation to win, place or show betting, and will be calculated in an entirely separate pool.

(c) In cases of a dead heat between the two horses for first place, the combination shall be the winner of the Quiniela pool.

(d) In case of a dead heat between two horses for second place, the pool shall be figured as a Place pool, the holders of tickets combining the winning horse and the two horses finishing second participating in the payoff.

(e) In case of a dead heat for second place, and no ticket is sold on one of the two winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the winning combination.

(f) If no ticket is sold on the winning combination of a Quiniela pool, the net pool shall be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second, in the same manner in which a place pool is calculated.

(g) If no ticket is sold that would require distribution of a Quiniela pool to a winner as above defined, the licensee shall make a complete and full refund of the Quiniela pool.

(h) In case of a scratch in a Quiniela race, the patron holding a ticket on the scratched horse will receive a refund.

§ 193.7. Trifecta.

(a) No trifecta wagering may be conducted without permission of the Commission. The only races in which "trifecta" type pari-mutuel wagering is permitted, are those races designated by the Commission and a separate pool is established therefor.

(b) The trifecta is a form of pari-mutuel wagering in a single race in which the bettor selects a ticket combining in exact finishing order, as officially posted the first, second and third place winner.

(c) The trifecta is not a parlay and except as set forth in this section, has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(d) Trifecta tickets shall be sold in at least \$2 denominations or in denominations as from time to time are approved by the Commission.

(e) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finishers in that order. If no ticket is sold combining the win and place finish, the net pool will be distributed to the holders of tickets selecting the winner. If less than three horses finish, the payoff will be made to holders of tickets selecting the finishing horses in order, ignoring the balance of the selection.

(f) If no ticket is sold that would require distribution of the trifecta pool to a winner defined in this section, the licensee shall make a complete and full refund of the Trifecta Pool.

(g) In the event of a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets. The payoff will be calculated as a place pool by dividing the net trifecta pool by the total purchase price of winning tickets.

(h) In the event of a scratch in the trifecta no exchanges will be made. All tickets which include the scratched horse are eliminated from further participation in the trifecta pool and will be refunded.

(i) Coupled entries and fields are allowed in trifecta races as set forth in the Commission's regulations.

(j) Trifecta tickets shall be sold only by the licensed racing entity or other approved entity. Resale of these tickets from one individual to another is prohibited and shall be grounds for ejection.

(k) Each licensed racing entity shall print in heavy type in a conspicuous place in its daily printed program all the provisions of this section and post printed copies of this section about the track in places as it deems available.

§ 193.8. Refunds.

(a) Any ruling of the Judges or Stewards or the Commission with regard to the award of purse money made after the sign "official" has been purposely displayed shall have no bearing on the pari-mutuel payoff.

(b) In all cases when a horse has been excused by a racing official after wagering has started, but before the horses shall have actually started, all money wagered on the horse so excused shall be deducted from the pool and refunded.

(c) If two or more horses in a race are coupled on the same pari-mutuel ticket, there shall be no refunds unless all of the horses so coupled are excused before the actual start.

(d) In the case of a race being declared off or postponed to another day by the Stewards after the wagering has begun, all money wagered in that race shall be refunded.

§ 193.9. Information required by Commission and Department of Revenue.

The officers and employees of the licensed racing entity shall promptly give the Department of Revenue and the

Commission the information as they may request from time to time and shall fully cooperate with them in every way.

§ 193.10. Record of unpaid tickets.

An itemized record of all unpaid winning pari-mutuel tickets shall be prepared and a complete record thereof, including total, forwarded to the Commission and the Department of Revenue in a timely manner, if requested.

§ 193.11. Report of handle and attendance.

On a monthly basis, the licensed racing entity or other approved entity shall provide to the Commission, a report including the following: handle of each race, amount in each pool, Daily Double handle, total daily handle and attendance.

§ 193.12. Test of equipment.

All licensed racing entities or other approved entities shall have a test, by actual operation, of the pari-mutuel equipment before the opening of each meeting or prior to beginning operations, which shall be approved by a representative of this Commission.

§ 193.13. Personnel.

(a) A list of the personnel of the Pari-Mutuel Department shall be submitted to the Commission for its approval as requested by the Commission.

(b) If requested by the Commission, a copy of the Pari-Mutuel Department payroll shall be submitted to the Commission and shall be accompanied by a statement sworn to by the manager of the Pari-Mutuel Department attesting to the report's accuracy.

§ 193.14. Odds board.

A licensee shall provide a sign, approved by the Commission upon which shall be displayed, the approximate straight odds on each horse in a race, the value of a \$2 winning pari-mutuel ticket, straight, place or show on the first three horses in the race; the elapsed time of the race; the value of a \$2 winning daily double ticket; the total amount wagered on each horse and each pool and other information that the Commission may deem necessary.

§ 193.15. Creation of new betting pools.

(a) A licensed racing entity seeking to offer new forms of wagering, such as "pick (x)," "instant racing pools," "mix and match" or other similar type pools for its patrons must first apply in writing to the Commission and receive written approval prior to implementing the new betting pool.

(b) For each new betting pool, the licensed racing entity shall provide the rules associated with the betting pool, including:

- (1) description of the game; how to wager;
- (2) take out rates and payout calculations;
- (3) wager amounts;
- (4) coupled entry and mutuel fields and dead heat rules;
- (4) carryover provisions, if applicable;
- (5) other conditions and requirements of the betting game.

(c) A licensed racing entity which seeks to terminate a previously approved betting game/pool shall provide a notice to the Commission 30 days prior to terminating the game/pool.

**CHAPTER 195. SIMULCASTING—
TEMPORARY REGULATIONS**

Sec.	
195.1.	Live event host—contract.
195.2.	Permitted simulcasts.
195.3.	Intrastate simulcasting.
195.4.	Casino simulcasting.

§ 195.1. Live event host—contract.

(a) A live horse racing event host duly licensed by the Commission may, subject to Commission approval of the applicable contract, simulcast its races for the purpose of pari-mutuel wagering to another licensed racing entity or SPMO or other authorized entity.

(b) Unless otherwise permitted by the Commission, every simulcast shall contain in its video content a digital display of actual time of day, the name of the host facility from where the race originates, the number of the contest being displayed and the minutes to post time.

(c) The approved live host licensee, if requested by the Commission, shall provide and maintain security controls including encryption over its uplink and communication systems.

§ 195.2. Permitted simulcasts.

(a) *Host licensees*—The Commission may approve the application of a licensed racing entity or secondary pari-mutuel organization to electronically simulcast horse races to and from this Commonwealth. Upon request by a licensed racing entity or secondary pari-mutuel organization, the Commission may designate the entity as a host licensee, authorized to maintain common pari-mutuel pools on International and interstate races transmitted to and from the racetrack enclosures within this Commonwealth.

(b) All simulcasts of horse races shall comply with the provisions of the Interstate Horseracing Act of 1978 (Pub.L. No. 95-515) (15 U.S.C.A. §§ 3001 et seq.) and the laws of each state involved, placed or transmitted by an individual in one state by means of telephone, Internet or other electronic media and accepted and maintained in common pari-mutuel pools.

(c) *Simulcasts*—The following apply:

(1) Cross simulcasting of the races described previously may be permitted if all amounts wagered on the races in this Commonwealth are included in common pari-mutuel pools. A host licensee seeking permission to cross simulcast must obtain approval from the Commission.

(2) All forms of pari-mutuel wagering shall be allowed on horse races simulcasted. The Commission may permit pari-mutuel pools in this Commonwealth to be combined with pari-mutuel pools created under the laws of another jurisdiction and may permit pari-mutuel pools created under the laws of another jurisdiction to be combined with pari-mutuel pools in this Commonwealth.

(c) *Taxation*—Money wagered by patrons in this Commonwealth on horse races shall be computed by the amount of money wagered each racing day for purposes of taxation under section 9334 of the act (relating to State Racing Fund and tax rate). Thoroughbred races shall be considered a part of a thoroughbred horse race meeting and standardbred horse races shall be considered a part of a standardbred horse race meeting.

§ 195.3. Intrastate simulcasting.

(a) The Commission shall permit intrastate simulcasting of live horse racing between the licensed racing entities that conduct live racing.

(b) The simulcast signal shall be encoded, and the racetrack receiving the simulcast signal may not send the signal anywhere other than a public location authorized under section 9329 (relating to interstate simulcasting) of the act.

(c) All forms of pari-mutuel wagering described in section 9335 (relating to pari-mutuel pool distribution) of the act shall be allowed on a horse race to be simulcasted under this section.

(d) The money wagered by a patron on a horse race must be computed in the amount of money wagered each racing day for purposes of taxation under section 9334 (relating to State Racing Fund and tax rate) of the act.

§ 195.4. Casino simulcasting.

(a) In accordance with Chapter 13F (relating to casino simulcasting) of the Race Horse Development and Gaming Act (4 Pa.C.S. §§ 13F01—13F44) and with 58 Pa. Code Chapter 1001 (relating to casino simulcasting—temporary regulations) of the Gaming Control Board, the Commission shall, in conjunction with, the Board shall review an application for casino simulcasting at licensed simulcasting facilities.

(b) Notwithstanding the provisions of the Gaming Act or of the Board's regulations, the standards and rules of racing, simulcasting and the conduct of pari-mutuel wagering in simulcasting facilities are subject to the act, regulations of the Commission promulgated under 3 Pa.C.S. (relating to Agriculture Code) and the Interstate Horse Racing Act of 1978 (15 U.S.C.A. §§ 3001—3007).

**CHAPTER 197. ADVANCE DEPOSIT ACCOUNT
WAGERING—TEMPORARY REGULATIONS**

Sec.	
197.1.	License required to conduct advance deposit account wagering.
197.2.	ADW license application.
197.3.	Advance deposit account wagering rules.
197.4.	ADWs in other jurisdictions.

§ 197.1. License required to conduct advance deposit account wagering.

(a) In addition to the electronic wagering provisions set forth in sections 9351—9359 (relating to additional licensing requirements for licensed racing entity, secondary pari-mutuel organization, totalisator and racing vendors) of the act and Subpart B (relating to licensing) of the Commission's regulations, a licensed racing entity, a racing vendor providing ADW services on behalf of a licensed racing entity or a SPMO licensed by the Commission to operate in this jurisdiction, may apply for a license to operate an ADW system whereby wagers are debited and payouts are credited to an account held by the licensed racing entity, racing vendor or SPMO on behalf of a person who has applied for the account and been accepted under these rules.

(b) An entity that operates an ADW and is not otherwise involved in pari-mutuel wagering may be licensed as both a SPMO and an ADW in a consolidated licensing procedure as prescribed by the Commission.

(c) A provider of advanced deposit account wagering facilities or systems for an ADW must be licensed by the Commission if account facilities, equipment or personnel are located in this jurisdiction under a contract with a licensed association or SPMO.

§ 197.2. ADW license application.

(a) The ADW license application shall include the following information:

(1) A copy of the contracts to provide services to an association or SPMO licensed by the Commission.

(2) A list of personnel assigned to work in this Commonwealth, a list of all employees involved in accepting pari-mutuel wagers placed in this Commonwealth and a list of employees with access to facilities where the wagers are placed, or systems and records relating to account wagering are operated and secured, who are not located in this jurisdiction.

(3) List of all officers, directors, partners, and shareholders with a 5% or greater share of ownership or beneficial interest.

(4) Full disclosure of all fees and other financial considerations relating to the contract with the licensed racing entity or SPMO.

(5) Certify to the Commission that the entity will provide prompt access to reports, logs, wagering transaction detail, and customer account detail, in printed form or standard electronic format approved by the Commission.

(6) Provide a detailed description and certification of systems and procedures used to validate the identity, age, and jurisdiction of legal residence of account holders and to validate the legality of wagers accepted.

(7) Certify to the Commission prompt access to all records relating to customer identify, age, and residency in hard copy or standard electronic format acceptable to the Commission.

(8) Certify to the Commission prompt access to customer account detail in hard copy or an electronic format acceptable to the Commission for:

(i) Persons who place wagers on races conducted in this jurisdiction, customers are identified as legal residents of this jurisdiction, who place wagers on races ran in this jurisdiction and races available for wagering by persons in this jurisdiction,

(ii) Persons the Commission has reason to investigate based on possible placing of wagers for persons other than the account holder, wagers that may be related to the investigation of any race or wagering pattern or relevant to any other investigation as may be determined by the Commission.

(9) Include certification of secure retention of all records related to wagering and customers' accounts for a period of not less than 3 years or longer period specified by the Commission.

(10) Include, as an attachment, a certified copy of rules governing the acceptance and management of accounts, and a certified copy of any changes in the rules at least 30 days prior to the effective date.

(b) All persons employed by ADWs as listed in subsection (a), not licensed by the Commission, shall hold a current pari-mutuel employee or vendor employee license issued by the National License Compact. The ADW shall provide and maintain with the Commission a current list of the employees and including their current National License number.

(c) Must utilize and communicate pari-mutuel wagers to a pari-mutuel system meeting all requirements for pari-mutuel systems employed by licensed racing associations in this jurisdiction.

(d) An ADW must operate and communicate with the totalisator system in a way as not to provide or facilitate a wagering advantage based on access to information and

processing of wagers by ADW account holders relative to persons who wager at race tracks or public off-track wagering facilities. The ADW shall have in place an independent real time monitoring system and use approved by the Commission, and use other procedures as needed, to insure compliance with this requirement.

§ 197.3. Advance deposit account wagering rules.

(a) The ADW shall notify the patron, at the time of opening the account, of any rules the association has made concerning deposits, withdrawals, average daily balance, user fees, interest payments and any other aspect of the operation of the account. The ADW shall notify the patron whenever the rules governing the account are changed, the notification occurring before the new rules are applied to the account and including the opportunity for the patron to close or cash-in the account. The patron shall be deemed to have accepted the rules of account operation upon opening or not closing the account. The ADW shall request authorization from the Commission before a system of account wagering is offered.

(b) The ADW may reserve the right at any time to refuse to open an account, to accept a wager or to accept a deposit.

(c) Each account holder shall provide the personal information as the ADW and the Commission require, including an address to which communications are to be delivered. The ADW shall provide each account holder, a confidential account number and password to be used by the patron to confirm the validity of every account transaction.

(d) Deposits may be made in cash, by check or by other methods approved by the Commission. Holding periods will be determined by the ADW and advised to the account holder. A written or electronic receipt for the deposit may be issued to the account holder but does not need to reflect the current account balance.

(e) Each account holder shall be deemed to be aware of the status of that account at all times and shall maintain an adequate fund balance. Wagers will not be accepted which would exceed the available balance of that account. Any account not updated when a transaction is completed shall be inoperable until the transaction is posted and the account balance updated.

(f) When an account is entitled to a payout or refund, said moneys will be credited to the respective accounts, thus increasing the credit balance. It is the responsibility of the account holder to verify proper credits and, if in doubt, notify the association within the agreed upon time-frame for consideration. Unresolved disputes may be forwarded to the Commission by the ADW or the account holder. No claim will be considered by the Commission unless submitted in writing and accompanied by supporting evidence.

(g) The ADW must maintain complete records of every deposit, withdrawal, wager and winning payout for each. These records shall be made available to the Commission upon request.

(h) For wagers made for an account by telephone, the ADW shall make a voice recording of the entire transaction and shall not accept any wager if the voice recording system is inoperable. Voice recordings shall be retained for not less than 6 months and shall be made available to the Commission for investigative purposes.

(i) Any account wagering system must provide for the account holder's review and finalization of a wager before

it is accepted by the ADW. Neither the account holder nor the ADW shall change a wager after the account holder has reviewed and finalized the wager. In the case of a wager made by telephone, the voice recording of the transaction shall be deemed to be the actual wager, regardless of what was recorded by the pari-mutuel system.

(j) The ADW may close any account when the holder thereof attempts to operate with an insufficient balance or when the account is dormant for a period approved by the Commission. In either case, the ADW shall refund the remaining balance of the account to the account holder.

§ 197.4. ADWs in other jurisdictions.

As a condition of approval of any simulcasting or common pool wagering contract, or both, between a licensed racing entity in this Commonwealth and an ADW in another jurisdiction, the agreement subject to Commission approval, shall include:

(1) Disclosure of all ADWs wagering on any races run in this jurisdiction, and all ADWs wagering on races run in other jurisdictions that would be available for wagering in this jurisdiction, under the contract;

(2) Certification of ADW licensing, authorization or approval by the recognized pari-mutuel authority in the other jurisdiction;

(3) Certification of compliance with rules for operation of an ADW comparable to those stated in § 197.3 (relating to advance deposit account wagering rules);

(4) Full disclosure of all fees, market share revenue and other financial considerations relating to the contract;

(5) Certify to the Commission that it will provide prompt access to reports, logs, wagering transaction detail and customer account detail, in printed form or standard electronic format approved by the Commission;

(6) Provide a detailed description and certification of systems and procedures used to validate the identity, age, and jurisdiction of legal residence of account holders and to validate the legality of wagers accepted;

(7) Include certification to the Commission that it will promptly provide access to all records relating to customer identify, age and residency in hard copy or standard electronic format acceptable to the Commission;

(8) Certify to the Commission that it will promptly provide access to customer account detail in hard copy or an electronic format acceptable to the Commission for:

(i) Persons who place wagers on races conducted in this jurisdiction, customers are identified as legal residents of this jurisdiction, who place wagers on races ran in this jurisdiction and races available for wagering by persons in this jurisdiction,

(ii) Persons the Commission has reason to investigate based on possible placing of wagers for persons other than the account holder, based on wagers placed that may be related to the investigation of any race or wagering pattern, or relevant to any other investigation as may be determined by the Commission.

(9) Include certification of secure retention of all records related to wagering and customers' accounts for a period of not less than 3 years or longer period specified by the Commission;

(10) Include, as an attachment, a certified copy of rules governing the acceptance and management of accounts

and provide a certified copy of any changes in the rules at least 30 days prior to the effective date.

CHAPTER 199. COMMON POOL WAGERING— TEMPORARY REGULATIONS

Sec.	
199.1.	Authorization of a common pari-mutuel pool.
199.2.	Application for permission to establish a common pari-mutuel pool.
199.3.	Review of application.
199.4.	Retention and distribution of retention.
199.5.	Distribution of common pari-mutuel pool.
199.6.	Responsibility for distribution.
199.7.	Races for which a common pari-mutuel pool is established.
199.8.	Publication and posting of rules.
199.9.	Administration of common pari-mutuel pool by an approved entity.
199.10.	Display of racing and wagering information.

§ 199.1. Authorization of a common pari-mutuel pool.

(a) Upon approval of the Commission, a licensed racing entity, an approved and licensed racing vendor providing racing services to the licensed racing entity or licensed SPMO, or other approved entities, may establish a common pari-mutuel pool with entities permitted under the laws of another jurisdiction to conduct pari-mutuel wagering on the results of horse races. The common pari-mutuel pool may be established to accept wagers on a race conducted outside this Commonwealth.

(b) A common pari-mutuel pool established under this chapter may consist of the amount wagered or the net amount wagered by a patron:

(1) Of the licensed racing entity.

(2) Of another licensed racing entity within this Commonwealth.

(3) Of other approved entities by the Commission.

(4) Under the laws of another jurisdiction.

(c) An individual wager shall be deemed to be made at the point of sale in the jurisdiction where it is placed.

§ 199.2. Application for permission to establish a common pari-mutuel pool.

(a) The entities set forth in § 199.1 (relating to authorization of a common pari-mutuel pool) may apply to the Commission for permission to establish a common pari-mutuel pool.

(b) An application for permission to establish a common pari-mutuel pool shall be submitted to the Commission at least 30 days prior to the beginning of wagering into the common pari-mutuel pool. The Commission may accept an application filed less than 30 days prior to the beginning of wagering for good cause shown.

(c) An application for permission to establish a common pari-mutuel pool shall be in a form prescribed by the Commission and shall contain the following:

(1) The name of the entity seeking permission to establish the common pari-mutuel pool.

(2) The name, date and jurisdiction of the racetrack conducting the race on which wagers will be accepted for inclusion into the common pari-mutuel pool.

(3) The name and licensing jurisdiction of each entity that will be accepting wagers for inclusion into the common pari-mutuel pool.

(4) A copy of the agreement for the simulcast of the race on which wagers will be accepted for inclusion into the common pari-mutuel pool.

(5) A copy of the agreement among the entities establishing the common pari-mutuel pool.

(6) A copy of the procedures established for administration of the common pari-mutuel pool.

(7) A copy of approvals required under the Interstate Horseracing Act of 1978 (15 U.S.C.A. §§ 3001—3007).

(8) The minimum amount of a wager which will be accepted for inclusion in the common pari-mutuel pool.

(9) The retention rate to be applied to amounts wagered in this Commonwealth for inclusion in the common pari-mutuel pool.

(10) The retention rate to be applied to amounts wagered in each jurisdiction other than the Commonwealth for inclusion in the common pari-mutuel pool.

§ 199.3. Review of application.

(a) The Commission may approve an application for permission to establish a common pari-mutuel pool if the Commission determines that the establishment of the common pari-mutuel pool will be in the best interest of racing in this Commonwealth and if the following conditions are satisfied:

(1) The race upon which patrons will be permitted to wager may be simulcast under section 9329 (relating to interstate simulcasting) of the act or under the Interstate Horseracing Act of 1978 (15 U.S.C.A. §§ 3001—3007), or both.

(2) The wager to be accepted is of a type which may be permitted by the Commission under section 9335 (relating to pari-mutuel pool distribution) of the act.

(3) The agreement under which the common pari-mutuel pool will be established and the procedures for the administration of the common pari-mutuel pool comply with the act and this chapter.

(b) The Commission may place conditions on an approval of an application as it deems appropriate to assure that the establishment of the common pari-mutuel pool will be in the best interests of racing in this Commonwealth and in compliance with the act and this chapter.

§ 199.4. Retention and distribution of retention.

(a) An approved entity that establishes a common pari-mutuel pool under this chapter shall retain from each wager placed in this Commonwealth an amount equal to the percentage retention rate approved by the Commission.

(b) The Commission will not approve a percentage retention rate which is less than or exceeds the minimum or maximum retention rate permitted for comparable wagers set forth in under section 9335 (relating to pari-mutuel pool distribution) of the act.

(c) A wager placed in this Commonwealth for inclusion in a common pari-mutuel pool established under this chapter shall be included by the approved entity in the amount wagered that racing day. A wager placed in another jurisdiction for inclusion in a common pari-mutuel pool established under this chapter shall be included in the amount wagered that racing day.

(d) Money retained by an approved entity under subsection (a) plus breakage allocated to the approved entity that establishes a common pari-mutuel pool under this chapter, shall be distributed in the same manner as other amounts retained under the act.

§ 199.5. Distribution of common pari-mutuel pool.

(a) Money in a common pari-mutuel pool shall be distributed to the holders of winning pari-mutuel tickets in conformity with the common practice of the pari-mutuel system.

(b) Money in a common pari-mutuel pool may be distributed to the holders of winning pari-mutuel tickets according to a net pricing calculation which reflects differing retention rates approved under the laws of the Commonwealth and other jurisdictions accepting wagers for inclusion into the common pari-mutuel pool.

(c) The procedures established for the administration of the common pari-mutuel pool shall include a procedure for the following:

(1) Distributing money in the common pari-mutuel pool to the holders of winning tickets.

(2) Allocating breakage between the entities contributing to the common pari-mutuel pool.

(3) Allocating funds for uncashed winning tickets between the entities contributing to the common pari-mutuel pool.

(4) Providing an accounting to the approved entity for submission to the Commission of contributions to and distributions from the common pari-mutuel pool.

(d) Funds for uncashed winning tickets allocated to an approved entity shall be distributed by the licensed entity as set forth in the act.

(e) If wagers placed in this Commonwealth cannot be transmitted for inclusion in a common pari-mutuel pool established under this chapter, the approved entity may do any of the following:

(1) Refund all amounts wagered to patrons holding pari-mutuel tickets representing wagers placed for inclusion in the common pari-mutuel pool if the refund is announced over the public address system of the approved entity prior to the official start of the race.

(2) Establish a pari-mutuel pool consisting solely of amounts wagered within this Commonwealth.

§ 199.6. Responsibility for distribution.

An approved entity that establishes a common pari-mutuel pool under this chapter is liable to the following:

(1) The holder of a winning pari-mutuel ticket representing a wager placed within this Commonwealth for inclusion in the common pari-mutuel pool for the distribution of winnings from the common pari-mutuel pool.

(2) The Commonwealth for other distributions required under the act or this chapter as a result of wagers placed in this Commonwealth for inclusion in the common pari-mutuel pool.

§ 199.7. Races for which a common pari-mutuel pool is established.

A race for which a common pari-mutuel pool has been established shall be conducted under the rules of racing of the jurisdiction in which the race is conducted unless that jurisdiction approves otherwise.

§ 199.8. Publication and posting of rules.

An approved entity that establishes a common pari-mutuel pool under this chapter shall:

(1) Print a summary of the rules governing wagers into and distributions from the common pari-mutuel pool in its program for the day of the race.

(2) Post a complete copy of the rules governing administration of the common pari-mutuel pool prominently at each betting window or group of betting windows in its racetrack enclosure.

§ 199.9. Administration of common pari-mutuel pool by an approved entity.

An agreement under which an approved entity will administer a common pari-mutuel pool shall contain a provision absolving the approved entity from liability if it becomes impossible to include wagers placed in another jurisdiction into the common pari-mutuel pool or if a representative of the Commission or approved entity determines that attempting to include wagers placed in another jurisdiction in the common pari-mutuel pool will endanger the approved entity's wagering pool.

§ 199.10. Display of racing and wagering information.

(a) An approved entity which establishes a common pari-mutuel pool under this chapter shall present an audio and video display of the race, including the post parade, upon which patrons may place wagers for inclusion into the common pari-mutuel pool.

(b) An approved entity which establishes a common pari-mutuel pool under this chapter shall present a video display containing wagering information, such as current odds, pari-mutuel pool totals and probable payoffs for the race upon which patrons may place wagers for inclusion into the common pari-mutuel pool.

Subpart D. STANDARDBRED RULES OF RACING (HARNESS)

Chap.	
201.	GENERAL PROVISIONS—TEMPORARY REGULATIONS
203.	LICENSING, DUTIES AND RESPONSIBILITIES OF STANDARDBRED OCCUPATIONAL LICENSEES—TEMPORARY REGULATIONS
205.	RULES OF STANDARDBRED RACING—TEMPORARY REGULATIONS

CHAPTER 201. GENERAL PROVISIONS—TEMPORARY REGULATIONS

Sec.	
201.1.	Definitions.
201.2.	Licensure.
201.3.	Registration.
201.4.	Regulatory conflicts.

§ 201.1. Definitions.

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

Added money early closing event—An event closing in the same year in which it is to be contested in which entrance, sustaining and declaration fees received are added to the purse.

Age, how determined—The age of a horse shall be calculated from the first day of January of the year of foaling.

Allowances—Given on claiming price in claiming races depending on the sex and age of the horse. Allowances are also given when determining the horse's eligibility in conditioned races based upon age and sex of the horse.

Also eligible—One of not more than two horses that are entered to race and determined at the time post positions are drawn to be eligible to start in the race should any horse properly drawn into the race be excused by the Judges prior to scratch time.

Bleeder—A horse which has demonstrated external evidence of exercise induced pulmonary hemorrhage.

Bleeder List—A tabulation of all bleeders to be maintained by the Commission.

Break—A horse's change during a race from its programmed gait to another gait or gallop.

Chart—A comprehensive account of a race showing the positions of all horses at various stages of the race.

Claimant—A person or entity who meets the eligibility requirements of the racing Commission.

Claiming price—The price by which a horse may be claimed from a race.

Claiming race—One where a horse which starts may be claimed for a designated amount in conformance with Chapter 205 (relating to rules of Standardbred racing—temporary regulations).

Conditioned race—An overnight event to which eligibility is determined according to specified qualifications in conformance with Chapter 205.

Coupled entry—Two or more horses starting in a race when owned or trained by the same person or trained in the same stable or by the same management.

Dam—The female parent, or mother, of a horse.

Dash—A race decided in a single trial. The number of premiums awarded may not exceed the number of Starters in the dash.

Dead heat—When the Judges cannot separate two or more horses as to their finishing position at the finish of a race. All unseparated horses are considered to be tied for that finish position. In the event of a dead heat in any positions, points and purses will be divided or shared, or both.

Declaration—The naming of a particular horse to a particular race.

Disqualification—It shall be construed to mean that the person disqualified is barred from acting as an official or from starting or driving a horse in a race. In the case of a disqualified horse, it may not be allowed to start.

Draw—The process by which horses are selected to start in specific races and post positions for each race.

Driver—A licensed person who drives a horse in a race.

Driving violation—A violation of one or more of the provisions of the Rules of Race in Chapter 205.

Early closing race—A race for a definite amount to which entries close at least 6 weeks preceding the race. The entrance fee may be on the installment plan or otherwise, and payments shall be forfeits. No payment on 2-year-olds in early closing events shall be permissible prior to February 15th of the year in which the horse is a 2-year-old.

Eligibility certificate—An official written record of a horse. See the definition of "registration" in this section.

Eligible—A horse qualified to start in a race and properly entered and meeting the conditions of that race.

Elimination heats—Heats of a race split according to Chapter 205 to qualify the contestants for a final heat.

Exotic wagers—Those in which the bettor selects more than two horses in one or more races in a single wager.

Expulsion—The unconditional exclusion and disqualification from a participation, either directly or indirectly, in the privileges and uses of the course and grounds of the association of a licensee or patron.

Futurity—A stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

Gait—Either a trotting or pacing gait.

Gelding—A neutered or castrated male horse of any age.

Go—The voice command given by the starting Judge to all drivers at the start of the race.

Guaranteed stake—A stake with a guarantee by the party sponsoring it that the sum may not be less than the amount named.

Handicap—A race in which performance, sex or distance allowance is made. Post positions for a handicap may be assigned by the racing secretary.

Head number—The wagering number for the horse or, in the case of a coupled entry, the wagering number of all horses that make up the coupled entry.

Head Pole—A piece of equipment used to control the position of a horse's head.

Heat—A single race or a single trial of a race that is one of a series of races that make up an event.

Hobbles—A leg harness used for controlling the gait of a pacer or trotter.

In harness—The horses participating shall be attached to a dual shaft sulky. Sulkies used in a race shall be equipped with unicolored or colorless wheel discs of a type approved by the Commission and placed on the inside and outside of the wheel. A change in the basic design of a sulky or major equipment shall require Commission approval. Rules, regulations, standards, guidelines affecting the use of any new sulky or equipment shall be approved by the Commission before their adoption.

Inquiry—When the Judges suspect that a foul or another misconduct occurred during a heat or dash.

Interference—An act, which by design or otherwise, hampers or obstructs a competing horse or horses.

Judges—The term "Judges" unless otherwise specified shall refer to the Board of Judges.

Lasix—An approved drug used as treatment of pulmonary bleeding. Also known as Furosemide.

Late closing race—A race for a fixed amount for which nominations or declarations close less than 6 weeks and more than 3 days before the race is to be contested.

Length of race and number of heats or dashes—Races or dashes shall be given at a stated distance in units not shorter than 1/16 of a mile. The length of a race and number of heats shall be stated in the conditions. If no distance or number of heats or dashes are specified races shall be a single-mile dash or heat. No 2-year-old shall be permitted to start in a dash or heat exceeding 1 mile in distance.

Maiden—A stallion, mare or gelding that has never won a heat or race at the gait at which it is entered to start and for which a purse is offered.

Mare—A female horse 4 years of age or older.

Match race—A race which has been arranged and the conditions thereof agreed upon between or among the contestants.

Mutuel field—When the individual horses competing in a race exceed the numbering capacity of the Tote, the highest numbered horse capacity of the Tote and horses of

a higher number shall be grouped together and called the mutuel field for betting purposes only.

No contest—A race that is voided for any reason by the Judges.

Nomination—The naming of a horse or in the event of a futurity the naming of a foal in utero to a certain race or series of races, eligibility of which is conditioned on the payment of a fee at the time of naming and payment of subsequent sustaining fees or declaration fees, or both.

Nominator—The person or entity in whose name a horse is nominated for a race or series of races.

Objection—A complaint by a driver of a foul driving or other misconduct occurring during a heat or dash.

Overnight race/event—A race for which entries close not more than 3 days (omitting Sundays) before the race is to be contested. In the absence of conditions or notice to the contrary, entries in overnight events may close not later than 12 p.m./noon the day preceding the race. A pari-mutuel association may not demand declaration fees from owners or trainers of horses competing in an overnight event.

Owner—Includes sole owner, part owner or lessee of a horse.

Paddock—An enclosure in which horses scheduled to compete in a race program are confined prior to racing under the supervision of a paddock Judge.

Pennsylvania-bred for pari-mutuel or fair division of sire stakes—Horses sired by a stallion registered with the Commission in conformity the Commission's regulations relating to registration and licensure. Naming of these horses shall be limited to standardbred horses which were sired by a standardbred stallion standing his full season in this Commonwealth.

Post position—The position drawn by the horse at the time declarations close.

Post time—The time set for the start of a race.

Programmed trainer—The person who assumes responsibility for a horse from the time it is entered to race until the conclusion of the race.

Protest—An objection, properly sworn to, charging that a horse is ineligible to race, alleging an improper entry or declaration, or citing an act of an owner, driver or official prohibited by the provisions of this chapter, and which, if true, shall exclude the horse or driver from the race.

Qualifying Race—A race in which a horse must establish its ability to participate at a race meeting consistent with the qualifying standards establish for that class of horse.

Race—A contest of speed between Standardbreds at a trotting or pacing gait.

Race officials—The term may include the following:

- (i) Board of Judges
- (ii) Racing secretary
- (iii) Paddock Judge
- (iv) Horse identifier
- (v) Clerk of the course
- (vi) Starter
- (vii) Charter/Timer
- (viii) Patrol Judge
- (ix) Commission Veterinarian
- (x) Racetrack veterinarian

Or any other person designated by the Commission as a racing official.

Record—The fastest time made by a winning horse in a heat or dash, in compliance with the requisites of racing.

Registration—A certification of ownership, except where there is a direct conflict with the rules, regulations or laws of the Commission, matters regarding registration and eligibility certificates shall be governed in accordance with the rules and regulations as set forth by the USTA.

Rules—The rules and regulations promulgated by the Commission.

Scoring—The preliminary practice taken by the horses in a race after the post parade and before they are called by the Starter to line up for the start.

Scratch—The removal of a horse from a race after its entry has been accepted.

Scratch time—The time specified for making final changes to the official program prior to publication, at which time, any “also eligible” horses in the programmed race are released.

Spayed mare—A female horse who has had her ovaries removed.

Stake—A race that shall be contested in a year subsequent to its closing in which the money given by the licensed racing entity conducting the race is added to the money contributed by the nominators, which belong to the winner or winners.

Starting point—The point marked on the inside rail where the Starter gives the word “Go.”

Starters—A group of horses competing in a heat or race.

Timed workout—Permitted instead of a qualifying race for a horse to establish its ability to participate at a race meeting consistent with the qualifying standards established for that class of horse.

USTA—United States Trotting Association—The National not-for-profit association of Standardbred owners, breeders, drivers, trainers and officials organized to provide administrative, rulemaking, licensing and breed registration services and documentation.

Walk-over—When only horses of the same interest start, a walk-over results. In a stake race a walk-over is entitled to stake money and forfeits unless otherwise provided in the published conditions. To claim the purse, the entry shall start and go once over the course unless this requirement is waived by the Judges.

Winner—The horse whose nose reaches the wire first. If there is a dead heat for first, both horses shall be considered winners. Where two horses are tied in a summary, the winner of the longer heat shall be entitled to the trophy. Where the heats are of the same distance and the horses are tied in the summary, the winner of the fastest heat shall be entitled to the trophy.

Wire—A real or imaginary line from the center of the Judge’s stand to a point immediately across, and at right angles to the track.

§ 201.2. Licensure.

(a) No person shall participate in the affairs of any licensed racing entity as director, officer, agent or employee of the entity without first receiving a license from the Commission.

(b) In addition to the requirements set forth in Chapter 185 (relating to occupational licenses—temporary regula-

tions), no person shall participate in any harness horse race meet as an official, driver, trainer or assistant trainer unless the person shall first have received a license from the USTA and this Commission. The Commission may issue temporary licenses or restricted licenses as it may deem necessary and desirable.

§ 201.3. Registration.

All matters relating to the registration of Standardbred horses, unless otherwise provided for herein, shall be governed by the Rules of the USTA. Pennsylvania stallions, to be eligible for Pennsylvania Sire Stakes for any given year, shall have on file a Stallion Certificate of Eligibility no later than December 1 of the preceding year with the Commission.

§ 201.4. Regulatory conflicts.

All duly licensed race meetings and pari-mutuel wagering activities conducted within this Commonwealth shall be governed by the provisions of the Act and the Commission’s regulations. If there is a conflict between the Commission’s regulations and the rules/regulations adopted by the USTA, the Commission’s regulations shall control. Except: in the event there is no provision or regulation to cover a specific matter, the Commission may utilize the published rules and regulations of the USTA.

CHAPTER 203. LICENSING, DUTIES AND RESPONSIBILITIES OF STANDARDBRED OCCUPATIONAL LICENSEES—TEMPORARY REGULATIONS

Sec.	
203.1.	Standardbred license categories.
203.2.	Knowledge of rules.
203.3.	License presentation.
203.4.	Visitor’s pass.
203.5.	Breath analyzer requirements.

OWNERS

203.11.	Licensing requirements for owners.
203.12.	Reinstatement of owner’s license.
203.13.	Transfer to ineligible trainer.
203.14.	Licensing requirements for multiple owners.
203.15.	Lease agreements.
203.16.	Stable name registration.
203.17.	Transfer of ownership.

TRAINERS AND GROOMS

203.21.	Eligibility for trainer’s license.
203.22.	Trainer responsibility rule.
203.23.	Duties of trainers.
203.24.	Other duties and responsibilities of trainers.
203.25.	Trainer treatment records.
203.26.	Corticosteroid and intra-articular injection reporting requirements.
203.27.	Restrictions on wagering.
203.28.	Assistant trainers.
203.29.	Substitute trainer.
203.30.	Owners authorized agents.
203.31.	Powers and duties of an authorized agent.
203.32.	Eligibility for groom’s license.

DRIVERS

203.51.	Application and qualifications for driver’s license.
203.52.	Racing colors.

SUBSTANCE ABUSE AND ADDICTION

203.71.	Use of controlled substances.
203.72.	Urine or other drug screening tests.
203.73.	Testing.
203.74.	Test results.
203.75.	Confidentiality.

SAFETY EQUIPMENT

203.91. Safety helmets.

FARRIERS

203.101. Eligibility for Farrier's license.
203.102. Reciprocity with other states.

PRACTICING VETERINARIANS

203.111. Eligibility for Commission license.
203.112. Duties and responsibilities.
203.113. Restrictions on wagering.

§ 203.1. Standardbred license categories.

(a) Standardbred license categories shall include the following and others as may be established by the Commission in its discretion:

(1) racing participants and personnel (including owner, authorized agent, trainer, assistant trainer, driver, groom, veterinarian, veterinary assistant, Farrier and stable employees);

(2) standardbred racing officials (including Judges, race secretary, patrol Judge, paddock Judge, official Starter, clerk of the course/charter, timer/clocker, program director, Commission Veterinarian and racetrack veterinarian);

(3) persons employed by the licensed racing entity, by a racing vendor or any other person whose employment at the racetrack enclosure requires their presence in a restricted area, or which requires their presence anywhere on racetrack grounds while pari-mutuel wagering is being conducted;

(b) Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee as set forth in Chapter 185 (relating to occupational licenses—temporary regulations). Persons may also be required to provide proof of identity and proper employment authorization.

(c) License applicants may be required to furnish to the Commission a set of fingerprints and a recent photograph and may be required to be re-fingerprinted or re-photographed periodically as determined by the Commission.

§ 203.2. Knowledge of rules.

A licensee shall be knowledgeable of the rules and regulations of the Commission and by acceptance of a license issued under Chapter 185 (relating to occupational licenses—temporary regulations) agrees to abide by these rules.

§ 203.3. License presentation.

When requested by Commission personnel or licensed racetrack security, a person shall present an appropriate license to enter a restricted area. A license may only be used by the person to whom it is issued. The licensed racing entity, in consultation with the Commission, may establish procedures and protocols for the visible display of a license while in the racetrack enclosure, including the restricted area.

§ 203.4. Visitor's pass.

Track security may not grant unlicensed persons temporary access to restricted areas unless that person is accompanied at all times while on the grounds of the racetrack. The unlicensed persons shall be identified and their purpose and credentials verified and approved in writing by racetrack security. A copy of the written approval shall be filed with the Commission or its designee within 48 hours. This authorization or credential may only be used by the person to whom it is issued.

§ 203.5. Breath analyzer requirements.

(a) To promote the health, safety and welfare of all racing participants and the integrity of racing in which they are participating, the following individuals shall be required to submit to a breath analyzer test at each racing program:

(1) Drivers, Judges, Starters, starting gate drivers and other racing officials designated by the Presiding Judge;

(2) Trainers and grooms randomly selected and designated by the Presiding Judge or other Commission official;

(3) Commission employees whose duties relate to the integrity of racing, including but not limited to the Judges, managers, investigators, livestock workers, Commission Veterinarians and any other Commission employee as required by the Commission.

(b) Participants must have a breath analyzer reading below .035%. Participants demonstrating a level above .035% shall be not permitted to participate in the racing program that day.

(c) Failing the breath analyzer test shall subject the licensee to the following penalties:

(1) First offense—\$500 dollar fine and 5-day suspension;

(2) Second offense—\$750 dollar fine and 10-day suspension;

(3) Third offense—refer to Bureau Director.

OWNERS

§ 203.11. Licensing requirements for owners.

(a) Each person desiring to enter a standardbred horse at a race meeting within this Commonwealth and who has a 5% or more ownership or beneficial interest in a horse is required to be licensed under these provisions.

(b) An applicant for an owner's license shall own or lease a horse which is eligible to race, registered with the race secretary and under the care, custody and control of a duly licensed trainer in good standing by the Commission. An owner shall immediately notify the Judges of a change in trainer. A horse shall not be transferred to a new trainer after entry.

(c) Notwithstanding § 185.6 (relating to age requirement) of the Commission's regulations, a horse owner of any age may apply for an owner's license. If younger than 18 years of age, an applicant for an owner's license shall submit a notarized affidavit from the applicant's parent or legal guardian stating that the parent or legal guardian assumes responsibility for the applicant's financial, contractual and other obligations relating to the applicant's participation in racing.

(d) Each licensed owner is responsible for disclosure to the Commission or its designee of the true and entire ownership of each of the owner's horses registered with the racing secretary. Any change in ownership or trainer of a horse registered with the race secretary shall be approved by the Judges. Each owner shall comply fully with the applicable licensing requirements set forth in Chapter 185 (relating to occupational licenses—temporary regulations).

(e) Every applicant for an owners' license shall furnish a completed application form, the necessary license fee, information relating to horse ownership and shall, if requested, submit fingerprints. An owner is subject to all the rules and regulations of the Commission. Any viola-

tion of the rules of racing shall subject the owner to the penalties set forth in the Commission's regulations.

§ 203.12. Reinstatement of owner's license.

A license may be reinstated by the Commission, in its discretion, upon application and upon the terms as the Commission may prescribe.

§ 203.13. Transfer to ineligible trainer.

(a) The Commission or its Judges may refuse, deny, suspend or revoke an owner's license for the spouse or member of the immediate family or household of a person ineligible to be licensed as an owner, unless the applicant or licensed owner demonstrates that participation in racing will not permit a person to serve as a substitute or hidden trainer for an ineligible person. The transfer of a horse to a spouse, member of the immediate family or household or employee to circumvent the ineligible status of the owner of the horse is prohibited.

(b) An owner shall not intentionally and knowingly employ a suspended trainer.

(c) In an effort to prevent owners or trainers from utilizing hidden trainers, the Commission may require from an owner or trainer applicable financial, business or other information, including invoices, Veterinarian records and the like to determine the validity of the employment of the trainer.

§ 203.14. Licensing requirements for multiple owners.

(a) If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall be licensed as required by this rule.

(b) Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the Commission all owners holding a 5% or greater beneficial interest, unless otherwise required by the Commission.

(c) Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a 5% ownership or beneficial interest shall file with the Commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not suspended in any racing jurisdiction and is presently eligible for licensing.

(d) Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notices or orders from the Commission at this address shall constitute official notice to all persons involved in the ownership of the horse. The written appointment of a managing owner or authorized agent shall be filed with the Commission.

§ 203.15. Lease agreements.

A horse may be raced under lease provided a completed breed registry or other lease form acceptable to the Commission is attached to the certificate of registration and on file with the Commission and the USTA. The lessor and lessee shall be licensed as horse owners.

§ 203.16. Stable name registration.

Licensed owners and lessees may adopt a stable name subject to the approval of the Commission.

(1) The applicant shall identify all persons using the stable name. Any changes shall be reported immediately to the Commission.

(2) A person who has registered a stable name may cancel it upon written notice to the Commission.

(3) A stable name may be changed by registering a new stable name.

(4) A stable name which has been registered by any other person will not be approved by the Commission. The Commission may prohibit the use of any name which is misleading to the public or unbecoming to the sport.

(5) A stable name shall be clearly distinguishable from other registered stable names.

(6) The stable name or the name of the owner shall be published in the program. If the stable name consists of more than one person, the program shall list the name of the managing owner along with the phrase "et al."

(7) All persons using a stable name shall comply with all rules regarding licensing of owners.

(8) Each member of the stable must sign a document designating the name and address of the corresponding officer.

§ 203.17. Transfer of ownership.

Once a horse has been registered with the USTA or a similar registration entity, the horse may not be transferred to a new owner, unless claimed, without permission of the Presiding Judge who may require a bona fide bill of sale signed by both buyers and sellers and the transfer of ownership must be timely reported to the USTA or a similar registration entity.

TRAINERS AND GROOMS

§ 203.21. Eligibility for trainer's license.

(a) A person shall not train horses or be programmed as trainer of record at race meetings without first being duly licensed by the Commission. The applicant must satisfy the Commission that the applicant possesses the necessary qualifications, both mental and physical, to perform the duties required. The Commission may deem a trainer as qualified for licensing if the applicant has obtained a USTA trainer's license for the current year.

(b) In addition to the general licensing requirements set forth in Chapter 185 (relating to occupational licenses—temporary regulations), an applicant for a license as a standardbred trainer shall comply with the provisions set forth in the USTA, Rule 17 and the following:

- (1) Be at least 18 years of age;
- (2) Submit evidence of good moral character;
- (3) Furnish a complete and truthful application;

(4) If requested, submit evidence of the applicant's physical ability to train and manage horses or a physical examination;

(5) Submit names of at least six currently licensed trainers or currently licensed drivers, or both.

(c) Evidence of qualifications, as determined by the Commission, shall also require passing all of the following:

- (1) A written examination;

(2) A demonstration of practical skills including the ability to harness and equip a horse properly and to establish proficiency in handling a horse; and

- (3) An interview with the Judges.

(d) Upon timely request to the Judges due to disability or other factors affecting the applicant's ability to effectively complete the trainer's test (such as illiteracy or language barriers), reasonable accommodations may be made for the applicant including, but not limited to oral administration of the examination, use of a pre-approved translator and aid from pre-approved assistant where deemed appropriate by the Judges administering the examination.

§ 203.22. Trainer responsibility rule.

(a) The trainer is responsible for the condition of the horse entered in an official workout or race and is charged with the responsibility to guard and protect the horse at all times regardless of the trainer's location. The trainer shall be responsible for the presence of any prohibited drug, medication, agent or other substance, including permitted medications in excess of the maximum allowable level, in the horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by the Commission's testing laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible.

(b) A trainer shall prevent the administration, attempted administration or passive contamination by others, including the trainers' employees and assistants who have care, custody and control of the horse from any drug, medication or other prohibited substance that may cause a violation of these rules.

(c) A trainer shall immediately report to the Judges and the Commission Veterinarian if the trainer knows, or has cause to believe, that a horse in the trainer's care, custody or control has received any prohibited drugs or medications.

§ 203.23. Duties of trainers.

(a) A licensed trainer may represent the owner in entries, declarations and other racing related matters. A licensed trainer may not have an interest, whether by ownership or lease, in a horse not being trained by the licensed trainer at a race meeting where the trainer is operating.

(b) A trainer who represents or files an application for an unlicensed owner shall file with the Commission an affidavit certifying that the trainer will secure a license for the owner within 30 days. The trainer or owner shall be jointly responsible for ensuring the timely and accurate filing of the owner's application. Failure of either to properly secure a license for the owner, may subject both the owner and trainer to a sanction or penalty.

(c) When a trainer is to be absent from the trainer's stable or the grounds where the trainer's horses are racing for a period of more than 2 days and horses are entered or are to be entered, the trainer shall provide a licensed trainer to assume the complete responsibility of the horses entered to run or running. The licensed trainer shall sign in the presence of the Judges a form furnished by the Commission accepting complete responsibility for the horses being entered and running. This section does not apply to trainers having in their employ a licensed assistant trainer.

(d) A trainer may not enter or start a horse that:

- (1) Is not in serviceable, sound racing condition;
- (2) Has its median, volar or plantar nerves either blocked or removed. The horse is not permitted to race on

a Commonwealth standardbred racetrack. A horse which has been nerved below the fetlock (digital nerves) may be permitted to start;

(3) The trainer knows or has reason to know that the horse has been given, either internally or externally, a stimulant, depressant, narcotic drug, medication or other foreign substance prior to the race; and

(4) Is on the Judges' List, Starter's List or Veterinarian's List in any racing jurisdiction.

§ 203.24. Other duties and responsibilities of trainers.

