

RULES AND REGULATIONS

Title 10—BANKS AND BANKING

DEPARTMENT OF BANKING

[10 PA. CODE CH. 42]

Registration of Loan Brokers

The Department of Banking (Department), under the authority contained in section 8 of the Credit Services Act (act) (73 P. S. § 2188), adopts Chapter 42 (relating to registration of loan brokers) which imposes requirements on persons acting as loan brokers in this Commonwealth.

Purpose

The purpose of the regulations is to implement the requirements of section 8 of the act which requires loan brokers, as defined in the act, who are located in or act on behalf of residents of this Commonwealth, to become registered with the Department. The regulations will enhance consumer protection by providing a means of ascertaining who is acting as a loan broker in this Commonwealth and by maintaining the names and addresses of those persons and by obtaining other relevant information about loan brokering activity conducted by those persons. This registration will enhance the Attorney General's ability to address consumer complaints by facilitating discovery and investigation of fraudulent activity and will provide an additional means for enforcement of the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1—209-6).

Explanation of Regulatory Requirements

Under the regulations, persons acting as loan brokers in this Commonwealth will be required to register with the Department and to renew that registration annually. Loan brokers will be required to submit a completed registration form to the Department which will require the applicant