In addition to the duties and responsibilities set forth in §§ 203.22 and 203.23 (relating to trainer responsibility rule; and duties of trainers), a trainer shall also be responsible for:

(1) The condition and contents of stalls, tack rooms, feed rooms and other areas which have been assigned by the licensed racing entity;

(2) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(3) Ensuring that fire prevention rules are strictly observed in the assigned stable area;

(4) Providing a list to the Commission of the trainer's employees on the racetrack grounds and any other area under the jurisdiction of the Commission. The list shall include each employee's name, occupation, social security number and occupational license number. The Judges shall be notified by the trainer, in writing, within 24 hours of any change to the employee list;

(5) Ensuring the adequate care, custody, condition, fitness, health, safety and security of horses under the trainer's care, custody and control;

(6) Disclosing the true and entire ownership of each horse the trainer's care, custody or control. Any change in ownership shall be reported immediately to, and approved by, the Judges and recorded by the race secretary;

(7) Training all horses owned wholly or in part by the trainer which are participating at the race meeting;

(8) Registering with the race secretary each horse in the trainer's charge within 24 hours of the horse's arrival on the licensed racetrack facility grounds;

(9) Ensuring that, at the time of arrival at a licensed racetrack, each horse in the trainer's care, custody or control is accompanied by a valid health certificate (Coggins) which shall be filed with the race secretary;

(10) Immediately reporting the alteration of the sex of a horse in the trainer's care to the horse identifier and the race secretary, whose office shall note the alteration on the certificate of registration;

(11) Promptly reporting to the race secretary and the Commission Veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that the fact is designated on its certificate of registration;

(12) Promptly notifying the Commission Veterinarian of any suspected or actual knowledge of a reportable disease and any unusual incidence of a communicable illness in any horse in the trainer's care;

(13) Promptly reporting the death of any horse in the trainer's care while on the licensed racing entity grounds to the Judges and the Commission Veterinarian and complying with the rules and regulations governing post-mortem examinations;

(14) Representing an owner in making entries and scratches and in all other matters pertaining to racing;

(15) Horses entered as to eligibility and by gait, age, sex, number of wins, earnings or claiming price;

(16) Ensuring the fitness of a horse to perform reasonably at the distance entered;

(17) For having the entered horse standing by and ready for the pre-race veterinary examination (racing soundness examination) to be conducted by the Commission Veterinarian or designee. The trainer shall have all bandages, blankets and muzzles off and horse's legs clean and free of substances, sweats or leg medications;

(18) For participating and assisting the Commission Veterinarian with pre-race examination tasks including the safe restraint of the horse, tattoo identification or jogging the horse as requested. Failure by the trainer or assistant trainer to comply with the direction, request or requirement issued by the Commission Veterinarian during the course of a pre-race examination shall result in the horse being scratched from the race and disciplinary action being taken against the trainer;

(19) Ensuring that the trainer's horses are properly shod, bandaged and properly equipped;

(20) Ensuring that all Lasix horses entered to compete shall be present on racetrack grounds no less than 4 hours prior to the scheduled post time of the race for which the horse is entered to compete and non-Lasix horses shall be present on racetrack grounds no less than 2 hours prior to the scheduled post time of the race. Horses not arriving on racetrack grounds in accordance with the previously mentioned times may be scratched or fined with discretion given to the Board of Judges to consider extenuating circumstances;

(21) Presenting the horse in the paddock at least 2 hours before post time or at a time otherwise appointed before the race in which the horse is entered and personally attending to the horse in the paddock, unless excused by the Judges;

(22) Instructing the driver to give the driver's best effort during a race and that each horse shall be driven to win;

(23) Attending the collection of post-race urine and blood samples from the horse in the trainer's charge or delegating a licensed employee or the owner of the horse to do so; and

(24) Notifying horse owners upon the revocation or suspension of the trainer's license. A trainer whose license has been suspended or whose license has expired or been revoked; or license application has been denied, must inform the horse owners that until the license is restored the trainer can no longer be involved with the training, care, custody or control of their horses, nor receive any compensation from them for the training, care, custody or control of their horses. Upon application by the owner, the Judges may approve the transfer of the horses to the care of another licensed trainer, and upon approved transfer, the horses may be entered to race. Upon transfer of the horse, the inactive trainer shall not be involved in any arrangements related to the care, custody or control of the horse and shall not benefit financially or in any other way from the training of the horse.

§ 203.25. Trainer treatment records.

(a) A trainer shall accurately document and maintain a record or log of all trainer treatments for every horse in

the trainer's care, custody or control. Each treatment by the trainer shall be recorded within 24 hours of administration. The trainer treatment log shall be maintained electronically or on paper.

(1) Treatment, for the purposes of this section, means any medication or procedure containing a medication administered to a horse by a licensed trainer or the trainer's designee.

(2) Treatment, for the purposes of this section, specifically excludes medications or procedures administered by a veterinarian licensed by the Commission.

(3) This section includes the administration of medications that are prescribed by a veterinarian but administered by the trainer or his or her designee.

(4) This section also includes those treatments that are administered by a veterinarian not licensed by the Commission.

(b) Trainer treatment records or log as required in subsection (a) must include the following information:

(1) The name of the horse (or, if unnamed, the registered name of the dam and year of foaling);

(2) The generic name of the drug (for example, phenylbutazone, methocarbamol);

(3) The name and address of the prescribing veterinarian;

(4) The brand name of the drug if a non-generic is used;

(5) The date of the treatment;

(6) The route and method of administration;

(7) The dosage administered;

(8) The approximate time (to the nearest hour) of each treatment;

(9) The first and last name of the individual that administered the treatment; and

(10) The treating veterinarian shall sign or initial the trainer's treatment log on the first day a horse receives a prescription medication.

(c) The trainer's treatment records or log shall be made available for inspection upon a request by the Commission in the course of an investigation of a possible violation of the medication and drug rules. Failure to provide accurate and complete trainer treatment records shall result in disciplinary action

(d) Copies of trainer treatment records must be maintained for at least 6 months.

§ 203.26. Corticosteroid and intra-articular injection reporting requirements.

(a) Trainers or their designees shall accurately keep and maintain complete records of all corticosteroid and intra-articular injections for all horses in the trainer's care, custody or control. Complete corticosteroid and intra-articular injection reports shall include:

(1) The date of the injection;

(2) The name of the veterinarian performing the injection;

(3) The articular space or structure injected;

(4) The medication or biologicals used to inject each articular space; and

(5) The dose in milligrams of each corticosteroid used.

(b) This information shall be maintained for a minimum of 60 days to facilitate compliance with this regulation. If a horse is successfully claimed by a new owner, the trainer of record at the time of that claiming race must provide that horse's complete corticosteroid and intra-articular injection report for the previous 30 days.

(c) The previous reports shall be maintained in whatever format the trainer elects. However, if the Commission requests a copy of the report, it must be provided in electronic form.

(d) The report must be provided to the new trainer within 48 hours of the transfer of the horse. The trainer or the trainer's designee shall notify the Commission Veterinarian when the records have been provided.

(e) Submission of the report and records may be delegated to the treating veterinarian, who shall provide the report to the new trainer within 48 hours of the transfer of the horse.

(f) Failure of the trainer to provide the reports as required shall result in disciplinary action.

§ 203.27. Restrictions on wagering.

A trainer shall only be allowed to wager on the trainer's horse or entries to win or to finish first in combination with other horses.

§ 203.28. Assistant trainers.

(a) A trainer may employ an assistant trainer as approved by the Judges. The trainer shall notify the Race Secretary of the use of an assistant trainer. The assistant trainer shall be duly licensed prior to acting in this capacity on behalf of the trainer. Qualifications for obtaining an assistant trainer's license shall be prescribed by the Judges and the Commission and may include those requirements prescribed in this chapter.

(b) An assistant trainer may substitute for and shall assume the same duties, responsibilities and restrictions as imposed on the licensed trainer. In which case, the trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing and all the duties and responsibilities set forth in §§ 203.22 and 203.23 (relating to trainer responsibility rule; and duties of trainers).

(c) While currently employed by a trainer, an assistant trainer shall not enter a horse or otherwise compete in the same race as the employer/trainer.

§ 203.29. Substitute trainer.

(a) A trainer absent for more than 2 days from the duties and responsibilities as a licensed trainer or on a day in which the trainer has a horse in a race, shall obtain another licensed trainer to substitute.

(b) A substitute trainer shall accept full responsibility for the horses in writing and must be approved by the Judges.

(c) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race under § 203.22 (relating to trainer responsibility rule) of these regulations.

§ 203.30. Owners authorized agents.

(a) A person undertaking or purporting to act as an authorized agent of an owner shall apply and secure a license from the Commission prior to this representation. An application for an authorized agent license shall be filed for each owner represented.

(b) A written instrument signed by the owner shall accompany the application and shall clearly set forth the delegated powers of the authorized agent. The owner's signature on the written instrument shall be acknowledged before a notary public.

(c) If the written instrument is a power of attorney it shall be filed with the Commission and attached to the regular application form.

(d) Any changes shall be made in writing and filed as set forth previously.

(e) The authorized agent's appointment may be terminated by the owner, in writing, acknowledged before a notary public and filed with the Commission whereupon the license shall not be valid.

§ 203.31. Powers and duties of an authorized agent.

(a) A licensed authorized agent may perform on behalf of the licensed owner-principal all acts relating to racing, as specified in the agency appointment, that could be performed by the principal if the principal were present.

(b) In executing any document on behalf of the principal, the authorized agent shall clearly identify the authorized agent and the owner-principal.

(c) When an authorized agent enters a claim for the account of a principal, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

(d) Authorized agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority. Any change in ownership shall be reported immediately to, and approved by, the Judges and recorded by the race secretary.

§ 203.32. Eligibility for groom's license.

(a) An applicant for a license as a groom must satisfy the Commission that the application possesses the necessary qualifications, both mental and physical, to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a groom.

(b) In addition to the requirements set forth in Chapter 185 (relating to occupational licenses—temporary regulations) an applicant shall furnish a complete, accurate and truthful application.

DRIVERS

§ 203.51. Application and qualifications for driver's license.

(a) In addition to the licensing requirements set forth in Chapter 185 (relating to occupational licenses—temporary regulations), all license requirements for drivers will be in accordance with the USTA Rule 17, except a restricted license as provided for in the USTA Rule A-1, section 3.

(1) The Commission shall deem a driver as qualified to compete if he has obtained a USTA license, either Provisional (P), Restricted (V) or Full Drivers (A). In cases where drivers are Provisional (P), it shall be so noted on the program. In addition to any other requirements mentioned herein the applicant shall:

(i) Furnish a complete application form.

(ii) Produce a driver's license for the current year issued by the USTA.

(2) All penalties imposed on any driver will be recorded on the reverse side of their USTA driver's license by the Presiding Judge.

(3) In the event any person is involved in an accident on the track, the Commission may order the person to submit to a physical examination and this examination must be completed within 30 days from the request or their license may be suspended until compliance therewith.

(4) This license shall be presented to the clerk of course before driving.

§ 203.52. Racing colors.

(a) No driver or trainer shall be permitted to drive in any race or other public performance unless wearing the driver's own registered colors or the owner's registered colors.

(b) Drivers must wear distinguishing colors. No driver shall be permitted to start in a race or other public performance unless, in the opinion of the Judges, the driver is properly dressed, including a clean driving outfit. All drivers in a race must wear white driving pants.

(c) During inclement weather conditions, drivers must wear rain suits in either of their colors or made of a transparent material through which their colors can be distinguished.

SUBSTANCE ABUSE AND ADDICTION

§ 203.71. Use of controlled substances.

(a) No driver, trainer, groom or official may use a controlled substance as defined in The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) or a prescription drug unless the substance was obtained under a valid prescription or order from a licensed physician while acting in the course of professional practice. The driver, trainer, groom or official is responsible for giving notice to the Presiding Judge on a form provided by the Commission that the driver, trainer, groom or official is using a controlled substance or prescription drug under a valid prescription from a licensed physician.

(b) To maintain the health, safety and welfare of all racing participants, no driver, trainer, groom or official using a controlled substance or prescription drug under a valid prescription or order will be permitted to participate in racing activities unless the physician has certified that use of the controlled substance or prescription drug will not adversely affect the driver's or official's ability to properly and safely carry out his responsibilities.

§ 203.72. Urine or other drug screening tests.

A driver, trainer, groom or official for a race may be subjected to a urine test, a swab test or any other noninvasive drug screening tests or methods for the detection of controlled substances or prescription drugs. The testing may be conducted and administered at any time, including on racing days on the track premises and in a manner prescribed by the Commission. An individual subject to this requirement who refuses to submit to the test if requested to do so by a representative of the Commission is subject to a fine of \$500 and an immediate 10-day suspension to be imposed by the Judges.

§ 203.73. Testing.

A driver, trainer, groom or official who is selected to submit to a urine test, swab test or other noninvasive drug screening tests or methods shall provide a sample to

a representative of the Commission and shall fully cooperate with the following procedures:

(1) The taking of the sample shall occur in the presence of a Commission representative of the same sex as the tested individual.

(2) The sample shall be sealed and tagged immediately using a form provided by the Commission. Evidence of the sealing shall be indicated by the signatures of the tested individual and the representative of the Commission.

(3) The portion of the form provided to the laboratory for analysis may not identify the tested individual by name.

(4) The sample will be initially tested utilizing a drug detection device approved by the Commission and used at a laboratory approved by the Department of Health under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to conduct urine content drug screening tests.

§ 203.74. Test results.

(a) *Action upon initial positive test result.* A driver, trainer, groom or official who has initially tested positive for a controlled substance or prescription drug as part of a test administered using a portable drug detection device may be prohibited from participating in racing programs by the Presiding Judge until, in the judgment of the Presiding Judge, the tested individual is capable of safely participating in racing activities.

(b) *Action upon confirmed positive test result.* Initial positive test results shall be analyzed by a clinical laboratory which is approved by the Department of Health under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to provide confirmatory urine content drug testing specialized laboratory services. If the clinical laboratory analysis confirms an initial positive test for a controlled substance or prescription drug, other than a controlled substance or prescription drug used under a valid prescription, the Bureau Director will:

(1) For the first violation, issue a written reprimand and warning and notify the tested individual that the tested individual will be subject to mandatory drug testing for a period of time as determined by the Bureau Director and that further violations shall result in the sanctions of paragraphs (2) and (3).

(2) For a second violation, require the tested individual to enroll in a treatment program approved by the Commission upon reasonable terms and conditions as required and at the cost of the tested individual. The tested individual shall be permitted to participate in racing activities prior to completion of the treatment program only if continued participation would not be detrimental to the best interests of racing or would not be unsafe, as determined by the Bureau Director or other Commission designated person. The tested individual shall provide the Commission written notice of his enrollment, weekly status reports and written notice of his successful completion of, and discharge from, the program. If a tested individual fails to comply with this paragraph, his license will be suspended until compliance is obtained. Upon successful completion of a treatment program, the tested individual will be permitted to participate in racing activities if permission had been denied by the Bureau Director.

(3) For a third or subsequent violation, inform the tested individual that the tested individual may be liable

under the penalty provisions of the act or the individual may be required to enroll in a treatment program instead of the penalties, at the discretion of the Commission.

(c) *Review.* Actions taken by a Presiding Judge or the Bureau Director under this section are subject to review by the Commission if review is requested in writing within 10 days of receipt of written notice of the actions. The Commission may affirm, modify or reverse action taken by a Presiding Judge, or the Bureau Director if the action is consistent with the best interests of racing.

(d) *Positive test.* For purposes of this section, a positive test is a test result indicating the presence of any amount of a controlled substance or prescription drug.

§ 203.75. Confidentiality.

(a) *Permitted disclosures.* Information received in the process of obtaining a urine sample, including, but not limited to, medical information, the results of a urine test and reports filed as a result of attending a treatment program, will be treated as confidential, except for use with respect to a ruling issued under this chapter or an administrative or judicial hearing with regard to the ruling. Access to the information received or reports of positive results or reports from a treatment program will be limited to the Commissioners, the Bureau Director or a designee, counsel for the Commission and the tested individual. Nothing in this section prohibits the disclosure of a fine, suspension or revocation imposed on a licensee under this chapter.

(b) *Storage and retention of information.* Information received and reports prepared under this chapter will be stored in a locked, secure area in the office of the Bureau Director for 1 year, after which time they will be destroyed. However, the Commission may maintain the information received and reports on individuals who have violated this chapter for the purpose of recording the number of violations and the results of treatment, and for use if future violations occur.

SAFETY EQUIPMENT

§ 203.91. Safety helmets.

(a) A protective helmet meeting the 1984 Standard for Protective Headgear (Snell Memorial Foundation), Laboratory Procedure for Motorcycle Helmet Testing (Federal Motor Vehicle Safety Standard No. 218, United States Department of Transportation) or Specification for Headgear Used in Horse Sports and Horse Back Riding (ASTM Standard F085.53, Draft # 4, 1986) standards for protective harness racing headwear, securely fastened under the chin, must be worn at all times on association grounds when:

- (1) Racing, parading or warming up a horse prior to racing; or
 - (2) Jogging, training or exercising a horse at any time.
- (b) A safety helmet shall not be altered in any manner nor shall the product marking be removed or defaced.

(c) The Commission, by written notice to the regulated community and by Order published in the *Pennsylvania Bulletin*, may adopt the minimum standards in sections (a) and (b) for helmets as may be amended from time to time.

(d) Failure of persons to adhere to the previous safety helmet provisions may subject the person to the following penalties:

- (1) First offense—a written warning;
- (2) Second offense—\$50 fine;
- (3) Third or subsequent offense—\$250 fine or suspension, or both, at the discretion of the Judges.

FARRIERS

§ 203.101. Eligibility for Farrier's license.

(a) The issuance of a Farrier's license shall be dependent upon the applicant satisfying the requirements set forth below. An applicant shall:

- (1) Be at least 18 years of age; and
- (2) Be qualified, by reason of experience, background and knowledge of horseshoeing, as determined by the Commission or its appointed testing organization,

(b) As evidence of qualifications and capabilities, applicants not previously licensed in any jurisdiction shall be required to pass one or more of the following:

- (1) A written examination;
- (2) An interview or oral examination; or
- (3) A demonstration of practical skills in horseshoeing.

(c) The Farriers' license shall be issued for a term of 3 years.

(d) If a Farrier's license is terminated by action of the Commission or by failure to renew the license for a period of 7 years, the applicant must comply with the requirements of subsection (b).

§ 203.102. Reciprocity with other states.

A Farrier's license, duly issued by and in good standing from another jurisdiction, shall be reciprocally accepted by the Commission or its testing organization as evidence of the Farrier's experience and qualifications for licensure in this Commonwealth. If requested by the Commission, the Farrier shall provide any necessary documentation from the licensing jurisdiction.

PRACTICING VETERINARIANS

§ 203.111. Eligibility for Commission license.

An applicant for a license as a practicing veterinarian on the grounds of a licensed racing facility shall be qualified and licensed to practice veterinary medicine in this Commonwealth. An application for a practicing veterinarian license from the Commission must be accompanied by a copy of the applicant's current license to practice veterinary medicine and be otherwise qualified to be issued a license to participate in racing.

§ 203.112. Duties and responsibilities.

(a) All practicing veterinarians licensed by the Commission and authorized to access secure areas of the licensed racing facility and to participate in racing activities shall ensure the health and welfare of racehorses and shall safeguard the interests of the public and the participants in racing.

(b) It shall be the duty of every practicing veterinarian to adhere to the highest ethical and professional standards of veterinary practice. Any deviation from those standards shall be considered a violation of the rules of racing and may subject the practicing veterinarian to discipline by the Commission including fines, suspensions or revocation.

(c) All practicing veterinarians administering drugs, medications or other substances shall be responsible for ensuring that the drugs, medications or other substances and the veterinary treatment of horses are administered

in accordance with rules in Subpart F (relating to foreign substances, medications, drugs and equine veterinary practices).

(1) All practicing veterinarians shall promptly notify the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge.

§ 203.113. Restrictions on wagering.

A practicing veterinarian shall not wager on the outcome of any race if the practicing veterinarian has treated a horse participating in that race within the past 30 days.

CHAPTER 205. RULES OF STANDARD BRED RACING—TEMPORARY REGULATIONS

Sec.

- 205.1. General provisions.
- 205.2. Required presence of officials in race.
- 205.3. Conflict of official's position.
- 205.4. Removal of official.
- 205.5. Wagering forbidden.
- 205.6. Admission to Judges' stand.
- 205.7. Decorum of officials.
- 205.8. Reporting of violations.
- 205.9. Observations and notifications.

RACING OFFICIALS

- 205.21. Racing officials.
- 205.22. Eligibility.
- 205.23. Approval and licensing.
- 205.24. Prohibited practices.
- 205.25. Appointment.
- 205.26. Appointment of substitute officials.

BOARD OF JUDGES

- 205.31. Accreditation of Judges.
- 205.32. Powers of the Judges.
- 205.33. Disciplinary action.
- 205.34. Judges' presence in the stand.
- 205.35. Duties of Judges.
- 205.36. Judges' List.
- 205.37. Procedure of the Judges.

RACE SECRETARY

- 205.51. General authority of the race secretary.
- 205.52. Claiming authorizations.
- 205.53. List of nerved horses.
- 205.54. Allocation of stalls.
- 205.55. Conditions.
- 205.56. Listing of horses.
- 205.57. Race information.
- 205.58. Classifications.
- 205.59. Daily racing program.
- 205.60. Posting of entries.
- 205.61. Nominations and declarations.
- 205.62. Stakes and added money records.
- 205.63. Winnings.

PADDOCK JUDGE

- 205.71. Duties of paddock Judge.

HORSE IDENTIFIER

- 205.91. General authority and duties.

CLERK OF COURSE/OFFICIAL CHARTER

- 205.101. General authority and duties.

OFFICIAL STARTER

- 205.111. Eligibility as a Starter.
- 205.112. Duties of the Starter.
- 205.113. Starter's List.

TIMER/CLOCKER

- 205.121. Duties of timers.
- 205.122. Error in reported time.
- 205.123. Certificate as to track measurement.
- 205.124. Time performance.

PATROL JUDGE

- 205.131. Power and duties of patrol Judges.

PROGRAM DIRECTOR

- 205.151. Duties.

COMMISSION VETERINARIAN

- 205.171. Qualifications.
- 205.172. Duties and responsibilities of the Commission veterinarian.
- 205.173. Veterinarian's List.

RACETRACK VETERINARIAN

- 205.191. General authority and duties.

HORSE IDENTIFICATION

- 205.201. Registration.
- 205.202. Horse identification records.
- 205.203. Check on identity of a horse.
- 205.204. False chart lines.
- 205.205. Tattoo/freeze brand/microchip requirements.

ELECTRONIC ELIGIBILITY

- 205.211. Electronic eligibility.
- 205.212. Issuance of electronic eligibility.
- 205.213. Leased horses.
- 205.214. Corrections on electronic eligibility.
- 205.215. Conditioned races.
- 205.216. Date eligibility determined.
- 205.217. Age of horses.
- 205.218. Prohibitions.

TYPES OF RACES OFFERED

- 205.221. Standards for overnight events.
- 205.222. Types of races to be offered.
- 205.223. Selection or drawing of horses.
- 205.224. Splitting of condition races.
- 205.225. Substitute and divided races.
- 205.226. Heats.
- 205.227. Prohibitions.
- 205.228. Bonus earnings.
- 205.229. Supplemental purse payments.
- 205.230. Classified races.
- 205.231. Exhibition races.

CLAIMING RACES

- 205.251. Claiming regulations and procedures.
- 205.252. Equine Infectious Anemia testing.

NOMINATIONS AND ADDED MONEY EVENTS

- 205.271. Making a nomination.
- 205.272. Receipt of nomination and sustaining payments.
- 205.273. Postage mark.
- 205.274. Failure to make payment.
- 205.275. Event sponsor membership.
- 205.276. Event sponsor requirements.
- 205.277. Date of nomination closing and sustaining payments due.
- 205.278. Estimated purse.
- 205.279. Excess entry fees.
- 205.280. Sponsor's contribution.
- 205.281. Nominators' or breeders' awards.
- 205.282. Deductions prohibited.
- 205.283. Fees held in escrow.
- 205.284. Deviation from published conditions.
- 205.285. Newly created stakes and futurities.
- 205.286. Sponsor's contribution by non-track sponsors.
- 205.287. Events raced in divisions.

ENTRIES AND STARTERS REQUIRED

- 205.301. Entries required for overnight events.
- 205.302. Entries required for early and late closing events.
- 205.303. Early closing events with fewer horses entered than required.
- 205.304. Number of Starters.
- 205.305. Purse money distribution.

ENTRY, DRAWING OF POST POSITIONS, POST DRAW

- 205.311. Agreement to race under the rules.
- 205.312. Horses not starting more than one race per day.
- 205.313. Length of race and number of heats.
- 205.314. Entry time.
- 205.315. Payment of entrance and starting fee.
- 205.316. Entry box.
- 205.317. Taking of entries.
- 205.318. Search for entries by Presiding Judge.
- 205.319. Opening of entry box and drawing of horses.
- 205.320. Preference date.
- 205.321. Qualifying races for overnight events.
- 205.322. Qualifying race for added money events.

- 205.323. Withdrawal of horse.
- 205.324. Notification of scratched horse.
- 205.325. Coupled entries.
- 205.326. Judges' approval of drivers.
- 205.327. Transfer of ineligible horse.
- 205.328. Drawing of post positions.
- 205.329. Also eligible.
- 205.330. Horses omitted through error.
- 205.331. When an ineligible horse races.
- 205.332. Effect of failure to enter on time.

POSTPONEMENT

- 205.351. Postponement.

STARTING OF HORSES

- 205.371. Starter's control.
- 205.372. Starting gate requirements.
- 205.373. Scoring of horses/coming to starting gate.
- 205.374. Speed of gate.
- 205.375. Starting point.
- 205.376. Recall procedure.
- 205.377. Reasons for recall.
- 205.378. No recall after the word "go."
- 205.379. Violations of the starting rule.
- 205.380. Loudspeaker.
- 205.381. Holding horses before start.
- 205.382. Starting two tiers of horses.
- 205.383. Horse out of position at start.
- 205.384. Failure to follow instructions of the Starter.
- 205.385. Horses deemed to have started.
- 205.386. Practice of emergency procedures.
- 205.387. Starting without a gate.
- 205.388. Positions in winning heat.
- 205.389. Refunds of entry money.

RACING RULES/CONDUCT OF THE RACE

- 205.401. Driving violations.
- 205.402. Requirements for filing an objection.
- 205.403. Driving violation committed by driver of coupled entry.
- 205.404. Placing of horses by the Judges.
- 205.405. Fraudulent or unsatisfactory driving.
- 205.406. Removal or substitution of driver.
- 205.407. Horse fails to finish heat.
- 205.408. Foot out of stirrup.
- 205.409. Use of whip.
- 205.410. Other devices prohibited.
- 205.411. Penalties for prohibited use of whip.
- 205.412. Breaking from gait.
- 205.413. Placing of breaking horse by Judges.
- 205.414. Fraudulent breaking of horse.
- 205.415. Calling and noting breaks.
- 205.416. Horse's right of the course.
- 205.417. Driver mounted in sulky at finish.
- 205.418. Use of wheel discs and mud fenders.
- 205.419. Talking on the track.
- 205.420. Passing lane.
- 205.421. Pylon violations.
- 205.422. Removal of passing lane.

EQUIPMENT

- 205.431. Sulkies.
- 205.432. Use of hobbles.
- 205.433. Nasal strips.
- 205.434. Cornell Collar.
- 205.435. Trainer responsibility for horse equipment.
- 205.436. Other equipment.

CONDUCT AND DECORUM OF RACING PARTICIPANTS

- 205.451. Improper language to officials.
- 205.452. Shouting.
- 205.453. Commit assault or battery.
- 205.454. Betting on a horse other than own.
- 205.455. Failure to report fraudulent or corrupt proposal.
- 205.456. Fraudulent or injurious conduct forbidden.
- 205.457. Conspiracy to commit a violation.
- 205.458. Withholding information in an investigation.
- 205.459. Financial responsibility.
- 205.460. Registration of nerved horses.
- 205.461. Spayed mares.
- 205.462. Equine Infectious Anemia.
- 205.463. Negative Coggins test certificate.
- 205.464. Trainer of horse of suspended person.

PROTESTS

- 205.471. Protests.

FINES, SUSPENSIONS AND EXPULSIONS

- 205.501. Suspension or revocation of driver, trainer or groom license.
- 205.502. Suspension until fines paid.
- 205.503. Recording and posting of penalties.
- 205.504. Effect of minor suspension on future engagements.
- 205.505. Effect of suspension penalty.
- 205.506. Effect of penalty on the horse.
- 205.507. Fraudulent transfer of a horse.
- 205.508. Participation by a suspended person or horse.
- 205.509. Reciprocity of penalty imposed by other racing authorities.
- 205.510. Dishonored payment.

§ 205.1. General provisions.

(a) The Commission shall annually approve each licensed racing entity employee whose duties include the enforcement of pari-mutuel racing and wagering activities which directly or indirectly affect the racing product. Compensation for a racetrack racing official shall be paid by the licensed racing entity.

(b) Racetrack racing officials shall enforce this chapter at all times and shall render regular written reports of the activities and conduct of the race meetings to the Commission, if requested by the Board of Judges or the Commission.

(c) The Commission shall employ individuals who shall be designated as Commission racing officials and whose duties shall include the oversight and enforcement of the act, regulations and Commission policies related to all racing activities, the conduct of live, simulcasted, electronic and pari-mutuel wagering activities and all licensees engaged in those racing activities.

(d) The purpose of this chapter is to define the duties and responsibilities of racing officials and the requirements, procedures and rules and conduct of live harness racing.

§ 205.2. Required presence of officials in race.

(a) In every race a Presiding Judge and two Associate Judges shall be present in the Judge's stand and all other race officials as defined in § 201.1 (relating to definitions), with the exception of the track veterinarian and the horse identifier.

(b) All racing officials shall be approved and licensed by the Commission. No racing official, with the exception of a timer, will be considered for approval unless that official has attended a USTA Officials' School or another school designated by the Commission and has satisfactorily passed a written or oral examination, or both, at the conclusion of this school.

§ 205.3. Conflict of official's position.

(a) A racing official may not participate in the supervision, regulation or review of a race in which either the racing official or a member of the racing official's immediate family, or a business partner, agent, associate, employee or joint-venturer has participated.

(b) No racing official, acting as a presiding, associate, starting, patrol or paddock Judge shall serve as a race secretary or a clerk of the course at the meeting. No racing official who is under suspension, an owner or otherwise interested in the ownership of any horse participating at the meeting or race, shall be qualified to act as an official.

§ 205.4. Removal of official.

(a) Any racing official may be fined, suspended or the official's license may be denied or revoked at any time for incompetency, failure to follow or enforce the provisions of this part, or any conduct detrimental to the sport.

(b) In the event of the disqualification of a racing official for any reason, the Board of Judges shall be notified immediately. The Board of Judges shall thereafter appoint a substitute.

§ 205.5. Wagering forbidden.

A racing official may not wager, directly or indirectly, or otherwise have a form of interest in a wager of money or other thing of value on the results of a race at the meeting at which the racing official is employed. This prohibition shall include all forms of electronic or account wagering through any personal device.

§ 205.6. Admission to Judges' stand.

Only the Judges, the clerk of course, timers, official announcer, racing officials or representatives of the Commission shall be allowed in the Judges' stand during a race. No exceptions shall be permitted.

§ 205.7. Decorum of officials.

Racing officials shall at all times during the performance of their duties refrain from using inappropriate language or from conducting themselves other than in a judicious manner. Any conduct on their part which could or does tend to detrimentally or negatively reflect upon the sport is prohibited.

§ 205.8. Reporting of violations.

All racing officials and their assistants shall immediately report to the Judges every observed or reported violation of these rules and of the laws of the Commonwealth governing racing.

§ 205.9. Observations and notifications.

Prior to a race, a racing official shall immediately report to the Judges any apparent issues with a horse based on the condition which may significantly affect the running of the race. Upon notification to the Judges, the Judges may either conduct an immediate investigation or forward the matter to Commission investigators.

RACING OFFICIALS

§ 205.21. Racing officials.

Officials at a race meeting may include the following:

- (1) Board of Judges;
- (2) Race secretary;
- (3) Paddock Judge;
- (4) Horse identifier;
- (5) Clerk of course/charter;
- (6) Starter;
- (7) Timer/clocker;
- (8) Patrol Judge;
- (9) Program director;
- (10) Commission Veterinarian;
- (11) Racetrack veterinarian.

§ 205.22. Eligibility.

To qualify as a racing official, the applicant shall, at a minimum be:

- (1) Of good character and reputation;
- (2) Experienced in harness racing;
- (3) Familiar with the duties of the position and with the Commission's rules of harness racing;

(4) Mentally and physically able to perform the duties of the job; and

(5) In good standing and not under suspension by the USTA or ineligible in any racing jurisdiction.

§ 205.23. Approval and licensing.

The Commission may, on an annual basis or when otherwise needed, determine the eligibility of a racetrack or Commission racing official and, in its sole discretion, may approve or disapprove any official for licensing.

§ 205.24. Prohibited practices.

While serving in an official capacity, racing officials and their assistants shall not:

- (1) Participate in the sale or purchase, or ownership of any horse actively racing at the meeting;
- (2) Sell or solicit horse insurance on any horse racing at the meeting;
- (3) Be licensed in any other capacity without permission of the Commission, or in case of an emergency, the permission of the Judges;
- (4) Wager utilizing any device on the outcome of a race under the jurisdiction of the Commission while performing their official duties;
- (5) Consume or be under the influence of alcohol or any prohibited substances while performing official duties at the meeting.

(6) Solicit or accept, either directly or indirectly, any gratuity, reward or favor in connection with racing at the meeting at which the racing official is employed.

§ 205.25. Appointment.

(a) A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the Commission.

§ 205.26. Appointment of substitute officials.

The licensed racing entity shall immediately notify the Judges where an emergency vacancy exists among racetrack racing officials and shall fill the vacancy immediately. This appointment shall be reported to the Commission and shall be effective until the vacancy is filled in accordance with these rules.

BOARD OF JUDGES

§ 205.31. Accreditation of Judges.

(a) To qualify for appointment as a Judge with the Board of Judges, the applicant must meet the education and examination requirements necessary to be accredited by the USTA Official's School, the Association of Racing Commissioners International Racing Officials Accreditation Program or a similar accreditation program approved by the Commission.

(b) In addition to subsection (a), the applicant must also meet the following racing experience requirements:

- (1) Five years or more of experience as a licensee of a racing commission or other regulatory racing authority of the United States or Canada;
- (2) Certified as a racing official in one or more of the following categories: patrol Judge, placing Judge, paddock Judge, clerk of course, horse identifier, racing secretary or assistant racing secretary and Starter; and
- (3) Be in good standing with all harness racing jurisdictions and with the USTA.

§ 205.32. Powers of the Judges.

(a) *General powers.* In matters pertaining to racing, the orders of the Judges shall supersede the orders of the officers and directors of the association. The Judges shall have the authority to regulate and supervise the conduct of the race meeting and licensed personnel, racing officials, owners, trainers, drivers, grooms and all other persons participating in pari-mutuel racing activities at the race meeting, unless the power and the duty is exclusively vested in the Commission.

(b) The authority of the Board of Judges shall begin at least 10 days prior to the beginning of the race meeting and shall terminate with the completion of their business pertaining to the meeting. This period may be modified or altered as deemed necessary by the Commission. If a dispute is unresolved at the time, it may be heard later or disposed of by the Judges or referred to the Commission. This section does not limit the power of the Judges to impose sanctions which continue beyond the end of the race meeting.

(c) If there is a succeeding meeting approved to begin at the same racetrack, the power of the Judges at the meetings is deemed to be continuing and sustaining.

(d) *Specific powers.* The Presiding Judge and Associate Judges shall have the authority to:

(1) Impose all necessary fines and penalties in accordance with the act and as specifically set forth in the Commission's regulations.

(2) Determine all questions of fact relating to the race and resolve conflicts and disputes related to racing and discipline violators in accordance with these regulations.

(3) Decide any disputes between parties to the race or any contingent racing matter not specifically covered by the rules, but which, in the Judges' opinion, may negatively impact the public interest or the public's perception of racing.

(4) Declare pools and bets "Off" in case of fraud, or to declare any horse a nonstarter and to direct the refund of all wagers made thereon. All pools and bets shall follow the decisions of the Judges. These decisions in respect to pools and bets shall be made before or after the conclusion of the race upon the observations of the Judges and upon the facts as an immediate investigation will develop. A reversal or change of decision after the official placing at the conclusion of a heat or dash shall not affect the distribution of the betting pools made upon the official placing.

(5) Declare a dash or heat of a race no contest in the event that a track is thrown into darkness during the progress of a race by failure of electricity.

(6) Postpone or cancel races in the event of unfavorable weather conditions or for any other reason related to the health and safety of the horse and those participating in the race.

(7) Conduct administrative hearings in accordance with Chapter 179, Subchapter B (relating to Judges and Stewards hearings) and compel the attendance of witnesses, the submission of documents or potential evidence related to any investigation or hearing and may administer oaths and examine witnesses.

(8) Consider complaints of foul from the patrol Judges or drivers in the race.

(9) To have reasonable control over and access to restricted and unrestricted areas including stands, paddock, stables, barns and other areas of the racetrack enclosure.

(10) To direct the examination a horse stabled on the racetrack grounds, or in a stabling area approved by the licensed racing entity.

(11) Inspect from time to time license documents, registration papers and other documents related to racing.

(12) Consult with the Commission Veterinarian to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

§ 205.33. Disciplinary action.

(a) The Judges shall take notice of alleged misconduct or rule violations and may initiate investigations into the matters through the Commission's investigative staff or matters may be referred to them for hearing. The Judges shall have the express authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

(b) The Judges may impose, but are not limited to, any of the following penalties on a licensee for an attempted violation or violation of these rules:

(1) Issue a reprimand;

(2) Impose a fine not to exceed the statutory amount set for in the act;

(3) Require forfeiture or redistribution of purse or award;

(4) Place a licensee on probation or a conditional license;

(5) Suspend a license or racing privileges;

(6) Revoke a license;

(7) Order that a person be ineligible for licensing; or

(8) Impose any other penalty as deemed necessary and appropriate for the level of violation.

(c) The Judges may suspend a person or disqualify a horse for fixed periods of time or under other conditions they may deem appropriate or as may be specified by this chapter. If a person is indefinitely suspended or is ordered suspended for more than the balance of a meeting, the matters shall promptly be referred to the Commission for final disposition.

(d) The Judges, on an emergency basis, shall have the power to exclude or eject from the racetrack premises and enclosures of the licensed racing entity any person who:

(1) Is under an order of suspension or revocation or has been denied a license or ruled off by a racing commission or Board of Judges.

(2) Is known to be an objectionable or undesirable person or whose presence on the racetrack enclosure is deemed to be inconsistent with the best interests of racing.

(3) Whose conduct is deemed an improper or detrimental to racing.

(e) The Judges' ruling shall not prevent the Commission from imposing a more severe penalty.

(f) The Judges may refer any matter to the Commission and may include recommendations for disposition. The absence of a Judges' referral shall not preclude the Commission from taking action in any matter on its own.

(g) All fines imposed by the Judges shall be paid to the Commission within 10 days after the ruling is issued, unless otherwise directed by the Judges.

(h) In addition to any penalties imposed upon any owner, trainer, veterinarian or other licensee as a result

of a medication or drug positive, after notice and an appropriate hearing, the horse which tested positive for the prohibited substance, shall be placed on the Judge's list and shall be ineligible to participate in racing for the following period of time:

(1) Class 1 or Class 2 drugs (as set forth in the Association of Racing Commissioners International Uniform Classification guidelines) shall be ineligible to race for a period of 90 days from the date of the Judges' ruling, unless the matter has been appealed to the Commission.

(2) Class 3 drugs or high blood gas (TCO₂) readings shall be ineligible for a period of 30 days from the date of the Judges' ruling unless the matter has been appealed to the Commission.

§ 205.34. Judges' presence in the stand.

(a) Three Judges shall be present and on duty in the Judges' stand during the running of each race. During the race times, the Judges shall remain in the stand, in the paddock or otherwise readily available to the participants at the meet.

(b) At least one of the Judges shall be on duty within call of the racing secretary from the time of the opening of overnight entries each morning until after the time allowed for filing of protests or objections to entries or assignment of post positions.

(c) Should any Judge be absent at race time, and no approved alternate Judge be available, the remaining Judges may appoint a qualified substitute for the absent Judge. If a substitute Steward is appointed, the Judges shall notify the Bureau Director and the racing secretary.

§ 205.35. Duties of Judges.

(a) The Judges shall investigate promptly and render a decision in every protest, objection and complaint made to them. They shall maintain a record of all protests, objections and complaints. The Judges shall file daily with the Commission a copy of each protest, objection or complaint and any related ruling.

(b) The Judges shall prepare a daily report, on a form approved by the Commission, detailing their actions and observations made during each day's race program. The report shall include the information such as the name of the racetrack, the date, the weather and track-conditions, claims, inquiries, and objections and any unusual circumstances or conditions. The report shall be signed by each Judge and be filed with the Commission not later than 24 hours after the end of each race day.

(c) The Presiding Judge shall maintain a detailed report of the Judges' official activities. The log shall describe all questions, disputes, protests, complaints, or objections brought to the attention of the Judges and all interviews, investigations and rulings made by the Judges. The log shall be available at all times for inspection by the Commission or its designee.

(d) Not later than 7 days after the last day of a race meeting, the Presiding Judge shall submit to the Commission a written report regarding the race meeting. The report shall include:

(1) The Judges' observations and comments regarding the conduct of the race meeting and the overall conditions of the association grounds during the race meeting; and

(2) Any recommendations for improvement by the licensed racing entity or action by the Commission.

(e) Order an investigation regarding any act of cruelty, seen by them or reported to them, toward a race horse

during a meeting. If, after a hearing, the Judges determine that an act has been committed, the Judges shall impose the appropriate penalty and shall refer the matter to the Commission for further action, including the referral of the matter to the appropriate law enforcement agency.

(f) Exclude from a race any horse that in the opinion of the Judges is improperly equipped, dangerous or unfit to race. A horse is unfit to race if it is sick, has impaired vision in both eyes, is noticeably weak or lame. The horse shall be placed on the Judges' List as provided in § 205.36 (relating to Judges' List).

§ 205.36. Judges' List.

(a) The Judges shall maintain a Judges' List of the horses which are ineligible to be declared or entered in a race because of poor or inconsistent performance or behavior on the racetrack that endangers the health or safety of other participants in racing.

(b) A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the race meeting, or otherwise unfit to race at the race meeting may be placed on the Judges' list by the Presiding Judge and declarations or entries, or both, on the horse shall be refused. The owner or trainer shall be notified of the action and the reason shall be clearly stated. The Judges shall post and maintain a current Judges' List in the racing office. When any horse is placed on the Judges' List, the clerk of course shall make an entry on the eligibility certificate of the horse, showing the date the horse was put on the Judges' List, the reason and the date of removal, if the horse has been removed.

(c) Any horse put on the Judges' List as unmanageable or dangerous must qualify in a satisfactory manner for the Judges at least two times.

(d) The Judges may put a horse on the Judges' List for performance when the horse shows a reversal of form or does not race near its own capabilities. The horse must qualify in a time comparable to its known capabilities from one to three times, at the discretion of the Judges, before being declared.

(e) The Judge may place a horse on the Judges' List when there exists a question as to the exact identification or ownership of said horse.

(f) A horse which has been placed on the Judges' List because of questions as to the exact identification or ownership of said horse, may be removed from the Judges' List when, in the opinion of the Judges, proof of identification or ownership has been reasonably established.

(g) A horse placed on the Judges' List can only be removed from the Judges' List by the Judges.

§ 205.37. Procedure of the Judges.

It shall be the procedure of the Judges to:

(1) Be in the stand 15 minutes before the first race and remain in the stand for 10 minutes after the last race and at all times when the horses are upon the track.

(2) Observe the preliminary warming up of the horses and scoring, noting the behavior of horses, lameness, equipment, conduct of drivers, changes in odds and any unusual incident pertaining to horses or drivers participating in races.

(3) Give notice at least 10 minutes before a race or heat. Any driver failing to obey this summons may be punished and the horse may be ruled out by the Judges and considered drawn.

(4) Designate one of the Judges to lock the pari-mutuel machines immediately upon the horses reaching the official starting point. The Presiding Judge shall designate the post time for each race and the horses will be called at the time as to preclude excessive delay after the completion of scoring.

(5) Be in communication with the patrol Judges from the time the Starter picks up the horses until the finish of the race. Any violation or near violation of the rules shall be reported by the patrol Judge or Starter witnessing the incident and written record made of the incident. At least one Judge will observe the drivers throughout the stretch specifically noting changing course, interference, improper use of whips, breaks and failure to contest the race to the finish.

(6) Post the "objection" sign, or "inquiry" sign, on the odds board in the case of a complaint or possible rule violation, and immediately notify the announcer of the objection or inquiry and the horses involved. As soon as the Judges have made a decision, the objection sign shall be removed, the correct placing displayed and the "official" sign flashed. In all instances the Judges shall post the order of finish and the official sign as soon as they have made their decision.

(7) Display the photo sign if the order of finish among the contending horses is less than half-length or a contending horse is on a break at the finish.

RACE SECRETARY

§ 205.51. General authority of the race secretary.

The race secretary or the assistant race secretary as an employee of the licensed racing entity shall be responsible for setting the conditions for each race of the race meeting, supervise the nominations of entries and determining the amounts of purses and to whom the purses are due. The race secretary shall verify the eligibility of all horses entered for each race and shall certify eligibility to the Judges.

§ 205.52. Claiming authorizations.

The race secretary is responsible for maintaining the claiming authorizations of all declared horses during the race meeting.

§ 205.53. List of nerved horses.

The race secretary shall maintain a list of nerved horses which are on the racetrack grounds and shall make the list available for inspection by the Commission or its designee or by written request from other licensees participating in the race meeting.

§ 205.54. Allocation of stalls.

The race secretary shall have the sole authority to assign stall applicants stabling as is deemed proper and maintain a record of arrivals and departures of all horses entering into and stabled on the racetrack grounds. No appeal to the Commission shall be available from a denial of stalls.

§ 205.55. Conditions.

(a) The race secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers, the Judge and the Commission and be posted in the racing secretary's office. The race secretary shall remain responsible for any errors occurring regarding a horse's eligibility and along with the licensed racing entity shall remediate the error if possible.

(b) The race secretary shall prescribe the standards for overnight events and to prepare and publish condition sheets or condition books in accordance with these rules.

§ 205.56. Listing of horses.

The race secretary shall:

(1) Examine all entry forms and declarations to verify information as set forth therein;

(2) Select the horses to start and the also eligible horses from the declarations in accordance with these rules; and

(3) Provide the listing of horses in the daily program.

§ 205.57. Race information.

The race secretary shall be familiar with the age, class and competitive ability of all horses racing at the race meeting.

§ 205.58. Classifications.

The race secretary shall classify horses in accordance with these rules and list horses in the categories in which they qualify.

§ 205.59. Daily racing program.

The race secretary or the designated program director shall publish the official daily racing program, ensuring the accuracy therein of the following information:

(1) Sequence of races to be run and post time for the first race;

(2) Purse, conditions and distance for each race, and current track record for distance;

(3) The name of licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried;

(4) The name of the trainer and the name of the drive named for each horse;

(5) The post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation;

(6) Identification of each horse by name, color, sex, age, sire and dam;

(7) Other information as may be requested by the licensed racing entity or the Commission.

§ 205.60. Posting of entries.

Upon completion of the draw each day, the race secretary shall post a list of entries in a conspicuous location in the racing office and make the list available to the media. No appeal shall be heard by the Commission from the denial or posting of entries.

§ 205.61. Nominations and declarations.

The race secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication.

§ 205.62. Stakes and added money records.

The race secretary shall be caretaker of the permanent records of all stakes and shall verify that all added moneys due are paid prior to declaration for races conducted at the race meeting.

§ 205.63. Winnings.

For the purpose of establishing conditions, winnings shall be considered to include all moneys and prizes won

up to the time of the start of a race. Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

PADDOCK JUDGE

§ 205.71. Duties of paddock Judge.

At the direction of the Presiding Judge, the paddock Judge shall at all times be in charge of the paddock and the activities in the paddock area as outlined in the Commission regulations. The paddock Judge shall:

- (1) Ensure that the horses are on the track for post parades in accordance with the schedule issued by the Presiding Judge;
- (2) Inspect horses for changes in equipment, broken or faulty equipment, head numbers and saddle pads;
- (3) Supervise paddock gate operators;
- (4) Check horses and drivers in and out;
- (5) Direct the activities of the paddock horseshoer;
- (6) Immediately notify the Presiding Judge of anything that could in change, delay or otherwise affect the racing program;
- (7) See that only properly authorized persons are permitted in the paddock;
- (8) Supervise the identification of horses in the race;
- (9) Notify the Presiding Judge of any change of racing equipment or horseshoes before the race;
- (10) Inspect and supervise the maintenance of all emergency equipment kept in the paddock;
- (11) Notify Judges of the reason for any horse returning to the paddock after having entered the track for the post parade and before the start of the race;
- (12) Notify Judges of all trainers and grooms who leave the paddock in an emergency;
- (13) Supervise and maintain cleanliness of the paddock;
- (14) Supervise the conduct of all persons in the paddock;
- (15) Immediately report to the Presiding Judge evidence of cruelty to any horse.

HORSE IDENTIFIER

§ 205.91. General authority and duties.

(a) The horse identifier shall be present for each race. The horse identifier shall inspect each horse prior to its departure from the paddock to the post parade to confirm the horse's proper identity by checking the horse's tattoo number, color and markings, and freeze brand if applicable.

(b) The horse identifier shall report to the Judges any horse not properly identified or whose registration certificate is not in conformity with these rules.

CLERK OF COURSE/OFFICIAL CHARTER

§ 205.101. General authority and duties.

(a) The clerk of course/charter shall be under the jurisdiction of the Presiding Judge at all times. The clerk of course/charter be responsible for verifying the eligibility records provided by the USTA and recording therein all the following information:

- (1) Names and addresses of owners, trainers and drivers;
 - (2) The standard symbols for medications, where applicable;
 - (3) Notations of placings, disqualifications and claimed horses;
 - (4) Notations of scratched or barred horses.
- (b) The clerk of course shall also:
- (1) Provide an eligibility record to the horse's owner or the owner's representative when requested.
 - (2) Check eligibility certificates before the race and after the race, enter all information provided thereon, including the position of the horse in the race it was charted.
 - (3) Record all protests, penalties and appeals on forms provided by the Presiding Judge.
 - (4) Assist the Presiding Judge in drawing positions and when called upon, assist in placing horses.
- (c) The official charter is responsible for providing a complete and accurate chart of each race and shall only be done by a licensed clerk of course/charter. At all meetings the charting of races is mandatory and the licensed racing entity shall employ a licensed clerk of course/charter to fulfill the requirements of this section.
- (d) An accurate chart shall include the following:
- (1) Horse's name;
 - (2) Driver's name;
 - (3) Date and place of the race;
 - (4) Track size, if other than a 1/2-mile track;
 - (5) Track condition and temperature;
 - (6) Type of race (trot or pace);
 - (7) Classification of race;
 - (8) Distance;
 - (9) Fractional times of the leading horse, including the race time;
 - (10) Post position, position at the 1/4-mile, the 1/2-mile and the 3/4-mile poles and at the head of the stretch with lengths behind the leader and finish position with lengths behind the winner;
 - (11) Official order of finish;
 - (12) Individual time of each horse;
 - (13) Closing dollar odds (with favorite designated by an asterisk);
 - (14) The standard symbols for breaks, interference breaks, interference, broken equipment, park outs and free legged pacers, where applicable;
 - (15) The standard symbols for medications, where applicable; in claiming races, the price for which the horse is entered to be claimed less allowances for age and sex;
 - (16) Names of the horses placed first, second and third by the Judges; and notations of placings, disqualifications and claimed horses.

OFFICIAL STARTER

§ 205.111. Eligibility as a Starter.

(a) No person shall be licensed as a Starter until the applicant has successfully completed a written examination and satisfied the Commission or the Commission's

designee that the Starter has the necessary qualifications to perform the required duties.

(b) Notwithstanding the requirement in subsection (a), the Commission may grant a limited Starter's license restricted to starting horses in matinee races, time performances or meetings not exceeding 10 days in duration within a calendar year.

§ 205.112. Duties of the Starter.

- (a) The Starter shall:
 - (1) Be subject to the supervision of the Presiding Judge;
 - (2) Be present in the starting gate at least 15 minutes before the first race;
 - (3) Have control over the horses from the formation of the post parade until the field is released at the starting point;
 - (4) Notify the Judges of all violations of the rules, giving detailed information thereof, including any assessed penalty;
 - (5) Notify drivers charged with violations of starting rules and grant a hearing before any penalties are assessed;
 - (6) Act as a patrol Judge when requested by the Judges; and
 - (7) Immediately report any false starts, impeded starts, unfair starts or any unauthorized activities to the Presiding Judge.

(b) Submit to a physical or eye examination, or both, when requested by the Commission.

§ 205.113. Starter's List.

The official Starter shall school horses as may be necessary and shall prepare a list of horses not qualified to start, which shall be delivered to the Judges and the racing secretary and entered on the Starter's List. The Starter's List shall be posted in the racing secretary's office. No horse on the Starter's List shall be eligible to declare until removed from the Starter's List.

TIMER/CLOCKER

§ 205.121. Duties of timers.

- (a) The official timer/clocker shall accurately record the time elapsed between the start and finish of each race and shall be in the stand 15 minutes before the first heat or dash is contested.
- (b) The time shall be recorded from the instant that the first horse crosses the starting point until the first horse reaches the finish line and each 1/4 mile shall also be recorded on the leading horse.
- (c) In every race, the time of each heat or dash shall be accurately recorded by two timers or an approved electrical timing device, in which case, there shall be one timer.
- (d) Times of heats shall be recorded in minutes, seconds and fifths of a second.
- (e) Immediately following each heat, the elapsed time of the heat shall be publicly announced or posted on the totalisator board, or both.
- (f) No unofficial time shall be announced, posted or entered into the official record.

§ 205.122. Error in reported time.

(a) In circumstances involving an error in timing, no time shall be announced, posted or recorded for that heat.

(b) In any case of alleged error regarding a horse's official time, the time in question shall not be changed to favor the horse or its owner, except upon the sworn statement of the Judges and official timers who officiated in the race.

§ 205.123. Certificate as to track measurement.

In order for races to be recognized or published as official or both, at the beginning of each race meeting or at any time requested by the Commission, every licensed racing entity shall file a certificate by a duly licensed civil engineer or similar person that the track has been measured from wire to wire 3 feet out from the pole or inside hub rail and certifying in linear feet the result of that measurement. Each racetrack shall be measured and recertified in the event of any changes or relocation to the physical structure of the hub rail.

§ 205.124. Time performance.

A record can be made only in a public race or performance against time. In a performance against time, the provisions of the USTA's Rule 24 shall apply.

PATROL JUDGE

§ 205.131. Powers and duties of patrol Judges.

The patrol Judge, when utilized, is responsible for observing the race and reporting information concerning the race to the Judges. If the track's video replay system is deemed adequate, use of patrol Judges is optional.

PROGRAM DIRECTOR

§ 205.151. Duties.

(a) Each licensed racing entity shall designate a program director. In addition to the information set forth in § 205.59 (relating to daily racing program), it shall be the responsibility of the program director to furnish the public complete and accurate past performance information including the following:

- (1) Horse's name and sex;
- (2) Color and age;
- (3) Sire and dam;
- (4) Owner's name;
- (5) Driver's name and colors;
- (6) Trainer's name and stable name.

(b) At extended pari-mutuel meetings, the following additional information shall be furnished:

(1) In claiming races, the price for which the horse is entered to be claimed.

(2) At least the last six performance and accurate chart lines for the horse which shall include the following: Date of race, place, size of the racetrack if other than a 1/2-mile racetrack, symbol for free-legged pacers, racetrack condition, type of race, distance, the fractional times of the leading horse including race time, post position, position at 1/4 with lengths behind the leader, 1/2 with lengths behind the leader, 3/4 with lengths behind the leader, stretch with lengths behind the leader, finish with lengths behind the leader, individual time of the horse, closing dollar odds, name of the driver, names of the horses placed first, second and third by the Judges. The standard symbols for breaks and park-outs shall be used, where applicable.

(3) Indicate drivers racing with a provisional license and trainers with a limited license.

(4) Indicate pacers racing without hobbles and trotters that are racing with hobbles.

(5) Summary of starts in purse races, earnings, and best win time for current and preceding year. A horse's best win time may be earned in either a purse or non-purse race.

(6) The consolidated line shall carry date, place, time, driver, finish, racetrack condition and distance, if race is not at 1 mile.

(7) Wherever a horse races under permissive medication, that fact shall be recorded on the horse's electronic eligibility and thereafter that information shall be included in the performance lines on the printed programs at all extended pari-mutuel meetings, using the standard symbol adopted therefore.

COMMISSION VETERINARIAN

§ 205.171. Qualifications.

(a) The Commission Veterinarian shall:

(1) Be employed by the Department as a Veterinary Medical Field Officer (VMFO), or as a temporary State veterinarian and appointed by the Commission to a racetrack under the jurisdiction of the Commission;

(2) Have graduated from an accredited veterinary school, be duly licensed by the Department of State to practice veterinary medicine within this Commonwealth and be properly licensed by the Commission as a Commission Veterinarian;

(3) Possess the necessary qualifications and experience to objectively and competently provide the regulatory duties described herein;

(4) Refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this Commonwealth while employed as the Commission Veterinarian;

(5) Refrain from directly treating or prescribing for any horse under the Commission's jurisdiction, except in cases of extreme emergency, accident or injury;

(6) Have no employment history or business relationship prior to employment as the Commission Veterinarian that could constitute a conflict of interest or impede in the performance of official duties.

(b) The Commission shall have an adequate number of Commission Veterinarians, as determined by the Commission, necessary to perform all the duties and responsibilities, as set forth in these regulations. The Commission may designate one of the Commission Veterinarians as the Chief Commission Veterinarian at that racetrack facility.

§ 205.172. Duties and responsibilities of the Commission Veterinarian.

(a) The Commission's Veterinarian, among other things, shall:

(1) Inform the Judge that a horse has been deemed unsafe to race, or inhumane to allow to race and shall place that horse on the Veterinarian's List;

(2) Conduct pre-race inspections (racing soundness examination) on all potential Starters on race day under the Pre-Race Examination Protocol as established and amended by the Commission. The examinations shall be conducted in or near the stall to which the horse is assigned;

(3) Inspect any horse when there is a question as to the physical condition of the horse regardless of the horse's entry status;

(4) Be present in the paddock and on the racetrack during the post parade;

(5) Recommend to the Judges the scratching of any horse that is, in the opinion of the Commission Veterinarian, injured, ill or otherwise unable to compete due to an apparent medical or health-related condition;

(6) Inspect any horse which appears in physical distress during the race or at the finish of the race and shall make a report of the horse and the suspected cause of the distress to the Judges, if the initial inspection was done by the racetrack veterinarian;

(7) Maintain a continuing health and racing soundness record of each horse so examined;

(8) Be authorized, in an emergency scenario, to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act;

(9) Report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore;

(10) Maintain the Veterinarian's List of horses ineligible to race;

(11) Supervise and control the test barn and the procedures to be implemented therein;

(12) Supervise the taking of all biological specimens, including but not limited to blood, urine or any other bodily fluid taken from the horse for pre or post-race testing according to procedures approved by the Commission;

(13) Maintain the proper administrative safeguards to protect the chain of custody handling of all laboratory specimens to prevent tampering, confusion or contamination and assure sample integrity;

(14) Have jurisdiction over the practicing licensed veterinarians within the racetrack enclosure for the purpose of these rules;

(15) Cooperate with the racetrack veterinarian, practicing licensed veterinarians and other regulatory agencies to take measures to control communicable or reportable equine diseases, or both.

§ 205.173. Veterinarian's List.

The Commission Veterinarian shall maintain a list to be known as the Veterinarian's List upon which the name of a horse which is considered unfit, unsound or not ready for racing shall be placed. The Veterinarian's List shall be binding on all licensed racetrack facilities and those participating in racing activities under the jurisdiction of the Commission. A horse placed on the Veterinarian's List shall be refused entry until the horse is shown to be fit, sound or ready to race.

RACETRACK VETERINARIAN

§ 205.191. General authority and duties.

(a) The track veterinarian shall be attendant on the Judges and the race secretary at scratch time and shall examine the horse that they request and make reports to the racing officials as promptly as possible.

(b) The racetrack veterinarian shall be an employee of the licensed racing entity and shall:

(1) Be duly licensed by the Commission and directly responsible to the Commission Veterinarian;

(2) Be a graduate veterinarian and be licensed to practice in this Commonwealth;

(3) Be present at a designated time to inspect a horse when there is a question as to the physical condition of the horse;

(4) Inspect any horse which appears in physical distress during the race or at the finish of the race; and shall report the horse together with a written opinion as to the cause of the distress to the Judges and to the Commission Veterinarian;

(5) Refrain from directly treating or prescribing for any horse scheduled to participate during the racetrack veterinarian's term of appointment at any recognized meeting except in cases of emergency, accident or injury;

(6) Be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act;

(7) Perform any other veterinarian function deemed necessary and appropriate as directed by the Commission Veterinarian, the Commission or the racetrack's employer;

(8) Refuse employment or payment, directly or indirectly, from any owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the racing veterinarian;

(9) Conduct soundness inspections on horses participating in races at the race meeting.

HORSE IDENTIFICATION

§ 205.201. Registration.

All matters relating to the registration of Standardbred horses, unless otherwise provided for herein, shall be governed by the Rules of the USTA. Pennsylvania stallions, to be eligible for Pennsylvania Sire Stakes for any given year, shall have on file a Stallion Certificate of Eligibility no later than December 1 of the preceding year with the Commission.

§ 205.202. Horse identification records.

(a) No horse may start in any race at an extended pari-mutuel or any other meeting unless it is fully identified. The burden of establishing the identity of a horse rests with the person or persons having charge of the horse at the meeting, and in connection therewith any person found guilty of fraud or attempted fraud or any person who aids in any way in the perpetration of a fraud or any person who participates in any attempt at fraud shall be expelled. Provided further that the provisions of this section shall not be interpreted as relieving the paddock Judge or the identifier, or both, from any responsibilities outlined in Rule 6.17 and 6.18 of the USTA.

(b) Horses must race under the name of the bona fide owner. Horses under lease must race in the name of the lessee and a copy of the lease must be recorded with the USTA and with the Commission. Persons violating this rule may be fined, suspended or both.

§ 205.203. Check on identity of a horse.

Where a question of a horse's identity or eligibility arises, a racing official may request verifying information regarding the horse's identity and eligibility from the horse's owner, trainer, driver or other person having control of the horse. If the owner, trainer, driver or other person having control of the horse refuses or fails to

provide the requested information that person may be subject to a penalty imposed by the Judges.

§ 205.204. False chart lines.

Any official or person who enters a chart line on an electronic eligibility certificate when the race has not been charted by a licensed charter may be fined, suspended or ejected by the Commission.

§ 205.205. Tattoo/freeze brand/microchip requirements.

A horse which has not been tattooed, freeze branded or implanted with a microchip as authorized by the USTA will not be permitted to start at a pari-mutuel meeting unless specific permission of the Presiding Judge is been obtained and arrangements are made to have the horse tattooed or freeze branded or implanted with a microchip.

ELECTRONIC ELIGIBILITY

§ 205.211. Electronic eligibility.

No horse will be permitted to race at a licensed racetrack facility under the jurisdiction of the Commission unless a current USTA electronic eligibility certificate at the proper gait has been obtained and approved by the Commission.

§ 205.212. Issuance of electronic eligibility.

Electronic eligibility shall be issued for the life of the horse.

(a) Each registered owner of a horse must be a member in good standing with the USTA prior to the issuance of an electronic eligibility. If the horse is registered in the ownership of a registered racing, farm, corporation, or stable, all "beneficial owners" of those entities must be members in good standing with the USTA prior to the issuance of an electronic eligibility.

(b) Each application for the issuance of electronic eligibility shall list the names of all owners including beneficial owners of the horse.

(c) The names of all owners, including beneficial owners, shall be listed on the electronic eligibility. The electronic eligibility shall not be issued in the names of more than four persons. In the event five or more names are reported to the USTA, the electronic eligibility shall be issued only in four or fewer including racing, farm, corporate or stable names, which names must be registered in accordance with Rule 8.02 of the USTA.

§ 205.213. Leased horses.

Any horse on a racing lease must race in the name of the lessee and must provide evidence to the Commission of the lease as filed with the, USTA.

§ 205.214. Corrections on electronic eligibility.

Corrections on an electronic eligibility may be made only by the Commission, the Presiding Judge or a designee of the Commission.

§ 205.215. Conditioned races.

For purposes of eligibility, a racing season or racing year shall be the calendar year. Conditions shall not be written in a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word "preferred" is used in a condition it shall not supersede date preference.

(1) Conditions shall be limited to the money earnings of the horses in a specified period of time or number of starts.

(2) Primary conditions shall be nonwinners or winners of more than a stated amount of money.

(3) Not more than two also eligible conditions shall be used in writing the condition of any overnight event.

(4) Age and sex allowances shall apply to the primary condition and shall not be considered an also eligible condition.

§ 205.216. Date eligibility determined.

Horses must be eligible to the event when entries close. Winnings earned on the closing date of eligibility shall not be considered.

§ 205.217. Age of horses.

No horse that is 15 years of age or older is eligible to perform in any race except in matinees, fair races, or races exclusively for amateur drivers as designated by the Commission and no electronic eligibility shall be issued for a horse except for a performance in those races.

§ 205.218. Prohibitions.

(a) No electronic eligibility will be issued on any horse under 2 years of age.

(b) No electronic eligibility shall be issued for a horse from which a positive Coggins test has been reported.

(c) No electronic eligibility will be issued on any horse not properly registered with the USTA.

TYPES OF RACES OFFERED

§ 205.221. Standards for overnight events.

The race secretary should prescribe standards to determine whether a horse is qualified to race in overnight events at a meeting. Where time standards are established at a meeting for both trotters and pacers, trotters shall be given a minimum of 2 seconds allowance in relation to pacers.

§ 205.222. Types of races to be offered.

The racing secretary shall exclusively use the following types of races:

- (1) Stakes and futurities.
- (2) Early closing and late closing events.
- (3) *Conditioned races.* These qualifications may be based upon, among other things:
 - (i) Horse's money winnings in a specified number of previous races or during a specified previous time.
 - (ii) A horse's finishing position in a specified number of previous races or during a specified period of time.
 - (iii) Age.
 - (iv) Sex.
 - (v) Number of starts during a specified period of time.
 - (vi) Or any one or more combinations of the qualifications herein listed.
- (4) Claiming races.
- (5) Open races or invitational races.

§ 205.223. Selection or drawing of horses.

For all overnight events, Starters and "also eligible" shall be drawn by lot from those properly entered, except that a race secretary must establish a preference system for races as provided for in Rule 14.10 of the USTA.

§ 205.224. Splitting of conditioned races.

When it is necessary to fill a card, not more than one conditioned race per day may be divided into not more than two divisions after preference has been applied and the divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.

§ 205.225. Substitute and divided races.

Substitute races may be provided for each day's program and shall be so designated. Entries in races not filling shall be posted. A substitute race or an event divided into two races shall be used only if regularly scheduled races fail to fill. If a regular race fills it shall be raced on the day it was offered. Overnight events and substitutes shall not be carried to the next racing day.

§ 205.226. Heats.

A heat, if conducted, shall be considered as a separate race for the purposes of conditioned racing.

§ 205.227. Prohibitions.

(a) A horse qualifying in a qualifying race for which no purse is offered shall not be deprived by reason of the performance of the right to start in any conditioned race.

(b) No time records or bars shall be used as an element of a horse's eligibility for any event.

(c) The racing secretary may reject the declaration on any horse whose past performance indicates that he would be below the competitive level of other horses declared, provided the rejection does not result in a race being cancelled.

(d) Declarations shall not be accepted for any horse to any race unless the declarer has furnished the race secretary with a negative Coggins test written certificate for that horse, as required by subsection (a).

(e) Performance in a matinee race shall not be considered an official start.

§ 205.228. Bonus earnings.

In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to USTA in a timely manner.

§ 205.229. Supplemental purse payments.

Supplemental purse payments made by a licensed racing entity after the end of a meeting will be charged and credited to the winnings of any horse at the end of the racing year in which they are distributed. The distribution shall not affect the current eligibility until officially credited to the horse.

§ 205.230. Classified races.

Classified races are permitted only when authorized by the Commission.

§ 205.231. Exhibition races.

When non-betting promotional races are conducted by licensed racing entities, these races shall be regarded as exhibitions and the horses' performances in those races shall not be noted on electronic eligibility or otherwise officially credited to either horses or drivers. Any money

awarded or paid on these races shall not be credited to the horses or drivers as official earnings and shall not affect the eligibility of participating horses to any subsequent event.

CLAIMING RACES

§ 205.251. Claiming regulations and procedures.

(a) A licensed owner, trainer or any other person properly licensed may claim any horse in a claiming race if the owner, trainer or licensee has on credit with the licensed racing entity conducting the race, an amount equal to the specified claiming price, plus the applicable tax and requisite fees for transfer of title. Except that, an unlicensed owner operating under a 30-day affidavit procedure may make a claim as previously set forth.

(b) The licensed racing entity shall provide an automatic time clock which shall be used to stamp the time the claim is filed in the claim box upon the envelope containing the claim.

(c) Claims shall be in writing on forms and in envelopes provided by the licensed racing entity, sealed and deposited in the claim box at least 15 minutes before the time originally scheduled for the race to begin. A person may file only one claim in one race.

(d) The claiming price shall be printed on the program and all claims shall be for the amount so designated. If more than one claim is filed for the same horse, the successful claimant shall be determined by lot by the Presiding Judge.

(e) The licensed racing entity shall provide for an agent who shall, immediately after closing the claim box, deliver it to the Presiding Judge. The licensed racing entity's agent or authorized person shall be prepared to state whether the claimant has the proper amount of money on credit equivalent to the specified claiming price. A racing official may not give information on claims filed until after the race.

(f) If a horse programmed to start in a claiming race is scratched, regardless of location, the horse on its next start within this Commonwealth, notwithstanding the conditions of that race, shall be subject to be claimed at the claiming price to which it was subject in the race from which it was scratched. This provision applies for 30 days immediately following the date of the race from which the horse was scratched. The removal of the horse from this jurisdiction shall toll the 30-day period. The 30-day period shall resume when the horse is returned to this jurisdiction.

(g) A horse claimed shall be delivered immediately by the original owner to the successful claimant upon authorization of the Presiding Judge. The horse's halter shall accompany the horse. Altering or removing the horse's shoes will be considered a violation of this rule. Every horse claimed shall race for the interest and for the account of the owner who declared it in the event. Title to the claimed horse, subject to the conditions and provisions of subsection (h), shall be vested in the successful claimant from the word "go." The successful claimant shall become the owner of the claimed horse, whether it be alive or dead, sound or unsound or injured during the race or after it.

(h) A post-race urine or blood test, or both, shall be taken from each horse claimed out of a claiming race. The claim shall be voidable at the claimant's discretion if the forensic analysis by the Commission's laboratory results in a positive test for a prohibited substance. The claimant shall notify the Presiding Judge in writing within 24

hours of the intention to void the claim and return the claimed horse to the original owner. The claimant shall immediately sign over to the original owner the necessary certificates of ownership of the claimed horse. This subsection does not relieve the original trainer/owner of the responsibility for the condition of the claimed horse during the trainer/owner's control or care or custody of the horse.

(1) Except that, if the claimant elects to race the claimed horse prior to the results of the forensic analysis results, the claim shall not be voidable.

(i) The owner of a horse may not claim it or cause it to be claimed for the owner's account.

(j) Before the claimed horse is delivered, the Presiding Judge may require the successful claimant to execute an affidavit stating that the horse is being claimed for the claimant's account or for the account of a person for whom the claimant is an authorized agent and not for another person.

(k) The Presiding Judge may void a claim if the horse claimed has impaired eyesight in both eyes or is denerved above an ankle, or if a mare is in foal and the Presiding Judge was not notified before declaration.

(l) If a horse is claimed, no right, title or interest therein may be sold or transferred except in a claiming race for 30 days following the date of claiming. The horse may not race at a track other than the track where claimed for 30 days or the balance of the current racing meeting, whichever comes first, unless released by the racing secretary.

(m) The trainer or driver of a horse may not claim that horse.

(n) A person may not offer to enter into an agreement to claim or refrain from claiming or attempt to prevent another person from claiming a horse in a claiming race.

(o) There may not be a change in ownership or trainer once a horse is programmed.

(p) A person may not refuse to deliver a horse legally claimed out of a claiming race.

(q) A person may not enter a horse against which there is a mortgage, bill of sale or lien, unless the written consent of the holder of the claim is filed with the clerk of course of the association conducting the claiming race.

(r) Subject to the conditions of subsection (h), the licensed racing entity shall pay the claiming price to the owner at the time the registration certificate is delivered for presentation to the successful claimant.

(s) The successful claimant of a horse who has requested a Coggins test be administered to the horse may not declare or start the horse in future races pending the receipt of a negative test.

(t) Except as provided in § 205.61 (relating to nominations and declarations), a horse owner is not prohibited from determining the price for which that owner's horse shall be entered.

(u) A claim may not be withdrawn once properly made.

(v) A claiming race may not be offered permitting claims for less than the minimum purse offered at that time during the same racing week.

(w) If the Presiding Judge determines that the declaration or claim of a horse or a claiming race is fraudulent, the Presiding Judge may void the claim. If the Presiding Judge determines that a claim of a horse is fraudulent on

the part of the person making the claim, the Presiding Judge may void the claim and may, at the option of the person declaring it in, return the horse to the person declaring it in.

(x) The current registration certificate of horses entered in claiming races shall be on file with the racing secretary together with a separate claiming authorization form signed by the registered owner and indicating the minimum amount for which the horse may be entered to be claimed. To facilitate transfer of claimed horses, the Presiding Judge may sign the transfer but must then send the registration certificate and claiming authorization to the registrar for transfer.

(y) Whenever possible, claiming races shall be written to separate horses 5 years of age or older from young horses and to separate males from females. If sexes are mixed, mares may be given a price allowance.

§ 205.252. Equine Infectious Anemia testing.

(a) If claimant indicates on the claiming form that the claimant desires a blood sample to test for Equine Infectious Anemia EIA, a licensed veterinarian shall immediately after the race take a blood sample from the claimed horse. The sample shall be properly marked and identified. The sample shall be forwarded within 24 hours to a laboratory approved by the Commission to be tested for EIA (Coggins test).

(b) Pending the receipt of a negative test for EIA, the moneys paid for the claimed horse shall be held by the licensed racing entity. In the event of a positive test for EIA, the ownership of the claimed horse shall revert to the owner from whom the horse was claimed and the claiming moneys shall be returned to the person or persons who claimed the horse.

(c) The cost of the test shall be paid by the claimant, if the test is negative. The original owner of the horse that was claimed shall pay for test, if test is found positive. Final vesting of title to claimed horse shall not be made pending receipt of the results of the test for EIA.

NOMINATIONS AND ADDED MONEY EVENTS

§ 205.271. Making a nomination.

All nominations must:

- (1) Be made in writing.
- (2) Give name and address of the registered owner and lessee.
- (3) Give name, color, sex, sire and dam of horse.
- (4) Name the event or events in which the horse is to be nominated.
- (5) In the event a mare nominated to a futurity fails to have a live foal, the nominator may substitute a foal if the conditions so provide.

§ 205.272. Receipt of nomination and sustaining payments.

(a) All nomination and sustaining payments not actually received at the hour of closing shall be ineligible except those by letter bearing a postmark not later than the following day (omitting Sunday or a legal Federal holiday, or both) to be actually received at the office at or before the hour of closing. The letter shall include the color, sex, name of horse and the class to be entered, and the name and residence of the owner and the party making the nomination or sustaining payment.

(b) Whenever a nomination or sustaining payment in a stake, futurity, early closing race or late closing race

becomes payable on a Sunday or legal holiday that falls on Saturday, this payment is to be due on the following Monday, the envelope must be post marked on or before the following Tuesday.

(c) If a payment falls on a Monday that is a legal holiday, this payment is due on Tuesday and must be post marked on or before the following Wednesday. For purposes of this rule payments made by means of commercial delivery services shall be treated the same as those made by letters bearing a postmark.

§ 205.273. Postage mark.

Where a nomination is received by letter bearing the postage meter date without any postmark placed thereon by the post office, this postage meter date shall be considered to be a postmark for the purposes of this rule, if the letter is actually received within 7 days following the closing date of the event. Receipt a nomination by letter after this time shall not be a valid nomination or payment to any event. The metered date must conform to the postmark date as previously set forth to be valid.

§ 205.274. Failure to make payment.

Failure to make any payment required by the conditions constitutes an automatic withdrawal from the event.

§ 205.275. Event sponsor membership.

All stake, futurity, early closing and late closing event sponsors or presenters must be members of the USTA.

§ 205.276. Event sponsor requirements.

Event sponsors shall:

(a) If possible, advertise the week and place the stake or futurity will be raced before taking nominations. Otherwise announcement of the week and place shall be made as soon as the stake or futurity is sold or awarded. No change in date, program, events or conditions can be made after the nominations have been taken without the consent of the racing authority having jurisdiction over the race. Before taking any sustaining payments during the year the race is to be contested, the date and place of the race shall be stated.

(b) Set the nominating date and the dates for all sustaining payments except the starting fee on the 15th day of the month in accordance with Rule 12.07 of the USTA.

(c) Send a complete list of nominations mailed to each nominator or electronically posted within 20 days after the closing date and mailed to the USTA and to each nominator.

(d) Mail or post a list of nominations within 60 days after the date of closing to the USTA.

(e) Notify all nominators and the USTA within 20 days if the stake or futurity does not fill.

(f) Mail or post within 45 days after the closing date a complete list of all horses nominated and shall mail or post within 45 days following all sustaining payment closing dates a complete list of all horses remaining eligible to the USTA. In addition, a list of all eligible horses shall be mailed upon request to all owners or agents of all eligible horses.

§ 205.277. Date of nomination closing and sustaining payments due.

(a) The date for closing of nominations of yearlings to stakes shall be May 15th and the date for closing of the nominations to futurities shall be July 15th. There shall

be no payments on yearlings except a nomination payment and the nomination payment shall be due not later than August 15th, except for state bred races for which the payment shall be due not later than October 15th.

(b) No more than one sustaining payment on 2-year-olds in stakes and futurities that do not have a 2-year-old division will be permitted.

(c) There shall be no conditions that call for payments in stakes or futurities to fall due after August 15th and before February 15th of the following year. No stake or futurity payment on 2-year-olds shall become due prior to March 15th and for all other ages not prior to February 15th of any year.

(d) In early closing events no payment on 2-year-olds shall become due prior to March 15th excluding fairs and sires stakes.

(e) No more than two sustaining payments on any horse of any age in any calendar year with the exception of the starting fee will be approved.

(f) All nominations and payments other than starting fees in early closing events shall be advertised to fall on the 15th day of the month.

§ 205.278. Estimated purse.

No estimated purse shall be advertised or published in excess of the actual purse paid or distributed during the previous year unless increased by guaranteed added money. No stake or futurity shall be raced for less than 75% of the estimated purse.

§ 205.279. Excess entry fees.

In early closing events, late closing events and overnight events requiring entry fees all moneys paid in by the nominators in excess of 85% of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the minimum purse. If the race is split and raced in divisions, the provisions of Rule 12.17(b) of the USTA shall apply. Where overnight events are split and raced in eliminations rather than divisions all entrance/starting fees payable under the provisions of Rule 14.5 of the USTA shall be added to the advertised purse.

§ 205.280. Sponsor's contribution.

No stake or futurity shall be approved for extended pari-mutuel meetings if the sponsor's contribution of added money is not at least 30% of the purse and for all other meetings at least 10% of the purse shall be added.

§ 205.281. Nominators' or breeders' awards.

No sponsor shall pay monetary awards to nominators or breeders out of stake or futurity funds. All of the money contributed in nominating, sustaining and starting payments must be paid to the winner or winners.

§ 205.282. Deductions prohibited.

No deduction, voluntary or involuntary, may be made from any purse or stake or futurity except that if the conditions specifically so provide, reasonable deductions may be made for clerical, printing, postage and surety bond expenses specifically related to the purse, stake or futurity.

§ 205.283. Fees held in escrow.

All fees paid in early closing events shall be segregated and held in escrow by the sponsor until the event is contested.

§ 205.284. Deviation from published conditions.

All nominations and payments not governed by published conditions shall be void and any proposed deviation from the published conditions shall be punished by a fine for each offense, and any nominator who is allowed privileges not in accordance with the published conditions of the race, or which are in conflict with these rules, shall be debarred from winning any portion of the purse, and the said nominator and other persons who allowed these privileges shall be deemed to have been parties to a fraud.

§ 205.285. Newly created stakes and futurities.

No conditions for newly created stakes and futurities shall be written so as:

(1) To permit a horse to race in more than two heats or dashes in a single day.

(2) To provide for a filly division of a race with less added money than the colt division of a race, unless said conditions allow for a filly properly nominated and sustained in the filly division to start in the colt division upon proper declaration and the payment of the starting fee required for the colt division and the difference between any lower nominating or sustaining fees, or both, for the filly division and the higher nominating or sustaining fees, or both, for the colt division.

§ 205.286. Sponsor's contribution by non-track sponsors.

(a) The sum contributed by a non-track sponsor shall be considered forfeit and is to be included in the sum distributed in the event the stake or futurity is not raced, provided, however, that for the provisions of this paragraph the term "sum contributed" shall not include added money to be paid by a track member or other responsible party where the track member or other responsible party is someone other than the stake sponsor. In this case the stake sponsor shall not be held liable for the payment of the added money.

(b) If an event is not raced due to circumstances beyond the control of a non-track sponsor then the stake sponsor is not required to contribute a sum as added money but need only refund the nominating, sustaining and starting fees as it has collected toward the canceled event.

§ 205.287. Events raced in divisions.

(a) In the event a stake or futurity is split into divisions, the added money for each division shall be at least 20% of all nomination, sustaining and starting fees paid into the stake or futurity, except that in the case of a stake with a value of \$20,000 or less, and conducted at a non-extended meeting, the stake may be divided and each division raced for an equal share of the total purse if the advertised conditions so provide.

(b) Where a race other than a stake or futurity is divided, each division must race for at least 75% of the advertised purse. For splitting of stakes and futurities the USTA Rule 12.10 applies. Provided however that at non-extended meetings in the case of other added money early closing events, and early closers and late closers with a value of \$20,000 or less the race may be divided and raced in divisions and each division raced for an equal share of the total purse if the advertised conditions so provide.

ENTRIES AND STARTERS REQUIRED.

§ 205.301. Entries required for overnight events.

A licensed racing entity must specify how many entries are required for overnight events and after the condition

is fulfilled the event must be contested except when declared off by the Commission in accordance with these regulations.

§ 205.302. Entries required for early and late closing events.

In either early closing events or late closing events, if five or more horses are entered in to start, the race must be contested, except when declared off as provided in the Commission's regulations. At pari-mutuel race meetings, licensed racing entities may require five separate betting interests to start. Stakes and futurities must be raced if one or more horses are entered to start except when declared off as provided in the Commission's regulations.

§ 205.303. Early closing events with fewer horses entered than required.

In an early closing event, if fewer horses are entered than are required to start and all entrants are immediately notified, the horse or horses declared in and ready to race shall be entitled to all the entrance money and any forfeits from each horse named.

§ 205.304. Number of Starters.

(a) In any race where the number of horses declared in to start exceeds 11 on a 1/2-mile track, 12 on a 5/8-mile track, or 14 on a larger track, unless lesser numbers are specified in the conditions of the race, the race at the option of the track member conducting same stated before positions are drawn may be raced in elimination heats.

(b) In the absence of conditions providing for a lesser number of Starters no more than 2 tiers of horses, allowing 8 feet per horse will be allowed to start in any race and in no event shall there be allowed more than 11 Starters on a 1/2-mile racetrack, 12 Starters on a 5/8-mile racetrack or 14 Starters on a larger racetrack. At a county fair or other non-extended meetings where no pari-mutuel wagering is permitted there shall not be more than ten Starters on a 1/2-mile racetrack.

(c) In overnight events at extended pari-mutuel meetings and other meetings not more than eight horses shall be allowed to start on a 1/2-mile racetrack and not more than ten horses on larger tracks. Trailers are not permitted where the racetrack has room to score all horses abreast allowing 8 feet per horse, unless otherwise agreed upon by the track member and representative horsemen's association. Presiding Judges at county fairs, in their discretion, and prior to the draw, shall have the authority to limit the number of Starters in a race to a number less than ten, if in their judgment starting ten horses would be unsafe, taking into account the condition of the racetrack, the width of the racetrack and the class of horses participating.

§ 205.305. Purse money distribution.

(a) Unless otherwise provided in the conditions, all purses shall be distributed on the heat basis with the money awarded according to a horse's position in each separate heat of the race.

(b) Purse placing in overnight events shall be limited to five places.

(c) Unless otherwise specified in the conditions, the purse money distribution shall be: five or more Starters: 50-25-12-8-5%; four Starters only: 55-25-12-8%; three Starters only: 60-28-12%; two Starters only: 65-35%.

(d) In early closing events, late closing events or added money events if there are less than five Starters the remaining premium shall go to the race winner unless the conditions call for a different distribution.

(e) In overnight events if there are fewer than five Starters the premium for the positions for which there are no Starters may be retained by the track.

(f) If there be any premium or premiums for which horses have started but were unable to finish due to an accident, all unoffending horses who did not finish will share equally in the premium or premiums, but where there are fewer unoffending horses failing to finish than there are premiums for which horses have started but have not finished, the number of premiums in excess of the number of unoffending horses not finishing shall go to the winner.

(g) If there be any premium or premiums for which horses have started but were unable to finish and the situation is not covered by the preceding the premium shall be paid to the winner.

**ENTRY, DRAWING OF POST POSITIONS,
POST DRAW**

§ 205.311. Agreement to race under the rules.

Every horse entry shall constitute an agreement by the person making the entry including, the owner, lessee, manager, agent, nominator, driver or other person having control of the horse to abide by and be subject to the rules and regulations of the Commission. Entries shall not be accepted for any horse to any race unless the declarer has furnished the race secretary with a negative Coggins test written certificate for that horse as required in Rule 20.12 of the USTA.

§ 205.312. Horses not starting more than one race per day.

No horse shall be permitted to start in more than one pari-mutuel race or fair race on any one racing day.

§ 205.313. Length of race and number of heats.

(a) Races or heats shall be given at a stated distance in units not shorter than a sixteenth of a mile.

(b) The length of a race and the number of heats shall be stated in the conditions for the race. If no distance or number of heats are specified all races shall be at a single mile.

§ 205.314. Entry time.

Unless otherwise specified in the conditions by the race secretary, the entry time shall be 9 a.m.

§ 205.315. Payment of entrance and starting fee.

The entrance or starting fee shall be due at time of declaration and payable not later than 1 hour prior to post time of the race to be contested, unless otherwise specified in the conditions for the race. The entrance or starting fee will not be refunded if the horse fails to start unless the horse dies between time of declaration to start and start of race. The entrance or starting fee shall be defined as the payment due with declaration to start.

§ 205.316. Entry box.

The licensed racing entity shall provide a locked box with an aperture through which entries shall be deposited. The Presiding Judge shall be in charge of the entry box.

§ 205.317. Taking of entries.

Entries may be taken by the racing office in person, by telephone or any other acceptable means approved by the licensed racing entity. Evidence of all entries must be deposited in the entry box before the time specified to enter. An entry must state the name of the horse, name of

the trainer, and name of the driver and the event in which the horse is to be entered to race. When requested by the race secretary the entry must also state the date and place of the horse's last start.

§ 205.318. Search for entries by Presiding Judge.

Just prior to opening of the box the Presiding Judge shall check with the race secretary to ascertain if any declarations are in the office and not deposited in the entry box and the race secretary shall ensure that they are declared and drawn in the proper event.

§ 205.319. Opening of entry box and drawing of horses.

The entry box shall be opened by the Presiding Judge at the advertised time who shall be responsible to ensure see that at least one horseman or an official representative of the horsemen is present. No owner or agent for a horse with an entry in the box shall be denied the privilege of being present. Under the supervision of the Presiding Judge all entries shall be listed, the eligibility verified, preference ascertained, Starters selected and post positions drawn. If it is necessary to reopen any race public announcement shall be made at least twice and the box reopened to a definite time.

§ 205.320. Preference date.

(a) Preference dates shall be given to horses in all overnight events conducted at licensed pari-mutuel racetracks in accordance with the following:

(1) The date of the horse's last previous start in a purse race during the current year is the horse's preference date with the following exceptions:

(i) The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

(ii) When a horse is racing for the first time in the current year the date of a successful qualifying attempt shall be considered the horse's preference date.

(iii) Wherever horses have equal preference in a race, the actual preference of the horses in relation to one another shall be determined from the most recent previous starts which do not result in equal preference.

(iv) When an overnight race has been reopened because it did not fill all eligible horses declared into the race prior to the reopening shall receive preference over other horses subsequently declared regardless of the actual preference dates.

(b) This rule is not applicable at any meeting at which an agricultural fair is in progress.

(c) Nothing in this rule shall preclude a licensed racing entity from adopting a racetrack rule limiting an owner or trainer to one Starter in any single overnight event.

§ 205.321. Qualifying races for overnight events.

(a) Within 45 days of being entered, a horse that has not raced previously at the gait chosen must start in a qualifying race under the supervision of the Board of Judges and acquire at least one charted line by a licensed charter. To provide complete and accurate chart information on time and beaten lengths a standard photo-finish shall be in use.

(b) A horse that does not show a charted line for the previous season or a charted line within its last six starts must start in a qualifying race as set forth in subsection (a).

(c) The Judges may require any horse that has been on the Judges' List to start in a qualifying race. If a horse has raced in individual time not meeting the qualifying standards for that class of horse, it may be required to start in a qualifying race.

(d) The Judges may permit a horse to qualify by means of a timed workout consistent with the time of the races in which the horse will compete if adequate competition is not available for a qualifying race.

(e) To enable a horse to qualify for an overnight, qualifying races should be held at least 1 full week prior to the opening of any race meeting that opens before July 1st of a season and shall be scheduled at least twice a week. Qualifying races shall also be scheduled twice a week during the meeting unless otherwise agreed upon by the track member and representative horsemen's association.

(f) Where a race is conducted to solely qualify drivers, the race need not be charted, timed or recorded. This section is not applicable to races qualifying both drivers and horses.

(g) If a horse takes a win race record in a qualifying race or a matinee race the record must be prefaced with the letter "Q" wherever it appears, except in a case where immediately prior to or following the race the horse taking the record has been submitted to an approved urine or blood test.

§ 205.322. Qualifying race for added money events.

Where qualifying races are provided in the conditions of an early closing event, stake or futurity the qualifying race must be held not more than 5 days prior to contesting the main event (excluding Sunday) and omitting the day of the race.

§ 205.323. Withdrawal of horse.

After an entry to start has been made no horse shall be excused from the race without permission of the Presiding Judge. The Presiding Judge may impose a fine or suspension for violation of this provision.

§ 205.324. Notification of scratched horse.

Whenever a horse has been "scratched" by the Presiding Judge and placed on the Judges' List, the Presiding Judge shall specify the reason for the scratch.

§ 205.325. Coupled entries.

(a) When the Starters in a race include two or more horses owned or trained by the same person or trained in the same stable or by the same management, the starts shall be "coupled" as a single entry and a wager on one horse in the "entry" shall be a wager on all horses in the "coupled entry" unless approval has been granted by the Commission to race as separate entries under bona fide ownerships. The fact that those horses are trained by the same person shall be indicated prominently in the program.

(b) If the race is split in two or more divisions horses in an "entry" shall be seeded insofar as possible, first by owners, then by trainers, then by stables but the divisions in which they compete and their post positions shall be drawn by lot. The above provisions shall also apply to elimination heats.

(c) At all race meetings the person making the declaration of a horse which qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank.

(d) The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only. However, where this is done entries may not be rejected. Provided further that when drivers participate in a pari-mutuel purse races in which they have an ownership interest or trainer interest in one or more of the horses, they must drive one of the horses in which they have the ownership interest or trainer interest.

(e) If one of the horses with common ownership or trainer while running in a race interferes or commits a foul preventing another horse in the race a better placing, the Judges may, in their discretion, disqualify both horses of common ownership or trainer. The Judges may use all relevant information, video of the incident and their respective experience to make the decision.

§ 205.326. Judges' approval of drivers.

No driver may be changed without permission of the Presiding Judge and for good cause. When an entry starts two or more horses, the Presiding Judge shall approve or disapprove the second and third drivers.

§ 205.327. Transfer of ineligible horse.

A horse nominated in an event to which it is ineligible may be transferred, with the consent of its owner, to any event to which it is eligible at the same gait.

§ 205.328. Drawing of post positions.

(a) For each individual race of a race card, post positions for horses in a race shall be conducted by a separate procedure to be determined by the Presiding Judge. The results of a draw procedure shall not be applied to more than one race of a race card, nor shall the results be applied to another race which is part of another race card.

(b) For races conducted under an elimination plan, the Presiding Judge shall draw the positions in which the horses are to start in the main event by one of the following methods, as required by the sponsor in the conditions for the event:

(1) The Presiding Judge shall draw positions to determine which of the two dash winners has the pole, and which the second position; which of the two horses that has been second shall start in third position; and which in fourth, and the like, or

(2) The Presiding Judge shall by lot have an open draw to determine the positions in which the horses are to start in the main event from among all horses qualified for the main event.

(c) In the event the sponsor fails to prescribe in the conditions for the event the method to be used for the drawing of post positions the provisions of the USTA's Rule 14.19(a) shall apply.

§ 205.329. Also eligible.

(a) Not more than two horses may be drawn as "also eligible" for a race and their positions shall be drawn along with the Starters in the race. In the event one or more horses are excused by the Judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different the also eligible horse shall take the position on the outside of horses with a similar handicap.

(b) No horse may be added to a race as an also eligible unless the horse was drawn as this at the time entries closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference because it has been drawn as an "also eligible."

(c) A horse moved into the race from the also eligible list cannot be withdrawn except by permission of the Judges but the owner or trainer of a horse shall be notified that the horse is to race. All horses on the also eligible list and not moved in to race by scratch time shall be released.

§ 205.330. Horses omitted through error.

For all events, including, but not limited to overnight and stakes races, all drawings shall be final unless there is conclusive evidence that a properly declared horse, eligible at the time of entry, has been mistakenly omitted from the race through the error of the licensed racing entity, its agent or employee, in which case, the racing secretary shall immediately redraw the race in question, provided, that the error is discovered prior to scratch time or the printing of the program whichever is sooner.

§ 205.331. When an ineligible horse races.

(a) A nominator is required to guarantee the identity and eligibility of the nominations and entries and if given incorrectly the nominator may be fined, suspended or expelled, and any winnings shall be forfeited and redistributed to eligible entries.

(b) A person obtaining a purse or money through fraud or error shall surrender or pay the same to the sponsor of the event, failing which the person or persons and the horse or horses shall be suspended until payment is made, whereupon the purse or money shall be awarded to the party justly entitled to it. However, where any horse is ineligible as a result of the negligence or action of the race secretary the licensed racing entity shall reimburse the owner for the resultant loss of winnings.

§ 205.332. Effect of failure to enter on time.

When a licensed racing entity requires a horse to be entered at a stated time, failure to declare the timely entry as required shall be considered a withdrawal from the event.

POSTPONEMENT

§ 205.351. Postponement.

(a) In addition to the Commission's authority set forth in the act, USTA Rule 15, section 1, is incorporated herein and shall govern matters related to the postponement of races.

(b) Each licensed racing entity shall report a postponement to the Presiding Judge and the Commission in an expeditious manner.

STARTING OF HORSES

§ 205.371. Starter's control.

In addition to the duties and responsibilities set forth in this chapter, the Starter shall be under the supervision of the Presiding Judge and shall have control of the horses from the formation of the parade until the Starter gives the word "go."

§ 205.372. Starting gate requirements.

(a) Every licensed racing entity shall utilize a mobile starting gate of a type and quality approved by the Commission. Every licensed racing entity shall maintain a standby mobile starting gate similarly approved. The arms of all starting gates shall be provided with a screen

or a shield in front of the position for each horse and the arms shall be perpendicular to the rail. Starting gates at pari-mutuel tracks shall be equipped with systems approved by the Commission providing direct two-way voice communication with the Judges stand.

(b) Each licensed racing entity must specify in writing to the Commission the exact distance prior to the beginning of the racing meet and have it clearly defined in their program.

(c) No person shall be allowed to ride in the starting gate except the Starter, the gate operator and a patrol Judge, unless permission has been granted by the Commission.

§ 205.373. Scoring of horses/coming to starting gate.

After one or two preliminary warming up scores the Starter shall notify the drivers to come to the starting gate. During or before the parade the drivers must be informed as to the number of scores permitted. The horses shall be brought to the starting gate no nearer than 1/8 of a mile before the start as the racetrack will permit. On mile tracks horses will be brought to the Starting gate at the head of the stretch.

§ 205.374. Speed of gate.

Allowing sufficient time so that the speed of the gate can be increased gradually the following minimum speeds will be maintained.

(1) For the first 1/8 mile, not less than 11 miles per hour.

(2) For the next 1/16 of a mile not less than 18 miles per hour.

(3) From that point to the starting point, the speed will be gradually increased to the maximum speed.

(4) When the speed has been reached in the course of a start there shall be no decrease except in the case of a recall.

§ 205.375. Starting point.

The starting point will be a point marked on the inside rail at a distance of not less than 200 feet from the first turn. The Starter shall give the word "go" at the starting point.

§ 205.376. Recall procedure.

In case of a recall, a light plainly visible to the driver shall be flashed and a recall sounded but the starting gate shall proceed out of the path of the horses. Whenever possible the Starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In emergencies, however, Starters shall use their discretion to close the wings of the gate.

§ 205.377. Reasons for recall.

The Starter may sound a recall only for the following reasons:

- (1) A horse scores ahead of the gate.
- (2) There is interference.
- (3) A horse has broken equipment.
- (4) There is a malfunction of the starting gate.
- (5) A horse falls before the word "go" is given.
- (6) A horse comes to the gate out of position.

§ 205.378. No recall after the word "go."

(a) There shall be no recall after the word "go" has been given and any horse regardless of its position or an accident shall be deemed to be a Starter from the time it entered into the Starter's control, unless dismissed by the Starter.

(b) *Breaking Horse.* The Starter shall endeavor to get all horses away in position and on proper gait but no recall shall be issued for a breaking horse.

§ 205.379. Violations of the starting rule.

A fine or suspension or both from driving not to exceed 15 days may be applied to any driver by the Starter for the following starting violations:

- (1) Delaying the start.
- (2) Failure to obey the Starter's instruction.
- (3) Rushing ahead of the inside or outside wing of the gate.
- (4) Coming to the starting gate out of position.
- (5) Crossing over before reaching the starting point.
- (6) Interference with another driver during the start.
- (7) Failure to come up into and stay in position.
- (8) After coming to the gate, failure to keep one line in each hand until the word "go," except for the purpose of adjusting equipment.

§ 205.380. Loudspeaker.

Use of a mechanical loudspeaker for any purpose other than to give instructions to drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the Starter to the drivers.

§ 205.381. Holding horses before start.

Horses may be held on the backstretch not to exceed 2 minutes awaiting post time, unless delayed by an emergency.

§ 205.382. Starting two tiers of horses.

(a) In the event there are two tiers of horses the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier.

(b) Whenever a horse is withdrawn from any tier horses on the outside move in to fill up the vacancy. Where a horse has drawn a post position in the second tier the driver of the horse may elect to score out behind any horse in the first tier so long as he does not thereby interfere with another trailing horse or deprive another trailing horse of a drawn position.

§ 205.383. Horse out of position at start.

When a horse comes to the gate out of its assigned post position and gains an unfair advantage by moving either to the left or right of its assigned post position before the Starter gives the word "go" said horse may be disqualified and placed by the Judges.

§ 205.384. Failure to follow instructions of the Starter.

The driver of any horse refusing or failing to follow the instructions of the Starter as to the parade or scoring ahead of the pole horse may be fined or suspended by the Starter.

§ 205.385. Horses deemed to have started.

The horses shall be deemed to have started when the word "go" is given by the Starter and all the horses must go the course except in case of an accident, broken equipment or any other reason in which it is the opinion of the Judges that it is impossible or unsafe to go the course.

§ 205.386. Practice of emergency procedures.

Every licensed Starter is required to check the starting gate for malfunctions before beginning any race meeting and to practice the procedure to be followed in the event of a malfunction. Both the Starter and the driver of the gate must be familiar with emergency procedures and the Starter is responsible for the training of the drivers of the procedures.

§ 205.387. Starting without a gate.

When horses are started without a gate, the Starter shall have control of the horses from the formation of the parade until the Starter gives the word "go." The Starter shall be located at the wire or other point of start of the race at which point as nearly as possible the word "go" shall be given. No driver shall cause unnecessary delay after the horses are called. After two preliminary warming up scores, the Starter shall notify the drivers to form in parade.

§ 205.388. Positions in winning heat.

The horse winning a heat shall take the pole the succeeding heat, and all others shall take their positions in the order they were placed the last heat. When two or more horses shall have made a dead heat, their positions shall be settled by lot.

§ 205.389. Refunds of entry money.

No refunds of entry money can be made for any purposes once the entered horse is in the control of the Starter.

RACING RULES/CONDUCT OF THE RACE**§ 205.401. Driving violations.**

A driver shall not commit any of the following acts which are considered violations of the driving rules:

(1) Change course or position, swerve in or out, or bear in or out during any part of the race in a manner as to compel another horse to shorten its stride or cause another driver to change course, take the horse back or otherwise pull the horse out its stride.

(2) Jostle, strike, hook wheels or interfere with another horse or driver.

(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner endangering other drivers.

(4) Swerve in and out or pull up quickly.

(5) Crowd a horse or driver by "putting a wheel under him."

(6) Carry a horse out.

(7) Sit down in front of a horse or take up abruptly in front of other horses so as to cause confusion or interference among trailing horses.

(8) Let a horse pass inside needlessly or otherwise help another horse to improve the horse's position in the race.

(9) Commit any act which shall impede the progress of another horse or cause the horse to break.

(10) Change course after selecting a position in the home stretch or swerve in and out or bear in and out in a manner as to interfere with another horse or cause the horse to change course or take back.

(11) To drive in a careless or reckless manner or fail to maintain reasonable control of the horse at all times during the race.

(12) Kick the horse which shall be defined as a blow or thrust with the foot against any part of the horse's body or to impel by striking with the foot. Removal of a foot from the stirrups or any foot supports as provided in § 205.408 (relating to foot out of stirrup) shall not alone constitute the offense of kicking.

(13) Cross the inside limits of the course.

(14) Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.

(15) Fail to set, maintain or properly contest a pace comparable to the class in which the driver is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.

§ 205.402. Requirements for filing an objection.

All complaints by drivers of any foul driving or other misconduct during the race must be made at the termination of the race unless the driver is prevented from doing so by an accident or injury. A driver who wishes to enter a claim of foul or other complaint relating to the running of the race must, before dismounting, inform the Judges of the driver's intent to enter the claim or complaint and immediately proceed to the appropriate telephone or Judges' stand where the claim or complaint shall be immediately entered. The Presiding Judge shall not cause the "official" sign to be displayed until the driver's claim or complaint shall have been entered and considered. No appeal to the Commission shall be heard based on the Presiding Judge's "no-call."

§ 205.403. Driving violation committed by driver of coupled entry.

If a person driving a horse as a coupled entry in the race, commits a racing violation or infraction as set forth in § 205.401 (relating to driving violations), the Presiding Judge shall set the offending horse back. The horse coupled in the entry with the offending horse shall also be set back if the Presiding Judge finds that the horse improved its finishing position as a direct result of the offense committed by the offending horse.

§ 205.404. Placing of horses by the Judges.

In case of interference, collision or violation of any of the previous restrictions, whether occurring before or after the start, the Judges may place the offending horse back one or more positions in that heat or race. In the event the collision or interference prevents a horse from finishing the heat or race, the offending horse may be disqualified from receiving any winnings and the driver may be penalized. In the event a horse is set back under its provision, the offending horse must be placed behind the horse with which it interfered and did not finish.

§ 205.405. Fraudulent or unsatisfactory driving.

(a) A race must be properly contested by every driver and horse in that race and must be driven to the finish. If the Presiding Judge believes that a horse was driven in an intentionally inconsistent manner or fraudulently, the Presiding Judge shall consider it a violation and the driver and anyone in concert with him or her shall be penalized. The Presiding Judge may substitute a competent and reliable driver at any time. The substituted

driver shall be paid at the discretion of the Judges and the fee retained from the purse money due the horse if any.

(b) In the event a drive is unsatisfactory due to lack of effort or carelessness and the Presiding Judge believes that there is no fraud, gross carelessness or deliberately inconsistent drive they shall impose a penalty under this subsection including but not limited to a fine, suspension or revocation.

§ 205.406. Removal or substitution of driver.

If in the opinion of the Presiding Judge a driver is unfit or incompetent to drive for any reason or refuses to comply with the directions of the Judges or is otherwise reckless in conduct and endangers the safety of horses or other drivers in the race, the driver may be removed and another driver substituted at any time after the positions have been assigned in the race and the offending driver shall be penalized.

§ 205.407. Horse fails to finish heat.

If for any reason, other than being interfered with or having broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled out of subsequent heats of the same race.

§ 205.408. Foot out of stirrup.

As set forth in § 205.401 (relating to driving violations), improper conduct is forbidden in a race. After the starting gate is in motion, both feet of the driver must be kept in the stirrups at all times until after the finish of the race, except that a driver shall be allowed to remove a foot from the stirrups briefly to pull earplugs.

§ 205.409. Use of whip.

(a) Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. All whips are subject to inspection and measurement by the Presiding Judge or the Commission. The following actions shall be considered as excessive or indiscriminate use of the whip and a violation of the rules of racing:

- (1) Causing visible injury to the horse.
- (2) Whipping a horse after the finish of a race or after a horse is no longer in contention in the race.
- (3) Whipping under the arch or shafts of the sulky.
- (b) The use of the whip shall be confined to an area above and between the sulky shafts to include the sulky shafts and the outside wheel discs. Drivers shall keep a line in each hand from the start of the race until the finish of the race.

(c) The whip shall be used in a conventional manner and shall be held in the handle area at all times. Whipping shall be restricted to elbow and wrist action only and the whipping arm shall not be raised above shoulder height.

(d) On their own accord or if there is an allegation of excessive or brutal use of the whip, the Presiding Judge may immediately direct that the racetrack veterinarian perform a visual inspection of each horse following the specific race to determine if there is evidence of excessive or brutal use of the whip. A representative of the horsemen's organization or other person chosen by the driver may be present.

(e) Alteration of whips in any manner shall be considered a prohibited practice and shall subject the licensee to penalty.

§ 205.410. Other devices prohibited.

The use of any goading or prodding device, chain, mechanical or electrical devices or appliances other than the ordinary whip or crop upon any horse in any race shall constitute a violation of this rule, regardless of whether the device is operational or functional. A licensee violating this provision shall be fined, suspended or both.

§ 205.411. Penalties for prohibited use of whip.

(a) As set forth in § 205.409 (relating to use of whip), the brutal use of a whip or crop or excessive or indiscriminate use of the whip or crop shall be considered a violation of the rules of racing and shall be punished by the following fines or suspension, or both:

- (1) Minor infraction: \$200, may be placed.
- (2) Major infraction: 1st violation—\$250 fine and 3-day suspension; 2nd violation—\$500 and 5-day suspension; 3rd violation—\$500 fine and 10-day suspension.

(b) All licensed racing entities conducting a pari-mutuel meeting shall publish the Commission's rules pertaining to whipping in each day's official racing program.

§ 205.412. Breaking from gait.

(a) When a horse breaks from its programmed gait, the driver shall at once, where clearance exists, take the horse to the inside or outside and pull him to its gait.

- (b) The following shall be considered violations:
 - (1) Failure to properly attempt to pull the horse to its gait.
 - (2) Failure to take to the outside where clearance exists.
 - (3) Failure to lose ground while on a break.

§ 205.413. Placing of breaking horse by Judges.

(a) The Judges, may in their discretion, set back a breaking horse at the finish when a contending horse properly on its gait is lapped on the hind quarter of the breaking horse. Except, if the breaking horse was off stride due to interference.

(b) Any horse making a break which causes interference to other contending horses may be placed behind all offended horses.

(c) If, in the opinion of the Judges, a driver of a horse on a break reasonably complies rule in subsection (b), no fine or suspension shall be imposed on the driver.

§ 205.414. Fraudulent breaking of horse.

If, in the opinion of the Judges, a driver allows the horse to break for purposes of intentionally or fraudulently losing a heat, the driver may be fined, suspended or both.

§ 205.415. Calling and noting breaks.

To assist in determining the matters contained in §§ 205.413 and 205.414 (relating to placing of breaking horse by Judges; and fraudulent breaking of horse) and this section, it shall be the duty of one of the Judges to call out every break made and note the break and character of it in writing.

§ 205.416. Horse's right of the course.

Horses called for a race shall have the exclusive right of the course and all other horses must vacate the racetrack at once, unless permitted to remain by the Presiding Judge.

§ 205.417. Driver mounted in sulky at finish.

A driver must be mounted in the sulky at all times during the race or the horse must be placed as a non-finisher.

§ 205.418. Use of wheel discs and mud fenders.

It shall be the responsibility of the owner, trainer or driver to provide every sulky used in a race with solid one-color or colorless wheel discs on the inside and out-side of the wheel. The Presiding Judge may order the use of mud guards at the pari-mutuel racetrack.

§ 205.419. Talking on the track.

Excessive or unnecessary conversation, or both, between and among drivers while on the racetrack during the time when colors are required is prohibited. Any violation of this rule may be punished by a fine, suspension or combination thereof.

§ 205.420. Passing lane.

(a) With the approval of the Commission, a licensed racing entity may remove the solid inside hub rail and extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the track to create the so-called passing lane. The licensed racing entity shall provide the Commission with an architectural rendering of the passing lane and a certification of the track's dimensions.

(b) The passing lane shall not be used by the lead horse. The passing lane may only be used during the final 1/8 of the race. A driver who goes into the passing lane and passes another horse before the last 1/8 of the race may be disqualified by the Presiding Judge.

(c) A horse, other than the lead horse, may be driven into the passing lane to attempt to pass another horse. A horse driven into the passing lane which does not gain ground on the lead horse may be considered blocking the rest of the field if the horse impedes the progress of the trailing horses. If in the opinion of the Presiding Judge a driver blocks another horse's forward progress while in the passing lane, that horse may be placed for interference.

(d) A driver using the passing lane must first have complete clearance of the pylons. Any horse or sulky running over of pylons or going to the inside of the pylons shall be disqualified as set forth below.

(e) Pylons will be:

- (1) 2 feet above ground;
- (2) 30-degree angle inward to track surface;
- (3) 40 feet apart on the turns;
- (4) 60 feet apart on the straight aways.

§ 205.421. Pylon violations.

(a) A driver must have full clearance of the pylons when entering the passing lane. A driver who drives inside of one or more pylons when entering or using the passing lane may be disqualified.

(b) A horse while on stride, or part of the horse's sulky, that leaves the race course by going inside the pylons which constitutes the inside limits of the course, when not forced to do so as a result of the actions of another driver or horse, or both, shall be in violation of this rule. In addition, when an act of interference causes a horse, or part of the horse's sulky, to cross inside the pylons and the horse is placed by the Judges, the offending horse shall be placed behind the horse with which it interfered.

(c) For purposes of placing the horse by the Judges the following shall apply:

(1) If a horse while on stride, or part of the horse's sulky, goes inside two consecutive pylons, the offending horse shall be placed behind all horses that are lapped on to the offending horse at the wire;

(2) If a horse while on stride, or any part of the horse's sulky, goes inside three or more consecutive pylons, the offending horse shall be placed last;

(3) If in the opinion of the Judges a horse while on stride, or part of the horse's sulky, goes inside a pylon and that action gave the horse an unfair advantage over other horses in the race or the action helped improve its position in the race, the horse may be placed at the discretion of the Judges.

(d) The following penalties shall apply to drivers for violation of the above rules:

(1) For the 1st violation, a monetary penalty of \$200 shall be imposed;

(2) For the 2nd violation within a year of the first violation, a monetary penalty of \$300 shall be imposed;

(3) For the 3rd violation within a year of the 1st violation of the first violation, a minimum monetary penalty of \$500 plus a suspension for 3 days shall be imposed;

(4) For the 4th violation within a year of the 1st violation of the first violation, a minimum monetary penalty of \$1,000 and a suspension for 5 days shall be imposed.

§ 205.422. Removal of passing lane.

The licensed racing entity, with the consent and approval its horsemen's organization, may petition the Commission for the removal of the passing lane. The petition shall include all applicable and necessary information from the licensed racing entity and its horseman's organization to support the request for the removal of the passing lane.

EQUIPMENT**§ 205.431. Sulkies.**

(a) All racing sulkies must meet or exceed the standards approved by the USTA prior to being used in any pari-mutuel racetrack within this Commonwealth. The Commission may from time to time adopt any amended sulky standards and publish those standards in the *Pennsylvania Bulletin*.

(b) The Commission may adopt, by publication in the *Pennsylvania Bulletin* any subsequent amendments to the guidelines, standards, recommendations for the design, performance and certification for sulkies as issued by the USTA.

(c) The Commission may authorize variances from the above sulky standards and may approve for use any sulky which does not otherwise qualify under the previous sections, if in the Commission's opinion, the sulky does not pose a safety hazard, does not impair the horse or driver and does not undermine the competitiveness of the horse and driver.

§ 205.432. Use of hobbles.

No horse shall wear hobbles in a race unless it starts in the race in the first heat and having so started shall continue to wear them to the finish of the race and any person found responsible for removing or altering a horse's hobbles during a race or between races shall be

fined, suspended or both. Other than as set forth previously, the use of hobbles from race to race shall be in the sole discretion of the trainer and not require qualifying the horse.

§ 205.433. Nasal strips.

(a) The Commission shall authorize and permit non-medicated equine latex nasal strips to be used at pari-mutuel racetracks within this Commonwealth. All other artificial means of opening nasal passages are specifically prohibited.

(b) Trainers must inform the equipment identifier regarding the trainer's use of a nasal strip and document its use as equipment worn by the horse.

(c) The licensed racing entity shall ensure the public is notified of all horses using the nasal strips by publication in the program, public address system or other approved methods.

§ 205.434. Cornell Collar.

The Cornell Collar may be used by trainers as an approved piece of equipment within this Commonwealth. Trainers shall notify the equipment checker and duly list the Cornell Collar as a part of the horse's equipment.

§ 205.435. Trainer responsibility for horse equipment.

It shall be the responsibility of the trainer to see that each horse under the trainer's supervision is safely equipped for each race and if it is determined by the Judges that a horse has been raced with unsafe or faulty equipment the Judges may impose a fine, suspension or both.

§ 205.436. Other equipment.

(a) Any change in equipment must be approved by the Presiding Judge and must be shown on the racing program. Any owner or trainer who wishes to change any equipment on a horse from one race to another shall apply in writing to the Judges no later than at the time of declarations.

(b) No horse will be permitted in a race to wear any type of equipment that covers, protrudes or extends beyond its nose or that in any way could interfere with the true placing or finish of the horse.

CONDUCT AND DECORUM OF RACING PARTICIPANTS

§ 205.451. Improper language to officials.

No owner, trainer, driver, groom, attendant of a horse or any other licensee shall use improper or inappropriate language to a Commission official, Commission employee or race official or be guilty of any improper conduct toward the race official or persons serving under their direction, when the improper language or conduct refers to the administration and the performance of the race officials' duties.

§ 205.452. Shouting.

Continuous loud shouting or similar behavior is expressly forbidden during the conduct of a race.

§ 205.453. Committing assault or battery.

No person at any time or place shall commit an assault or an assault and battery upon another.

§ 205.454. Betting on a horse other than own.

No owner, trainer, driver or groom shall directly or indirectly place a bet on any other horse participating in the same race as the owner's, trainer's, driver's or groom's

horse. Any wager placed by the owner, trainer driver or groom on their horse participating in the race shall be to "win."

§ 205.455. Failure to report fraudulent or corrupt proposal.

It shall be the duty of every licensee to immediately report to the Commission or the Presiding Judge if that licensee has been approached with an offer, suggestion or promise of a bribe or other thing of value to commit, engage or participate in a corrupt, improper or fraudulent activity relating to racing.

§ 205.456. Fraudulent or injurious conduct forbidden.

Conduct on the part of a licensee, participant or patron, which is fraudulent or injurious in its nature or otherwise reflects negatively on the sport, although not specifically addressed by the Commission's regulations, is strictly forbidden. A person who, individually or in concert with one another shall intentionally, fraudulently and corruptly by any means affects the outcome of any race or commits any other act injurious to the sport shall be guilty of a violation.

§ 205.457. Conspiracy to commit a violation.

If two or more persons agree, plan, combine and conspire together in any manner and regardless of their location, for the purpose of violating any of the rules of racing and shall commit some act in furtherance of the plan it shall constitute a conspiracy and a violation. The Commission may also refer these matters to criminal law enforcement.

§ 205.458. Withholding information in an investigation.

In the course of an underlying investigation or hearing, where an oath is administered by the Judges, or other duly appointed person legally authorized to administer oaths, and the party knowingly testifies falsely or withholds information pertinent to the investigation the person shall be fined, suspended, or both.

§ 205.459. Financial responsibility.

A licensee may not knowingly accumulate unpaid obligations, default in obligations, issue drafts or checks that are dishonored or payment refused, or otherwise display financial irresponsibility reflecting negatively on the sport.

§ 205.460. Registration of nerved horses.

All horses that have been nerved shall be so designated on the USTA registration certificate, electronic eligibility and be registered with the Commission Veterinarian. It is the responsibility of the owner of the horse at the time the horse is nerved to see that this information is placed on the registration certificate and the electronic eligibility. No trainer or owner will be permitted to enter or start a horse that is high nerved. It shall be the responsibility of the owner or trainer, or both of a horse that has been low-nerved to post on the bulletin board in the racing office at each racetrack where the horse competes the fact that the horse has been low-nerved and it is the responsibility of each track member to provide a space in the racing office where the fact of nerving can be posted in accordance with this rule.

§ 205.461. Spayed mares.

The fact that a mare has been spayed must be noted on the registration certificate, the electronic eligibility and any program when the mare races. It shall be the owner's

responsibility to report the fact that the mare has been spayed to the USTA and return its papers for correction.

§ 205.462. Equine Infectious Anemia.

No owner, trainer, driver, attendant or other person representing a horse which has previously tested positive for Equine Infectious Anemia (EIA) shall knowingly cause the horse to be declared into any race. No owner, trainer, driver, attendant or other person shall seek to transfer the horse without first notifying the prospective purchaser or transferee of the fact that the horse had previously tested positive for EIA.

§ 205.463. Negative Coggins test certificate.

It shall be the responsibility of the trainer of a horse to furnish to the racing office all pertinent information regarding the Coggins test of the horse so that it may be entered on the electronic eligibility of the horse prior to the horse's first start in the current year. The submission to the Commission or its designees of Coggins tests which are false, misleading or have been tampered with shall be an integrity violation and may result in the person being fined, suspended or having the person's license revoked.

§ 205.464. Trainer of horse of suspended person.

A trainer who enters, trains or races a horse knowing the horse to be owned wholly or in part by a person or persons barred or otherwise disqualified from participating in racing shall be fined and suspended by the Commission.

PROTESTS

§ 205.471. Protests.

(a) Protests to the participation of a horse entered in any race shall be made to the Judges in writing, signed by the objector, and filed not later than 60 minutes prior to post time for the first race on the day in which the questioned horse is entered. A protest not timely received shall be denied on those grounds. A protest shall set forth the specific reasons for the protest in detail as to establish probable cause for the protest and the information provided by the protestor shall be verified and signed in affidavit form. The Judges may upon their own motion consider an objection until the time as the horse becomes a Starter.

(b) A protest to a horse which is entered in a race may be made on, but not limited to, the following grounds or reasons:

(1) A misstatement, error or omission in the entry under which a horse is to run;

(2) The horse which is entered to run is not the horse it is represented to be at the time of entry or the age was erroneously given;

(3) The horse is not qualified to enter under the conditions specified for the race, or the allowances are improperly claimed either by age, sex, earnings or wins or incorrect under the conditions of the race;

(4) The horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in these rules; or the horse was entered without regard to a lien filed previously with the racing secretary.

(c) The Judges may scratch from the race any horse which is the subject of a protest if the Judges have reasonable cause to believe that the objection is valid.

(d) Notwithstanding any other provision in this section, the time limitation on the filing of protests shall not

apply in any case in which fraud or willful misconduct is alleged provided that the Judges are satisfied that the allegations are bona fide and have been duly verified by affidavit.

(e) The Judges may order any purse, award or prize for any race withheld from distribution pending the determination of any protest. In the event any purse, award or prize has been distributed to an owner or for a horse which by reason of a protest or other reason is disqualified or determined to be not entitled to the purse, award or prize, the Judges or the Commission may order the purse, award or prize returned and redistributed to the rightful owner or horse. Any person who fails to comply with an order to return any purse, award or prize erroneously distributed shall be subject to fines and suspension.

FINES, SUSPENSIONS AND EXPULSIONS

§ 205.501. Suspension or revocation of driver, trainer or groom license.

In accordance with the provisions of the act, the license of any driver, trainer or groom may be suspended, revoked or a money fine may be imposed, at any time for:

(1) Failure to obey the instructions of a racing official.

(2) Failure to drive in a race when programmed, unless excused by the Presiding Judge.

(3) Consumption of intoxicating beverages within 4 hours of the first post time of the program on which the licensee is carded to drive.

(4) Appearing in the paddock in an unfit condition to perform the licensee's duties.

(5) Fighting.

(6) Assault or battery upon any other person.

(7) Offensive, profane or threatening language.

(8) Smoking while on the race track in silks and during actual racing hours.

(9) Warming up a horse without silks at any time.

(10) Disturbing the peace.

(11) Refusal to take a breath analyzer test.

(12) Refusal, when requested by the Commission to submit evidence of physical and mental ability or to submit to a physical examination, or both.

(13) Failure to participate in post parade, unless specifically excused by Presiding Judge.

(14) Any other act or conduct detrimental to the sport or reflects negatively on the sport.

(15) Violation of any rule, regulation, order or directive of the Commission.

(16) Failure or refusal to obey a rule, regulation, order or directive of the Commission, including but not limited to a properly issued records subpoena.

(17) Falsifying or misrepresenting answers on the application for license.

(18) Failure to name a driver at the properly prescribed time of the race meet.

§ 205.502. Suspension until fines paid.

All persons who have been fined for violation of these rules and regulations shall be suspended until the fine has been paid in full.

§ 205.503. Recording and posting of penalties.

Written notice of all fines and other penalties imposed by the Judges shall be delivered to the person penalized in accordance with the applicable provisions of Commission's regulations, posted immediately at the race secretary's office of the licensed racing entity and forwarded to the USTA.

§ 205.504. Effect of minor suspension on future engagements.

Where the suspension imposed by the Judges is for a driving violation and does not exceed in time a period of 5 days, the driver may complete the engagement of all horses programmed to race in before the penalty becomes effective. With permission from the Presiding Judge, a driver may drive in stake, futurity, early closing and feature races, during a suspension of 5 days or less but the underlying suspension will be extended 1 day for each date the driver drives in a race.

§ 205.505. Effect of suspension penalty.

Whenever a suspension is prescribed in these rules it shall be construed to mean an unconditional exclusion and disqualification from any participation, either directly or indirectly, in the privileges and uses of the course and grounds of the licensed racetrack, unless otherwise specifically authorized by the Presiding Judge when the suspension is imposed.

§ 205.506. Effect of penalty on the horse.

No horse shall have the right to compete while owned or controlled wholly or in part by a suspended, expelled, disqualified or excluded person. No suspended, disqualified or excluded person shall drive, nor shall a suspended or disqualified horse perform in a race.

§ 205.507. Fraudulent transfer of a horse.

(a) The attempted transfer of a horse by a trainer while under suspension or by the owner of the horse on behalf of the suspended trainer to avoid or circumvent the trainer's suspension shall constitute fraud and will be a separate violation of the rules. The person seeking the approval by the Judges of a transfer of a horse shall provide supporting information and records relating to the new programmed trainer of the horse, and the relationship to the suspended trainer.

(b) No transfers shall be approved if the transfer is to a spouse, family member or to a current or former employee.

§ 205.508. Participation by a suspended person or horse.

A licensee knowingly and willfully allowing a suspended, disqualified or excluded person to participate in a race or a suspended or disqualified horse to start in a race shall be subject to a fine or suspension.

§ 250.509. Reciprocity of penalty imposed by other racing authorities.

(a) All penalties imposed by other racing authorities, state racing commissions or the USTA shall be recognized and fully enforced by the Commission unless application is made by the licensee for a hearing before the Commission at which time the applicant may show cause as to why the penalty should not be enforced against him in this Commonwealth. If a hearing is granted, the Commission may delay enforcement of the reciprocal penalty.

(b) When the Commission receives notice that a person or horse, or both, has been penalized by another racing authority, state racing commission or by the USTA, the

Commission may, for good cause shown and upon consideration of the record of the proceedings before the racing authorities and state racing commissions, modify or adjust the penalty accordingly to conform with the Commission's regulations.

(c) Notwithstanding the previous provisions, the Commission may conduct its own original inquiry and investigation regarding the penalties imposed by another racing authority or state racing commission and may take separate action based on the conclusion of its investigation.

§ 205.510. Dishonored payment.

Any person who pays an entry, a fine or other claim to the Commission or any entry, claim, or fine to a licensed racing entity by a draft, check or money order, which upon presentation is protested, payment refused or otherwise dishonored, may be subject to an additional fine. If the protested, refused or dishonored payment is for a fine, the licensee shall remain suspended until the original fine and the additional fee has been paid.

Subpart E. THOROUGHBRED RULES OF RACING (HORSE)

Chap.	
301.	GENERAL PROVISIONS—TEMPORARY REGULATIONS
303.	LICENSING, DUTIES AND RESPONSIBILITIES OF THOROUGHBRED OCCUPATIONAL LICENSEES—TEMPORARY REGULATIONS
305.	RULES OF THOROUGHBRED RACING—TEMPORARY REGULATIONS
307.	PENNSYLVANIA BREEDERS' FUND PROGRAM—TEMPORARY REGULATIONS

CHAPTER 301. GENERAL PROVISIONS—TEMPORARY REGULATIONS

Sec.	
301.1.	Scope
301.2.	Definitions.

§ 301.1. Scope.

(a) The rules, regulations and policies under which thoroughbred horse racing shall be conducted in this Commonwealth are prescribed by the act and by the State Horse Racing Commission.

(b) No person shall participate in or engage in any aspect of pari-mutuel racing activities without a proper license.

(c) All persons, whether licensed or not licensed, shall be subject to and abide by the laws of the Commonwealth, and the regulations of the Commission and shall accept the decisions of the Board of Steward, the Bureau Director or the Commission on matters arising within their exclusive jurisdiction and authority, subject to the right to an administrative appeal.

§ 301.2. Definitions.

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

Age—Beginning on the first day of January in the year in which the horse is foaled.

Allowance race—An overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, sex, earnings and number of wins.

Also eligible—Pertains to:

(a) a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become

eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

(b) in a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, under the written conditions of the race.

Arrears—Includes moneys due for entrance forfeits, fees (including jockey's fees), forfeitures, subscriptions, stake, purchase money in claiming races and also a default in money incident to the rules.

Arrest—Refers to a criminal matter in which the applicant has been indicted, booked or otherwise charged and which is pending final disposition. A matter on which a final judgment or order has been entered should be reported under "conviction." (Reference should be made to the term "conviction" as set forth in this section.)

Association grounds—All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, employee housing facilities and parking lots and any other areas under the jurisdiction of the Commission.

Authorized agent—A person appointed by a written instrument, signed and acknowledged before a notary public and filed in accordance with the rules, who is thereupon entitled to represent a licensed owner-principal. Authorization will be deemed unrestricted unless otherwise prepared in strict compliance with the provisions of this subpart.

Betting interest—One or more horses in a pari-mutuel contest which are identified by a single program number for wagering purposes.

Bleeder—A horse which has demonstrated evidence of exercise induced pulmonary hemorrhage.

Bleeder List—A tabulation of all bleeders to be maintained by the Commission.

Breeder—The owner of the horse's dam at the time of foaling.

Claiming race—A race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules.

Conditions—Certain qualifications which determine a horse's eligibility to be entered in a race.

Conviction—A final judgment of guilt or criminal culpability in either juvenile or adult proceeding, whether arising from verdict, judgment or order of a Court or from a plea of guilty, of no contest or nolo contendere or other form of final disposition. Conviction does not include accelerated rehabilitative disposition adjudications (A.R.D.'s) or other similar forms of preindictment release where a final record of guilt or conviction will not follow.

Corrupt practice—Includes the Commission, the attempt to commit or the solicitation, inducing or attempt to induce a violation of a rule of racing or civil or criminal statute pertinent or relevant to racing by a person whether acting alone or in concert.

Coupled entry—Two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes (see also, *Entry*).

Dead heat—The finish of a race in which the noses of two or more horses reach the finish line at the same time.

Declaration—The act of withdrawing an entered horse from a race before the closing of overnight entries.

Draw—The process of assigning post positions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

Entry—

(i) A horse eligible for and entered in a race.

(ii) Two or more horses which are entered and run in a race which have common ties of ownership, lease or training (see also, *Coupled entry*).

Equipment—As applied to a horse, shall mean whips, blinkers, tongue straps, muzzles, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

Flat race—A race in which horses mounted by jockeys run over a course on which no jumps or other obstacles are placed.

Forfeit—Money due to a party because of an error, fault, neglect of duty, breach of contract or a penalty ordered by the Stewards or the Commission.

Foul—The term includes an infraction of the rules of racing involving physical conduct occurring during the actual running and course of a race.

Furosemide (Lasix) List—A listing of all horses eligible to participate in a race with furosemide in its system.

Horse—A Thoroughbred duly registered with the Jockey's Club and includes a 2-year-old, stallion, filly, mare, colt, gelding or ridgling.

Inquiry—An investigation by the Stewards of potential interference in a contest prior to declaring the result of said contest official.

Jockey—A race rider currently licensed, or permitted to ride, or both.

Licensee—A person or entity holding a form of license from the Commission who is exercising the powers, privileges or prerogatives of a licensee or who is acting in a manner as to apparently indicate they are entitled to hold or who should hold a license.

Maiden—A horse which at the time of starting has never won a race on the flat at a recognized meeting in any country. A maiden which has been finally disqualified after finishing first is thereafter still to be considered a maiden.

Maiden race—A contest restricted to nonwinners.

Match race—A race between two or more horses under conditions agreed to by their owners.

Mutuel field—Two or more contestants treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

Nomination—The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

Nominator—A person in whose name a horse is entered for a race.

Objection—

(a) a written complaint made to the Stewards concerning a horse entered in a race and filed not later than one hour prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or

(b) a claim of foul in a race lodged with the Stewards or their designee by the horse's jockey, trainer, or owner before the race is declared official.

Official Starter—The official responsible for dispatching the horses for a race.

Off time—The moment at which, on the signal of the official Starter, the doors of the starting gate are opened, officially dispatching the horses in each contest.

Optional claiming race—A race restricted to horses who have started previously for a designated claiming price or less, whose owner or trainer may, at his discretion, enter the horse to be claimed. In the case of horses entered to be claimed in a race, the race will be considered for the purposes of these rules, a claiming race.

Overnight race—A contest for which entries close at a time set by the racing secretary; also known as Purse Race.

Owner—Includes the sole owner, a part owner, a holder of any beneficial or equitable interest present, reversionary or expectant interest or the lessee of a horse. An interest only in the winnings of a horse does not constitute part ownership.

Paddock—An enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

Place—First, second or third in the order of finish of a race and are referred to, respectively, as "win," "place" and "show."

Post—The place on the course from which a race is designated to start.

Post position—The position assigned to a horse at the starting line of the race.

Post time—The time set for the arrival at the starting point of the horses in a race. It shall be posted a reasonable time prior to the race on a clock device, provided for that purpose, prominently displayed before and clearly visible from the grandstand. The post time of each race shall be set by the pari-mutuel department manager and shall not be changed after being posted without permission of the Stewards.

Protest—A formal complaint filed after a race with the Stewards in accordance with the rules, protesting the right of any horse to a place, purse, award or entitlement in a race or protesting or excepting to a decision relating to eligibility, participation or placing of a horse in a race.

Race day—A day during which racing is authorized and conducted.

Racing official—The term as used in this chapter shall include, but not be limited to: Stewards, placing Judges and patrol Judges, the clerk of scales, a horse identifier, a Starter, a paddock Judge, a racing secretary, an assistant racing secretary, the handicapper, a timer, horsemen's bookkeeper, Commission Veterinarian, track veterinarian, a mutuel manager, a chief of security and any other person designated by the Commission.

Recognized meeting, authorized meeting or race meeting—Includes the entire period of time designated by the Commission for the conduct of pari-mutuel racing activities by a licensed association. Meetings of a given association or of several associations may be split or joined as shall be determined and authorized by the Commission.

Rules—The rules and regulations adopted by the Commission that are in effect at a given time together with additions and modifications thereto.

Scratch—The act of withdrawing an entered horse from a contest after the closing of entries.

Scratch time—The deadline for withdrawal of entries from a scheduled performance.

Stakes race—A contest in which nomination, entry and/or starting fees contribute to the purse. Special designations or classifications for stakes races as "Graded Stakes" or "Black Type" shall be determined by the appropriate breed registries or recognized authorities.

Starter—A horse which becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official Starter.

Steward—The duly appointed Commission racing official with powers and duties to serve at each horse race meeting conducted by a licensed racing entity as specified by statute or regulation.

Subscription—The act of nomination or entry of a horse to a stakes race.

Walkover—Occurs when one and only one of the owners who has nominated for a race qualifies a horse to start. When only one horse or interest has qualified to start in a race, that horse shall be ridden past the Judge's Stand and go to the post and shall then be deemed the winner. It shall receive entrance fees, forfeit, but no portion of a purse, stake, or added money or another prize.

Weigh in—The presentation of a jockey to the clerk of scales for weighing after a race.

Weigh out—The presentation of a jockey to the clerk of scales for weighing prior to a race.

Weight for age—Standard weight according to the scale set forth in the rules or regulations, regardless of weight penalties or allowances.

Winner—The horse whose nose reaches the finish line first or is placed first through disqualification by the Stewards.

CHAPTER 303. LICENSING, DUTIES AND RESPONSIBILITIES OF THOROUGHBRED OCCUPATIONAL LICENSEES—TEMPORARY REGULATIONS

- Sec. 303.1. Thoroughbred license categories.
- 303.2. Knowledge of rules.
- 303.3. License presentation.
- 303.4. Visitor's pass.

SAFETY EQUIPMENT

- 303.5. Helmets and vests.

OWNERS

- 303.6. Licensing requirements for owners.
- 303.7. Licensing requirements for multiple owners.
- 303.8. Lease agreements.
- 303.9. Stable name registration.
- 303.10. Racing colors.
- 303.11. Transfer of ownership.

TRAINERS

- 303.12. Eligibility.
- 303.13. Trainer responsibility rule.
- 303.14. Responsibilities of trainers.
- 303.15. Other duties and responsibilities of trainers.
- 303.16. Trainer treatment records.
- 303.17. Corticosteroid and intra-articular injection reporting requirements.
- 303.18. Restrictions on wagering.
- 303.19. Assistant trainers.
- 303.20. Substitute trainer.
- 303.21. Owners authorized agents.
- 303.22. Powers and duties of an authorized agent.

JOCKEY LICENSE

- 303.31. Eligibility for licensure.
- 303.32. Apprentice jockeys.
- 303.33. Jockey duties and responsibilities.
- 303.34. Jockey agent eligibility.
- 303.35. Limit on contracts.
- 303.36. Responsibilities of agents.
- 303.37. Prohibited areas.
- 303.38. Agent withdrawal.

FARRIERS

- 303.51. Eligibility for a Farrier's license.
- 303.52. Reciprocity with other states.
- 303.53. Commission appointed testing organization.

PRACTICING VETERINARIANS

- 303.71. Eligibility for Commission license.
- 303.72. Duties and responsibilities.
- 303.73. Restrictions on wagering.

§ 303.1. Thoroughbred license categories.

(a) Thoroughbred license categories shall include the following and others as may be established by the Commission in its discretion:

(1) Racing participants and personnel (including owner, authorized agent, trainer, assistant trainer, jockey, apprentice jockey, jockey agent, exercise rider, pony rider, veterinarian, veterinary assistant, Farrier and stable employees);

(2) Thoroughbred racing officials (including Steward, racing secretary, Starter, horsemen's bookkeeper, timer/clocker, clerk of scales, jockey room custodian, paddock Judge, patrol Judge, placing Judge, Commission Veterinarian, racetrack veterinarian and horse identifier);

(3) Persons employed by the licensed racing entity, by a racing vendor or any other person whose employment at the racetrack enclosure requires their presence in a restricted area, or which requires their presence anywhere on racetrack grounds while pari-mutuel wagering is being conducted; and

(b) Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee as set forth in Chapter 185 (relating to occupational licenses—temporary regulations). Persons may also be required to provide proof of identity and proper employment authorization.

(c) License applicants may be required to furnish to the Commission a set of fingerprints and a recent photograph and may be required to be re-fingerprinted or re-photographed periodically as determined by the Commission.

§ 303.2. Knowledge of rules.

A licensee shall be knowledgeable of the rules and regulations of the Commission and by acceptance of a license issued under Chapter 185 (relating to occupational licenses—temporary regulations) agrees to abide by these rules.

§ 303.3. License presentation.

When requested by Commission personnel or licensed racetrack security, a person shall present an appropriate license to enter a restricted area. A license may only be used by the person to whom it is issued. The licensed racing entity, in consultation with the Commission, may establish procedures and protocols for the visible display of a license while in the racetrack enclosure, including the restricted area.

§ 303.4. Visitor's pass.

Track security may authorize unlicensed persons temporary access to restricted areas. These persons shall be identified and their purpose and credentials verified and approved in writing by track security. A copy of the written approval shall be filed with the Commission or its designee within 48 hours. This authorization or credential may only be used by the person to whom it is issued.

SAFETY EQUIPMENT**§ 303.5. Helmets and vests.**

(a) Any person mounted on a horse or stable pony while on the licensed racetrack or association grounds must wear a protective safety helmet securely fastened under the chin at all times. Additionally, all members of the starting gate crew must adhere to this regulation at all times while performing their duties or handling a horse. For the purpose of this regulation, a member of the starting crew means any person licensed as an assistant Starter or any person who handles a horse in the starting gate. The helmet must comply with one of the following minimum safety standards or later revisions:

- (1) American Society for Testing and Materials (ASTM 1163);
- (2) European Standards (EN-1384 or PAS-015 or VG1);
- (3) Australian/New Zealand Standards (AS/NZ 3838 or ARB HS 2012);
- (4) Snell Equestrian Standard 2001.

(b) Any person mounted on a horse or stable pony on the association grounds must wear a properly-secured safety vest at all times. Additionally, all members of the starting gate crew must also adhere to this regulation at all times while performing their duties or handling a horse. For the purpose of this regulation, a member of the starting gate crew means any person licensed as an assistant Starter or any person who handles a horse at the starting gate. The safety vest must comply with one of the following minimum standards or later revisions:

- (1) British Equestrian Trade Association (BETA):2000 Level 1;
- (2) Euro Norm (EN) 13158:2000 Level 1;
- (3) American Society for Testing and Materials (ASTM) F2681-08 or F1937;
- (4) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or
- (5) Australian Racing Board (ARB) Standard 1.1998.

(c) A safety helmet or a safety vest shall not be altered in any manner nor shall the product marking be removed or defaced.

(d) All horses with a jockey or exercise rider mounted that are racing, parading or warming up prior to racing or jogging or exercising at any time must be equipped with a type of safety reins approved by the Commission. Reins to be approved by the Commission may be originally designed and constructed to provide a secure secondary attachment to the bit that is secured to a reinforcement material to prevent failure due to breakage of the rein, or breakage or inadvertent loss of the primary connection to the bit.

(e) The Commission, by written notice to the regulated community and by Order published in the *Pennsylvania Bulletin*, may amend, modify or update the previously stated required minimum standards for helmets and vests.

(f) Failure of the previously stated persons to adhere to the previously stated safety helmet and safety vests provisions may subject the person to the following penalties:

- (1) First offense—a written warning;
- (2) Second offense—\$50 fine;
- (3) Third or subsequent offense—\$250 fine or suspension, or both, at the discretion of the Stewards.

OWNERS

§ 303.6. Licensing requirements for owners.

(a) Each person who has a 5% or more ownership or beneficial interest in a horse is required to be licensed.

(b) An applicant for an owner's license shall own or lease a horse which is eligible to race, registered with the racing secretary and under the care of a trainer licensed by the Commission. An owner shall notify the Stewards of a change in trainer of his/her horse. A horse shall not be transferred to a new trainer after entry.

(c) Notwithstanding § 185.6 (relating to age requirement) of the Commission's regulations, a horse owner of any age may apply for an owner's license. If younger than 18 years of age, an applicant for an owner's license shall submit a notarized affidavit from the applicant's parent or legal guardian stating that the parent or legal guardian assumes responsibility for the applicant's financial, contractual and other obligations relating to the applicant's participation in racing.

(d) Each licensed owner is responsible for disclosure to the Commission or its designee of the true and entire ownership of each of the owner's horses registered with the racing secretary. Any change in ownership or trainer of a horse registered with the racing secretary shall be approved by the Stewards. Each owner shall comply with all licensing requirements set forth in Chapter 185 (relating to occupational licenses—temporary regulations).

(e) The Commission or its designee may refuse, deny, suspend or revoke an owner's license for the spouse or member of the immediate family or household of a person ineligible to be licensed as an owner, unless the applicant or licensed owner demonstrate and the Commission concludes that participation in racing will not permit a person to serve as a substitute for an ineligible person. The transfer of a horse to a spouse, member of the immediate family or household solely to circumvent the ineligible status of the owner of the horse is prohibited.

§ 303.7. Licensing requirements for multiple owners.

(a) If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall be licensed as required by this rule.

(b) Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the Commission all owners holding a 5% or greater beneficial interest, unless otherwise required by the Commission.

(c) Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a 5% ownership or beneficial interest shall file with the Commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.

(d) Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notices, or orders from the Commission at the address shall constitute official notice to all persons involved in the ownership of the horse. The written appointment of a managing owner or authorized agent shall be filed with the Commission.

§ 303.8. Lease agreements.

A horse may be raced under lease provided a completed breed registry or other lease form acceptable to the Commission is attached to the certificate of registration and on file with the Commission. The lessor and lessee shall be licensed as horse owners.

§ 303.9. Stable name registration.

Licensed owners and lessees may adopt a stable name subject to the approval of the Commission.

(1) The applicant shall identify all persons using the stable name. Any changes shall be reported immediately to the Commission.

(2) A person who has registered a stable name may cancel it upon written notice to the Commission.

(3) A stable name may be changed by registering a new stable name.

(4) A stable name which has been registered by any other person will not be approved by the Commission.

(5) A stable name shall be clearly distinguishable from other registered stable names.

(6) The stable name or the name of the owner shall be published in the program. If the stable name consists of more than one person, the program shall list the name of the managing owner along with the phrase "et al."

(7) All persons using a stable name shall comply with all rules regarding licensing of owners.

§ 303.10. Racing colors.

(a) Owners or trainers shall provide racing colors which may be subject to the approval of the Commission, unless the colors are furnished by the licensed racing entity. Racing colors shall be registered with the racing secretary. The Stewards may authorize a temporary substitution of racing colors when necessary.

(b) The racing colors to be worn by each jockey in a race shall be described in the program and any change shall be announced to the public prior to the beginning of the race.

§ 303.11. Transfer of ownership.

Once a horse has been registered with The Jockey Club or a similar registration entity, the horse may not be transferred to a new owner, unless claimed, without permission of a Board of Stewards who may require a bona fide bill of sale signed by both buyer(s) and sellers(s) and the transfer of ownership must be timely reported to The Jockey Club or a similar registration entity.

TRAINERS

§ 303.12. Eligibility.

(a) In addition to the general licensing requirements set forth in Chapter 185 (relating to occupational licenses—temporary regulations), an applicant for a license as a thoroughbred trainer shall comply with the following:

- (1) Be at least 18 years of age;
- (2) If not previously licensed as a trainer, the applicant must provide evidence of:

(i) At least 2 years of experience as a licensed assistant trainer, or comparable experience in other equine disciplines, or college-level education in equine science and/or horsemanship;

(ii) Submission of two written statements from trainers currently licensed in this Commonwealth or other jurisdiction as to the applicant's character and qualifications and one written statement from a currently licensed owner stating intent to place one or more horses with the applicant, when licensed; and

(iii) Shall be required to pass a written examination, oral interviews with the Stewards and the Commission Veterinarian and demonstrate practical skills.

(b) A trainer licensed and in good standing in another jurisdiction, having been issued within a prior period as determined by the Commission, may be accepted if evidence of experience and qualifications are provided to the Stewards. Evidence of qualifications, as determined by the Stewards, shall require passing one or more of the following:

- (1) A written examination;
- (2) A demonstration of practical skills; or
- (3) An interview with the Stewards.

(c) Upon timely request to the Stewards due to disability or other factors affecting the applicant's ability to effectively complete the trainer's test (for example, illiteracy or language barriers), reasonable accommodations may be made for the applicant including, but not limited to oral administration of the examination, use of a pre-approved translator, and aid from pre-approved assistant where deemed appropriate by the Stewards administering the examination.

(d) If established or adopted by the Commission, as an ongoing condition of licensure, trainers shall be required to attend continuing education classes or programs specifically designed for trainers.

§ 303.13. Trainer responsibility rule.

(a) The trainer is responsible for the condition of the horse entered in an official workout or race and is charged with the responsibility to guard and protect the horse at all times regardless of the trainer's location. The trainer shall be responsible for the presence of any prohibited drug, medication, agent or other substance, including permitted medications in excess of the maximum allowable level, in these horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible.

(b) A trainer shall prevent the administration, attempted administration or passive contamination by others, including the trainers' employees and assistants who have care, custody and control of the horse from any drug, medication, or other prohibited substance that may cause a violation of these rules.

(c) A trainer shall immediately report to the Stewards and the Commission Veterinarian if the trainer knows, or has cause to believe, that a horse in the trainer's care, custody or control has received any prohibited drugs or medications.

§ 303.14. Responsibilities of trainers.

(a) A licensed trainer may represent the owner in the matter of entries, declarations and the employment of

jockeys. A licensed trainer may not have an interest, whether by ownership or lease, in a horse of which he is not the trainer at a race meeting at which the trainer is operating as a licensed trainer.

(b) A trainer who represents or files an application for an unlicensed owner shall file with the Commission an affidavit certifying that the trainer will secure a license for the owner within 30 days. The trainer or owner shall be jointly responsible for ensuring the timely and accurate filing of the owner's application. Failure of either to properly secure a license for the owner, may subject both the owner and trainer to a sanction or penalty.

(c) When a trainer is to be absent from the trainer's stable or the grounds where the trainer's horses are racing for a period of more than 2 days and horses are entered or are to be entered, the trainer shall provide a licensed trainer to assume the complete responsibility of the horses entered to run or running. The licensed trainer shall sign in the presence of the Stewards a form furnished by the Commission accepting complete responsibility for the horses being entered and running. This section does not apply to trainers having in their employ a licensed assistant trainer.

(d) A trainer may not enter or start a horse that:

- (1) Is not in serviceable, sound racing condition.
- (2) Has its median, volar or plantar nerves either blocked or removed. The horse is not permitted to race on Commonwealth tracks. A horse which has been nerved below the fetlock (digital nerves) may be permitted to start.
- (3) The trainer knows or has reason to know that the horse has been given, either internally or externally, a stimulant, depressant, hypnotic, narcotic drug or other medication prior to the race.

(4) Is on the Stewards' List, Starter's List or Veterinarian's List in any racing jurisdiction.

§ 303.15. Other duties and responsibilities of trainers.

In addition to the duties and responsibilities set forth in §§ 303.13 and 303.14 (relating to trainer responsibility rule; and responsibilities of trainers), a trainer shall also be responsible for:

- (1) The condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;
- (2) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;
- (3) Ensuring that fire prevention rules are strictly observed in the assigned stable area;
- (4) Providing a list to the Commission of the trainer's employees on association grounds and any other area under the jurisdiction of the Commission. The list shall include each employee's name, occupation, social security number and occupational license number. The Commission shall be notified by the trainer, in writing, within 24 hours of any change;
- (5) Ensuring the adequate care, custody, condition, fitness, health, safety and security of horses under his/her care, custody, and control;

(6) Disclosing the true and entire ownership of each horse the trainer's care, custody or control. Any change in ownership shall be reported immediately to, and approved by, the Stewards and recorded by the racing secretary;

(7) Training all horses owned wholly or in part by the trainer which are participating at the race meeting;

(8) Registering with the racing secretary each horse in the trainer's charge within 24 hours of the horse's arrival on the licensed racetrack facility grounds;

(9) Ensuring that, at the time of arrival at a licensed racetrack, each horse in the trainer's care, custody or control is accompanied by a valid health certificate (Coggins) which shall be filed with the racing secretary;

(10) Immediately reporting the alteration of the sex of a horse in the trainer's care to the horse identifier and the racing secretary, whose office shall note the alteration on the certificate of registration;

(11) Promptly reporting to the racing secretary and the Commission Veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that the fact is designated on its certificate of registration;

(12) Promptly notifying the Commission Veterinarian of any suspected or actual knowledge of a reportable disease and any unusual incidence of a communicable illness in any horse in the trainer's care;

(13) Promptly reporting the death of any horse in his/her care on association grounds to the Stewards and the Commission Veterinarian and compliance with the rules and regulations governing post-mortem examinations;

(14) Representing an owner in making entries and scratches and in all other matters pertaining to racing;

(15) Horses entered as to eligibility and weight or other allowances claimed;

(16) Ensuring the fitness of a horse to perform creditably at the distance entered;

(17) For having the entered horse standing by and ready for the Pre-Race Veterinary Examination (racing soundness examination) to be conducted by the Commission Veterinarian or designee. The trainer shall have all bandages, blankets and muzzles of and horse's legs clean and free of substances, sweats or leg medications;

(18) For participating and assisting the Commission Veterinarian with pre-race examination tasks, including the safe restraint of the horse, tattoo identification or jogging the horse as requested. Failure by the trainer or assistant trainer to comply with the direction, request or requirement issued by the Commission Veterinarian during the course of a pre-race examination shall result in the horse being scratched from the race and disciplinary action being taken against the trainer;

(19) Ensuring that the trainer's horses are properly shod, bandaged and properly equipped with a type of safety reins that are approved by the Commission that are originally designed and constructed to insure a secure secondary connection to the bit and reinforcement to prevent breakage;

(20) Presenting the trainer's horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered and personally attending to the horse in the paddock and supervising the saddling thereof, unless excused by the Stewards;

(21) Instructing the jockey to give the jockey's best effort during a race and that each horse shall be ridden to win;

(22) Attending the collection of post-race urine and blood samples from the horse in the trainer's charge or delegating a licensed employee or the owner of the horse to do so; and

(23) Notifying horse owners upon the revocation or suspension of the trainer's license. A trainer whose license has been suspended or whose license has expired or been revoked; or license application has been denied, must inform the horse owners that until the license is restored the trainer can no longer be involved with the training, care, custody or control of their horses, nor receive any compensation from them for the training, care, custody or control of their horses. Upon application by the owner, the Stewards may approve the transfer of the horses to the care of another licensed trainer, and upon the approved transfer, the horses may be entered to race. Upon transfer of the horses, the inactive trainer shall not be involved in any arrangements related to the care, custody or control of the horses and shall not benefit financially or in any other way from the training of the horses.

§ 303.16. Trainer treatment records.

(a) A trainer shall accurately document and maintain a record or log of all trainer treatments for every horse in the trainer's care, custody or control. Each treatment by the trainer shall be recorded within 24 hours of administration. The trainer treatment log shall be maintained electronically or on paper.

(1) Treatment, for the purposes of this section, means any medication or procedure containing a medication administered to a horse by a licensed trainer or the trainer's designee.

(2) Treatment, for the purposes of this section, specifically excludes medications or procedures administered by a veterinarian licensed by the Commission.

(3) This section includes the administration of medications that are prescribed by a veterinarian but administered by the trainer or his or her designee.

(4) This section also includes those treatments that are administered by a veterinarian not licensed by the Commission.

(b) Trainer treatment records or log as required in subsection (a) must include the following information:

(1) The name of the horse (or, if unnamed, the registered name of the dam and year of foaling);

(2) The generic name of the drug (for example, phenylbutazone, methocarbamol);

(3) The name and address of the prescribing veterinarian;

(4) The brand name of the drug if a non-generic is used;

(5) The date of the treatment;

(6) The route and method of administration;

(7) The dosage administered;

(8) The approximate time (to the nearest hour) of each treatment;

(9) The first and last name of the individual that administered the treatment; and

(10) The treating veterinarian shall sign or initial the trainer's treatment log on the first day a horse receives a prescription medication.

(c) The trainer's treatment records or log shall be made available for inspection upon a request by the Commission at any time. Failure to provide accurate and complete trainer treatment records shall result in disciplinary action.

(d) Copies of trainer treatment records must be maintained for at least 6 months.

§ 303.17. Corticosteroid and intra-articular injection reporting requirements.

(a) Trainers or their designees shall accurately keep and maintain complete records of all corticosteroid and intra-articular injections for all horses in the trainer's care, custody or control. Complete corticosteroid and intra-articular injection reports shall include:

- (1) The date of the injection;
- (2) The name of the veterinarian performing the injection;
- (3) The articular space(s) or structure(s) injected;
- (4) The medication or biologicals used to inject each articular space; and
- (5) The dose in milligrams of each corticosteroid used.

(b) This information shall be maintained for a minimum of 6 months to facilitate compliance with this regulation. If a horse is successfully claimed by a new owner, the trainer of record at the time of that claiming race must provide that horse's complete corticosteroid and intra-articular injection report for the previous 6 months.

(c) The above reports shall be maintained in whatever format the trainer elects. However, if the Commission requests a copy of the report, it must be provided in electronic form.

(d) The report must be provided to the new trainer within 48 hours of the transfer of the horse. The previous trainer or the trainer's designee shall notify the Commission Veterinarian when the records have been provided to the new trainer.

(e) Submission of the report and records may be delegated to the treating veterinarian, who shall provide the report to the new trainer within 48 hours of the transfer of the horse.

(f) Failure of the trainer to provide the reports as required shall result in disciplinary action.

§ 303.18. Restrictions on wagering.

A trainer shall only be allowed to wager on the trainer's horse or entries to win or to finish first in combination with other horses.

§ 303.19. Assistant trainers.

(a) A trainer may employ an assistant trainer as approved by the Stewards. The trainer shall notify the racing secretary of the use of an assistant trainer. The assistant trainer shall be duly licensed prior to acting in the capacity on behalf of the trainer. Qualifications for obtaining an assistant trainer's license shall be prescribed by the Stewards and the Commission and may include those requirements prescribed in this chapter.

(b) An assistant trainer may substitute for and shall assume the same duties, responsibilities and restrictions as imposed on the licensed trainer. In which case, the trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing.

(c) An assistant trainer shall not enter a horse owned in whole or in part by the assistant trainer or compete against the trainer's horses in a race while employed by the trainer.

§ 303.20. Substitute trainer.

(a) A trainer, who is absent for more than 2 days from their duties and responsibilities as a licensed trainer or

on a day in which the trainer has a horse in a race, shall obtain another licensed trainer to substitute.

(b) A substitute trainer shall accept full responsibility for the horses in writing and must be approved by the Stewards.

(c) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race under § 303.13 (relating to trainer responsibility rule of these regulations).

§ 303.21. Owners authorized agents.

(a) A person undertaking or purporting to act as an authorized agent of an owner shall apply and secure a license from the Commission prior to the representation. An application for an authorized agent license shall be filed for each owner represented.

(b) A written instrument signed by the owner shall accompany the application and shall clearly set forth the delegated powers of the authorized agent. The owner's signature on the written instrument shall be acknowledged before a notary public.

(c) If the written instrument is a power of attorney it shall be filed with the Commission and attached to the regular application form.

(d) Any changes shall be made in writing and filed as set forth above.

(e) The authorized agent's appointment may be terminated by the owner, in writing, acknowledged before a notary public and filed with the Commission whereupon the license shall not be valid.

§ 303.22. Powers and duties of an authorized agent.

(a) A licensed authorized agent may perform on behalf of the licensed owner-principal all acts as relate to racing, as specified in the agency appointment, that could be performed by the principal if the principal were present.

(b) In executing any document on behalf of the principal, the authorized agent shall clearly identify the authorized agent and the owner-principal.

(c) When an authorized agent enters a claim for the account of a principal, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

(d) Authorized agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority. Any change in ownership shall be reported immediately to, and approved by, the Stewards and recorded by the racing secretary.

JOCKEY LICENSE

§ 303.31. Eligibility for licensure.

(a) No person may participate in racing as a jockey unless and until duly licensed by the Commission in accordance the Commission's regulations and procedures, including the provisions of Chapter 305 (relating to rules of Thoroughbred racing—temporary regulations).

(b) No person under 18 years of age shall be licensed by the Commission as a jockey, except persons who have been licensed by this Commission prior to the date of adoption of this rule.

(c) An applicant shall show competence by prior licensing and the demonstration of the jockey's riding ability, which may include participation in up to five races with

the prior approval of the Stewards. The demonstration of riding ability includes at a minimum:

- (1) Breaking with a horse in company from the starting gate;
 - (2) Working a horse in company around the turn and down the stretch;
 - (3) Switching the riding crop from one hand to the other while maintaining control of the horse in a stretch drive;
 - (4) Causing a horse to switch leads coming out of the turn.
- (d) A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

(e) A person whose weight exceeds 130 pounds at the time of application shall not be licensed as a jockey.

(f) A jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey and a baseline concussion test using the most current SCAT testing protocol, if required by Commission regulation or by a licensed racing entity in accordance with an adopted concussion protocol program. The results of the physical examination and the baseline test shall be provided by the jockey to the Commission. The Stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of the examinations.

§ 303.32. Apprentice jockeys.

(a) No person may participate in racing as an apprentice jockey unless and until duly certified as an apprentice by the Stewards in accordance the Commission's regulations and procedures, including the provisions of §§ 305.275—305.277 (relating to requirements for apprentice jockeys; apprentice jockey weight allowances in overnight races; and applications for extensions).

(b) No person under 18 years of age shall be licensed by the Commission as a jockey, except persons who have been licensed by this Commission prior to the date of adoption of this rule.

(c) An applicant may be prohibited from riding until the Stewards or the Commission has sufficient opportunity (not to exceed 14 days) to verify the applicant's previous riding experience.

(d) An applicant with an approved apprentice certificate may be licensed as an apprentice jockey. An apprentice certificate may be obtained from the Stewards on a form provided by the Commission. A person shall not receive more than one apprentice certificate. In case of emergencies, a copy of the original may be obtained from the racing jurisdiction where it was issued.

(e) An apprentice jockey may ride with a five-pound weight allowance beginning with the apprentice's first mount and for 1 full year from the date of the apprentice's fifth winning mount. If after riding 1 year from the date of the fifth winning mount, the apprentice jockey has failed to ride a total of forty winners from the date of the first winning mount, the apprentice may continue to ride with a five-pound weight allowance for 1 more year from the date of the fifth winning mount or until the apprentice has ridden forty winners, whichever comes first. Apprentice allowance may be waived with the Stewards' permission at the time of entry by the trainer or the trainer's designee.

(f) In accordance with the provisions of § 305.277 (relating to applications for extensions), the Stewards or the Commission may extend the time during which the apprentice weight allowance may be claimed, not to exceed the period of time the apprentice jockey was unable to ride (see, APPRENTICE JOCKEY EXTENSION FORM). The Commission will take jurisdiction only on certificates which it has issued. All other requests for extensions shall be directed to the racing authority or jurisdiction that approved the apprentice certificate.

APPRENTICE JOCKEY EXTENSION FORM

Date: _____

To: _____ (Name of Racing Commission)

I hereby request an extension of my apprentice allowance for the following reason(s):

- _____ physical disability or illness.
- _____ military service.
- _____ attendance in an institution of secondary or higher learning.
- _____ other reasons which would be acceptable to the Commission. (explain below)

My apprentice allowance expires on _____ (date)

My apprentice contract expires on _____ (date)

Incident occurred at _____ on _____ (Track and location) (date)

Name(s) of Steward(s) at track: _____

I was examined at the time by _____ on _____ (Name of physician) (date)

(Address of examining physician)

I was examined and declared fit to ride by _____ on _____
 (Name of physician) (date)

 (Address of examining physician)

(Attached is a letter from my physician verifying above facts.)

Total number of calendar days I was unable to ride requested as an extension in this application _____

Name of contract holder at time of incident _____

Present contract holder, if other than above _____

Signed: _____
 (apprentice signature)

Note to applicant: No request will be considered by the Commission without a confirming report from your doctor. Be sure to secure letters from attending physicians stating nature and extent of injury, date, and the like, and names of Stewards presiding at meeting where you were injured.

§ 303.33. Jockey duties and responsibilities.

(a) A jockey shall give a best effort during a race, and each horse shall be ridden to win. A jockey shall not ease up on or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money.

(b) A jockey shall not have a valet attendant except one provided and compensated by the licensed racing entity.

(c) No person other than the licensed contract employer or a licensed jockey agent, may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make his own riding engagements.

(d) A jockey shall not have more than one jockey agent at a time.

(e) No revocation of a jockey agent's authority is effective until the jockey notifies the Stewards in writing of the revocation of the jockey agent's authority.

§ 303.34. Jockey agent eligibility.

(a) An applicant for a license as a jockey agent shall:

(1) provide written proof of agency with at least one jockey licensed by the Commission;

(2) demonstrate to the Stewards that he/she has a contract for agency with at least one jockey who has been licensed by the Commission; and

(3) be qualified, as determined by the Stewards or other Commission designee, by reason of experience, background and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

- (i) a written examination or
- (ii) an interview or oral examination.

(4) Applicants not previously licensed as a jockey agent shall be required to pass a written, oral examination, and if applicable, the Commission shall require evidence that the applicant has attended and completed a continuing education program for jockeys.

§ 303.35. Limit on contracts.

A jockey agent may serve as agent for no more than two jockeys and one apprentice jockey at a time.

§ 303.36. Responsibilities of agents.

(a) A jockey agent shall not make or assist in making engagements for a jockey other than those the agent is licensed to represent.

(b) A jockey agent shall file written proof of all agencies and changes of agencies with the Stewards.

(c) A jockey agent shall notify the Stewards, in writing, prior to withdrawing from representation of a jockey and shall submit to the Stewards a list of any unfulfilled engagements made for the jockey.

(d) All persons permitted to make riding engagements shall maintain current and accurate records of all engagements made, the records being subject to examination by the Stewards at any time.

§ 303.37. Prohibited areas.

A jockey agent is prohibited from entering the jockey room, winner's circle, racing strip, paddock or saddling enclosure during the hours of racing, unless permitted by the Stewards.

§ 303.38. Agent withdrawal.

(a) When any jockey agent withdraws from representation of a jockey, the jockey agent shall immediately notify the Stewards and shall submit to the Stewards a list of any unfulfilled engagements made for the jockey.

(b) A jockey agent shall not be permitted to withdraw from the representation of any jockey unless written notice to the Stewards has been provided.

FARRIERS

§ 303.51. Eligibility for a Farrier's license.

(a) The issuance of a Farrier's license shall be dependent upon the applicant satisfying the requirements set forth below. An applicant shall:

- (1) Be at least 18 years of age; and
- (2) Be qualified, by reason of experience, background and knowledge of horseshoeing, as determined by the Commission or its appointed testing organization.

(b) As evidence of qualifications and capabilities, applicants not previously licensed in any jurisdiction shall be required to pass one or more of the following:

- (1) A written examination;
- (2) An interview or oral examination; or
- (3) A demonstration of practical skills in horseshoeing.

(c) The Farriers' license shall be issued for a term of 3 years.

(d) If a Farrier's license is terminated by action of the Commission or by failure to renew the license for a period of 7 years, the applicant must comply with the requirements of subsection (b).

§ 303.52. Reciprocity with other states.

A Farrier's or horseshoer's license, duly issued by and in good standing from another jurisdiction, shall be reciprocally accepted by the Commission or its testing organization as evidence of the Farrier's experience and qualifications for licensure in this Commonwealth. If requested by the Commission, the Farrier shall provide any necessary documentation from the licensing jurisdiction.

§ 303.53. Commission appointed testing organization.

The examination requirements, as set forth in § 303.51(b), may be conducted by the Commission or by an organization or entity duly appointed by the Commission, which has the appropriate knowledge and expertise. The appointed organization shall establish the standards, material, and scope of the written, oral and practical examinations and shall determine the satisfactory score for the written examination, as approved by the Commission.

PRACTICING VETERINARIANS

§ 303.71. Eligibility for Commission license.

An applicant for a license as a practicing veterinarian on the grounds of a licensed racing facility shall be qualified and licensed to practice veterinary medicine in this Commonwealth. An application for a practicing veterinarian license from the Commission must be accompanied by a copy of the applicant's current license to practice veterinary medicine and be otherwise qualified to be issued a license to participate in racing.

§ 303.72. Duties and responsibilities.

(a) All practicing veterinarians licensed by the Commission and authorized to access secure areas of the licensed racing facility and to participate in racing activities shall ensure the health and welfare of racehorses and shall safeguard the interests of the public and the participants in racing.

(b) It shall be the duty of every practicing veterinarian to adhere to the highest ethical and professional standards of veterinary practice. Any deviation from those standards shall be considered a violation of the rules of racing and may subject the practicing veterinarian to discipline by the Commission including fines, suspensions or revocation.

(c) All practicing veterinarians administering drugs, medications or other substances shall be responsible for ensuring that the drugs, medications or other substances and the veterinary treatment of horses are administered in accordance with rules in Subpart F (relating to foreign substances, medications, drugs and equine veterinary practices).

(d) All practicing veterinarians shall promptly notify the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge.

§ 303.73. Restrictions on wagering.

A practicing veterinarian shall not wager on the outcome of any race if the practicing veterinarian has treated a horse participating in that race within the past 30 days.

CHAPTER 305. RULES OF THOROUGHBRED RACING—TEMPORARY REGULATIONS

- Sec. 305.1. General provisions.
- 305.2. Prohibited conduct by racing officials.
- 305.3. Conflict of interest.

- 305.4. Wagering forbidden.

RACING OFFICIALS

- 305.11. Racing officials.
- 305.12. Eligibility.
- 305.13. Approval and licensing
- 305.14. Prohibited practices.
- 305.15. Reporting of violations.
- 305.16. Observations and notifications.
- 305.17. Appointment.
- 305.18. Appointment of substitute officials.

BOARD OF STEWARDS

- 305.31. Accreditation of Stewards.
- 305.32. Power of the Stewards.
- 305.33. Disciplinary action.
- 305.34. Stewards' presence.
- 305.35. Duties of Stewards.
- 305.36. Stewards' List.

RACING SECRETARY

- 305.51. Duties of racing secretary.
- 305.52. Foal, health and other eligibility certificates.
- 305.53. List of nerved horses.
- 305.54. List of bred fillies and mares.
- 305.55. Allocation of stalls.
- 305.56. Conditions.
- 305.57. Eligibility.
- 305.58. Listing of horses.
- 305.59. Posting of entries.
- 305.60. Daily racing program.
- 305.61. Nominations and declarations.
- 305.62. Stakes and Entrance Money Records.
- 305.63. Inspection of licenses and other documents.

HORSEMEN'S BOOKKEEPER

- 305.71. General authority.
- 305.72. Records.
- 305.73. Moneys and funds on account.
- 305.74. Payment of purses.

PADDOCK JUDGE

- 305.91. Duties of paddock Judge.

HORSE IDENTIFIER

- 305.101. General authority and duties.

CLERK OF SCALES

- 305.111. Duties.

JOCKEY ROOM CUSTODIAN

- 305.121. Duties of the jockey room custodian.

STARTER

- 305.131. General authority and duties.
- 305.132. Use of starting gate.
- 305.133. Prohibited conduct.
- 305.134. Starter's List.
- 305.135. Report violations.

TIMER/CLOCKER

- 305.151. Duties of timers.
- 305.152. Duties of clockers.

PATROL JUDGE

- 305.171. Power and duties of patrol Judges.

PLACING JUDGE

- 305.191. Duties.
- 305.192. Photo finish.
- 305.193. Dead heats.

COMMISSION VETERINARIAN

- 305.201. Qualifications.
- 305.202. Duties and responsibilities of the Commission Veterinarian.
- 305.203. Veterinarian's List.

RACETRACK VETERINARIAN

- 305.221. General authority and duties.
- 305.222. Outriders.

ENTRIES AND NOMINATIONS

- 305.231. Entries.
- 305.232. Procedure.
- 305.233. Limitation as to spouses.

- 305.234. Coupled entries.
- 305.235. Nominations.
- 305.236. Closings.
- 305.237. Number of Starters in a race.
- 305.238. Split or divided races.
- 305.239. Post positions.
- 305.240. Also-eligible list.
- 305.241. Preferred list.
- 305.242. Declarations and scratches.
- 305.243. Ineligible horses.

WEIGHTS, PENALTIES AND ALLOWANCES

- 305.251. Weight allowances.
- 305.252. Weight penalties.
- 305.253. Scale of weights.
- 305.254. Timed workouts.
- 305.255. Identification.
- 305.256. Information dissemination
- 305.257. Restrictions.

RUNNING OF THE RACE

- 305.271. Racing equipment.
- 305.272. Racing numbers.
- 305.273. Jockey and apprentice license.
- 305.274. Examination of jockeys by licensed physicians.
- 305.275. Requirements for apprentice jockeys.
- 305.276. Apprentice jockey weight allowances in overnight races.
- 305.277. Applications for extensions.
- 305.278. Jockey agents.
- 305.279. Valet-attendants.
- 305.280. Jockey mount fees.
- 305.281. Jockey suspensions and designated races.
- 305.282. Jockey requirements.
- 305.283. Weighing out.
- 305.284. Paddock to post.
- 305.285. Post to finish.
- 305.286. Interference, jostling or striking.
- 305.287. Maintaining a straight course.
- 305.288. Disqualification.
- 305.289. Multiple disqualifications.
- 305.290. Horses shall be ridden out.
- 305.291. Use of a riding crop.
- 305.292. Review by Stewards.
- 305.293. Prohibition.
- 305.294. Horse leaving the racecourse.
- 305.295. Order of finish.
- 305.296. Returning after the finish.
- 305.297. Unsaddling.
- 305.298. Weighing in.
- 305.299. Dead heats.

OBJECTIONS AND PROTESTS

- 305.301. Stewards' inquiries.
- 305.302. Race objections.
- 305.303. Prior objections and protest.

CLAIMING RACES

- 305.401. General provisions.
- 305.402. Claiming of horses.
- 305.403. Procedure for claiming.
- 305.404. Prohibitions.
- 305.405. Transfer of possession of a claimed horse.
- 305.406. Delivery of claimed horse.
- 305.407. Subsequent start of a claimed horse.
- 305.408. Subsequent sale and transfer of claimed horses.
- 305.409. Posting of claiming price.
- 305.410. Starting in claiming races.
- 305.411. Foal certificate.
- 305.412. Cancellation of claiming race results.

§ 305.1. General provisions.

(a) The Commission shall annually approve each licensed racing entity employee whose duties include the enforcement of pari-mutuel racing and wagering activities which directly or indirectly affect the racing product. Compensation for a racetrack racing official shall be paid by the licensed racing entity.

(b) Racetrack racing officials shall enforce this chapter at all times and shall render regular written reports of the activities and conduct of the race meetings to the Commission, if requested by the Board of Stewards or the Commission.

(c) The Commission or its designee shall employ individuals who shall be designated as Commission racing officials and whose duties shall include the oversight and enforcement of the act, regulations and Commission policies related to pre-race and post-race activities, the conduct of live, simulcasted, electronic and pari-mutuel wagering activities and all licensees engaged in those racing activities.

(d) The purpose of this chapter is to define the duties and responsibilities of racing officials and the requirements, procedures and rules of racing.

§ 305.2. Prohibited conduct by racing officials.

(a) A person may not offer and no racing official may accept, directly or indirectly, a gratuity, reward or favor in connection with racing at the meeting.

(b) A racing official may not, directly or indirectly, for a commission, gratuity or otherwise, sell, buy or hold for himself or for another a form of interest in a thoroughbred horse that is run or entered at a meeting where he is officiating.

(c) A racing official may not, directly or indirectly, buy, sell or hold an interest in a contract upon a jockey or apprentice jockey.

(d) A racing official may not write or solicit horse insurance at the meeting.

§ 305.3. Conflict of interest.

A racing official may not participate in the supervision, regulation or review of a race in which either the racing official or a member of the racing official's family, or a business partner, agent, associate, employee or joint-venturer has participated or in which any of them has had an interest in the event there is an objection, protest, claim of foul or dispute raised with regard to the race.

§ 305.4. Wagering forbidden.

A racing official may not wager, directly or indirectly or have a form of interest in a wager of money or other value on the result of a race at the meeting at which the racing official is employed.

RACING OFFICIALS

§ 305.11. Racing officials.

Officials at a race meeting may include the following:

- (1) Stewards;
- (2) Racing secretary;
- (3) Horsemen's bookkeeper;
- (4) Paddock Judge;
- (5) Horse identifier;
- (6) Clerk of scales;
- (7) Jockey room custodian;
- (8) Starter;
- (9) Timer/clocker;
- (10) Patrol Judge, absent video replay equipment;
- (11) Placing Judge;
- (12) Commission Veterinarian;
- (13) Racetrack veterinarian;
- (14) Any other person designated by the Commission as a racing official.

§ 305.12. Eligibility.

To qualify as a racing official, the appointee shall, at a minimum be:

- (1) of good character and reputation;
- (2) experienced in flat racing;

(3) familiar with the duties of the position and with the Commission's rules of flat racing;

(4) mentally and physically able to perform the duties of the job; and

(5) in good standing and not under suspension or ineligible in any racing jurisdiction.

§ 305.13. Approval and licensing.

The Commission, in its sole discretion, may determine the eligibility of a racetrack or Commission racing official and, in its sole discretion, may approve or disapprove any official for licensing.

§ 305.14. Prohibited practices.

While serving in an official capacity, racing officials and their assistants shall not:

(1) participate in the sale or purchase, or ownership of any horse actively racing at the meeting;

(2) sell or solicit horse insurance on any horse racing at the meeting;

(3) be licensed in any other capacity without permission of the Commission, or in case of an emergency, the permission of the Stewards;

(4) wager on the outcome of any race under the jurisdiction of the Commission; or

(5) consume or be under the influence of alcohol or any prohibited substances while performing official duties at the meeting.

§ 305.15. Reporting of violations.

All racing officials and their assistants shall immediately report to the Stewards every observed or reported violation of these rules and of the laws of this Commonwealth governing racing.

§ 305.16. Observations and notifications.

A racing official shall immediately report to the Stewards any perceived issues with a horse based on the condition prior to the race which may significantly affect the running of the race. Upon notification to the Stewards, the Stewards may either conduct an immediate investigation or forward the matter to Commission investigators.

§ 305.17. Appointment.

(a) A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the Commission.

(b) The Commission, the Bureau Director or other Commission representative shall appoint or approve the Stewards at each race meeting.

§ 305.18. Appointment of substitute officials.

The licensed racing entity shall immediately notify the Stewards where an emergency vacancy exists among racetrack racing officials and shall fill the vacancy immediately. The appointment shall be reported to the Commission and shall be effective until the vacancy is filled in accordance with these rules.

BOARD OF STEWARDS

§ 305.31. Accreditation of Stewards.

(a) To qualify for appointment as a Steward, the appointee must meet the education and examination requirements necessary to be accredited by the Racing Officials Accreditation Program in association with the

Universities of Arizona and Louisville or any other similar accreditation program approved by the Commission.

(b) In addition to all of the above, the appointee must also meet the following racing experience requirements:

(1) Five years or more of experience as a licensee of a racing commission or other regulatory racing authority of the United States or Canada;

(2) Certified as a racing official in one or more of the following categories: patrol Judge, placing Judge, paddock Judge, clerk of scales, horse identifier, racing secretary or assistant racing secretary and Starter; and

(3) Be in good standing with all racing jurisdictions.

(c) Once appointed, the Stewards shall attend and complete applicable continuing education programs, as required by the Commission.

§ 305.32. Power of the Stewards.

(a) In matters pertaining to racing, the orders of the Stewards shall supersede the orders of the officers and directors of the association. The Stewards shall have the power and duty to regulate and supervise the conduct of track management, licensed personnel, racing officials, owners, trainers, jockeys, grooms and all other persons participating in pari-mutuel racing activities, unless the power and the duty is exclusively vested in the Commission.

(b) The authority of each Board of Stewards shall begin at least 10 days prior to the beginning of the race meeting and shall terminate with the completion of their business pertaining to the meeting. This period may be modified or altered as deemed necessary by the Commission. If a dispute is unresolved at the time, it may be heard later or disposed of by the Stewards or referred to the Commission. This section does not limit the power of a board to impose sanctions continuing beyond the end of a meeting.

(c) If there is a succeeding meeting approved to begin at the same racetrack, the power of the Board of Stewards at the meetings is deemed to be continuing and sustaining.

(d) In the performance of duty, the Stewards shall have reasonable control over and unrestricted access to stands, weighing rooms and jockey rooms, stables, barns and other areas of the racetrack enclosure.

(e) The Stewards shall have the power to determine questions arising with reference to entries and racing. They shall have the authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.

(f) The Stewards have the authority to interpret these rules and to decide all questions of racing not specifically covered by the rules, but which, in their opinion, may negatively impact the public interest or the public's perception of racing.

(g) The Stewards shall have the power to cause to be examined a horse stabled on the association grounds, or in a stabling area approved by the association.

(h) In accordance with the provisions of Chapter 179 (relating to Rules of Administrative Practice and Procedure—temporary regulations), the Stewards may compel the attendance of witnesses, the submission of documents or potential evidence related to any investigation or hearing and may administer oaths and examine witnesses.

(i) The Stewards may at any time inspect license documents, registration papers, and other documents related to racing.

(j) The Stewards shall consult with the official veterinarian to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

§ 305.33. Disciplinary action.

(a) The Stewards shall take notice of alleged misconduct or rule violations and may initiate investigations into the matters through the Commission's investigative staff or matters may be referred to them for hearing. The Stewards shall have the express authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

(b) The Stewards may impose any of the following penalties on a licensee for a violation of these rules:

- (1) Issue a reprimand;
- (2) Impose a fine not to exceed the statutory amount set for in the act;
- (3) Require forfeiture or redistribution of purse or award;
- (4) Place a licensee on probation or a conditional license;
- (5) Suspend a license or racing privileges;
- (6) Revoke a license;
- (7) Order that a person be ineligible for licensing; or
- (8) Impose any other penalty as deemed necessary and appropriate for the level of violation.

(c) The Stewards may suspend a person or disqualify a horse for fixed periods of time or under other conditions they may deem appropriate or as may be specified by this chapter. If a person is indefinitely suspended or is ordered suspended for more than the balance of a meeting, the matters shall promptly be referred to the Commission for final disposition.

(d) The Stewards, on an emergency basis, shall have the power to exclude or eject from the racetrack premises and enclosures of the licensed racing entity any person who:

- (1) Is under an order of suspension or revocation or has been denied a license or ruled off by a racing commission or Board of Stewards.
- (2) Is known to be an objectionable or undesirable person or whose presence on the racetrack enclosure is deemed to be inconsistent with the best interests of racing.
- (3) Whose conduct is deemed improper.

(e) The Stewards' ruling shall not prevent the Commission from imposing a more severe penalty.

(f) The Stewards may refer any matter to the Commission and may include recommendations for disposition. The absence of a Stewards' referral shall not preclude Commission action in any matter.

(g) Purses, prizes, awards, and trophies shall be redistributed if the Stewards or Commission order a change in the official order of finish.

(h) All fines imposed by the Stewards shall be paid to the Commission within 10 days after the ruling is issued, unless otherwise directed by the Stewards.

(i) In addition to any penalties imposed upon any owner, trainer, veterinarian or other licensee as a result of a medication or drug positive, after notice and an appropriate hearing, the horse which tested positive for the prohibited substance, shall be placed on the Steward's List and shall be ineligible to participate in racing for the following period of time:

(1) Class 1 or Class 2 drugs (as set forth in the Association of Racing Commissioners International Uniform Classification guidelines) shall be ineligible to race for a period of 90 days from the date of the Stewards' ruling, unless the matter has been appealed to the Commission.

(2) Class 3 drugs or high blood gas (TCO2) readings shall be ineligible for a period of 30 days from the date of the Stewards' ruling unless the matter has been appealed to the Commission.

§ 305.34. Stewards' presence.

(a) Three Stewards shall be present and on duty in the Stewards' stand during the running of each race. During the race times, the Stewards shall remain in the stand, in the paddock or otherwise readily available to the participants at the meet.

(b) At least one of the Stewards shall be on duty within call of the racing secretary from the time of the opening of overnight entries each morning until after the time allowed for filing of protests or objections to entries or assignment of post positions.

(c) Should any Steward be absent at race time, and no approved alternate Steward be available, the remaining Stewards may appoint a qualified substitute for the absent Steward. If a substitute Steward is appointed, the Bureau Director and the licensed racing entity shall be notified by the Stewards.

§ 305.35. Duties of Stewards.

(a) The Stewards shall investigate promptly and render a decision in every protest, objection and complaint made to them. They shall maintain a record of all protests, objections and complaints. The Stewards shall file daily with the Commission a copy of each protest, objection or complaint and any related ruling.

(b) The Stewards shall prepare a daily report, on a form approved by the Commission, detailing their actions and observations made during each day's race program. The report shall include the following information as the name of the racetrack, the date, the weather and track-conditions, claims, inquiries and objections and any unusual circumstances or conditions. The report shall be signed by each Steward and be filed with the Commission not later than 24 hours after the end of each race day.

(c) The Presiding Steward shall maintain a detailed report of the Stewards' official activities. The log shall describe all questions, disputes, protests, complaints, or objections brought to the attention of the Stewards. Investigative materials and information or interviews conducted by the Stewards is confidential and shall be excluded from this log. The log shall be provided to the Commission upon its request.

(d) Not later than 7 days after the last day of a race meeting, the Presiding Steward shall submit to the Commission a written report regarding the race meeting. The report shall include:

- (1) The Stewards' observations and comments regarding the conduct of the race meeting and the overall conditions of the association grounds during the race meeting; and

(2) Any recommendations for improvement by the licensed racing entity or action by the Commission.

§ 305.36. Stewards' List.

(a) The Stewards shall maintain a Stewards' List of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that endangers the health or safety of other participants in racing.

(b) The Stewards may place a horse on the Stewards' List when there exists a question as to the exact identification or ownership of said horse.

(c) A horse which has been placed on the Stewards' List because of inconsistent performance or behavior, may be removed from the Stewards' List when, in the opinion of the Stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing.

(d) A horse which has been placed on the Stewards' List because of questions as to the exact identification or ownership of the horse, may be removed from the Stewards' List when, in the opinion of the Stewards, proof of exact identification or ownership, or both, has been established.

(e) In addition to any penalties imposed upon any owner, trainer, veterinarian or other licensee as a result of a medication or drug positive, after notice and an appropriate hearing, the horse which tested positive for the prohibited substance, shall be placed on the Stewards' List and shall be ineligible to participate in racing for the following period of time:

(1) For Class 1 or Class 2 drugs (as set forth in the Association of Racing Commissioners International Uniform Classification guidelines) the horse shall be ineligible to race for a period of 90 days from the date of the Stewards' ruling, unless the matter has been appealed to the Commission.

(2) For Class 3 drugs or high blood gas (TCO2) readings the horse shall be ineligible for a period of 30 days from the date of the Stewards' ruling, unless the matter has been appealed to the Commission.

RACING SECRETARY

§ 305.51. Duties of racing secretary.

The racing secretary or the assistant racing secretary as an employee of the licensed racing entity shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations.

§ 305.52. Foal, health and other eligibility certificates.

(a) The racing secretary or designee approved by the Stewards shall be responsible for receiving, inspecting and maintaining the digital and paper foal and health certificates, Equine Infectious Anemia (Coggins or EIA) test certificates and other documents of eligibility for all horses competing at the track and stabled on the grounds.

(b) The racing secretary or designee approved by the Stewards shall record the alteration of the sex of a horse on the horse's foal certificate or report, or both, to the appropriate breed registry and past performance services.

(c) The racing secretary or designee approved by the Stewards shall record on a horse's registration certificate

when a posterior digital neurectomy (heel nerving) is performed on that horse or report to the appropriate breed registry.

(d) The racing secretary shall ensure that all horses entered to race are registered with The Jockey Club or a similar registration entity.

§ 305.53. List of nerved horses.

The racing secretary shall maintain a list of nerved horses which are on the racetrack grounds and shall make the list available for inspection by the Commission or its designee or by written request from other licensees participating in the race meeting.

§ 305.54. List of bred fillies and mares.

The racing secretary shall maintain a list of all fillies or mares on the racetrack grounds who have been covered by a stallion. The list shall also contain the name of the stallion to which each filly or mare was bred and shall be made available for inspection by other licensees participating in the race meeting.

§ 305.55. Allocation of stalls.

The racing secretary shall have the sole authority to assign stall applicants stabling as is deemed proper and maintain a record of arrivals and departures of all horses entering into and stabled on the racetrack grounds. No appeal to the Commission shall be available from a denial of stalls.

§ 305.56. Conditions.

(a) The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers, the Stewards and the Commission and be posted in the racing secretary's office. The racing secretary shall remain responsible for any errors occurring regarding a horse's eligibility and along with the licensed racing entity shall remediate the error if possible. No appeal shall be heard by the Commission regarding horse entries and conditions.

(b) For the purpose of establishing conditions, winnings shall be considered to include all moneys and prizes won up to the time of the start of a race. Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

§ 305.57. Eligibility.

(a) When the Commission receives an official testing laboratory report of a positive test or overage for a winner of a race that requires a disqualification, change in the order of finish and redistribution of the purse, the horse in question shall maintain the win in past performance records and carry the penalty of a win when determining eligibility by the racing secretary for entry in a subsequent race. This horse's condition and eligibility shall remain in effect until the Stewards issue a ruling disqualifying the aforementioned horse and order the redistribution of the purse.

(b) The second-place horse shall not carry the win in past performance records nor shall the second-place horse carry the win in determining the eligibility for entry in a subsequent race until the Stewards issue a ruling disqualifying the winner, change the order of finish and order a redistribution of the purse.

(c) Should the aforementioned ruling be properly appealed, the disqualification, change in the order of finish and purse redistribution is stayed until a final adjudication and the winner must carry the win and the second-place horse is not penalized for the condition.

§ 305.58. Listing of horses.

The racing secretary shall examine all entry blanks and declarations to verify information as set forth therein and shall select the horses to start and the "also eligible" horses from the declarations in accordance with these rules.

§ 305.59. Posting of entries.

Post positions shall be determined publicly by lot in the presence of the racing secretary, assistant racing secretary, a Steward or designee and at least one trainer licensed by the Commission. Upon completion of the draw, the racing secretary shall post a list of entries in a conspicuous location in his/her office and make the list available to the media, if requested.

§ 305.60. Daily racing program.

The racing secretary shall publish the official daily racing program, ensuring the accuracy therein of the following information:

- (1) Sequence of races to be run and post time for the first race;
- (2) Purse, conditions and distance for each race, and current track record for the distance;
- (3) The name of licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried;
- (4) The name of the trainer and the name of the jockey named for each horse together with the weight to be carried;
- (5) The post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation;
- (6) Identification of each horse by name, color, sex, age, sire and dam;
- (7) A notice shall be included in the daily program that all jockeys will carry approximately 3 pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures and that jockeys may weigh in with an additional 3 pounds for inclement weather gear when approved by the Stewards; and
- (8) Other information as may be requested by the licensed racing entity or the Commission.

§ 305.61. Nominations and declarations.

The racing secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication.

§ 305.62. Stakes and Entrance Money Records.

The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance moneys due are paid prior to entry for races conducted at the meeting.

§ 305.63. Inspection of licenses and other documents.

The racing secretary shall have the right to inspect an owner's, trainer's or jockey's license, partnership papers, papers and documents with respect to a contract between a jockey and the jockey's employer, and papers relating to the appointment of authorized agents, jockey agents or the adoption of colors or to stable names.

HORSEMEN'S BOOKKEEPER**§ 305.71. General authority.**

The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain the other records and accounts and perform the other duties as the licensed racing entity and the Commission may prescribe.

§ 305.72. Records.

(a) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the licensed racing entity.

(1) The records shall include the name, mailing address, Social Security number or Federal tax identification number, and the jurisdiction or country of residence of each horse owner, trainer or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(2) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements and registrations of authorized agents.

(3) All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the Regulatory Authority at any time.

(4) The horsemen's bookkeeper and the licensed racing entity are subject to disciplinary action by the Commission for any violations of or non-compliance with the provisions of this rule.

§ 305.73. Moneys and funds on account.

(a) All moneys and funds on account for the horsemen with the horsemen's bookkeeper shall be maintained as follows:

(1) Separate and apart from moneys and funds of the licensed racing entity or any other association or entity;

(2) In a trust or similar type of account designated as Horsemen's Trust Account; and

(3) In an account insured by the Federal Deposit and Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The horsemen's bookkeeper shall be bonded with proof of the bond submitted to the Commission upon request.

(c) The amount of purse money earned is credited in the currency of the jurisdiction in which the race was run. There shall be no appeal for any exchange rate loss at the time of transfer of funds from another jurisdiction.

§ 305.74. Payment of purses.

(a) The horsemen's bookkeeper shall receive, maintain and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, along with all applicable taxes and other moneys that properly come into the bookkeeper's possession in accordance with these regulations.

(b) The horsemen's bookkeeper may accept moneys due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(c) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be

deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

(d) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, along with all applicable taxes, upon request, within 48 hours of receipt of notification that all tests with respect to the races have cleared the drug testing laboratory or the split sample laboratory as reported by the Stewards or the Commission, except that minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratories.

(e) In the event a protest or appeal has been filed with the Stewards or the Commission, the horsemen's bookkeeper shall disburse the purse within 48 hours of receipt of the dismissal or a final non-appealable order disposing of the protest or appeal.

PADDOCK JUDGE

§ 305.91. Duties of paddock Judge.

(a) The paddock Judge shall at all times be in charge of the paddock and the entire saddling area and shall:

(1) Supervise the assembly of horses in the paddock no later than 15 minutes before the scheduled post time for each race;

(2) Maintain a written record of all equipment, inspect all equipment of each horse saddled and report any change in equipment to the Stewards;

(3) Insure that all horses are properly equipped with a type of safety reins that are approved by the Commission and are originally designed and constructed to insure a secure secondary connection to the bit and reinforcement to prevent breakage;

(4) Prohibit any change of equipment without the approval of the Stewards;

(5) Ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are mounted at the same time, and leave the paddock for the post in proper sequence;

(6) Supervise paddock schooling of all horses approved for this by the Stewards;

(7) Report to the Stewards any observed cruelty to a horse;

(8) Ensure that only properly authorized persons are permitted in the paddock and may exclude those unauthorized persons; and

(9) Report to the Stewards any unusual, irregular or illegal activities.

(b) The paddock Judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing.

(1) At the end of each race day, the paddock Judge shall provide a copy of the List to the Stewards.

(2) To be removed from the paddock Judge's List, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock Judge and the Stewards that the horse is capable of performing safely in the paddock.

HORSE IDENTIFIER

§ 305.101. General authority and duties.

(a) The Horse Identifier shall:

(1) When required, ensure the safekeeping of digital and paper registration certificates and racing permits for horses stabled or racing, or both, on licensed racing entity grounds;

(2) Inspect documents of ownership, eligibility, registration or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting;

(3) Examine without physically touching every starting horse in the paddock for sex, color, markings and lip tattoo, microchip (ISO 11784), freeze brand or other identification method approved by the appropriate breed registry and the Commission for comparison with its registration certificate to verify the horse's identity.

(b) The Horse Identifier shall report to the Stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

CLERK OF SCALES

§ 305.111. Duties.

The clerk of scales or the assistant clerk of scales shall have the general authority and responsibility to:

(1) Verify the presence of all jockeys in the jockeys' room at the appointed time;

(2) Verify that all the jockeys have a current jockey's license issued by the Commission;

(3) Verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the Stewards immediately;

(4) Oversee the security of the jockeys' room including the conduct of the jockeys and their attendants;

(5) Promptly report to the Stewards any infraction of the rules with respect to weight, weighing, riding equipment, safety equipment, riding crops, or conduct;

(6) Record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;

(7) Maintain the record of applicable winning races on all apprentice certificates at the race meeting;

(8) Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; and

(9) Assume the duties of the jockey room custodian in the absence of the employee.

JOCKEY ROOM CUSTODIAN

§ 305.121. Duties of the jockey room custodian.

The jockey room custodian shall be responsible to:

(1) Supervise the conduct of the jockeys and their attendants while they are in the jockey room;

(2) Keep the jockey room clean and safe for all jockeys;

(3) Ensure all jockeys are in the correct colors before leaving the jockey room to prepare for mounting their horses;

(4) Keep a daily film list as dictated by the Stewards and have it displayed in plain view for all jockeys;

(5) Keep a daily program displayed in plain view for the jockeys so they may have ready access to mounts that may become available;

(6) Keep unauthorized persons out of the jockey room;

(7) Maintain segregated facilities for female jockeys and keep unauthorized individuals out of the female jockey area; and

(8) Report to the Stewards any unusual occurrences in the jockey room.

STARTER

§ 305.131. General authority and duties.

The Starter shall have complete jurisdiction over the starting gate, the starting of horses and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start. The decision of the Starter as to the validity of a start shall be final. In performance of the Starter's duties, the starter may:

(1) Appoint and supervise assistant Starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the Starter may appoint qualified individuals to act as substitute assistant Starters;

(2) Ensure that at least one assistant Starter is available for each horse in a race;

(3) Assign the starting gate stall positions to assistant Starters and notify the assistant Starters of their respective stall positions not more than 10 minutes before post time for the race;

(4) Assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and shall make said assessment known to the Stewards; and

(5) Load horses into the gate in any order deemed necessary to ensure a safe and fair start.

§ 305.132. Use of starting gate.

(a) A flat race shall be started out of a starting gate approved by the Commission. If the Starter or the Starter's assistant is unable, after reasonable efforts, to place a horse in its assigned position in the gate for a satisfactory start, or if a horse is fractious or unruly, the Starter may order the horse into a different gate position.

(b) If, after reaching the starting post, a horse is so badly injured as to make it impractical or impossible for him to run in the race, the Starter may, in the interest of saving time, excuse that horse, but shall notify the Stewards before the race starts. A horse so excused by the Starter shall be deemed excused by the Stewards.

§ 305.133. Prohibited conduct.

With respect to an official race, the assistant Starters shall not:

(1) Handle or take charge of any horse in the starting gate without the expressed permission of the Starter;

(2) Impede the start of a race;

(3) Apply a whip or other device, except Steward-approved twitches, to assist in loading a horse into the starting gate;

(4) Slap, boot or otherwise dispatch a horse from the starting gate;

(5) Strike or use abusive language to a jockey; or

(6) Accept or solicit any gratuity, gift or payment of any kind other than his/her regular salary, directly or indirectly, for services in starting a race.

§ 305.134. Starter's List.

No horse shall be permitted to start in a race unless approval is given by the Starter. The Starter shall maintain a Starter's List of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. The horse shall be refused entry until it has demonstrated to the Starter that it has been satisfactorily schooled in the gate and can be removed from the Starter's List. Schooling shall be under the direct supervision of the Starter.

§ 305.135. Report violations.

The Starter and assistant Starter shall immediately report any false starts, impeded starts, unfair starts or any unauthorized activities to the Stewards.

TIMER/CLOCKER

§ 305.151. Duties of timers.

(a) The timer shall accurately record the time elapsed between the start and finish of each race.

(b) The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.

(c) At the end of a race, the timer shall post the official running time on the infield totalisator board on instruction by the Stewards.

(d) At a racetrack equipped with an appropriate infield totalisator board, the timer shall post the quarter times (splits) for thoroughbred races in fractions as a race is being run.

(e) For back-up purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that at least three stopwatches are used by the Stewards or their designees.

(f) The timer shall maintain a written record of fractional and finish times of each race and have same available for inspection by the Stewards or the Commission on request.

§ 305.152. Duties of clockers.

(a) The clocker shall be present during training hours at each track on association grounds, which is open for training, to identify each horse working out and to accurately record the distances and times of each horse's workout.

(b) Each day, the clocker shall prepare a list of workouts that describes the name of each horse which worked along with the distance and time of each horse's workout.

(c) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the Stewards and the racing secretary.

PATROL JUDGE

§ 305.171. Powers and duties of patrol Judges.

The patrol Judge, when utilized, is responsible for observing the race and reporting information concerning the race to the Stewards. If the track's video replay system is deemed adequate, use of patrol Judges is optional.

PLACING JUDGE

§ 305.191. Duties.

The placing Judges shall determine the order of finish in a race as the horses pass the finish line, and with the approval of the Stewards, may display the results on the totalisator board.

§ 305.192. Photo finish.

(a) In the event the placing Judges or the Stewards request a photo of the finish, the photo finish sign shall be posted on the totalisator board.

(b) Following their review of the photo finish, the placing Judges shall determine the exact order of finish for all horses participating in the race, and shall immediately post the numbers of the first four finishers on the totalisator board.

(c) In the event a photo was requested, the placing Judges shall cause a photographic or digital print of said finish to be produced. The finish photograph or digital print shall, when needed, be used by the placing Judges as an aid in determining the correct order of finish.

(d) Upon determination of the correct order of finish of a race in which the placing Judges have utilized a photographic or digital print to determine the first four finishers, the placing Judges shall cause prints of said photograph or digital print to be displayed publicly on the on-track television monitors and be provided to simulcast outlets.

§ 305.193. Dead heats.

(a) In the event the placing Judges determine that two or more horses finished the race simultaneously and cannot be separated as to their order of finish, a dead heat shall be declared.

(b) In the event one or more of the first four finishers of a race are involved in a dead heat, the placing Judges shall post the dead heat sign on the totalisator board and cause the numbers of the horse or horses involved to blink on the totalisator board.

COMMISSION VETERINARIAN

§ 305.201. Qualifications.

(a) The Commission Veterinarian shall:

(1) Be employed by the Department as a Veterinary Medical Field Officer (VMFO) and appointed by the Commission to a racetrack under the jurisdiction of the Commission;

(2) Have graduated from an accredited veterinary school, be duly licensed by the Department of State to practice veterinary medicine within this Commonwealth and be properly licensed by the Commission as a Commission Veterinarian;

(3) Possess the necessary qualifications and experience to objectively and competently provide the regulatory duties described herein;

(4) Refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this Commonwealth while employed as the Commission Veterinarian;

(5) Refrain from directly treating or prescribing for any horse under the Commission's jurisdiction, except in cases of extreme emergency, accident or injury;

(6) Have no employment history or business relationship prior to employment as the Commission Veterinarian

that could constitute a conflict of interest or impede in the performance of official duties.

(b) Each racetrack under the jurisdiction of the Commission shall have an adequate number of Commission Veterinarians, as determined by the Commission, necessary to perform all the duties and responsibilities, as set forth in these regulations. The Commission shall designate one of the Commission Veterinarians as the Chief Commission Veterinarian at that racetrack facility.

§ 305.202. Duties and responsibilities of the Commission Veterinarian.

(a) The Commission's Veterinarian, among other things, shall:

(1) Inform the Stewards that a horse has been deemed unsafe to race, or inhumane to allow to race and shall place that horse on the Veterinarian's List as set forth in § 305.203 (relating to Veterinarian's List);

(2) Conduct pre-race inspections (racing soundness examination) on all potential Starters on race day under the Pre-Race Examination Protocol as established and amended by the Commission. The examinations shall be conducted in or near the stall to which the horse is assigned;

(3) Inspect any horse when there is a question as to the physical condition of the horse regardless of the horse's entry status;

(4) Be present in the paddock during saddling and on the racetrack during the post parade;

(5) Recommend to the Stewards the scratching of any horse that is, in the opinion of the Commission Veterinarian, injured, ill, or otherwise unable to compete due to an apparent medical or health-related condition;

(6) Inspect any horse which appears in physical distress during the race or at the finish of the race; and shall make a report of the horse and the suspected cause of the distress to the Stewards;

(7) Maintain a continuing health and racing soundness record of each horse so examined;

(8) Be authorized, in an emergency scenario, to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act;

(9) Report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore;

(10) Maintain the Veterinarian's List of horses ineligible to race;

(11) Supervise and control the Test Barn and the procedures implemented therein;

(12) Supervise the taking of all specimens, including but not limited to saliva, blood, urine or any other bodily fluid taken from the horse for pre-race or post-race testing according to procedures approved by the Commission;

(13) Maintain the proper administrative safeguards to protect the chain of custody handling of all laboratory specimens to prevent tampering, confusion, or contamination and assure sample integrity;

(14) Have jurisdiction over the practicing licensed veterinarians within the racetrack enclosure for the purpose of these rules;

(15) Cooperate with the racetrack veterinarian, practicing licensed veterinarians and other regulatory agencies to take measures to control communicable or reportable equine diseases, or both.

§ 305.203. Veterinarian's List.

The Commission Veterinarian shall maintain a list to be known as the Veterinarian's List upon which the name of a horse which is considered unfit, unsound or not ready for racing shall be placed. The Veterinarian's List shall be binding on all licensed racetrack facilities and those participating in racing activities under the jurisdiction of the Commission. The Veterinarian's List shall be published in a format as required by the Commission. A horse placed on the Veterinarian's List shall be refused entry until the horse is shown to be fit, sound or ready to race.

RACETRACK VETERINARIAN

§ 305.221. General authority and duties.

(a) The racetrack track veterinarian may be present at the starting gate and may visually inspect each entrant. If, in the opinion of the racetrack veterinarian, prior to the starting gate dispatching the horses, a horse is not in condition to compete in that race, the racetrack veterinarian shall immediately notify the Stewards or the Commission Veterinarian of the horse's condition.

(b) The racetrack veterinarian shall be attendant on the Stewards and the racing secretary at scratch time each morning, and shall examine the horse that they request, and make reports to the racing officials as promptly as possible.

(c) The racetrack veterinarians shall be an employee of the licensed racing entity and shall:

- (1) Be directly responsible to the Commission Veterinarian;
- (2) Be a graduate veterinarian and be licensed to practice in this Commonwealth;
- (3) Be present at the starting gate until the horses are dispatched from the gate for the race;
- (4) Inspect any horse which appears in physical distress during the race or at the finish of the race; and shall report the horse together with a written opinion as to the cause of the distress to the Stewards and to the Commission Veterinarian;
- (5) Refrain from directly treating or prescribing for any horse scheduled to participate during his/her term of appointment at any recognized meeting except in cases of emergency, accident or injury;
- (6) Be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act;
- (7) Perform any other veterinarian function deemed necessary and appropriate as directed by the Commission Veterinarian, the Commission or the racetrack's employer.

§ 305.222. Outriders.

(a) The Outriders shall make every effort to maintain the safety and orderly conduct of training and racing according to the rules, regulations and directives of the Commission, the Stewards and the licensed racing entity management.

(b) The Outriders shall report all unauthorized activities, unusual occurrences or potential rule violations to the Stewards.

(c) The Outriders shall, in cooperation with the Stewards, establish a plan to stop the running of a race should there be a loose horse, removal of starting gate malfunction or in case of any other on-track issue that endangers the safety of the participants and horses.

(d) The Outriders shall oversee and supervise all jockeys, exercise riders, pony persons and trainers when they are on the track. First-time applicants for these positions shall be observed and approved by the Outriders as a condition of licensure.

(e) The Outriders shall enforce the track and Commission regulations concerning the use of approved safety vests and protective helmets while riders are on the racetrack.

ENTRIES AND NOMINATIONS

§ 305.231. Entries.

(a) No horse shall be qualified to start in a race unless it has been properly entered and its owner, trainer, or their authorized designee have been licensed by the Commission, and evidence of workers compensation insurance carried by owners and trainers properly filed. A trainer may use the affidavit process to temporarily license an owner for purposes of entering a horse as provided for by the Commission. Overnight entries shall be made and completed 48 hours prior to the morning of the applicable race program.

(b) To compete in a race, a horse must be eligible at the time of starting that race. A horse disqualified in any jurisdiction or placed on the Stewards' List, Starters' List or Veterinarians' List in any jurisdiction is not allowed to be entered or to start in a race without permission of the Stewards. The racing secretary shall be responsible to verify and accurately determine the horse's eligibility at the time of entry.

§ 305.232. Procedure.

(a) Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of 1 year.

(b) An entry shall be in the name of the horse's licensed owner and made by the owner, trainer or a licensed designee of the owner or trainer.

(c) Races printed in the condition book shall have preference over substitute and extra races.

(d) An entry may initially be made by telephone with the racing secretary but must be immediately confirmed in writing or facsimile machine to the racing secretary.

(e) The person making an entry shall clearly designate the horse so entered.

(f) No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of the Stewards.

(g) No horse may be entered in more than one race at the same licensed racing facility to be run on the same day on which pari-mutuel wagering is conducted.

(h) Any permitted medication or approved change of equipment must be declared at time of entry.

§ 305.233. Limitation as to spouses.

No entry in any race shall be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of the entry, unless the non-suspended spouse can demonstrate, by horse records, financial documents and other business

records that they are duly licensed as a trainer by the Commission and maintain a separate business from the suspended spouse. The Stewards shall review the provided documentation.

§ 305.234. Coupled entries.

(a) The term “entry” means a horse made eligible to run in a race. When Starters in a race include two or more horses with common ownership, they shall be coupled as an entry. A wager on one horse in the entry shall be a wager on all horses in the entry. If one horse is scratched after betting has begun, the remaining horse shall run as a single betting entry.

(b) Horses owned wholly or in part by the same trainer, person or the spouse of the person shall be coupled and run as an entry.

(c) Starters in a race which include two horses of different ownership trained by the same person, or trained in the same stable shall not be coupled as an entry and shall constitute a separate wagering interest.

(d) No more than two horses having common ties through ownership or training may be entered in an overnight race. Under no circumstances may both horses of a coupled entry start to the exclusion of a single entry. When making a coupled entry, a preference for one of the horses must be made.

(e) The rules in subsections (a)—(d) may be waived by application and demonstration of proper cause to the racing secretary and the Stewards.

§ 305.235. Nominations.

(a) Any nominator to a stakes race may transfer or declare the nomination prior to closing.

(b) Joint nominations and entries may be made by any one of joint owners of a horse, and each owner shall be jointly and severally liable for all payments due.

(c) Death of a horse, or a mistake in its entry when the horse is eligible, does not release the nominator or transferee from liability for all stakes fees due. No fees paid in connection with a nomination to a stakes race that is run shall be refunded, except as otherwise stated in the conditions of a stakes race.

(d) Death of a nominator to a stakes race shall not render void any subscription, entry or right of entry. All rights, privileges and obligations shall be attached to the legal heirs of the decedent or the successor owner of the horse.

(e) When a horse is sold privately or at public auction or claimed, stakes engagements shall be transferred automatically to its new owner; except when the horse is transferred to a person whose license is suspended or who is otherwise unqualified to race or enter the horse, then the nomination shall be void as of the date of the transfer.

(f) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the conditions for the race. If a stakes race is not run for any reason, all the nomination fees paid shall be refunded.

§ 305.236. Closings.

(a) Entries for purse races and nominations to stakes races shall close at the time designated by the licensed racing entity in previously published conditions for the races. This time may not be less than 48 hours prior to the time of the running of the races for which entry is being made. No entry, nomination or declaration shall be accepted after the closing time, except that in the event of

an emergency or if an overnight race fails to fill, the racing secretary may, with the approval of a Steward, extend the closing time.

(b) Except as otherwise provided in the conditions for a stakes race, the deadline for accepting nominations and declarations is midnight of the day of closing, provided they are received in time for compliance with every other condition of the race.

§ 305.237. Number of Starters in a race.

The maximum number of Starters in any race shall be limited to the number of starting positions afforded by the association starting gate and its extensions. The number of Starters may be further limited by the number of horses which, in the opinion of the Board of Stewards, after consultation with the horsemen’s group and the jockeys’ association, can be afforded a safe, fair and equal start. The decision of the Stewards is final and not appealable.

§ 305.238. Split or divided races.

In the event a race is cancelled or declared off, the licensed racing entity may split any overnight race for which post positions have not been drawn. Where an overnight race is split, forming two or more separate races, the racing secretary shall give notice of not less than 15 minutes before the races are closed to grant time for making additional entries to the split races.

§ 305.239. Post positions.

Post positions for all races shall be determined by lot and shall be publicly drawn in the presence of a Steward or Steward designee.

§ 305.240. Also-eligible list.

(a) If the number of entries for a race exceeds the number of horses permitted to start, the racing secretary may create and post an also-eligible list.

(b) If any horse is scratched from a race for which an also-eligible list was created, a replacement horse shall be drawn from the also-eligible list into the race in order of preference. If none is preferred, a horse shall be drawn into the race from the also-eligible list by lot.

(c) Any owner or trainer of a horse on the also-eligible list who does not wish to start the horse in the race shall so notify the racing secretary prior to scratch time for the race, thereby forfeiting any preference to which the horse may have been entitled.

(d) A horse which draws into a straightaway race from the also-eligible list shall start from the post position vacated by the scratched horse. In the event more than one horse is scratched, post positions of horses drawing in from the also-eligible list shall be determined by lot.

(e) A horse which draws into a non-straightaway race from the also-eligible list shall start from the outermost post position. In the event more than one horse is scratched, post positions of horses drawing in from the also-eligible list shall be determined by public lot.

§ 305.241. Preferred list.

The racing secretary shall maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The preferred list shall be maintained and all rules governing the list shall be the sole responsibility of the racing secretary.

§ 305.242. Declarations and scratches.

(a) *Declaration.* A declaration is the act of withdrawing an entered horse from a race prior to the closing of

entries. The declaration of a horse before closing shall be made by the owner, trainer or their licensed designee in the form and manner prescribed in these rules.

(b) *Scratch*. A scratch is the act of withdrawing an entered horse from a contest after the closing of entries. The scratch of a horse after closing shall be made by the owner, trainer or their licensed designee, with permission from the Stewards. No horse may be scratched from an overnight race without the express approval of the Stewards.

(1) A horse may be scratched from a stakes race for any reason at any time up until 45 minutes prior to post time for that race.

(2) A horse which has been scratched, or excused from starting by the Stewards, because of a physical disability or sickness shall not be accepted until the horse has been released from the Veterinarian's List by the Commission Veterinarian.

(c) The declaration or scratch of a horse out of an engagement is irrevocable.

§ 305.243. Ineligible horses.

(a) A horse is ineligible to start in a race within this Commonwealth if:

(1) It is not stabled on the grounds of the licensed racing entity or present by the time established by the Commission;

(2) Its breed registration certificate is not on file with the racing secretary or horse identifier (unless the racing secretary has submitted the certificate to the appropriate breed registry for correction). The Stewards may waive these requirements if the information contained on the registration certificate is otherwise available and the horse is otherwise correctly identified to the Stewards' satisfaction;

(3) It is not fully identified and is tattooed on the inside of the upper lip, is microchipped with a unique microchip (ISO 11784), freeze brand or identified by any other method approved by the appropriate breed registry and the Commission;

(4) It has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo, microchip ISO 11784, freeze brand or other identification method approved by the appropriate breed registry and the Commission;

(5) It is wholly or partially owned by or is under the direct or indirect training or management of a person who for any reason is ineligible to be licensed to participate in this jurisdiction;

(6) It is wholly or partially owned by or is under the direct or indirect management of the spouse of a person who for any reason is ineligible to be licensed or to participate in this jurisdiction;

(7) The stakes or entrance money for the horse has not been paid, in accordance with the conditions of the race;

(8) Its name appears on the Starter's List, Stewards' List or Veterinarian's List except when an unforeseen administrative issue occurs in removing the horse from the Veterinarian's List of another racing jurisdiction;

(9) It is a first-time Starter and has not been approved to start by the Starter;

(10) It is owned in whole or in part by an undisclosed person or interest;

(11) It lacks sufficient official published workouts or race past performances;

(12) It has been entered in a stakes race and has subsequently been transferred with its engagements, unless the racing secretary has been notified prior to the start;

(13) It is subject to a lien which has not been approved by the Stewards and filed with the horsemen's bookkeeper;

(14) It is subject to a lease not filed with the Stewards;

(15) It is not in sound racing condition;

(16) It has had a surgical neurectomy performed on a heel nerve, which has not been approved by the Commission Veterinarian;

(17) It has been trachea tubed to artificially assist breathing;

(18) It has been blocked with alcohol or otherwise drugged or surgically denerved to desensitize the nerves above the ankle;

(19) It has impaired eyesight in both eyes;

(20) It is barred or suspended in any other recognized racing jurisdiction;

(21) It does not meet the eligibility conditions of the race;

(22) Its owner or lessor is in arrears for any stakes fees, except with approval of the racing secretary;

(23) Its owners, lessors or trainer have not completed the licensing or affidavit procedures as required by the Commission;

(24) It is by an unknown sire or out of an unknown mare;

(25) There is no current negative test certificate for Equine Infectious Anemia (Coggins or EIA) attached to its breed registration certificate or proof of a negative test certificate is not otherwise available if the Stewards have waived the requirement of a registration certificate; or

(26) It has shoes (racing plates) which have toe grabs with a height greater than 2 millimeters (0.07874 inches), bends, jars, caulks, stickers or any other traction device on the front hooves while racing or training on all racing surfaces.

WEIGHTS, PENALTIES AND ALLOWANCES

§ 305.251. Weight allowances.

(a) Weight allowance must be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the Stewards.

(b) A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.

(c) Horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(d) Claim of weight allowance to which a horse is not entitled shall not disqualify it unless protest is made in writing and lodged with the Stewards at least one hour before post time for that race.

(e) A horse shall not be given a weight allowance for failure to finish second or lower in any race.

(f) No horse shall receive allowance of weight nor be relieved extra weight for having been beaten in one or

more races, but this rule shall not prohibit maiden allowances or allowances to horses that have not won a race within a specified period or a race of a specified value.

(g) Except in handicap races which expressly provide otherwise, 2-year-old fillies shall be allowed 3 pounds, and fillies and mares, 3 years old and upward, shall be allowed 5 pounds before September 1 and 3 pounds thereafter in races where competing against male horses.

(h) All allowances are optional and may be waived at the time of entry by the trainer or the trainer's designee with the permission of the Stewards.

§ 305.252. Weight penalties.

(a) Weight penalties are obligatory.

(b) Weight allowance, including apprentice allowance, shall be claimed at time of overnight entry.

(c) Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race.

(d) No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race.

(e) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(f) The reports, records and statistics as published by Daily Racing Form, Equibase or other recognized publications shall be considered official in determining eligibility, allowances and penalties, but may be corrected.

(g) For determining weight penalties and allowances for horses that have previously won or placed in Graded or Group races, penalties in the race conditions will only apply to Graded or Group races in Part 1 countries as recognized in the *International Catalogue Standards* (ICS) book.

§ 305.253. Scale of weights.

(a) With the exception of apprentice allowances, handicap races, 3-year-old horses entered to run in races against horses 4 years old and upwards, and the allowance provided in subsection (b) of this section, no jockey shall be assigned a weight of less than 118 pounds. For 3-year-old horses entered to run in races against horses 4 years old and upwards from January 1 through August 31, no jockey shall be assigned a weight of less than 116 pounds.

(b) Except in handicaps, fillies 2 years old shall be allowed 3 pounds, and fillies and mares 3 years old and upward shall be allowed 5 pounds before September 1, and 3 pounds thereafter in races where competing against horses of the opposite sex.

(c) A notice shall be included in the daily program that all jockeys will carry approximately 3 pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures. Additionally, upon Stewards' approval, jockeys may weigh in with an additional 3 pounds for inclement weather gear.

§ 305.254. Timed workouts.

In addition to the provisions of § 305.243 (relating to ineligible horses), a horse which has not started for a period of 45 days or more is ineligible to race until it has completed a timed workout satisfactory to the Stewards.

A workout following the entry of a horse shall appear on the official daily racing program or electronically online in Equibase or a similar entity.

§ 305.255. Identification.

(a) The trainer or exercise rider shall bring each horse scheduled for an official workout to be identified by the clocker or clocker's assistant immediately prior to the workout.

(b) The horse shall be properly identified by its lip tattoo, unique implanted microchip (ISO 11784), freeze brand or other identification method approved by the breed registry and the Commission immediately prior to participating in an official timed workout.

(c) The trainer or trainer's designee shall be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

§ 305.256. Information dissemination.

Information regarding a horse's approved timed workout(s) shall be furnished to the public prior to the start of the race for which the horse has been entered.

§ 305.257. Restrictions.

A horse shall not be taken onto the track for training or a workout except during hours designated by the licensed racing entity.

RUNNING OF THE RACE

§ 305.271. Racing equipment.

(a) All riding crops are subject to inspection and approval by the Stewards and the clerk of scales.

(1) Riding crops shall have a shaft and a flap and will be allowed in flat racing including training, only as follows:

- (i) Maximum weight of 8 ounces;
- (ii) Maximum length, including flap of 30 inches;
- (iii) Minimum diameter of the shaft of 3/8 inch; and
- (iv) Shaft contact area must be smooth, with no protrusions or raised surface, and covered by shock absorbing material that gives a compression factor of at least one-millimeter throughout its circumference.

(2) The flap is the only allowable attachment to the shaft and must meet these specifications:

- (i) Length beyond the end of the shaft a maximum of 1 inch;
- (ii) Width a minimum of 0.8 inch and a maximum of 1.6 inches;
- (iii) No reinforcements or additions beyond the end of the shaft;
- (iv) No binding within 7 inches of the end of the shaft; and
- (v) Shock absorbing characteristics similar to those the contact area of the shaft.

(b) No bridle shall exceed 2 pounds.

(c) A horse's tongue may be tied down with clean bandages, gauze or tongue strap.

(d) No licensee may add blinkers or cheek pieces to a horse's equipment or discontinue their use without the prior approval of the Starter, the paddock Judge, and the Stewards. Any request for a change must be stated at entry. Blinkers and cheek pieces may not be utilized at the same time.

(e) No licensee may change any equipment used on a horse since its last race in this Commonwealth without approval of the paddock Judge.

§ 305.272. Racing numbers.

(a) Each horse shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

(b) In the case of a coupled entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall appear in the official program as 1 and 1A.

(c) Each horse in the mutuel field shall carry a separate number or may carry the same number with a distinguishing letter following the number.

§ 305.273. Jockey and apprentice license.

(a) A jockey or an apprentice jockey who wants to obtain an appropriate license from the Commission shall meet all the licensing and eligibility requirements set forth in Chapter 303 (relating to licensing, duties and responsibilities of Thoroughbred occupational licensees—temporary regulations) of these regulations.

(b) No person under 18 years of age shall be licensed by the Commission as a jockey.

(c) The Stewards may permit a jockey to ride pending action on a license application.

(d) A licensed jockey may not be an owner or trainer of a race horse.

(e) A jockey may not make a bet on any horse other than the one the jockey is riding. The bet placed shall only be to “win” and shall only be placed through the owner or trainer of the horse the jockey is riding.

(f) A jockey may not solicit or accept directly or indirectly anything of value from any person for the performance of his duties other than the applicable jockey’s fee.

(g) A jockey shall not compete in any race against a horse which is trained by the jockey’s spouse or partner.

(h) It shall be unlawful and a violation of these rules for a jockey, an owner, trainer or other person authorized to handle the horse, to be in possession or control of any electrical, mechanical or similar type of stimulating or shocking device. In addition to any penalty imposed by the Stewards, the matter may be referred by the Commission to law enforcement agencies for criminal prosecution.

§ 305.274. Examination of jockeys by licensed physicians.

Before the beginning of a racing season, a jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey. The Stewards may require that a jockey be reexamined and may refuse to allow the jockey to ride pending successful completion of the physical examination.

§ 305.275. Requirements for apprentice jockeys.

(a) A person 18 years of age or older who has never been licensed as a jockey in any country may apply to become an apprentice jockey. An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

(b) A person desiring an apprentice jockey certificate and the privilege of riding races at tracks in this Commonwealth shall provide proof of the following:

(1) Employment on the backside of a race track, including exercising horses on the track.

(2) Attending and reviewing video tapes of races in jockeys’ quarters, as scheduled by the Stewards.

(3) Observing jockeys and horses break from the gate, at the start of races under the supervision of a Starter, for at least three racing days and at least five races per racing day.

(4) Observing horses changing leads at the 1/4, 3/8 and 7/8 poles and observing horses and jockeys approaching the finish line and finishing the race.

(5) Participating in as many schooling races as possible through the cooperation of the racing secretary and informing two or more members of the board of approval of application for apprentice license as soon as the applicant has been notified of acceptance to ride in the schooling race.

(6) Breezing horses from the gate satisfactorily with a whip at least twice in the presence of two or more members of the board of approval.

(7) Riding with competence in two pari-mutuel races without a whip under a temporary apprentice jockey certificate. The applicant will be observed by the board of approval during the races.

§ 305.276. Apprentice jockey weight allowances in overnight races.

A certified apprentice jockey may claim the weight allowances set forth in Chapter 303 (relating to licensing, duties and responsibilities of Thoroughbred occupational licensees—temporary regulations) in all overnight races except stakes and handicaps.

§ 305.277. Applications for extensions.

If an apprentice jockey is unable to ride for a period of 5 consecutive days or more after the date of the apprentice jockey’s fifth winning mount because of restriction of racing, service in National armed forces, physical disablement or illness, or enrollment and attendance in an institution of secondary or higher education, the Commission may, upon the submission of appropriate documentation, extend the time during which the apprentice weight allowance may be claimed.

§ 305.278. Jockey agents.

(a) A jockey may have only one agent. A jockey agent may only handle up to two jockeys and may not make or assist in making of an engagement for a jockey other than those jockeys represented by the agent.

(b) A jockey agent is prohibited from:

(1) Being within the saddling enclosure during racing hours;

(2) Being on the racetrack proper at the conclusion of a race;

(3) Being in or having access to the jockey quarters during racing hours.

(c) No revocation of a jockey agent’s authority is effective until the jockey notifies the Stewards in writing of this revocation.

§ 305.279. Valet-attendants.

A jockey may not have a valet-attendant other than one provided by the licensed racing entity.

§ 305.280. Jockey mount fees.

(a) In the absence of a contract or other agreement between jockey representatives, the Commission shall use the following as a guideline for establishing jockey mount fees.

<i>Purse</i>	<i>Winning mount</i>	<i>Second mount</i>	<i>Third mount</i>	<i>Fourth mount</i>	<i>Other mounts</i>
0 to \$2,499	10% of Win Purse	\$55	\$50	\$45	\$40
\$2,500 to \$4,999	10% of Win Purse	\$60—\$75	\$55—\$70	\$50—\$65	\$45—\$60
\$5,000 to \$9,999	10% of Win Purse	\$65—\$85	\$60—\$80	\$55—\$75	\$50—\$65
\$10,000 to \$24,999	10% of Win Purse	5% of Place Purse	\$90—\$100	\$70—\$90	\$65—\$80
\$25,000 to \$49,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$80—\$100	\$75—\$95
\$50,000 to \$99,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of Fourth Place Purse	\$80—\$100
\$100,000 and up	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of Fourth Place Purse	\$105—\$115

(b) A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. In the event an owner or trainer elects to remove a jockey from the mount after naming a rider at the time of the draw, the Stewards may require a double jockey fee to be paid.

(c) The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the Stewards. All jockey protests must be filed prior to the race.

§ 305.281. Jockey suspensions and designated races.

(a) For purposes of this subchapter, "designated race" shall mean any stakes race or associated trial in any state as designated by the Stewards.

(b) A jockey suspended for 10 days or less for a riding violation unless otherwise specified in the ruling may continue to exercise horses during training hours and may fulfill riding engagements in designated races, as designated by the Stewards at the beginning of the race meeting.

(c) The official rulings where designated races are permitted shall be stated in the initial ruling.

(d) A jockey who is serving a suspension of 10 race days or less may ride in designated races during the suspension under the following conditions:

(1) The race has been specified as a designated race by the Stewards officiating at the meeting; and

(2) The jockey is named no later than the time set for the close of entries for the designated race.

(e) When a jockey rides in a designated races the Board of Stewards, which originally imposed the suspension will designate the day to serve the additional suspension.

§ 305.282. Jockey requirements.

(a) Jockeys shall report to the jockeys' quarters at the time designated by the licensed racing entity. Jockeys shall report their engagements and any overweight to the clerk of scales. Jockeys shall not leave the jockeys' quarters, except to ride in scheduled races, until all of their riding engagements of the day have been fulfilled, except as approved by the Stewards.

(b) A jockey who has not fulfilled all riding engagements, who desires to leave the jockeys' quarters, must first receive the permission of the Stewards and must be accompanied by a licensed racing entity security guard.

(c) While in the jockeys' quarters, jockeys shall have no contact or communication with any person outside the

jockeys' quarters other than Commission personnel and officials, or an owner or trainer for whom the jockey is riding, except with the permission of the Stewards. Any communication permitted by the Stewards may be conducted only in the presence of the clerk of scales or other person designated by the Stewards.

(d) Jockeys shall be weighed out for their respective mounts by the clerk of scales not more than 30 minutes before post time for each race. Only valets employed by the licensed racing entity shall assist jockeys in weighing out.

(e) A jockey must wear a safety vest when riding in any official race. The safety vest shall meet the applicable standards for safety vests as set forth in Chapter 303 (relating to licensing, duties and responsibilities of Thoroughbred occupational licensees—temporary regulations).

§ 305.283. Weighing out.

(a) A jockey's weight shall include his/her clothing, boots, saddle and its attachments and any other equipment except the bridle, bit, blinkers, goggles, number cloth and safety equipment including helmet, vest, overgirth, reins and breast collar.

(b) Upon Stewards' approval, jockeys may be allowed up to 3 pounds more than published weights to account for inclement weather clothing and equipment.

(c) Seven pounds is the limit of overweight any horse is permitted to carry.

(d) Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be re-admitted to the jockeys' quarters until after the entire racing program for that day has been completed, except with permission of the Stewards.

§ 305.284. Paddock to post.

(a) Each horse shall carry the full weight assigned for that race from the paddock to the starting post, and shall parade past the Stewards' stand, unless excused by the Stewards. The post parade shall not exceed 12 minutes, unless otherwise ordered by the Stewards. It shall be the duty of the Stewards to ensure that the horses arrive at the starting gate as near to post time as possible.

(b) After the horses enter the track, a jockey may not dismount or entrust the horse to the care of an attendant without the prior consent of the starter, unless, it is necessary to do so because of an accident to the jockey, the horse or the equipment. During any delay during which a jockey is permitted to dismount, all other jockeys may also dismount and their horses may be attended by others. After the horses enter the track, only the jockey, an assistant starter, the Commission Veterinarian, the racing veterinarian or an outrider or pony rider may touch the horse before the start of the race.

(c) If a jockey is injured on the way to the post, the horse shall be returned to the paddock or any other area designated by the Stewards, re-saddled with the appropriate weight and remounted with a replacement jockey.

(d) After passing the Stewards' stand in parade, the horses may break formation and proceed to the post in any manner unless otherwise directed by the Stewards. Once at the post, the horses shall be started without unnecessary delay.

(e) Horses shall arrive at the starting post in post-position order.

(f) If a horse throws its jockey on the way from the paddock to the post, the horse must be returned to the point where the jockey was thrown, where it shall be remounted and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

(g) If a horse leaves the course while moving from paddock to post, the horse shall be returned to the course at the nearest practical point to that at which it left the course and shall complete its parade to the post from the point at which it left the course unless ordered scratched by the Stewards.

(h) No person shall willfully delay the arrival of a horse at the post.

(i) The starter shall load horses into the starting gate in any order deemed necessary to ensure a safe and fair start as set forth in this chapter. Only the jockey, the racing veterinarian, the starter or an assistant starter shall handle a horse at the post.

§ 305.285. Post to finish.

(a) In addition to the duties and responsibilities of the starter as set forth in this chapter, the starter is responsible for ensuring that each participant in every race receives a fair and appropriate start. If the Stewards suspect a false start has occurred, they shall post the inquiry sign and may disqualify the horse(s), declare it a non-starter, or take no action.

(b) If, when the starter dispatches the field, any door at the front of the starting gate stalls should not open properly due to a mechanical failure or malfunction or should any action by any starting personnel directly cause a horse to receive an unfair start, the Stewards may declare this horse a non-starter.

(c) If a horse is not in the starting gate stall at the time the field is dispatched by the starter thereby causing it to be left out, the horse shall be declared a non-starter by the Stewards.

(d) Should an accident or malfunction of the starting gate, or other unforeseeable event compromise the fairness of the race or the safety of race participants, the Stewards may declare individual horses to be non-starters, exclude individual horses from all pari-mutuel pools or declare the race a "no contest."

§ 305.286. Interference, jostling or striking.

(a) A jockey shall not carelessly or intentionally permit the horse the jockey is riding to interfere with, impede or intimidate any other horse in the race.

(b) No jockey shall carelessly or intentionally jostle, strike or touch another jockey or another jockey's horse or equipment at any time in the race.

(c) No jockey shall unnecessarily or unreasonably cause the horse the jockey is riding to shorten its stride or pull up, so as to give the appearance of having suffered a foul.

§ 305.287. Maintaining a straight course.

(a) During the running of the race, when the way is clear, a horse may be ridden or taken to any part of the course, but a horse may not cross, weave, or swerve in front of another horse, or otherwise be ridden to either side, so as to interfere with, impede or intimidate any other horse. This conduct shall be considered a foul. The offending horse may be disqualified, if in the opinion of the Stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful or the result of careless riding.

(b) If the Stewards determine the foul was intentional, or due to careless riding, the jockey may be held responsible.

(c) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane in this manner that it interferes with, impedes or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

§ 305.288. Disqualification.

(a) If the Stewards determine that a horse shall be disqualified for interference, the Stewards may place the offending horse behind these horses as in their judgment it interfered with, or they may place the offending horse last.

(b) If a horse is disqualified for a foul, any horse or horses in the same race owned or trained by the same interests, whether coupled or uncoupled may also be disqualified.

(c) No appeal may be taken from a decision of the Stewards not to disqualify a horse.

(d) When a horse is disqualified for interference in a time trial race, for the purposes of qualifying only, it shall receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(e) Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person authorized to handle or attend to a horse shall be prima facie evidence of a violation of these rules and is sufficient grounds for the Stewards to scratch or disqualify the horse.

(f) The Stewards may determine that a horse shall be unplaced for the purpose of purse distribution and time trial qualification.

§ 305.289. Multiple disqualifications.

Should the Stewards determine that there is more than one incident of interference in a race where disqualification is warranted, the Stewards shall deal with the incidents in the order in which the incident occurs during the race from start to finish; except in the case where the same horses are involved in multiple incidents. Once a horse has been disqualified, it should remain placed behind the horse with which it interfered. The Stewards shall make a conscious effort to place and maintain as placed, every and all horses placed behind others for interference.

§ 305.290. Horses shall be ridden out.

(a) All horses shall be ridden out in every race. A jockey shall not ease up or coast to the finish, without reasonable cause, even if the horse has no apparent

chance to win prize money. A jockey shall at all times give a best effort during a race and each horse shall be ridden to win.

(b) A jockey may not intentionally ride wide on the turns, cause the horse to lose ground when there is no reasonable cause for the loss or ride in a manner inconsistent with using the best efforts of the horse.

§ 305.291. Use of a riding crop.

(a) Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his/her best efforts to win. In all races where a jockey will ride without a riding crop, an announcement of this fact shall be made over the public-address system.

(b) Other than the riding crop approved by the Stewards, no electrical, mechanical or other device designed to increase or retard the speed of a horse, shall be possessed by a jockey, nor shall any electrical, mechanical device by applied by anyone to a horse at any time on the grounds of the licensed racing entity during the meeting.

(c) Riding crops shall not be used on 2-year-old horses before April 1 of each year.

(d) The riding crop shall be used during a race for safety, correction and encouragement of the horse in an appropriate, proportionate, and professional manner, taking into account the rules of racing herein. The stimulus provided by the use of the riding crop shall be monitored by the Stewards at all times so as not to compromise the health, safety and welfare of the horse.

(e) Except for extreme safety reasons all riders should comply with the following when using a riding crop:

(1) Initially showing the horse the riding crop or tapping the horse with the riding crop down, giving it time to respond before using it;

(2) Having used the riding crop, giving the horse a chance to respond before using it again;

(i) "Chance to respond" is defined as one of the following actions by a jockey:

(a) Pausing the use of the riding crop on their horse before resuming again;

(b) Pushing on their horse with a rein in each hand, keeping the riding crop in the up or down position;

(c) Showing the horse the riding crop without making contact; or

(d) Moving the riding crop from one hand to the other.

(3) Using the riding crop in rhythm with the horse's stride.

(f) When deciding whether to review the jockey's use of the riding crop, Stewards may consider how the jockey has used the riding crop during the course of the entire race, with particular attention to its use in the closing stages, and other relevant factors such as:

(1) The manner in which the riding crop was used;

(2) The purpose for which the riding crop was used;

(3) The distance over which the riding crop was used and whether the number of times it was used was reasonable and necessary; and

(4) Whether the horse was continuing to respond.

§ 305.292. Review by Stewards.

In the event there is a review by the Stewards, use of the riding crop may be deemed appropriate in the following circumstances:

(1) To keep a horse in contention or to maintain a challenging position prior to what would be considered the closing stages of a race,

(2) To maintain a horse's focus and concentration,

(3) To correct a horse that is noticeably hanging,

(4) To assure the horse maintains a straight course, or

(5) Where there is only light contact with the horse.

§ 305.293. Prohibition.

(a) Prohibited use of the riding crop includes but is not limited to striking a horse:

(1) On the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;

(2) During the post parade or after the finish of the race except when necessary to control the horse;

(3) Excessively or brutally causing welts or breaks in the skin;

(4) When the horse is clearly out of the race or has obtained its maximum placing;

(5) Persistently even though the horse is showing no response under the riding crop; or

(6) Striking another rider or horse.

(b) After the race, horses will be subject to inspection by a racing or official Veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the Stewards.

(c) The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave these instructions.

§ 305.294. Horse leaving the racecourse.

If a horse leaves the racecourse during a race, it must turn back and resume the race from the point at which it originally left the course.

§ 305.295. Order of finish.

(a) The official order of finish shall be decided by the Stewards. The video replay shall be available to assist in the Stewards' decision.

(b) The nose of the horse shall determine the placement of the horse in relationship to other horses in the race.

§ 305.296. Returning after the finish.

(a) After a race has been run, the jockey shall ride promptly to the place designated by the Stewards, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

(b) If a jockey is prevented from riding to the designated unsaddling area because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales or may be excused from weighing in by the Stewards.

§ 305.297. Unsaddling.

(a) Only persons authorized by the Stewards may assist the jockey with unsaddling the horse after the race.

(b) No one shall place a covering over a horse before it is unsaddled.

§ 305.298. Weighing in.

(a) A jockey shall "weigh in" at no less than the same weight at which the jockey weighed out, and if under that weight, and after consideration of mitigating circumstances by the Board of Stewards, the jockey's mount may be disqualified from any portion of the purse money.

(b) In the event of this disqualification, all moneys wagered on the horse shall be refunded unless the race has been declared official.

(c) A jockey's weight shall include clothing, boots, saddle and its attachments and any other equipment, except a safety vest and helmet, the bridle, bit, blinkers, number cloth and over-girth, reins and breast collar.

(d) Upon approval of the Stewards, the jockeys may be allowed up to 3 pounds more than published weights to account for specialized inclement weather clothing and equipment.

(e) The post-race weight of jockeys includes any sweat, dirt and mud that have accumulated on the jockey, jockey's clothing, jockey's safety equipment and over-girth. This accounts for additional weight, depending on specific equipment, as well as weather, track and racing conditions.

§ 305.299. Dead heats.

(a) When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

(b) In a dead heat for first place, each horse involved shall be deemed a winner and liable to penalty for the amount it shall receive.

(c) When a dead heat is run for second place and an objection is made to the winner of the race, and sustained, the horses which ran a dead heat shall be deemed to have run a dead heat for first place.

(d) If the dividing owners cannot agree as to which of them is to have a cup or other prize which cannot be divided, the question shall be determined by lot by the Stewards.

OBJECTIONS AND PROTESTS

§ 305.301. Stewards' inquiries.

(a) During the running of a race, the Stewards shall take cognizance of foul riding and upon their own motion or other racing official empowered by this chapter to object or complain of an occurrence during the race, shall immediately post an official inquiry and shall make every diligent effort to investigate the objection or complaint.

(b) In determining the extent of disqualification, the Stewards in their discretion may:

(1) Declare null and void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(2) Affirm the placing Judges' order of finish and hold the jockey responsible if, in the Stewards' opinion, the foul riding did not affect the order of finish; or

(3) Disqualify the offending horse and hold the jockey blameless, if in the Stewards' opinion, the interference to

another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.

(c) No appeal may be taken from the decision of the Stewards not to disqualify a horse as a result of the running of a race.

§ 305.302. Race objections.

(a) An objection to an incident alleged to have occurred during the running of a race shall be received only when lodged with the clerk of scales, the Stewards or their designees, by the owner, the authorized agent of the owner, the trainer or the jockey of a horse engaged in the same race.

(b) An objection following the running of any race must be filed before the race is declared official by the Stewards, whether all or some riders are required to weigh in, or the use of a "fast official" procedure is permitted. No objection shall be received once the race has been declared official.

(c) The Stewards shall take into account all information provided by race participants and matters occurring during the running of a race; shall determine all objections and inquiries and shall determine the extent of disqualification, if any, of horses in the race. This determination by the Stewards shall be final and binding.

§ 305.303. Prior objections and protest.

(a) Objections or protests to the participation of a horse entered in any race shall be made to the Stewards in writing, signed by the objector, and filed not later than 60 minutes prior to post time for the first race on the day which the questioned horse is entered. A protest not timely received shall be denied on those grounds. A protest shall set forth the specific reasons for the protest in detail to establish probable cause for the protest and the information provided by the protestor shall be verified and signed in affidavit form. The Stewards may upon their own motion consider an objection until the time as the horse becomes a starter.

(b) An objection or protest to a horse which is entered in a race may be made on, but not limited to, the following grounds or reasons:

(1) A misstatement, error or omission in the entry under which a horse is to run;

(2) The horse which is entered to run is not the horse it is represented to be at the time of entry, or the age was erroneously given;

(3) The horse is not qualified to enter under the conditions specified for the race, or the allowances are improperly claimed or not entitled to the horse, or the weight to be carried is incorrect under the conditions of the race;

(4) The horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in these rules or the horse was entered without regard to a lien filed previously with the racing secretary;

(5) The weight carried by a horse was improper, by reason of fraud or willful misconduct.

(c) The Stewards may scratch from the race any horse which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

(d) Notwithstanding any other provision in this section, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is

alleged provided that the Stewards are satisfied that the allegations are bona fide and have been duly verified by affidavit.

(e) The Stewards may order any purse, award or prize for any race withheld from distribution pending the determination of any protest. In the event any purse, award or prize has been distributed to an owner or for a horse which by reason of a protest or other reason is disqualified or determined to be not entitled to this purse, award or prize, the Stewards or the Commission may order this purse, award or prize returned and redistributed to the rightful owner or horse. Any person who fails to comply with an order to return any purse, award or prize erroneously distributed shall be subject to fines and suspension.

CLAIMING RACES

§ 305.401. General provisions.

(a) A person entering a horse in a claiming race warrants that the title to said horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering the horse, the written consent of the holder of the claim or lien has been filed with the Stewards and the racing secretary and its entry approved by the Stewards. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for that horse.

(b) Title to a claimed horse shall be vested in the successful claimant at the time the horse becomes a starter. However, the successful claimant may request on the claim blank or envelope at the time of the claim that the horse be tested for any test as approved by the Commission Veterinarian. Should this test prove positive, it shall be cause for voiding the claim. The expense of the test shall be the responsibility of the successful claimant.

(c) An in-foal filly or mare shall be eligible to be entered into a claiming race upon notice to the racing secretary, the Stewards and the Commission Veterinarian.

(d) The Stewards may set aside and order a claim rescinded for any horse from a claiming race run in this Commonwealth upon a showing that any party to the claim committed a prohibited action, as set forth in § 305.405 (relating to transfer of possession of a claimed horse) of this chapter, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of these rules. Should the Stewards set aside the claim, they may make a further order for the costs of maintenance and care of the horse as they may deem appropriate for the health and safety of the horse.

§ 305.402. Claiming of horses.

(a) Any horse starting in a claiming race is subject to be claimed for its entered price by any:

- (1) Licensed owner;
- (2) Licensed authorized agent acting on behalf of an eligible claimant.

(b) Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant at the time the horse becomes a starter as determined by the Stewards. The successful claimant shall become the owner of the horse under the provisions of this chapter.

§ 305.403. Procedure for claiming.

(a) To make a valid claim for a horse, an eligible person shall:

(1) Have on deposit with the horsemen's bookkeeper an amount equal to the amount of the claim. Money may not accompany the claim;

(2) Complete a written claim on a form furnished by the licensed racing entity and approved by the Commission;

(3) Identify the horse to be claimed by the spelling of its name on the certificate of registration or as spelled on the official program;

(4) Place the completed claim form inside an envelope furnished by the licensed racing entity and approved by the Commission;

(5) Both forms and envelopes must be filled out completely and must be substantially accurate or the claim may be voided. The Stewards shall, in their sole discretion, determine what is substantially accurate;

(6) Have the envelope deposited in the claim box no later than 10 minutes prior to post time of the race for which the claim is entered.

(b) After a claim has been completely deposited in the claim box, it is irrevocable by the claimant and shall not be withdrawn from the claim box until the time designated by the Stewards.

(c) Officials and employees of the licensed racing entity shall not provide any information as to the filing of claims until after the race has been run, except as is necessary for processing of the claim.

(d) If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the Stewards or their representatives.

(e) Notwithstanding any designation of sex or age appearing in the racing program or in any racing publication, the claimant of a horse shall be solely responsible for the determination of the sex or age of any horse claimed.

§ 305.404. Prohibitions.

(a) A person shall not claim a horse, directly or indirectly, in which the person has a financial or beneficial interest as an owner or trainer.

(b) A person shall not cause another person to claim a horse for purposes of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

(c) A person may not offer or enter into an agreement for purposes of preventing another person from obtaining a horse in a claiming race.

(d) A person shall not claim a horse or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

(e) A person shall not claim more than one horse in a race. No authorized agent shall submit more than one claim for the same horse in a race, even if the authorized agent represents several owners.

(f) A person may not claim from his spouse a horse owned wholly or in part by that spouse.

§ 305.405. Transfer of possession of a claimed horse.

(a) Upon successful claim, the Stewards or their representative shall issue an authorization of transfer of possession of the horse from the original owner to the

successful claimant. Copies of the transfer authorization shall be forwarded to and maintained by the Stewards and the racing secretary. Upon notification by the Stewards, the horsemen's bookkeeper shall immediately debit the claimant's account for the claiming price.

(b) A person shall not refuse to deliver a properly claimed horse to the successful claimant as determined by the provisions of this chapter.

(c) Delivery of a claimed horse shall take place in accordance with § 305.407 (relating to subsequent start of a claimed horse).

(d) When a horse is claimed out of a claiming race, the horse's engagements are transferred, with the horse, to the claimant.

(e) A claimed horse shall not remain in the same stable or under the control or management of its former owner.

(f) If the claimed horse has been approved by the Stewards to run without the registration certificate on file in the racing office, then the registration certificate must be provided to the Stewards for transfer to the new owner before claiming funds will be approved for transfer by the Stewards.

§ 305.406. Delivery of claimed horse.

(a) In the event a horse dies during a claiming race or is euthanized on the racetrack during a claiming race, any claim made on that horse will be declared void.

(b) In the event that a horse is vanned off the racetrack after a claiming race, that horse will be taken to the detention barn for no longer than 1 hour from post-time of the race. The successful claimant for the horse may declare the claim void at the claimant's election within 1 hour of post-time of the race, except that the claim may not be declared void if the horse was vanned off the track due solely to heat stroke or bleeding from the nostrils, as determined by the Commission Veterinarian. In the event the successful claimant exercises the claimant's discretion to declare the claim void, the horse will be returned to the custody of the original owner who entered the horse in the claiming race.

(c) If a horse is placed on the Veterinarian's List within 1 hour of post-time of the race after having been taken to the test barn under its own power or otherwise without assistance for evaluation by the Commission Veterinarian, the successful claimant may declare the claim null and void at his or her election. Except that, the claim may not be declared null and void if the horse is placed on the Veterinarian's List due solely to heat stroke or bleeding from the nostrils, as determined by the Commission Veterinarian. In the event the successful claimant exercises his/her discretion to declare the claim void, the horse will be returned to the custody of the original owner who entered the horse in the claiming race.

§ 305.407. Subsequent start of a claimed horse.

For a period of 20 days after the claim, a claimed horse may not start in a race in which the determining eligibility price is less than 25% more than the price at which it was claimed. The day claimed does not count, but the following calendar day shall be the first day and the horse shall be entitled to enter whenever necessary so that the horse may start on the 21st calendar day following the claim for any claiming price. This section does not apply to starter allowance or starter handicaps.

§ 305.408. Subsequent sale and transfer of claimed horse.

When a horse is claimed, it may not be sold or transferred to anyone wholly or in part, except in a

claiming race, for a period of 30 days from date of claim, nor may it, unless reclaimed, remain in the same stable or under the control or management of its former owner or trainer for a like period, nor may it race elsewhere until the end of the race season in progress or for a period of 60 days, whichever occurs first. The Commission may waive this section upon application and demonstration by the requestor that the waiver is in the best interest of the requestor, the licensed racing entity, and horse racing in general in this Commonwealth.

§ 305.409. Posting of claiming price.

The claiming price of each horse in a claiming race shall be printed on the program and claims for the horse shall be the amount so designated.

§ 305.410. Starting in claiming races.

In claiming races not more than two horses in the same interest or under control of the same trainer can start.

§ 305.411. Foal certificate.

The foal certificate of a claimed horse shall remain in the custody of the racing secretary or his representative until the new owner removes the horse from the track.

§ 305.412. Cancellation of claiming race results.

If the Stewards, within 24 hours after the running of a race, believe that the lease, sale or entry of a horse was not made in good faith but was made for the purpose of obtaining the privilege of entering a claim, they may disallow the claim and order the return of a horse that may have been delivered and refer the case to the Commission for further action.

CHAPTER 307. PENNSYLVANIA BREEDERS' FUND PROGRAM—TEMPORARY REGULATIONS

Sec.	
307.1.	Definitions.
307.2.	Eligibility for Pennsylvania-bred races.
307.3.	Records of registration.
307.4.	Appeals.
307.5.	Purses and awards.
307.6.	Pennsylvania Horse Breeders Association.

§ 307.1. Definitions.

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

Breeder—The owner of the dam at the time of foaling, and indicated this on the certificate of registration issued by the Jockey Club.

Fund—The Pennsylvania Breeding Fund as created by section 9336 of the act (relating to Pennsylvania Breeding Fund).

The Jockey Club—The breed registry organization for all thoroughbred horses in North America, having responsibility for maintaining the American Stud Book, which includes all thoroughbreds foaled in the United States, Canada and Puerto Rico, as well as thoroughbreds imported into those countries from other countries that maintain similar thoroughbred registries.

Pennsylvania-bred horse—A thoroughbred horse with respect to which all of the following apply:

- (i) The horse was foaled in this Commonwealth.
- (ii) The horse is the subject of a current certificate of registration issued by the Jockey Club.
- (iii) The horse meets the registration eligibility qualifications for participation in the Fund program as determined by the Pennsylvania Horse Breeders Association.

(iv) The horse is registered with the Pennsylvania Horse Breeders Association in accordance with § 307.3 (relating to records of registration).

Pennsylvania sire—A thoroughbred stallion with respect to which all of the following apply:

- (i) The horse regularly stands in this Commonwealth.
- (ii) The horse meets the registration eligibility qualifications for participation in the Fund program as determined by the Pennsylvania Horse Breeders Association.
- (iii) The horse is registered with the Pennsylvania Horse Breeders Association in accordance with § 307.3 and is so registered each year the stallion stands in Pennsylvania.

§ 307.2. Eligibility for Pennsylvania-bred races.

To be eligible for preferences in races in which registered Pennsylvania-breds are preferred and to be eligible for entry in races which are restricted by condition to registered Pennsylvania-breds, a horse shall be registered as a Pennsylvania-bred with the Pennsylvania Horse Breeders Association at the time of entry.

§ 307.3. Records of registration.

Foals and sires eligible for registration shall be registered on official registration forms approved by the Commission and maintained by the Pennsylvania Horse Breeders Association. The registrar shall certify thereon the name and address of the owner, breeder, farm where mare was covered, farm of which this horse was foaled, owner of stallion at time the mare was covered, stallion by which the mare was covered following the birth of the thoroughbred to be registered, breeder Social Security or tax identification number, Jockey Club registration number, name of foal, color and sex of foal, date of foaling, sire, dam, sire of the dam, signature of the owner, or breeder or authorized representative and the date of application.

(1) The registration record shall be maintained at the headquarters of the Pennsylvania Horse Breeders Association and be open to public inspection during normal business days and hours.

(2) Immediately upon completion and filing of the form, the Pennsylvania Horse Breeders Association shall cause a correct copy of it to be filed with the offices of the Commission in Harrisburg.

§ 307.4. Appeals.

(a) A person having an interest in the matter shall have the right to file objections or exceptions to a registration and to the facts set forth therein within 30 days of the filing of the copy with the Commission. The objections or exceptions shall be delivered in writing to the Pennsylvania Horse Breeders Association (PHBA) and a duplicate copy delivered to the Commission within the 30-day time period. The PHBA shall rule upon the objections or exceptions within the 10 days of the delivery and receipt. An interested party aggrieved by an action taken by the PHBA may appeal to the Commission in the manner and within the time period prescribed for appeals in Chapter 179 (relating to Rules of Administrative Practice and Procedure—temporary regulations) of the Commission. The Commission may hear and determine an appeal de novo in accordance with its regular hearing procedures or the parties may seek an expedited documentary hearing in accordance with Chapter 179 Subchapter C (relating to Commission hearings) of the Commission regulations. The parties may appeal the Commission's final determination to the Commonwealth

Court within 30 days of receipt of the written adjudication. In the absence of a timely appeal to the Commonwealth Court, a registration shall be deemed final and binding and an official record of the Commission for all purposes under the act. Except that, the Commission may, in its discretion, correct an error or inaccuracy that it may find within the records.

(b) The Commission is not an aggrieved party as contemplated by 2 Pa.C.S. § 702 (relating to Administrative Agency Law) and shall be deemed a disinterested party in the registration matter subsequently appealed, by either party, to the Commonwealth Court. In accordance with Pa.R.A.P. 1513(a), as a disinterested party, the Commission shall not be named on the caption or listed as the Respondent on Appellant's Petition for Review.

§ 307.5. Purses and awards.

(a) A prize awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. Each prize shall be advanced to the Horsemen's Bookkeeper Account as won or earned at each meet by the racing association conducting the meet. The racing association shall maintain a separate ledger of them and shall transmit a certified copy of allowances, prizes and purses made no later than every 10th day of each month of the meets to the Commission. After the Commission has reviewed and approved them, it shall reimburse the racing association for the advances made which the Commission finds proper.

(b) The Pennsylvania Horse Breeders Association shall compile awards earned by breeders, owners of Pennsylvania sires and owners of Pennsylvania-bred horses and maintain a separate ledger of them. Monthly, a certified report of awards earned shall be forwarded to the Commission. After the Commission has reviewed and approved them it will be forwarded to the Department of Treasury for payment to the awardees. In accordance with section 9336(b.1) of the act (relating to Pennsylvania Breeding Fund), awards shall be distributed as follows:

(1) An award of 40% of the purse earned by every registered Pennsylvania-bred thoroughbred race horse sired by a registered Pennsylvania sire at the time of conception of the registered Pennsylvania-bred thoroughbred race horse which finishes first, second or third in any race conducted by a licensed racing entity under this chapter shall be paid to the breeder of the registered Pennsylvania-bred thoroughbred race horse.

(2) An award of 20% of the purse earned by every registered Pennsylvania-bred thoroughbred race horse sired by a nonregistered sire, which finishes first, second or third in any race conducted by a licensed racing entity under this chapter shall be paid to the breeder of the registered Pennsylvania-bred thoroughbred race horse.

(3) A single award under paragraphs (1) and (2) may not exceed 1% of the total annual fund money.

(4) An award of 10% of the purse earned by any registered Pennsylvania-bred thoroughbred race horse which finishes first, second or third in any race conducted by a licensed racing entity under this chapter shall be paid to the owner of the registered Pennsylvania sire which regularly stood in Pennsylvania at the time of conception of the Pennsylvania-bred thoroughbred race horse. A single award under this paragraph may not exceed 0.5% of the total annual fund money.

(c) A person interested in the awards, allowances, prizes and purses and objecting to calculations or determinations thereof as shown on the records of the racing

association, the Pennsylvania Horse Breeders Association and the horsemen's bookkeeper, shall be responsible for taking written appeals to the Commission in the manner provided for appeals from decisions of the association pertaining to registrations.

(d) The Commission will have the right to review and approve fees and charges imposed by the Pennsylvania Horse Breeders Association for a program. The charge or fee may not be imposed without prior approval by the Commission.

(e) Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Commission.

§ 307.6. Pennsylvania Horse Breeders Association.

(a) The Commission shall contract with the Pennsylvania Horse Breeders Association as the organization responsible for the registration and records of Pennsylvania-bred Thoroughbred race horses. The Pennsylvania Horse Breeders Association shall advise the Commission when called upon and shall determine the qualifications for Pennsylvania-bred Thoroughbred race horses and Pennsylvania sires.

(b) At the close of each calendar year, the Pennsylvania Horse Breeders Association shall submit to the Commission for its approval an itemized budget of projected expenses for the ensuing year relating to the administration and development of the Pennsylvania Breeding Fund Program. The Commission, on no more than a quarterly basis, shall reimburse from the fund the Pennsylvania Horse Breeders Association for those expenses actually incurred in the administration and development of the Pennsylvania Breeding Fund Program.

Subpart F. FOREIGN SUBSTANCES, MEDICATIONS, DRUGS AND EQUINE VETERINARY PRACTICES

Chap.	
401.	PROHIBITED AND UNLAWFUL PRACTICES—TEMPORARY REGULATIONS
403.	EQUINE VETERINARY PRACTICES—TEMPORARY REGULATIONS
405.	OUT-OF-COMPETITION TESTING PROGRAM—TEMPORARY REGULATIONS
407.	PHYSICAL INSPECTION OF HORSES—TEMPORARY REGULATIONS

CHAPTER 401. PROHIBITED AND UNLAWFUL PRACTICES—TEMPORARY REGULATIONS

Sec.	
401.1.	Definitions.
401.2.	General provisions.
401.3.	Restrictions; prima facie evidence.
401.4.	Substances of therapeutic value.
401.5.	Tubing, dosing or jugging prohibited.
401.6.	Possession of illegal, prohibited substances and devices.

PRE-RACE TESTING

401.11.	Pre-race blood gas testing—Standardbred.
401.12.	Initial testing procedures.
401.13.	Retesting procedures.
401.14.	Base excess prohibited levels.
401.15.	Alternate TCO ₂ protocol and levels.
401.16.	Base excess penalties.
401.17.	Total carbon dioxide testing for stakes races—Thoroughbred.

POST-RACE TESTING

401.21.	Refusal to submit to test.
401.22.	Test barn.
401.23.	Reporting to the test barn.
401.24.	Primary sample collection.
401.25.	Storage of split samples.
401.26.	Packaging and shipping of split samples.

401.27.	Frozen samples.
401.28.	Commission Testing Laboratory minimum standards.
401.29.	Split sample testing laboratory minimum standards.

UNIFORM MEDICATION CLASSIFICATION AND PENALTIES

401.41.	Determination of positive test results.
401.42.	Uniform classification guidelines for foreign substances.
401.43.	Positive test penalty categories.
401.44.	Criminal or administrative licensing referrals.
401.45.	Responsibility of a trainer.
401.46.	Control of horse, presumption of knowledge.
401.47.	Persons found guilty of administration of drugs.

MULTIPLE MEDICATION VIOLATION POINT SYSTEM

401.51.	Multiple medication violation points.
401.52.	Enhancement points.
401.53.	Expiration of points.

OTHER PROHIBITED CONDUCT

401.61.	Possession of hypodermic needles, syringes and injectable substances.
401.62.	Mistreatment of horses.

§ 401.1. Definitions.

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

Administer or *Administration*—The introduction of a substance into the body of a horse.

Bleeder—A horse which hemorrhages from the respiratory tract during a race or within 1 hour post-race, or during exercise or within 1 hour of the exercise or as specifically set forth in the Commission's regulations.

Bleeder List—A tabulation of bleeders to be maintained by the Commission.

Commission Testing Laboratory—The officially accredited laboratory of the Commission designated as the primary laboratory for the detection, confirmation and reporting of primary sample findings.

Controlled substance—A substance included in the five classification schedules of the Controlled Substance Act of 1970 (21 U.S.C.A. §§ 801—971).

Controlled therapeutic medication—A medication approved by the Commission or the Association of Racing Commissioners International (ARCI) for which the regulatory analyte concentration in the samples may not exceed specified regulatory limits approved and published by the Commission.

Foreign substances—All prohibited substances except those which exist naturally in the untreated horse at normal physiological concentration.

Furosemide—4-chloro-N-(2-furylmethyl)-5-sulfamoyl-anthranilic acid. Also known as Lasix.

Horse—Either Thoroughbred or Standardbred horses registered for racing under the jurisdiction of the Commission and for the purposes of this chapter shall mean stallion, colt, gelding, ridgling, filly or mare.

Hypodermic injection—An injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intra-bursal injection, intra-ocular (intra-conjunctival) injection.

Overage—A finding certified by the Commission Testing Laboratory that a regulatory analyte from a controlled therapeutic medication is present in the sample in an amount that exceeds the regulatory limit or threshold level.

Positive test—A determination by the Standardbred or Thoroughbred Bureau Directors based upon a finding by the Commission Testing Laboratory that a regulatory analyte from a prohibited substance is present in the sample in an amount that exceeds the regulatory limit.

Practicing veterinarian—A private veterinary practitioner licensed by the Commission and authorized to practice at a licensed racetrack facility within this Commonwealth.

Prohibited substance—Any substance, other than controlled therapeutic medication, or vaccine, equine antihelminthic, antibiotic, equine feed supplement, vitamins and minerals (collectively, “horse health and husbandry products”), for which the regulatory analyte concentration in samples may not exceed specified regulatory limits published herein.

Race day—The 24-hour period prior to the scheduled post time for the first race.

Regulatory analyte—An analyte or substance identified and, where appropriate, quantified in a specified matrix for regulatory purposes.

Regulatory limit or Threshold level—The concentration of a specified regulatory analyte that has been defined and published by the Racing Medication and Testing Consortium (RMTC) or ARCI and adopted by the Commission provided that exceeding the specified concentration is deemed either an overage or a positive test.

Security area—The area surrounding the security stall delineated by the Commission and controlled by it.

Security stall—The stall assigned by the Commission to a horse on the bleeder list, for occupancy as a prerequisite for receiving bleeder medication, sometimes called the detention stall.

Split sample laboratory—A duly accredited facility approved by the Commission to test split samples.

Test sample—A portion of a biological or bodily substance or fluid, including, but not limited to, tissue, hair, blood or urine obtained from a horse at the direction of the Commission for the purposes of determining the presence or concentration, or both, of regulatory analytes.

§ 401.2. General provisions.

(a) The purpose of this chapter is to protect the integrity of horse racing, to ensure the health and welfare of the horse and to protect the interests of the betting public and racing participants through the prohibition, strict control and detection of drugs, medications, foreign substances to the untreated horse and the regulation of devices for the administration of those substances. In this context:

(1) A horse participating in a race may not carry in its body a prohibited drug, medication, chemical, substance or any other substance foreign to the untreated horse, except as otherwise provided.

(2) A person acting alone or in concert may not provide, administer, cause to be administered or allow to be administered to a horse, by any means or methods, a foreign substance, a prohibited drug, medication, chemical or other substance, including any restricted medication under this chapter during the 24-hour period prior to the scheduled post time for the race in which the horse is entered, except as otherwise provided.

(3) In addition to the Commission approved Prohibited Substances List and the provisions of Chapter 403 (relat-

ing to equine veterinary practices—temporary regulations), the term prohibited substance shall include:

(i) Drugs or medications for which no acceptable threshold concentration has been established;

(ii) Controlled therapeutic medications in excess of established threshold concentrations or administration within the restricted time period, if approved by the Commission, and set forth by the *ARCI Controlled Therapeutic Medication Schedule* and the *Uniform Classification Guidelines of Foreign Substance*;

(iii) Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

(iv) Substances foreign to a horse at concentrations that may cause interference with testing procedures.

(b) No person may possess or use a drug, substance, chemical or medication on the premises of a licensed racetrack or other facility under the jurisdiction of the Commission that:

(1) A recognized analytical method has not been developed to detect and confirm the administration of the substance;

(2) Its use may endanger the health and welfare of the horse or endanger the safety of the rider or driver;

(3) Its use may adversely affect the integrity of racing;

(4) No generally-accepted use in equine care exists; or

(5) Has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

(c) Notwithstanding subsection (b), a person may have in his possession within a race track enclosure a medication or drug for that person’s own use if the person produces a proper and valid prescription. If the medication, drug or chemical substance is prohibited from being dispensed by Federal or State law without a prescription, that person shall possess documentary evidence that a valid prescription for the chemical substance has been issued to him. However, regardless of a valid prescription, a jockey, driver or trainer may not use or be under the influence of a medication, drug or other chemical substance while actively engaged in their respective activities. The possession of a medical marijuana card by a licensee shall not be a defense to the charge of violating the rules of racing for possession of a controlled substance for jockeys, drivers and trainers engaged in their respective occupational duties.

§ 401.3. Restrictions; prima facie evidence.

(a) *General Rule.* A horse participating in a race may not carry in its body a prohibited drug, medication, chemical, substance or any other substance foreign to the natural horse, except as provided in § 401.4 (relating to substances of therapeutic value).

(b) The detection and confirmation by the Commission’s Testing Laboratory of a prohibited drug, medication, chemical, substance or any other foreign substance in a test sample of a horse shall be prima facie evidence that the prohibited drug, medication, chemical, substance or other foreign substance was administered to the horse and carried in the body of the horse while participating in a race. This finding shall also be taken as prima facie evidence that the trainer and the trainer’s agents responsible for the care, custody or control of the horse has been negligent in the handling or care of the horse.

(c) The determination by the Standardbred or Thoroughbred Bureau Directors, based upon a finding by the Commission Testing Laboratory of a foreign substance or an approved therapeutic substance above the established level in violation of this chapter, may be declared an overage or positive test and may result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering, which shall be in no way affected.

§ 401.4. Substances of therapeutic value.

(a) A foreign substance of accepted therapeutic value may be administered as prescribed by a veterinarian when test levels and guidelines for its use have been established, adopted and published by the Commission, the *RMTC Schedule of Therapeutic Medications*, the ARCI, the USTA, or a similar Nationally recognized organization.

(1) The administration of furosemide shall be permitted for the prophylactic treatment of a confirmed bleeder under the specific provisions set forth in §§ 403.14 and 403.15 (relating to furosemide (Lasix—Thoroughbred); and furosemide (Lasix—Standardbred)).

§ 401.5. Tubing, dosing or jugging prohibited.

The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian treating the horse. The licensed veterinarian shall comply with the reporting and treatment requirements set forth in these regulations. The horse shall immediately be scratched by the Judges or Stewards. The practice of administration of any substance by means of a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation of license.

§ 401.6. Possession of illegal, prohibited substances and devices.

(a) The Commission, its investigative personnel, the Judges and Stewards or other Commission designee personnel shall have the right to enter buildings, stables, rooms or other places within the grounds of a licensed racetrack facility and to examine and inspect those locations and the personal property and effects of a person within these locations.

(b) A person granted a license by the Commission, by accepting his license, consents to the search and seizures of all contraband, including hypodermic syringes, hypodermic needles or other devices and drugs, stimulants or narcotics which could be, used in connection therewith, or appliances (electrical, mechanical or otherwise) other than ordinary racing equipment, of the nature that could affect the speed, performance or racing condition of a horse.

PRE-RACE TESTING

§ 401.11. Pre-race blood gas testing—Standardbred.

(a) *General Rule*—The administration or use of alkalinizing agents or similar substances that elevate a horse's Base Excess (BE) or TCO₂ levels above those existing naturally in the untreated horse at normal physiological concentrations is prohibited. To assist in the detection of the prohibited substances in a horse entered to race, the Commission may conduct prerace blood sampling and pre-race testing with the use of an ac-

cepted, reliable testing instrument, including but not limited to a blood gas analyzer for measuring BE levels in blood samples.

(b) Unless otherwise permitted by these rules, no foreign substance shall be carried in the body of a horse when the horse is on the grounds of the licensed racetrack. It shall be a violation of this rule for a horse to test above the established BE levels on race day.

(c) The Board of Judges shall determine which horses will be selected for blood gas testing by random lots or by pre-determined selection based on previous elevated levels found in horses from a particular trainer or owner, probable cause or a trainer or owner's conditional license status.

(1) All horses selected to be tested shall be brought to the designated area for the prerace testing before the horse's first warm up. The order and number of horses which shall have blood drawn for prerace testing shall be randomly selected by lots by the Presiding Judge or the Judges' designee.

(2) In accordance with the Commission's regulations, it is presumed that a horse, when entered to race by an owner or trainer, shall be presented on race day in a sound and healthy condition. It is the sole responsibility of the owner, trainer or groom accompanying the horse to identify any health issues pertaining to the horse and immediately notify the Commission Veterinarian or other Commission personnel prior to the initiation of pre-race testing.

(3) Failure or refusal by a licensee to present a selected horse under his care, custody or control for blood gas analyzer testing, or who refuses in any other way, shall result in an automatic scratch of the horse from the racing program, and any other appropriate disciplinary action in the discretion of the Judges. The Commission Veterinarian shall document the name of the trainer or person who refuses to have blood drawn from the horse and shall file a report with the Commission.

(4) An owner, trainer or groom shall be permitted to observe the testing procedure but may not question, object or otherwise disrupt the testing by the blood gas technician or the Commission Veterinarian.

(d) The Commission shall adopt standard operating procedures documenting the calibration procedures for the blood gas analyzer, sampling procedures, initial testing and retesting procedures, methods used by personnel and positive test notification processes. The documentation related to these procedures shall be made a part of the Commission's chain of custody documentation and shall be admitted into evidence any subsequent hearings without need for authentication or the presence of individuals preparing those documents.

(e) The Commission Veterinarian shall provide documentation reflecting the tattoo or name of the horse from which the blood was drawn, the date and time the blood was drawn, and any other identifying information the Commission deems necessary and appropriate. The Commission Veterinarian shall be responsible to verify that the blood samples for the specific horse in question were tested in accordance with the Commission's procedures.

§ 401.12. Initial testing procedures.

In accordance with the Commission's procedures, the Commission Veterinarian shall draw a blood sample from the selected horse which shall be tested by the blood gas technician using a blood gas analyzer or similar machine.

Should the initial testing indicate an elevated level of BE in the horse, a Commission representative will immediately notify the owner, trainer or groom present of the horse's elevated levels. The horse's initial high levels will be duly documented in the control sheet.

§ 401.13. Retesting procedures.

(a) The Commission Veterinarian or designee shall take the rectal temperature of the horse who had elevated Base Excess (BE) levels. The horse's temperature will be recorded on the Commission Veterinarian's control sheet. The Commission Veterinarian shall extract a second blood sample from the horse.

(b) The horse's second blood sample shall be tested three times utilizing the same procedures and blood gas analyzer machine as the horse's initial blood sample. If the horse's three retests still indicate a high BE level, it shall be considered a positive test and the following will occur:

(1) The Commission Veterinarian shall inform the owner, trainer or groom present of the positive test;

(2) The Commission's investigator shall advise the Board of Judges of the BE positive test; and

(3) The Board of Judges will scratch the horse from the race.

(c) Should any of the three retests fall below the Commission's established threshold, it shall be considered negative and the horse shall be permitted to race.

§ 401.14. Base excess prohibited levels.

The prohibited Base Excess (BE) concentrations are as follows: BE level of 10.0 mmol/l (mEq/l) or higher for nonfurosemide (Lasix) treated horses and BE level of 12.0 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horses. The level of uncertainty will be included before it is considered a violation of these rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a BE level of 10.4 mmol/l (mEq/l) or higher for a nonfurosemide (Lasix) treated horse and a BE level of 12.4 mmol/l (mEq/l) or higher for a furosemide (Lasix) treated horse in order for a violation to be reported under this rule.

§ 401.15. Alternate TCO2 protocol and levels.

(a) The Commission may establish an alternate protocol to determine the levels of total carbon dioxide (TCO2) in a horse using the same methods and procedures as the Base Excess testing, except that the horse's second blood sample may be obtained, sealed and secured and stored in the same manner as post-racing samples. The second blood sample taken from a horse with a positive Base Excess may be forwarded to the Commission Testing Laboratory and subjected to post-race testing in accordance with the Commission's regulations.

(b) *Standardbred TCO2 levels:* A blood serum or plasma TCO2 level shall not exceed 37.0 millimoles per liter in a nonfurosemide (non-Lasix) horse and not to exceed 39 mmol/L for a furosemide (Lasix) horse.

§ 401.16. Base excess penalties.

The Commission may establish and publish a list of penalties against an owner or trainer for positives tests of the Base Excess or TCO2 levels, if applicable, as previously set forth.

§ 401.17. Total carbon dioxide testing for stakes races—Thoroughbred.

(a) For thoroughbred stakes races or other races as directed by the Commission, the Commission may estab-

lish procedures and protocols for the testing, detection and confirmation of an alkalizing substance which could alter the blood serum, plasma pH or concentration of bicarbonates or carbon dioxide in a horse. The use of any foreign substance within 24 hours prior to post time of the race in which the horse is entered is strictly prohibited.

(b) The Commission may utilize either pre-race sampling or post-race sampling and post-race testing procedures of blood samples from a horse to determine the total carbon dioxide concentration in the blood serum or plasma of the horse.

(c) *Thoroughbred TCO2 levels:* A blood serum or plasma TCO2 level shall not exceed 37.0 millimoles per liter in a nonfurosemide (non-Lasix) horse and not to exceed 39 mmol/L for a Furosemide (Lasix) horse.

POST-RACE TESTING

§ 401.21. Refusal to submit to test.

No owner, trainer or any other person having the care, custody or control of a horse, whether entered in a race or not, whether the horse participated in the race or not, may refuse to produce a horse for testing, if requested by the Judges or Stewards during the race meeting. This refusal by the horse's owner, trainer or other person having care, custody or control, shall be deemed a violation of these rules and subject the licensee to a penalty. The horse entered in the race shall be scratched by the Judges or Stewards.

§ 401.22. Test barn.

(a) A licensed racing entity shall provide and at all times maintain in good condition a designated test barn on the racetrack grounds which shall be considered a secured location.

(b) The test barn shall be of an appropriate size and sufficient to accommodate the safe stabling of horses temporarily detained for the taking of biologic samples and shall be structurally designed and constructed to prevent entry by unauthorized persons.

(c) The test barn shall be deemed a restricted area and under the internal supervision and control of the Commission Veterinarian. No access to individuals other than Commission personnel shall be permitted without permission of the Commission Veterinarian.

(d) Notwithstanding subsection (c), the owner, trainer or the trainer's representative, whose horse is in the test barn for sampling, may be present to witness the Commission's sampling process. Those individuals shall properly display their current Commission identification/license badge, and clearly identify the horse they are accompanying. The Commission Veterinarian or the race-track security may properly exclude any person or licensee that does not have a legitimate reason for being in the test barn area.

(e) The absence of the owner, trainer or trainer representative shall not invalidate the procedures followed in taking the sample, nor shall the absence be the grounds for objection to Commission action based on a laboratory report resulting from the test of a sample taken in the absence of the owner, trainer or their representative.

(f) Stable equipment other than that necessary for washing or cooling out a horse shall not be permitted in the test barn. Buckets and water shall be furnished by the Commission.

§ 401.23. Reporting to the test barn.

(a) The official winning horse and any other horse which participated in the race, as determined by Judges, Stewards or the Commission shall be selected to have blood, urine or other biological samples taken in accordance with the guidelines and procedures established by the Commission.

(b) Random or for cause testing may be required by the Judges or Stewards or the Commission at any time based upon reasonable suspicion of unlawful or violative conduct.

(c) Unless otherwise directed by the Judges or Stewards or the Commission Veterinarian, a horse that is selected for testing must be taken directly to the test barn and shall remain there until released by the Commission Veterinarian.

§ 401.24. Primary sample collection.

(a) The collection of blood, urine or other biological samples shall be done in accordance with the Commission's established procedures or other National guidelines or procedures approved by the Commission. In every event, "primary" and "split" portions of a sample shall always be taken at the same time and shall be of the same substance.

(b) Any combination or sufficient quantity of blood, urine or other biological samples, as determined by the Commission Veterinarian or the Commission, may be used by the Commission testing laboratory for purposes of testing for prohibited substances under this chapter. The election by the Commission testing laboratory to use one form of biological sample shall not be a basis to challenge the detection and confirmation of a prohibited substance in the tested horse.

(c) The Commission shall approve and provide the urine containers, blood sample receptacles and all other materials, plastic bags, evidentiary security/evidence tape and equipment necessary to properly identify, seal, secure and store the samples from the selected horses.

(d) The samples taken from a horse by the Commission Veterinarian or the Commission's test barn staff shall be collected in the appropriate number of containers and shall be designated as the primary and split samples. At least two blood samples for each horse shall be collected in sample receptacles approved by the Commission. These samples shall be sealed with tamper-proof tape and bear the specific identification tracking number associated with that horse and its samples.

(e) The Commission Veterinarian and testing barn staff shall create and properly maintain records of the sampling, evidentiary sealing and storing of the primary and split samples which shall be made a part of the Commission's chain of custody documentation for administrative hearing purposes.

(f) Once collected, sealed and documented, all primary samples shall be placed into locked refrigerators designated for storage of biological samples under the supervision of the Commission Veterinarian or the Commission's designee, to be safeguarded until the primary samples are packaged and shipped to the Commission testing laboratory for chemical analysis.

(g) At all times during the sampling, testing and administrative process, the Commission shall be considered the owner of the primary sample.

§ 401.25. Storage of split samples.

(a) In accordance with § 401.24 (relating to primary sample collection) the blood, urine or other biological

samples previously taken and designated as split samples shall be stored and maintained in a locked freezer in the test barn until an owner or trainer requests that the split samples be tested in accordance with the Commission's procedures.

(b) The freezer for storage of split samples shall be opened only for depositing or removing split samples, review of inventory or for checking the condition of the split samples. A log shall be maintained by the Commission Veterinarian or the Commission investigators and an entry shall be made each time the split sample freezer is opened to indicate the following:

- (1) Persons in attendance;
- (2) The purpose for opening the freezer;
- (3) Identification of split samples deposited or removed;
- (4) The date and time the freezer was opened or when was closed;
- (5) Verification that the lock was secured prior to and after opening of the freezer; and
- (6) Evidence of a malfunction, if any, of the split sample freezer.

(c) At all times, the Commission shall be considered the owner of the split sample.

(d) If the results of the split sample testing do not substantially confirm the findings by the Commission testing laboratory of the primary sample, the Commission will not consider the sample to constitute a prima facie violation of this chapter and no penalty will be imposed.

(e) If the Standardbred or Thoroughbred Bureau Directors declare a positive test based upon the reported findings of the Commission testing laboratory, it shall be considered to be a prima facie violation of the applicable provisions of this chapter and written and dated notification of the positive test shall be made to the trainer of record for the tested horse. The trainer shall be solely responsible to notify the owner of the horse of the positive test.

(f) Within 48 hours after receiving written notification of the positive test, the owner or trainer of the horse in question may request that the split sample be tested. The Commission may provide a form for a request which must be signed and dated by the owner or trainer. Failure by either the owner or trainer to make a timely request within 48 hours of notice of the positive shall constitute a waiver of the right to have the split sample tested. The findings of the primary sample by the Commission testing laboratory shall be deemed conclusive at any subsequent hearing.

(g) Upon application by the trainer or owner of the horse in question, the split portion of the sample taken shall be tested by a duly accredited laboratory designated and approved by the Commission under the minimum standards set forth in § 401.29 (relating to split sample testing laboratory minimum standards).

(h) If the Commission is unable to secure the services of a specific laboratory with the proper accreditation or testing methods to test the split portion of a sample, the Commission will have the option of having the split sample retested at the laboratory which tested the original sample. The owner and trainer affected will be notified by the Commission.

(i) If an act of God, power failure, accident, strike or other action prevents a retest from being made which is

beyond the control of the Commission, the results of the primary official test shall be accepted as prima facie evidence.

§ 401.26. Packaging and shipping of split samples.

(a) The Commission or its investigative staff shall be responsible for the packaging and shipping of the split sample and shall coordinate the time and location for the packaging of the split sample at the test barn with the owner, trainer or representative. The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer or a designee to appear at the time and place designated by the Commission representative in connection with packaging and shipping the split sample shall constitute a waiver of any right to challenge Commission's procedures.

(c) Prior to opening the split sample freezer or refrigerator, the Commission's representative shall provide the split sample verification form or split sample packaging form or any other similar form approved by the Commission. The forms shall be completed fully during the retrieval, packaging and shipment of the split sample and shall contain the following information:

(1) The date and time the sample is removed from the split sample freezer;

(2) The sample number;

(3) The address where the split sample is to be sent; and,

(4) A check from the owner or trainer made payable to the split sample laboratory with the appropriate testing fee.

(d) The Commission representative shall remove the split sample from the freezer and shall package it in accordance with the packaging procedures directed by the Commission. All necessary Commission chain of custody forms shall be signed by the owner, trainer or other representative, if present, and the Commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(e) The owner, trainer or representative, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(f) Prior to shipment of the split sample, the Commission's representative shall confirm:

(1) That the split sample laboratory has agreed to provide the testing requested;

(2) That the split sample laboratory has agreed to send results to the Commission; and

(3) That arrangements for payment satisfactory to the split sample laboratory have been made.

§ 401.27. Frozen samples.

(a) The Commission from time to time may direct the Commission Testing Laboratory to retain and preserve by freezing samples for future analysis or research purposes.

(b) After 1 year from the date of sampling, the Commission may grant permission, at the request of the Commission Testing Laboratory, to properly dispose of primary samples which were determined to contain no prohibited substances or in the case of samples which

were determined as positive, after all administrative appeals have been exhausted.

(c) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance or metabolic derivative has been administered to a horse.

§ 401.28. Commission Testing Laboratory minimum standards.

(a) The purpose of the Commission Testing Laboratory is to analyze biologic samples for the presence in race horses of any drugs, medications, foreign substances or other substances including permitted medications in excess of the maximum allowable levels and to reports those findings to the Standardbred and Thoroughbred Horse Racing Bureau Directors.

(b) The Commission Testing Laboratory shall at all times continue to meet and maintain the minimum competency standards as set forth by National and International accrediting bodies such as the American Association of Laboratory Accreditation (A2LA) and the RMTCC or other similar accrediting bodies under the globally recognized ISO/IEC 17025 *General Requirements for the Competence of Testing and Calibration Laboratories*.

§ 401.29. Split sample testing laboratory minimum standards.

(a) The designated split sample testing laboratory (Split Lab) conducting split post-race sample analysis must, at a minimum, demonstrate technical competence in the field of chemical testing and laboratory quality management be meeting similar accreditation standards and testing standards as the Commission Testing Laboratory.

(b) The Commission shall provide a list of approved split sample laboratories for use.

UNIFORM MEDICATION CLASSIFICATION AND PENALTIES

§ 401.41. Determination of positive test results.

(a) If the Standardbred or Thoroughbred Bureau Directors declare a positive test based upon the reported findings of the Commission testing laboratory, and if applicable, the confirmation by the split sample laboratory, it shall be considered a possible violation of the provisions of this chapter. The Bureau Directors shall authorize and direct Commission investigators to immediately conduct an investigation of the matters relating to the positive finding. Medication and drug violations shall be investigated and reviewed on a case by case basis.

(b) The results of biological sample testing and analysis prepared by the Commission Testing Laboratory shall be deemed prima facie correct and all steps undertaken in the collection, preservation, handling and testing thereof shall be presumed correct in the absence of affirmative proof to the contrary.

(c) The Board of Judges or Board of Stewards shall thereafter schedule and conduct a hearing consistent with the provisions set forth in Chapter 179 (relating to Rules of Administrative Practice and Procedure—temporary regulations) of the Commission's regulations to determine whether a violation of the Commission's regulations has occurred. In addition to the penalty provisions contained in the act and the Commission's regulations, the Judges and Stewards may consider the specific drug classification level of the violation and the appropriate penalty categories as set forth in the *Uniform Classification Guidelines*

of *Foreign Substances* established by the ARCI and set forth in §§ 401.42 and 401.43 (relating to uniform classification guidelines for foreign substances; and positive test penalty categories).

(d) Prior to issuing the medication violation ruling, the Judges and Stewards, may also consult with the Commission Veterinarian to determine if the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's Medication Report Form (treatment sheets) received under § 403.4 (relating to treatments sheets or veterinarian medication report forms) and may also consult with the Commission's Testing Laboratory director to determine the seriousness of the laboratory finding or the medication violation penalties.

(e) For purposes of determining mitigating or aggravating circumstances, the Judges and Stewards may consider the following factors:

(1) The past record of the trainer, veterinarian and owner in drug cases;

(2) The potential of the drugs to influence a horse's racing performance;

(3) The legal availability of the drug;

(4) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

(5) The steps taken by the trainer to safeguard the horse;

(6) The probability of environmental contamination or inadvertent exposure due to human drug use;

(7) The purse of the race;

(8) Whether the drug found was one for which the horse was receiving a treatment as determined by the Medication Report Form;

(9) Whether there was any suspicious betting pattern in the race; and

(10) Whether the licensed trainer was acting on the advice of a licensed veterinarian.

(f) As a result of the investigation, the Judges or Stewards may determine that mitigating circumstances exist for which a lesser or no penalty is appropriate for the licensee or that aggravating factors exist, which may increase the penalty beyond the minimum.

(g) Whenever there is a positive result of a post-race test the purse may be redistributed.

§ 401.42. Uniform classification guidelines for foreign substances.

The Commission adopts the following outline which describes the types of medications, drugs and substances placed in each classification. This list shall be publicly posted on the Commission's web site, in the offices of the Commission Veterinarian and in the office of the racing secretary.

(1) *Class 1:*

Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines, all United States Drug Enforcement Agency Schedule I drugs and many Schedule II drugs. Also found in this class are drugs that are potent stimulants of the central nervous system. Drugs in this class have no generally accepted medical use in the racing horse and their pharmacologic potential for altering the performance of a racing horse is very high.

(2) *Class 2:*

Drugs placed in this classification have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the racing horse. Many are products intended to alter consciousness or the psychic state of humans and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a racing horse. The following groups of drugs placed are in this class:

(i) Opiate partial agonists or agonist-antagonists;

(ii) Non-opiate psychotropic drugs. These drugs may have stimulant, depressant, analgesic or neuroleptic effects;

(iii) Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

(iv) Drugs with prominent CNS depressant action;

(v) Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

(vi) Muscle blocking drugs that have a direct neuromuscular blocking action;

(vii) Local anesthetics that have a reasonable potential for use as nerve blocking agents (except procaine); and

(viii) Snake venoms and other biologic substances, which may be used as nerve blocking agents.

(3) *Class 3:*

Drugs placed in this classification may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a racing horse. The following groups of drugs are placed in this class:

(i) Drugs affecting the autonomic nervous system that do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects. Bronchodilators are included in this class;

(ii) A local anesthetic that has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

(iii) Miscellaneous drugs with mild sedative action, such as the sleep-inducing antihistamines;

(iv) Primary vasodilating/hypotensive agents;

(v) Potent diuretics affecting renal function and body fluid composition; and

(vi) Anabolic and/or androgenic steroids and other drugs.

(4) *Class 4:*

Drugs in this classification comprise primarily therapeutic medications routinely used in racing horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

(i) Non-opiate drugs that have a mild central analgesic effect;

(ii) Drugs affecting the autonomic nervous system that do not have prominent CNS, cardiovascular or respiratory effects:

(A) Drugs used solely as topical vasoconstrictors or decongestants;

(B) Drugs used as gastrointestinal antispasmodics;

(C) Drugs used to void the urinary bladder;

(D) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs;

(E) Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

(iii) Antihistamines that do not have a significant CNS depressant effect. (This does not include H2 blocking agents, which are in Class 5).

(iv) Mineralocorticoid drugs;

(v) Skeletal muscle relaxants;

(vi) Anti-inflammatory drugs. These drugs may reduce pain as a consequence of their anti-inflammatory action.

(A) Non-Steroidal Anti-Inflammatory Drugs (NSAIDs);

(B) Corticosteroids (glucocorticoids); and

(C) Miscellaneous anti-inflammatory agents.

(vii) Less potent diuretics;

(viii) Cardiac glycosides and antiarrhythmic agents.

(A) Cardiac glycosides;

(B) Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

(C) Miscellaneous cardiotoxic drugs.

(ix) Topical Anesthetics—agents not available in injectable formulations;

(x) Antidiarrheal drugs;

(xi) Miscellaneous drugs.

(A) Expectorants with little or no other pharmacologic action;

(B) Stomachics; and

(C) Mucolytic agents.

(5) *Class 5:*

Drugs in this classification are therapeutic medications for which concentration limits have been established by the racing jurisdictions as well as certain miscellaneous agents. Included specifically are agents that have very localized actions only, such as anti-ulcer drugs and certain antiallergenic drugs. The anticoagulant drugs are also included.

§ 401.43. Positive test penalty categories.

(a) To maintain consistency of drug medication penalties with surrounding racing jurisdictions, in accordance with section 9312(6) of the act (relating to additional powers of commission), the Commission shall adopt and publish in the *Pennsylvania Bulletin* the most recent version of the “Penalty Categories” set forth in the *Uniform Classification Guidelines of Foreign Substances* as established by ARCI. The penalty categories “A”, “B”, “C” and “D” and their related schedules for trainers and owners shall also contain provisions for the number of offenses committed which shall determine the level of penalty assessed.

(b) The Commission, Bureau Directors, Judges or the Stewards may use the penalty “categories” and medication guidelines schedule as a starting place in the penalty stage of the deliberations for a violation of the Commission’s medication and foreign substance rules.

(c) In issuing penalties against individuals found guilty of medication and drug violations, a regulatory distinction may be made between the detection of therapeutic medications used routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.

(d) If a licensed veterinarian is administering or prescribing a drug not listed in the ARCI *Uniform Classification Guidelines for Foreign Substances*, the identity of the drug shall be forwarded to the Commission Testing Laboratory for classification.

(e) A drug or metabolite thereof found to be present in a pre-race or post-race sample which is not classified in the most current ARCI *Uniform Classification Guidelines for Foreign Substances* shall be deemed Class 1 drug and the trainer and/or owner shall be subject to those penalties as set forth in schedule “A.”

(f) The recommended penalty for a violation involving a drug that carries a Category “D” penalty is a written warning to the trainer and owner. Multiple violations may result in fines or suspensions, or both.

(g) A licensee of the Commission, including practicing veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer.

§ 401.44. Criminal or administrative licensing referrals.

(a) In addition to any penalties issued by the Judges, Stewards or the Commission, a veterinarian found to be involved in the administration of any drug carrying the penalty category of “A” shall be referred to the State Board of Veterinary Medicine for consideration of further disciplinary action or license revocation.

(b) In accordance with the provisions of the act, a person believed to have committed acts in violation of Pennsylvania criminal statutes may be referred to the appropriate law enforcement agency. Administrative action taken by the Judges, Stewards or the Commission shall not prohibit a prosecution for criminal acts committed, nor shall a criminal prosecution preclude the administrative action by the Judges, Stewards or the Commission.

(c) Procedures shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This shall include ensuring that horses are not transferred to licensed family members or employees of the suspended person.

§ 401.45. Responsibility of a trainer.

As fully set forth in Chapters 205 and 305 (relating to rules of Standardbred racing—temporary regulations; and rules of Thoroughbred racing—temporary regulations), a trainer shall be responsible for the condition of the horses in the care, custody or control of the trainer regardless of the trainer’s physical location.

§ 401.46. Control of horse, presumption of knowledge.

Whenever the chemical analysis test described in this chapter discloses the presence of a drug, stimulant, depressant or foreign substance or therapeutic medications above the established levels, it shall be presumed that the same was administered by the person having the

care, custody or control of the horse and that the administering was done with the intent to affect the speed or condition of the horse and the result of the race in which it participated.

§ 401.47. Persons found guilty of administration of drugs.

A person found guilty by the Commission of participation in or knowledge of that a narcotic, stimulant or similar illegal drug has been administered to a horse shall be summarily ruled off from all tracks in this Commonwealth and upon notice and hearing, the occupational license may be revoked.

MULTIPLE MEDICATION VIOLATION POINT SYSTEM

§ 401.51. Multiple medication violation points.

(a) A trainer, who receives a penalty for a medication violation based upon a horse testing positive for a Class 1—5 medication with a Category A—C penalty, as provided in the most recent version of the ARCI *Uniform Classification Guidelines for Foreign Substances*, or similar state regulatory guidelines, shall be assigned additional multiple medication violation (MMV) enhanced points as follows:

<i>Penalty Class</i>	<i>Points If Controlled Therapeutic Substance</i>	<i>Points If Non-Controlled Substance</i>
Class A	N/A	6
Class B	2	4
Class C	1/2 for first violation with an additional 1/2 point for each additional violation within 365 days ¹	1 for first violation with an additional 1/2 point for each additional violation within 365 days
Class D	0	0

¹ Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation.

(1) If the Standardbred or Thoroughbred Horse Racing Bureau Directors, or Judges and Stewards determine that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

(b) The points assigned to a medication violation ruling by the Judges or Stewards shall be included in the trainer’s Commission licensing records and forwarded to the ARCI official database or any other similar recordkeeping entity. MMV points shall be recorded consistent with subsection (a) including when appropriate, a designation that points have been suspended for the medication violation. Points assigned by the Judges’ or Stewards’ rulings shall reflect, in the case of multiple positive tests as described in subsection (d), whether they constitute a single violation. The Judges’ or Stewards’ rulings shall be posted on the Commission’s official web site and the official database of the ARCI or other record keeping entity.

(1) If an appeal is pending, that fact shall be noted in the ruling.

(2) No enhancement points shall be applied until a final adjudication of the enforcement of any violation.

(c) A trainer’s cumulative points for violations in all racing jurisdictions shall be maintained by the Commission, ARCI or other recordkeeping entities. Once all

appeals are waived or exhausted, the points shall immediately become part of the trainer’s official Commission records, ARCI or other recordkeeping entity’s records and shall be considered by the Commission in its determination to subject the trainer to the mandatory enhanced penalties by the Judges or Stewards as provided in this regulation.

(d) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the Commission may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the Judges or Stewards may treat each substance found as an individual violation for which points will be assigned, depending upon the facts and circumstances of the case.

(e) The official database shall be used to advise the Judges, Stewards or Commission of the trainer’s record of past violations and the cumulative MMV points. Nothing in this administrative regulation shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

(f) The Judges or Stewards shall consider all points for violations in all racing jurisdictions as contained in the trainer’s official record when determining whether the mandatory enhancements provided in this regulation shall be imposed.

§ 401.52. Enhancement points.

(a) In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in his/her official ARCI record:

<i>Points</i>	<i>Suspension in days</i>
5—5.5	15 to 30
6—8.5	30 to 60
9—10.5	90 to 180
11 or more	180 to 360

(b) MMV penalties are not a substitute for the current penalty system and are intended to be an additional uniform penalty when the licensee:

(i) Has had more than one medication violation for the relevant time period; and

(ii) Exceeds the permissible number of points.

(c) The Stewards and Commission shall consider aggravating and mitigating circumstances, including the trainer’s prior record for medication violations, when determining the appropriate penalty for the underlying offense. The MMV point system is intended to be a separate and additional penalty for a pattern of violations.

(d) The suspension periods as provided in subsection (a) shall run consecutively to any suspension imposed by the Judges or Stewards for the underlying offense.

(e) The Judges’ or Stewards’ ruling shall distinguish between the penalty for the underlying offense and any enhancement penalty based upon the Judges’ or Stewards’ review of the trainer’s cumulative points and regulatory record, which may be considered an aggravating factor in a case.

§ 401.53. Expiration of points.

(a) Points shall expire as follows:

<i>Penalty Classification</i>	<i>Time to Expire</i>
A	3 years
B	2 years
C	1 year

(b) In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

OTHER PROHIBITED CONDUCT

§ 401.61. Possession of hypodermic needles, syringes and injectable substances.

No person, except a Commission Veterinarian, race-track veterinarian or veterinarian licensed by the Commission, may possess or use a hypodermic needle, hypodermic syringe capable of accepting a needle and injectable substances of any kind, type or description on the licensed racetrack grounds, in that person's custody, control or possession. If a person has a medical condition which makes it necessary to have a syringe while on the grounds of a racetrack, that person must request permission of the Judges or Stewards in writing, furnish a letter form a licensed physician explaining the necessity of the syringe and must comply with any conditions or restrictions set by the Judges or Stewards. Violations of this rule will subject the violator to a fine, suspension or both.

§ 401.62. Mistreatment of horses.

A licensee or other person under the jurisdiction of the Commission may not alone or in concert with another person permit an animal under his control to be subjected to a form of cruelty, mistreatment, neglect or abuse or abandon, or to injure, maim or kill or administer a noxious or harmful substance to or deprive an animal of necessary care, sustenance, shelter or veterinary care.

CHAPTER 403. EQUINE VETERINARY PRACTICES—TEMPORARY REGULATIONS

Sec.	
403.1.	General purpose.
403.2.	Role of practicing veterinarians.
403.3.	Treatment restrictions.
403.4.	Treatment sheets or veterinarian medication report forms.
403.5.	Prohibited substances and methods.
403.6.	Blood doping substances or agents prohibited.
403.7.	Extracorporeal shock wave therapy or radial pulse wave therapy.
403.8.	Nasogastric tube.
403.9.	Prohibited substances list.
403.10.	Prohibited manipulation of blood and blood components.
403.11.	Restricted therapeutic use requirements chart.
403.12.	Medical labeling.
403.13.	Non-steroidal anti-inflammatory drugs.
403.14.	Furosemide (Lasix—Thoroughbred).
403.15.	Furosemide (Lasix—Standardbred).
403.16.	Environmental contaminants and substances of human use.
403.17.	Androgenic-anabolic steroid (AAS).
403.18.	Compounded medications on racetrack grounds.

§ 403.1. General purpose.

To expressly set forth the professional duties, ethical obligations and procedures to be used by licensed equine veterinarians to ensure the health, safety and welfare of racehorses and to properly safeguard the integrity of racing, the interests of the general public and the participants in racing. In addition to the licensing requirements under Chapter 185 (relating to occupational licenses—temporary regulations) and §§ 303.71—303.73 (relating to practicing veterinarians) of the Commission's regulations, practicing veterinarians shall comply with the following provisions and requirements of this chapter and

with their professional duties and ethical obligations under their veterinary license.

§ 403.2. Role of practicing veterinarians.

(a) Veterinarians licensed by the Commission and practicing at any licensed racing facility under the jurisdiction of the Commission are under the authority of the Commission Veterinarian and the Board of Judges or Board of Stewards at that facility or other location.

(b) The following limitations apply to drug treatments of horses that are engaged in racing activities, including training, related to competing in pari-mutuel racing in this Commonwealth:

(1) No drug or other substance may be administered except in the context of a valid veterinarian-client-patient relationship between the attending veterinarian, the horse owner (who may be represented by the trainer or other agent) and the horse.

(2) The owner is not required by this subdivision to follow the veterinarian's instructions, but no drug may be administered without a veterinarian having examined the horse and provided the treatment recommendation. This relationship requires the following:

(i) The veterinarian, with the consent of the owner, has accepted responsibility for making medical judgments about the health of the horse;

(ii) The veterinarian has sufficient knowledge of the horse to make a preliminary diagnosis of the medical condition of the horse;

(iii) The veterinarian has performed an examination of the horse and is acquainted with the keeping and care of the horse;

(iv) The veterinarian is available to evaluate and oversee treatment outcomes, or has made appropriate arrangements for continuing care and treatment;

(v) The relationship is maintained by veterinary visits as needed;

(vi) The veterinarian's judgment is independent and not dictated by the trainer or owner of the horse; and,

(vii) The veterinarian maintains appropriate, substantial and pertinent records reflecting the treatment of the horses as previously set forth.

(c) No prescription drug or medication may be administered except as prescribed by an attending veterinarian and who shall provide copies of the prescriptions or orders to the Commission at all reasonable times.

(d) The trainer and veterinarian are both equally responsible to ensure compliance with these limitations on drug treatments of horses, except the medical judgment to recommend a drug treatment or to prescribe a drug is the responsibility of the veterinarian and the decision to proceed with a drug treatment that has been so recommended is the responsibility of the horse owner (who may be represented by the trainer or other agent).

§ 403.3. Treatment restrictions.

(a) Only licensed owners or trainers shall be permitted to authorize veterinary medical treatment of horses under the veterinarian's care, custody and control at a race-track, licensed facility or other location under the jurisdiction of the commission.

(b) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or con-

trolled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any racetrack, facility or other location under the jurisdiction of the Commission.

(c) This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

(1) A recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

(2) A non-injectable substance on the direction or by prescription of a licensed veterinarian; or

(3) A non-injectable non-prescription medication or substance.

(d) No person, other than a veterinarian licensed by the Commission, shall use, transport or be in the care, control, custody or constructive possession of a hypodermic needle, syringe capable of accepting a needle or injectable substances of any kind on the licensed racetrack or grounds. The discovery of a hypodermic needle, syringe or injectable substance in shared locations such as tack rooms, lockers, stalls or stables shall be sufficient grounds for imposition of penalty on all licensees who use or control the previously listed locations. At all licensed racetracks or other locations under the jurisdiction of the Commission, veterinarians may use only a one-time (one-use) disposable syringe and needle and shall properly dispose of both into an appropriate container provided by the licensed racing entity or in a manner approved by the Commission.

(1) Except that, if a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person must furnish a letter from a licensed physician explaining the need for the person to possess a syringe and must comply with any conditions and restrictions set by the Judges or Stewards or the Commission.

(e) Practicing veterinarians shall not have contact with an entered horse within 24 hours before the scheduled post time of the race in which the horse is scheduled to compete except for the administration of furosemide under the guidelines set forth in § 403.14 (relating to Furosemide (Lasix—Thoroughbred)) unless approved by the Commission Veterinarian. Any unauthorized contact may result in the horse being scratched from the race in which it was scheduled to compete and may result in further disciplinary action by the Stewards.

§ 403.4. Treatment sheets or veterinarian medication report forms.

(a) Every veterinarian who treats a racehorse at any racetrack or other location under the jurisdiction of the Commission shall maintain an accurate and complete written log of treatment activities on a Medication Report Form or Treatment Sheet and report the treatment to the Commission office, the Stewards or Judges at the racetrack where the horse is entered to run or as otherwise specified by the Commission. The Treatment Sheet shall contain the following:

- (1) The name of the horse treated;
- (2) List of all medications, drugs, substances, or procedures administered or prescribed to the horse;
- (3) The name of the trainer of the horse;
- (4) The date and time of treatment;

(5) Indicate the route of administration on all meds and specific amounts administered; must list all oral medications left with trainers and indicate the horse's need for these oral medications;

(6) For all intra-articular injections, identify the exact location, body part, limb or joint on the horse of the injection and specific dosage amounts;

(7) Indicate whether the horse is entered to run; and

(8) Any other information that may be requested by the Commission veterinarian.

(b) The Medication Report Form or Treatment Sheet shall be signed and attested to by the practicing veterinarian under the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), and may subject the practicing veterinarian to other administrative penalties as set forth in subsections (c)—(e).

(c) The Medication Report Form or Treatment Sheet must be filed by the treating veterinarian with the Commission office within 24 hours after treatment. The report/treatment sheet shall be deemed confidential and its contents shall not be disclosed to others, except:

(1) To the horse's owner or trainer of record at the time of treatment;

(2) To the Commission, or its designees in the course and scope of an investigation or in an administrative proceeding before the Stewards/Judges or the Commission; or

(3) To law enforcement officials conducting a criminal investigation relating to the treatment of horses.

(d) Failure of any practicing veterinarian to adhere to the previously listed provisions or to properly and timely provide the Medication Reports or Treatment Sheets to the Commission or its designee shall subject the practicing veterinarian to all applicable penalties, including fines or suspensions, as set forth in the act and the Commission's regulations.

(e) In addition to the above administrative penalties, the Commission, in its sole discretion, may refer any violation of subsections (a)—(d) by a licensed practicing veterinarian to the State Board of Veterinary Medicine or to criminal law enforcement entities for any action they may deem necessary and appropriate.

§ 403.5. Prohibited substances and methods.

(a) The substances and methods listed in the Commission's Prohibited Substances List in § 403.9 (relating to prohibited substances list) may not be used at any place or time and may not be possessed on the premises of a licensed racetrack, licensed facility or other location under the jurisdiction of the Commission, except as a restricted therapeutic use. As the Prohibited Substances List is amended, the Commission shall publish the most recent version of the list in the *Pennsylvania Bulletin* and on its web site.

(b) *Restricted Therapeutic Use.* A limited number of medications on the Prohibited Substance List shall be exempted when the administration occurs in compliance with the Required Conditions for Restricted Therapeutic Use chart set forth in § 403.11 (relating to restricted therapeutic use requirements chart):

(1) *Report When Sampled* means the administration of the substance must be reported to the Commission when the horse is next sampled, if the horse is sampled within 24 hours after the administration;

(2) *Pre-File Treatment Plan* means a treatment plan for the substance which must be filed by the time of administration in a manner approved by the Commission;

(3) *Written Approval from Commission* means the Commission has granted written approval of a written treatment plan before the administration of the substance;

(4) *Emergency Use (report)* means the substance had to be administered due to an acute emergency involving the life or health of the horse, provided the emergency use is reported to the Commission as soon as practicable after the treatment occurs;

(5) *Prescribed by Veterinarian* means the substance has been prescribed by an attending veterinarian, in compliance with this chapter and recorded in the veterinary records in the manner required by the Commission;

(6) *Report Treatment* means the treatment must be reported to the Commission by the trainer at the time of administration to provide the Commission with information for the Veterinarian's List. The trainer may delegate this responsibility to the treating veterinarian, who shall make the report to the Commission when so designated; and

(7) *Other Limitations* means additional requirements that apply, such as a substance may be used in only fillies or mares or a horse that is administered a substance shall be reported immediately to the Commission and placed on the Veterinarian's List for a specific minimum period of time.

§ 403.6. Blood doping substances or agents prohibited.

(a) The possession or use, or both, of the following substances or of blood doping agents, including but not limited to those listed as follows, on the racetrack premises or other facility under the jurisdiction of the Commission is expressly forbidden:

- (1) Aminoimidazole carboxamide ribonucleotide (AICAR);
- (2) Darbepoetin;
- (3) Equine Growth Hormone;
- (4) Erythropoietin;
- (5) Hemopure®;
- (6) Myo-Inositol Trispyrophosphate (ITPP);
- (7) Oxyglobin®;
- (8) Thymosin beta;
- (9) Venoms or derivatives thereof; and
- (10) Thymosin beta.

(b) No person shall at any time administer any other doping agent to a horse, except under a valid therapeutic, evidence-based treatment plan.

(c) *Other doping agent* means a substance that is not listed in the Commission's Prohibited Substances List, has a pharmacologic potential to materially alter the performance of a horse, has no generally accepted medical use in the horse when treated, and is:

(1) Capable at any time of causing an action or effect, or both, within one or more of the blood, cardiovascular, digestive, endocrine, immune, musculoskeletal, nervous, reproductive, respiratory or urinary mammalian body systems; including but not limited to endocrine secretions and their synthetic counterparts, masking agents, oxygen carriers and agents that directly or indirectly affect or manipulate gene expression; but

(2) Not a substance that is considered to have no effect on the physiology of a horse except to improve nutrition or treat or prevent infections or parasite infestations.

(d) The Commission may from time to time publish advisory warnings in the *Pennsylvania Bulletin* that certain substances or administrations may constitute a violation of this rule.

(e) *Therapeutic, evidence-based treatment plan* means a planned course of treatment written and prescribed by an attending veterinarian before the horse is treated that:

(1) Describes the medical need of the horse for the treatment, the evidence-based scientific or clinical justification for using the doping agent, and a determination that recognized therapeutic alternates do not exist; and

(2) Complies with this chapter, meets the standards of veterinary practice within this Commonwealth and is developed in good faith to treat a medical need of the horse.

(f) These plans shall not authorize the possession of a doping agent or substance on the premises of a licensed racetrack or other racing facility under the jurisdiction of the Commission.

§ 403.7. Extracorporeal shock wave therapy or radial pulse wave therapy.

(a) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy ("shock wave therapy") or other acoustic wave high energy, high amplitude devices, therapies, treatments or similar mechanisms, devices or treatments shall not be permitted unless the following conditions are satisfied:

(1) Only licensed veterinarians are permitted to use the preferred types of Extracorporeal shock wave devices or perform therapies and treatments on a horse as previously defined;

(2) Only licensed veterinarians are permitted to possess or use any instrument used to administer or deliver shock wave therapy on the licensed racetrack grounds or other facility under the jurisdiction of the Commission;

(3) All shock wave therapy machines or devices, whether in operating condition or not, must be registered with and approved by the Commission or its designee before the machine is brought to or possessed on any racetrack or other facility under the jurisdiction of the Commission;

(4) All shock wave therapy machines must be reported and registered within 24 hours prior to treatment on the prescribed form to the Commission veterinarian.

(5) All shock wave therapy machines must be used at a previously-disclosed location that is approved by the Commission. Commission investigative staff shall be granted access to any location housing a registered shock wave therapy machine of any type.

(b) Shock wave therapy cannot be administered to any horse entered in a race. If a horse is entered, shock wave therapy cannot be administered until that horse has been scratched from the race. If shock wave therapy is administered to a horse entered in a race, but which has not been scratched, both the trainer and veterinarian shall be in violation of this section.

(c) Any horse treated with shock wave therapy shall, within 24 hours of the treatment, be placed on the Veterinarian's List and added to a list of ineligible horses. This list shall be kept in the race secretary's office and accessible to the jockeys, drivers, trainers or their agents

during normal business hours and be made available to other regulatory jurisdictions.

(d) No horse treated with shock wave therapy shall be permitted to qualify, breeze or race for a minimum of 10 days following treatment with the day one beginning on the day the therapy was administered.

(e) Within 24 hours of administering shock wave therapy, the treating veterinarian shall submit a written report/treatment sheet detailing the treatment information and horse and trainer's name to the Commission Veterinarian.

(f) Any owner, trainer, veterinarian or other person who performs, participates in the use, treatment or administration of shock wave therapy or who is in the possession or control of an unregistered shock wave therapy machine in violation of this section shall be considered to have committed a violation of the rules of racing and is subject to the penalties and fines set forth in section 9325 (relating to power of commission to impose fines) of the act, the applicable penalty matrix as adopted and published by the Commission or under the ARCI Class A Penalty provisions.

(1) Penalties assessed against an owner, trainer, veterinarian or other person for violation of this section shall be individually assessed against each violator.

(2) A person directing another to violate this section shall be subject to the same penalties as the offender.

§ 403.8. Nasogastric tube.

The use of a nasogastric tube (a tube longer than 6 inches) for the administration of any substance within 24 hours prior to the post time of the race in which the horse is entered is prohibited, unless performed by a licensed practicing veterinarian and properly logged in a medical report/treatment sheet in accordance with this chapter.

§ 403.9. Prohibited substances list.

(a) All substances in the following categories of drugs shall be strictly prohibited, unless otherwise exempted by the Commission in accordance with the provisions of this chapter: non-approved substances; anabolic agents/steroids; growth hormones; hormone and metabolic modulators; diuretics and other masking agents. The Prohibited Substance List is a comprehensive list of those prohibited substances. Since the Prohibited Substance List, as established by the ARCI is subject to frequent review, amendment or modification, the Commission shall annually notify the regulated community and publish the Prohibited Substance List in the *Pennsylvania Bulletin* and on its web site.

(b) In accordance with section 9312(6) (relating to additional powers of commission) of the act, the Commission is authorized to adopt National standards relating to prohibited substances, uniform drug thresholds or penalties, which includes the Prohibited Substance List, as established or amended by other racing jurisdictions or commission-recognized National regulatory racing organizations, such as ARCI or the USTA.

§ 403.10. Prohibited manipulation of blood and blood components.

(a) The following conduct or manipulation is expressly prohibited:

(1) The administration or reintroduction of any quantity of autologous, allogenic (homologous) or heterologous blood or red blood cell products of any origin into the circulatory system.

(2) Artificially enhancing the uptake, transport or delivery of oxygen, including, but not limited to, perfluorochemicals, efaproxiral (RSR13) and modified hemoglobin products (for example hemoglobin-based blood substitutes, microencapsulated hemoglobin products), excluding supplemental oxygen.

(3) Any form of intravascular manipulation of the blood or blood components by physical or chemical means.

(b) The chemical and physical manipulation, tampering or attempt to tamper, to alter the integrity and validity of samples collected by the Commission, is prohibited. These methods include but are not limited to urine substitution or adulteration (for example, proteases).

(c) Gene doping or any similar conduct with the potential to enhance the horse's performance, is prohibited, including the transfer of polymers of nucleic acids or nucleic acid analogues or the use of normal or genetically modified hematopoietic cells.

§ 403.11. Restricted therapeutic use requirements chart.

(a) The Commission hereby adopts the ARCI Restricted Therapeutic Use Requirements Chart (Chart) which is intended to provide the treating veterinarian with specific conditions and approvals for the therapeutic use of what are normally restricted or prohibited substances. The Chart identifies the particular prohibited substance and whether the veterinarian must prefile the treatment plan with the Commission and which substances require written approval from the Commission. The Chart provides for instances of emergency use of prohibited substances as prescribed by the treating veterinarian.

(b) In accordance with section 9312(6) (relating to additional powers of commission) of the act, the Commission is authorized to adopt National standards relating to prohibited substances, uniform drug thresholds or penalties, which includes the Chart, as established or amended by other racing jurisdictions or Commission-recognized National regulatory racing organizations, such as ARCI or the USTA. The Commission shall provide notice to the regulated community and publish the Chart in the *Pennsylvania Bulletin* and on the Commission's web site.

§ 403.12. Medical labeling.

(a) While on racetrack grounds and facilities, no person shall have or be in possession of a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day, unless the product is labeled in accordance with this subsection. Possession shall be deemed to include any location in and upon the racetrack grounds which that person occupies or has the right to occupy or is in that person's personal property or effects or in any vehicle in that person's care, custody or control.

(b) All allowable medications must have a prescription label which is securely attached to the medication container and clearly ascribed to show the following:

(1) Name, address and telephone number of the pharmacy or veterinarian dispensing the medication;

(2) Prescription number when dispensed by a pharmacy if required by law;

- (3) Date prescription filled;
- (4) Name of the prescribing veterinarian;
- (5) Name of the horse for whom the medication is prescribed or dispensed;
- (6) Name of the trainer or owner of the horse for whom the product was dispensed;
- (7) Dose, dosage, route of administration, and duration of treatment of the prescribed product (instructions for use);
- (8) Name, active ingredient, quantity prescribed, expiration date (if applicable), beyond use date (if applicable), and lot number (if applicable); and
- (9) Cautionary statements (if any), and if applicable, withdrawal time.

(c) The use and possession of an expired medication is considered a violation of this rule.

(d) Any medication that has a label that is missing, illegible, tampered with or altered, or in any other way does not comply with this section shall be considered a violation of these rules.

(e) A licensee who voluntarily surrenders any non-compliant medication shall not be considered to be in violation of the medication rules described in this section. A surrender shall not be deemed voluntary after a licensee has been advised or it is apparent that an investigatory search has begun.

(f) Licensed practicing veterinarians shall be exempt from this section.

§ 403.13. Non-steroidal anti-inflammatory drugs.

The use of Non-Steroidal Anti-Inflammatory drugs (NSAID) shall be governed by the following conditions:

(a) NSAIDs included in the Commission's annually approved Controlled Therapeutic Medication List are not to be used in a manner inconsistent with the restrictions contained therein. NSAIDs not included on the Commission's Controlled Therapeutic Medication List are not to be present in a racing horse biological test sample at the laboratory concentration of detection.

(b) The presence of more than one NSAID may constitute a NSAID stacking violation consistent with the following restrictions:

(1) A Class 1 NSAID Stacking Violation (Penalty Class B) occurs when:

(i) Two Non-Steroidal Anti-Inflammatory drugs are found at individual levels determined to exceed the following restrictions:

- (a) Diclofenac—5 nanograms per milliliter of plasma or serum;
- (b) Firocoxib—20 nanograms per milliliter of plasma or serum;
- (c) Flunixin—20 nanograms per milliliter of plasma or serum;
- (d) Ketoprofen—2 nanograms per milliliter of plasma or serum;
- (e) Phenylbutazone—2 micrograms per milliliter of plasma or serum; or

(f) All other Non-Steroidal Anti-Inflammatory drugs—laboratory concentration of detection.

(ii) Three or more Non-Steroidal Anti-Inflammatory drugs are found at individual levels determined to exceed the following restrictions:

- (a) Diclofenac—5 nanograms per milliliter of plasma or serum;
- (b) Firocoxib—20 nanograms per milliliter of plasma or serum;
- (c) Flunixin—3 nanograms per milliliter of plasma or serum;
- (d) Ketoprofen—1 nanograms per milliliter of plasma or serum;
- (e) Phenylbutazone—0.3 micrograms per milliliter of plasma or serum; or
- (f) All other Non-Steroidal Anti-Inflammatory drugs—laboratory concentration of detection.

(2) A Class 2 NSAID Stacking Violation (Penalty Class C) occurs when:

(i) Any one substance noted in subsection (b)(1) is found in excess of the restrictions contained therein in combination with any one of the following substances at levels below the restrictions so noted but in excess of the following levels:

- (a) Flunixin—3 nanograms per milliliter of plasma or serum;
- (b) Ketoprofen—1 nanogram per milliliter of plasma or serum; or
- (c) Phenylbutazone—0.3 micrograms per milliliter of plasma or serum.

(3) A Class 3 NSAID Stacking Violation (Penalty Class C, fines only) occurs when:

(i) Any combination of two of the following Non-Steroidal Anti-Inflammatory drugs are found at or below the restrictions in subsection (b)(1)(i), but in excess of the noted restrictions:

- (a) Flunixin—3 nanograms per milliliter of plasma or serum;
- (b) Ketoprofen—1 nanogram per milliliter of plasma or serum;
- (c) Phenylbutazone—0.3 micrograms per milliliter of plasma or serum;
- (c) Any horse to which a NSAID has been administered shall be subject to having a blood or urine samples, or both, taken at the direction of the Commission Veterinarian to determine the quantitative NSAID levels or the presence of other drugs, or both, which may be present in the blood or urine samples.

§ 403.14. Furosemide (Lasix—Thoroughbred).

(a) The Commission recognizes that the diuretic Furosemide (Lasix) is helpful in the management of Exercise Induced Pulmonary Hemorrhage (EIPH). In regulating the race-day use of Furosemide (Lasix), the Commission has placed strict controls on the dose, route and time the medication is administered. All of these measures are designed to provide a thorough regulation of Furosemide (Lasix) and prevent the misuse of the drug.

(b) A horse is eligible to race with Furosemide (Lasix) if at least one of the following occurs:

(1) The horse is on the Commission's Furosemide (Lasix) list and has complied with the provisions of subsection (c);

(2) The horse is on the Commission's Bleeder List and has complied with the provisions of subsection (d);

(3) The trainer provides the Commission Veterinarian or the designee with evidence that the horse is on the Furosemide (Lasix) list or the Bleeder List in another jurisdiction. Acceptable evidence shall be a furosemide or bleeder certificate approved by that jurisdiction's official veterinarian.

(4) The trainer provides the Commission Veterinarian or the designee with evidence that the horse has been running consistently, up to the last start, with Furosemide (Lasix) in other racing jurisdictions as shown on official past performance records from Equibase or Racing Form.

(c) *Furosemide (Lasix) list*—Furosemide (Lasix) shall be administered to a horse that is entered to race only after the Commission Veterinarian has placed the horse on the Furosemide (Lasix) list. To be placed on the Furosemide (Lasix) list the following process shall be followed:

(1) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with Furosemide, the trainer or licensed veterinarian shall notify the Commission Veterinarian or designee using the prescribed form, requesting that the horse be placed on the Furosemide (Lasix) list.

(2) The form must be received by the official veterinarian or his/her designee by the proper time deadlines to ensure public notification.

(3) A horse placed on the official Furosemide (Lasix) list must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the Commission Veterinarian or designee, on the proper form, no later than the time of entry.

(4) After a horse has been removed from the Furosemide (Lasix) list, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official Furosemide (Lasix) list a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.

(d) *Bleeder List*—To obtain approval for the administration of Furosemide (Lasix), the horse shall be placed on a bleeder list which shall be maintained by the Commission Veterinarian. An up-to-date Bleeder List shall be maintained and posted in the racing secretary's office by the Commission. Only the following horses shall be placed on the Bleeder List:

(1) External evidence of exercised induced pulmonary hemorrhage from one or both nostrils during or after a race or workout, as observed by a Commission's Veterinarian;

(2) Internal evidence of exercised induced pulmonary hemorrhage by means of endoscopy reported by a licensed practicing veterinarian on a Commission approved form.

(3) A confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the following time periods:

(i) First incident—14 days;

(ii) Second incident within 365-day period—30 days;

(iii) Third incident within 365-day period—180 days;

(iv) Fourth incident within 365-day period—barred for racing lifetime.

(4) Once a horse is placed on the bleeder list, it must continue to race with Furosemide (Lasix) unless the removal from the list is approved by the Commission Veterinarian. The horse may be removed from the bleeder list upon written request of the trainer, if the horse's performance is negatively affected by the use of Furosemide (Lasix) or if the horse has an adverse physiological reaction to Furosemide (Lasix).

(i) Prior to removal, the horse must perform a workout, without bleeding, to the satisfaction of the Commission Veterinarian. The Commission Veterinarian may witness an endoscopic examination of the horse to confirm that the horse has not bled.

(ii) Once removed from the bleeder list, a thoroughbred horse shall be ineligible to participate in a race for a minimum of 30 days. Prior to starting in a race, a horse must participate without Furosemide (Lasix) in official workout without bleeding, to the satisfaction of the Commission Veterinarian.

(e) Furosemide (Lasix) shall be the only authorized bleeder medication and shall only be administered on the licensed racetrack grounds.

(1) The use of Furosemide (Lasix) shall be permitted under the following circumstances on association grounds where a detention barn is utilized:

(i) Furosemide (Lasix) shall be administered by the official veterinarian, the racing veterinarian or a properly appointed designee no less than four hours prior to post time for the race for which the horse is entered;

(ii) Any veterinarian participating in the administration process must be prohibited from working as private veterinarians on the race track or with participating licensees;

(iii) A horse qualified for Furosemide (Lasix) administration must be brought to the detention barn within time to comply with the 4-hour administration requirement.

(iv) The dose administered shall not exceed 500 mg. nor be less than 150 mg.

(v) Furosemide (Lasix) shall be administered by a single, intravenous injection.

(2) After treatment, the horse shall be required by the Commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association or Commission security supervision, or both, until called to the saddling paddock.

(3) The use of Furosemide (Lasix) shall be permitted under the following circumstances on association grounds where a detention barn is not utilized:

(i) Furosemide (Lasix) shall be administered by the official veterinarian, the racing veterinarian or his/her designee no less than 4 hours prior to post time for the race for which the horse is entered.

(ii) Any veterinarian participating in the administration process must be prohibited from working as private veterinarians or technicians on the race track on or with participating licensees;

(iii) The Furosemide (Lasix) dosage administered shall not exceed 500 mg., nor be less than 150 mg.

(iv) Furosemide (Lasix) shall be administered by a single, intravenous injection.

(v) After treatment, the horse shall be required by the Commission to remain in the proximity of its stall in the care, custody and control of its trainer or the trainer's designated representative under general association and/or Commission security surveillance until called to the saddling paddock.

(f) In the event a horse listed on the Furosemide (Lasix) list races without Furosemide (Lasix), the horse shall be disqualified and any purse money earned by the horse redistributed. The Stewards may impose a fine, suspension, or both, upon the trainer or veterinarian.

(g) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

(1) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed;

(2) Quantitation of Furosemide (Lasix) in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of Furosemide (Lasix) per milliliter of serum or plasma.

(h) The practicing veterinarian shall be responsible for administering the proper Furosemide (Lasix) medication and dose at the proper time to the proper horse and providing the Commission or its staff, upon request, with any necessary documentation related to the horses under the veterinarian's care relating to Furosemide (Lasix).

§ 403.15. Furosemide (Lasix—Standardbred).

(a) The Commission recognizes that the diuretic Furosemide (Lasix) is helpful in the management of Exercise Induced Pulmonary Hemorrhage (EIPH) in the standardbred horse. Accordingly, 2-year-old harness horses or older shall be eligible for bleeder medication as set forth below. In regulating the race-day use of Furosemide (Lasix), the Commission has placed strict controls on the dose, route and time the medication is administered. All of these measures are designed to provide a thorough regulation of Furosemide (Lasix) and prevent the misuse of the drug.

(b) A horse is eligible to race with Furosemide (Lasix) if at least one of the following occurs:

(1) The horse is on the Commission's bleeder's list and the Judge's list in accordance with the following provisions;

(2) The trainer provides the Commission Veterinarian or the designee with evidence that the horse is on the Furosemide (Lasix) list or the bleeder list in another jurisdiction. Acceptable evidence shall be a Furosemide (Lasix) or bleeder certificate approved by that jurisdiction's official veterinarian.

(3) The trainer provides the Commission Veterinarian or the designee with evidence that the horse has been running consistently, up to the last start, with Furosemide (Lasix) in other racing jurisdictions as shown on official past performance records from the USTA, Equibase or the Racing Form.

(c) A horse shall be placed on the bleeder's list by either method:

(1) Blood visualized or noted in one of the nostrils (no endoscopic exam required), if:

(i) During a race or qualifier;

(ii) Immediate post-race or post exercise on track;

(iii) Post-race or post exercise in paddock or stable area, or both, within a reasonable time;

(iv) After training at a horse facility and confirmed by a licensed veterinarian within this Commonwealth.

(2) Endoscopic examination may be requested by the owner or trainer who believes his or her horse is a bleeder. The endoscopic examination must be done by a licensed veterinarian within this Commonwealth and at the owner's/trainer's expense. This examination shall take place within a reasonable length of time at:

(i) Post race in paddock.

(ii) Post training exercise in paddock.

(iii) Post training at a horse facility.

(d) Any owner or trainer that intends to race a horse within the Furosemide (Lasix) Program (Program) is required to submit the proper certificate completed by a licensed veterinarian within this Commonwealth no later than the time of entry to the Judges. This information shall be entered into the USTA database.

(e) Once a horse is certified as a "bleeder" that horse may not race for a period of 6 days beginning the day after the examination was performed.

(f) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample or it will be considered a positive.

(g) Once on the Program the horse must stay on the Program for a minimum on 45 days within this Commonwealth.

(h) If after the 45 days the owner/trainer want to remove said horse from the Program, a licensed veterinarian, must perform an endoscopic examination after a qualifying race to confirm no evidence of bleeding and a blood sample must be pulled and tested to confirm Furosemide (Lasix) was not administered. The owner/trainer must then submit the proper forms to the Judges prior to entry to remove the said horse from the Program.

(i) If a horse bleeds through regardless of Furosemide (Lasix) administration, then the horse shall be placed on the Judges' List:

(1) First time 30 days;

(2) Second time 60 days;

(3) Third time barred for life.

(j) *Out-of-State entries.* At the time of entry of a horse, it is the sole responsibility of the horse's owner/trainer to provide the racing secretary, the Judges and Commission Veterinarian with the horse's bleeder medication status on the entry form, including the first time bleeder certificate when coming from out of this Commonwealth.

(k) Furosemide (Lasix) shall be administered by a licensed veterinarian under the supervision of the Commission representative no less than 2cc's (100mg) nor more than 10cc's (500mg). Horses must arrive in the paddock no less than 4 hours prior to their scheduled post time to receive their Furosemide (Lasix) medication. A 30-minute grace period will be granted but the trainer

may be subject to a fine. No horse shall receive Furosemide (Lasix) medication after the 30-minute grace period.

(l) All associations shall provide a secure retention facility for the administration of the Program. The trainer, or his/her authorized representative with a valid license, shall remain with the horse from the time of its arrival in the retention facility until the horse is removed after receiving Furosemide (Lasix) or scratched. During the horse's time in the retention facility the trainer or authorized person shall provide assistance when required by the licensed veterinarian who is administering the Furosemide (Lasix) medication.

(m) *Late for Furosemide (Lasix)*: Trainers not presenting horses who are on the Program within the required time frame shall be subject to a fine of \$250 and having their horse scratched from the race.

(n) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

(1) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of Furosemide (Lasix) in serum or plasma shall be performed;

(2) Quantitation of Furosemide (Lasix) in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(o) The practicing veterinarian shall be responsible for administering the proper Furosemide (Lasix) medication and dose at the proper time to the proper horse and providing the Commission or its staff, upon request, with any necessary documentation related to the horses under the veterinarian's care relating to Furosemide (Lasix).

§ 403.16. Environmental contaminants and substances of human use.

(a) Environmental contaminants are either endogenous to the horse or can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases.

(b) Substances of human use and addiction may be found in the horse due to its close association with humans.

(c) If probative and substantial evidence is presented to the Bureau Directors prior to a hearing or presented to the Judges or Stewards during a hearing which indicates that a positive test may have been a result of environmental contamination, including inadvertent exposure due to human drug use, or dietary intake, or is endogenous to the horse, those factors may be considered in mitigation of any disciplinary action taken against the affected trainer.

§ 403.17. Androgenic-anabolic steroid (AAS).

(a) As set forth in the Commission's regulations, no Androgenic-anabolic steroid (AAS) shall be permitted in test samples collected from racing horses except for endogenous concentrations of the naturally occurring substances boldenone, nandrolone and testosterone at concentrations less than the approved thresholds.

(b) Concentrations of these AAS shall not exceed the following free (that is, not conjugated) steroid concentrations in plasma or serum:

(1) *Boldenone*—A confirmatory threshold not greater than 25 picograms/milliliter for all horses, regardless of sex;

(2) *Nandrolone*—A confirmatory threshold not greater than 25 picograms/milliliter for fillies, mares and geldings; male horses other than geldings shall be tested for Nandrolone in urine;

(3) *Testosterone*—A confirmatory threshold not greater than 100 picograms/milliliter for fillies, mares and gelding.

(c) Total concentrations of these AAS shall not exceed the following total concentrations in urine after hydrolysis of conjugates:

(1) *Boldenone*—A confirmatory threshold not greater than 1 nanogram/milliliter for fillies, mares and geldings; a confirmatory threshold not greater than 15 nanograms/milliliter in male horses other than geldings;

(2) *Nandrolone*—A confirmatory threshold not greater than 1 nanogram/milliliter for fillies, mares and geldings; a confirmatory threshold not greater than 45 nanograms/milliliter (as 5 α -estrane-3 β ,17 α -diol) of urine in male horses other than geldings;

(3) *Testosterone*—A confirmatory threshold of not greater than 55 nanograms/milliliter of urine in fillies and mares (unless in foal); a confirmatory threshold of not less than 20 nanograms/milliliter in geldings.

(d) All other AAS are expressly prohibited in racing horses.

(e) The sex of the horse must be identified to the Commission's testing laboratory on all pre-race and post-race samples designated for anabolic steroid testing.

(f) If an anabolic steroid has been administered to a horse to assist in its recovery from illness or injury, that horse shall be placed on the Veterinarian's List to monitor the concentration of the drug or metabolite in urine or blood. After the concentration has fallen below the designated threshold for the administered AAS, the horse shall be eligible to be removed from the list.

§ 403.18. Compounded medications on racetrack grounds.

(a) The possession or use of any drug, substance, or medication on the licensed racetrack grounds which has not been approved by the appropriate Federal agency (for example, the United States Food and Drug Administration) for use in humans or animals is forbidden without prior approval from the Commission or its designee.

(b) It is a violation of this regulation to possess, use, or distribute a compounded medication on licensed racetrack grounds if there is an FDA approved equivalent of that substance available for purchase. A difference in available formulations or concentrations does not alleviate the need to use FDA approved products.

(c) It is a violation of this regulation to possess, use or distribute a compounded medication on licensed racetrack grounds made from bulk substances, if an FDA approved equivalent is available for purchase.

(d) Combining two or more substances with pharmacologic effect constitutes the development of a new drug and is prohibited. This may only be done in accordance with state and local laws and must contain FDA approved medications, if available.

(e) *Compounded veterinary drugs.* Veterinary drugs shall be compounded in accordance with all applicable state and Federal laws. Compounded medication shall be dispensed only by prescription issued by a licensed veterinarian to meet the medical needs of a specific horse and for use only in that specific horse.

(f) All compounded medications must be labeled in accordance with § 403.12 (relating to medical labeling).

(g) Possession of an improperly labeled product by any person on the licensed racetrack grounds is considered a violation of this section and may subject the person to a penalty.

CHAPTER 405. OUT-OF-COMPETITION TESTING PROGRAM—TEMPORARY REGULATIONS

Sec.	
405.1.	General purpose.
405.2.	Out-of-competition testing authorization.
405.3.	Horses eligible to be tested.
405.4.	Selection of horses to be tested.
405.5.	General procedures for collecting samples.
405.6.	Procedures for collecting samples from horses located outside the jurisdiction.
405.7.	Analysis and use of collected samples.
405.8.	Cooperation with the Commission.
405.9.	Penalties for non-cooperation or positive tests.

§ 405.1. General purpose.

The purpose of this chapter is to ensure the health, safety and welfare of racehorses and to properly safeguard the integrity of racing, the interests of the general public and the participants in racing by testing racehorses for performance enhancing substances that may not otherwise be detected with post-race testing and to deter the illegal use of these substances.

§ 405.2. Out-of-competition testing authorization.

(a) Under the statutory authority set forth in act, the Commission may, at any reasonable time, on any reasonable date draw blood, urine or other biologic samples as authorized by Commission rules from a horse to enhance the ability of the Commission to enforce its medication and anti-doping rules. All these samples shall be the property of the Commission.

(b) This rule authorizes only the collection and testing of samples and does not independently make impermissible the administration to or presence in any horse of any drug or other substance.

(c) A race day prohibition or restriction of a substance by a Commission rule is not applicable to an out-of-competition test unless there is an attempt to race the horse in a manner that violates this rule.

§ 405.3. Horses eligible to be tested.

(a) Any horse that has engaged in racing activities, including training and competing in horse racing in this Commonwealth is eligible to be selected for random testing, as set forth below. This shall include, without limitation, any horse which is located, stabled or trained outside of this Commonwealth in preparation to participate in racing within this Commonwealth.

(b) A horse is presumed eligible for out-of-competition testing if:

(1) It is on the grounds of a racetrack or horse facility within this Commonwealth. If the trainer of record or a designee of the selected horse is not available, the trainer will be given 24 hours to produce the specified horses at the designated racetrack or location for samples to be taken.

(2) It is under the care or control of a trainer licensed by the Commission;

(3) It is owned by an individual owner or ownership group or partnership duly licensed by the Commission;

(4) It is entered or nominated to race at a racetrack or other facility licensed by the Commission;

(5) It has raced within the previous 12 months at a racetrack or other facility licensed by the Commission; or

(6) It is nominated to a program based on racing in this jurisdiction, including a thoroughbred breeder's award race, or standardbred sire stakes race.

(c) The presumption of eligibility to be tested, as previously set forth, is conclusive in the absence of evidence that the horse is not engaged in racing activities relating to competing in horse racing within this Commonwealth.

§ 405.4. Selection of horses to be tested.

Horses shall be selected for random sampling by the breed specific Bureau Director, or a designee of the Bureau Director. Selection of horses to be sampled and tested may be based upon any of the following:

(1) Reasonable suspicion or probable cause based upon gathered intelligence or investigation;

(2) The seizure of illegal medication, drugs or paraphernalia in the custody, control or possession of the horse's owner, trainer or groom;

(3) An enumerated "condition" of licensure;

(4) Past medication or drug violations;

(5) Documented changes in the horses performances; or

(6) Horses entered in Stakes Races in Pennsylvania.

§ 405.5. General procedures for collecting samples.

(a) Upon request, the Commission Veterinarian, Commission investigators and any other person designated to take samples for the Commission shall provide proper identification and disclose the purpose of the sampling to the owner, trainer or designated attendant of the horse.

(b) All samples shall be collected by and under the supervision and direction of a Commission Veterinarian or other persons duly employed or designated by the Commission. Samples taken outside of this Commonwealth may be taken by a regulatory veterinarian employed by the racing jurisdiction of the state where the sample is collected, or by a veterinary technician who is acting under appropriate supervision of the regulatory veterinarian.

(c) The Commission need not provide advanced notice before arriving at any racing facility or other location, whether or not licensed by the Commission, to collect samples.

(d) Upon request by a representative of the Commission, the trainer, owner or their specified designee shall immediately provide information regarding the exact location of their horses which are eligible for out-of-competition testing.

(e) If a representative of the Commission has previously sought and received permission from a managing owner of a facility at which a selected horse is located, no trainer or other custodian of a selected horse may refuse or decline the sampling of the selected horse. The Commission may attempt but is not required to contact the managing owner of the facility again to secure the immediate sampling of the selected horse.

(f) The trainer, owner, or their specified designee shall cooperate fully with the Commission's representative collecting the out-of-competition samples for the Commission. Full cooperation by the trainer, owner, or specified designee shall include:

- (1) Assisting in the immediate location and identification of the horses;
- (2) Making the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples;
- (3) Providing a stall or other safe location to collect the samples;
- (4) Assisting the person who is collecting samples in properly procuring the samples; and
- (5) Witnessing the taking of samples including sealing of sample collection containers.

(g) The management and employees of a licensed racetrack or horse facility at which a horse may be located shall cooperate fully with the Commission representative who is authorized to take samples. The person who collects samples for the Commission may require that the collection be done at a specified location on the premises.

(h) The Commission, in its sole discretion, and upon request, may permit the trainer, owner, or their specified designee to present a selected horse, which is located in this Commonwealth, but not at a licensed racetrack or horse facility licensed by the Commission, to be sampled at an alternate time and location designated by the Commission.

§ 405.6. Procedures for collecting samples from horses located outside the jurisdiction.

The Commission may arrange for the sampling of an out-of-state horse by requesting that the selected horse be brought to a designated racetrack or other location in this Commonwealth within 24 hours of the request. Failure to abide by this request will result in a scratch of the selected horse and the horse being placed on the Stewards' or Judges' list for 90 days and may further subject the owner, trainer or other specified designee of record to a penalty under § 405.9(a) (relating to penalties for non-cooperation or positive tests).

§ 405.7. Analysis and use of collected samples.

(a) The Commission may have out-of-competition samples tested to produce information which may enhance or assist the ability of the Commission to enforce its existing racing medication and anti-doping regulations.

(b) Existing post-race split sample rules and procedures shall apply to out-of-competition testing, except that the split sample shall be retained at the licensed racetrack.

(c) The Commission may use any remaining sample for other equine research and investigation.

§ 405.8. Cooperation with the Commission.

(a) Licensees of the Commission are required to cooperate and comply fully with the provisions of this chapter as set forth more specifically in § 405.5(f) (relating to general procedures for collecting samples).

(b) Any duly licensed person, including an owner, trainer or groom shall be deemed to have given specific permission and consent for Commission representatives to collect out-of-competition samples from their horses regardless of the horse's physical location, whether

stabled on the grounds or shipped into a licensed racetrack. Licensees shall take any steps necessary to authorize access by Commission representatives into the premises.

(c) No other person shall knowingly and intentionally interfere with or obstruct a sampling of horses.

§ 405.9. Penalties for non-cooperation or positive tests.

(a) Failure or refusal to make a horse available for sampling or other intentionally deceptive acts or interference during the sampling process shall carry a minimum penalty of a 180-day suspension, plus a \$5,000 fine and referral to the Commission for other action deemed appropriate. In addition to the foregoing, a horse entered in to race, but not sampled due to the licensee's non-cooperation, may also be scratched.

(b) A selected horse, which is not made available for out-of-competition sampling, shall be placed on the Steward's or Judge's list and shall remain on the list for a minimum of 90 days and must test negative per the out-of-competition testing requirements before it may be removed from the list.

(c) A selected horse, which is presumed eligible for out-of-competition testing, as set forth in § 405.3(c) (relating to horses eligible to be tested), shall be placed on the Steward's or Judge's list and shall be ineligible to race in this Commonwealth for 180 days if the owner, trainer or their designee fails to provide evidence that the horse is not engaged in racing activities related to competing in racing within this Commonwealth. This restriction shall not apply if the trainer, owner or their designee permits the immediate collection of the samples from the horse.

(d) A trainer with a positive test for Anabolic Steroids shall be fined \$5,000 and suspended for a period of 180 days. In addition, trainer shall also forfeit any purse money earned.

(e) A trainer with a positive test for blood doping agents shall be \$10,000 and suspended for a period of 2 years. In addition, trainer shall also forfeit any purse money earned.

(f) All horses that test positive for Anabolic Steroids or blood doping agents shall be placed on the Steward's or Judges' List for a minimum of 90 days. A horse must provide a negative test sample to be removed from the Steward's or Judge's list.

CHAPTER 407. PHYSICAL INSPECTION OF HORSES—TEMPORARY REGULATIONS

Sec.	
407.1.	Assessment of racing soundness and condition.
407.2.	Veterinarian's List.
407.3.	Postmortem examination and necropsy.

HORSE MORTALITY REVIEW BOARD

407.4.	General purpose.
407.5.	Creation of Horse Mortality Review Board.
407.6.	Meeting procedures.
407.7.	Standardized questions.
407.8.	Report and recommendations.

§ 407.1. Assessment of racing soundness and condition.

(a) Every horse entered to participate in an official race shall be subjected to a veterinary inspection prior to starting in the race for which it is entered. The inspection shall be conducted by the Commission Veterinarian or the Commission Veterinarian's designee at a location determined by the Commission or the Commission Veterinarian.

(b) The trainer of each horse or a representative of the trainer must present the horse for inspection as required by the examining veterinarian. Horses presented for examination must have bandages removed and the legs must be clean. Prior to examination horses shall not be placed in ice nor shall any device or substance be applied to the horse which may impede veterinary clinical assessment.

(c) The assessment of a horse's racing condition shall include:

- (1) Proper identification of each horse inspected;
- (2) Observation of each horse in motion;
- (3) Manual palpation and passive flexion of both forelimbs;
- (4) Visual inspection of the entire horse and assessment of overall condition;
- (5) Clinical observation in the paddock and saddling area, during the parade to post and at the starting gate, during the running of the race, and following the race until the horse has exited the race track; and

(6) Any other inspection deemed necessary by the Commission veterinarian and the Commission Veterinarian designee.

(d) The Commission Veterinarian and the Commission Veterinarian designee shall maintain a permanent continuing health and racing soundness record of each horse inspected. This record shall be provided to the Commission upon request. If the record contains confidential or personal identification information, that information may be redacted prior to public review.

(e) The Commission or the Commission Veterinarian designee shall be authorized access to any and all horses housed or present at the licensed racetrack facility and grounds regardless of the horse's entry status.

(f) If, prior to starting, a horse is determined to be unfit for competition, or if the Commission Veterinarian is unable to make a determination of racing soundness, the Commission Veterinarian will recommend to the Stewards the horse be scratched. Horses scratched upon the recommendation of the Commission Veterinarian shall be placed on the Veterinarian's List.

§ 407.2. Veterinarian's List.

(a) As set forth in § 305.203 (relating to Veterinarian's List) of the Commission's regulations, the Commission Veterinarian shall maintain the Veterinarian's List of all horses which are determined to be unfit to compete in a race due to illness, unsoundness, injury, infirmity, heat exhaustion, positive test or overage, administration of a medication invoking a mandatory stand down time, administration of shock wave therapy or any other assessment or determination by the Commission Veterinarian that the horse is unfit to race.

(b) Horses so listed are ineligible to start in a race in any jurisdiction until released by the Commission Veterinarian, except when there is an unforeseen administrative issue in releasing the horse from the Veterinarian's List of another racing jurisdiction.

(c) A horse placed on the Veterinarian's List for being unfit to compete in a race due to illness, physical distress, unsoundness, injury, infirmity, heat exhaustion, or any other assessment of determination by the Commission Veterinarian may be removed from the Veterinarian's List when in the opinion of the Commission Veterinarian, the

condition which resulted in the horse's placement on the list is resolved and the horse's status is returned to racing soundness.

(d) Horses participating in a qualifying race or working to be released from the Veterinarian's List are to be subjected to a post-exercise biologic sample collection for laboratory confirmation of compliance at the expense of the current owner.

(e) Horses having generated a positive drug finding on a biological sample collected under the Commission's regulations shall not be released from the Veterinarian's List until it generates a negative test.

§ 407.3. Postmortem examination and necropsy.

(a) A horse that dies or is euthanized, whether in training or in competition, while present on the licensed racetrack facility under the jurisdiction of the Commission, shall undergo a postmortem examination (necropsy) at a laboratory approved by the Commission to determine, where possible, the injury or sickness which resulted in euthanasia or natural death. Within 24 hours of the horse's death or euthanization, the Commission Veterinarian shall notify the Director of the respective bureau in writing.

(b) A horse that dies or is euthanized while present on the licensed racetrack facility, but not during training or competition, may undergo a necropsy at the discretion of the Commission Veterinarian based upon available information at the time.

(c) The Commission Veterinarian, in coordination with the racetrack veterinarian, the racing secretary and the owner or trainer of the horse, shall take physical possession of the horse upon its death for postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse.

(d) The Commission Veterinarian or the racetrack veterinarian shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization. The Commission may submit the blood, urine, bodily fluids, or other biologic specimens collected from the horse to its testing laboratory for toxicological analysis. The presence of a prohibited substance in a specimen collected from the horse may constitute a violation. The collection of the biologic samples post-euthanization shall not invalidate the findings by the testing laboratory of a prohibited substance.

(e) To maintain control of the evidentiary chain of custody, the necropsy report of the deceased horse or other documentary findings and results shall remain in the Commission's sole control and possession. All licensees shall be required to comply with postmortem examination requirements as a condition of licensure.

(f) The Commission may direct that an investigation be conducted based upon the results of the necropsy or the testing laboratory findings. These investigatory documents and findings are not deemed public records for purposes of the act of February 14, 2008 (P.L. 6, No. 3), known as the Right-to-Know Law (65 P.S. §§ 67.101—67.3104).

HORSE MORTALITY REVIEW BOARD

§ 407.4. General purpose.

(a) While there are attendant risks associated with live Standardbred and Thoroughbred racing, the Commission fully understands that the fatality of any racing horse represents a tragic loss for the horse owners, trainers and caretakers and can impact the health and safety of

jockeys and drivers as well. The Commission's top priority is to protect the welfare of the human and equine athlete and reduce equine fatalities within this Commonwealth by establishing a Horse Mortality Review Board (Mortality Board). The Commission believes that meetings of the Mortality Boards should be educational in nature but should emphasize everyone's collective responsibility to protect the safety and welfare of the participating horse, drivers and jockeys.

(b) To that end, the objective of each Mortality Board shall be to conduct a methodical review of information which is intended to identify practical and relevant intervention procedures, protocols and recommendations designed to potentially reduce the occurrence of racing fatalities.

§ 407.5. Creation of Horse Mortality Review Board.

(a) In addition to the licensing provisions of Chapter 181 (relating to licensed racing entities—temporary regulations), the Commission hereby directs that each Thoroughbred and Standardbred licensed racing entity within this Commonwealth shall create a Horse Mortality Review Board (Mortality Board) to be located at each racetrack facility to be approved by the Commission.

(b) Each Mortality Board shall include, at least, the following individuals:

- (1) Racetrack Vice-President, General Manager or similar level management person (Chair);
- (2) A Commission Steward or Judge of the applicable racetrack;
- (3) A Commission Veterinarian;
- (4) A representative of the applicable horsemen's organization;
- (5) A jockey or driver representative;
- (6) Trainer and assistant trainer (if applicable) of the fatally-injured horse;
- (7) Attending veterinarian of the fatally-injured horse;
- (8) Racetrack superintendent; and
- (9) Any other individual deemed necessary and appropriate by the Mortality Board.

(c) The goal of the Mortality Board shall be to gather information regarding the catastrophic event and to have an open communication between all the previously listed individuals regarding issues which may have led to the incident and to ultimately arrive, if possible, at conclusions and recommendations to the appropriate entity or person, in particular and where possible to the general racing industry.

§ 407.6. Meeting procedures.

(a) The Horse Mortality Review Board (Mortality Board) shall meet to discuss and interview individuals related to each catastrophic horse injury occurring at that racetrack facility. If no catastrophic injury has occurred, then the Mortality Board shall meet at least quarterly throughout the year.

(b) Either shortly prior to or during the Mortality Board meeting, the following documents, information or procedures, or both, shall be reviewed:

- (1) The video of race, if applicable;
- (2) The attending or treating veterinarian's records for the fatally-injured horse for a 30-day period prior to the horse's catastrophic injury;
- (3) The past performance records to determine the horse's exercise history warranted increased pre-race scrutiny;
- (4) The Incompass or E-Track, or similar racing database records to determine whether the horse had previously been on a Steward's or Veterinarian's List;
- (5) The pre-race examination findings;
- (6) Risk factors that may apply to the fatally injured horse;
- (7) The Death Certificate and the Commission Investigative Report and Necropsy Report, if available;
- (8) Any findings or results of blood or urine tests conducted by the Commission's Testing Laboratory;
- (9) The trainer's and veterinarian's treatment log/sheets.

§ 407.7. Standardized questions.

The Commission, in conjunction with the approved and established Horse Mortality Review Board (Mortality Board), shall develop a set of standardized questions to assist in identify factors which might predispose a horse to suffer catastrophic injuries. The standardized questions may be amended from time to time by the Mortality Board with the approval of the Commission.

§ 407.8. Report and recommendations.

At the conclusion of each Horse Mortality Review Board (Mortality Board) meeting regarding a catastrophic horse injury, the Mortality Board shall prepare a report with conclusions and recommendations regarding the incident and shall provide a copy to all individuals on the Mortality Board and the Commission's Bureau Directors.

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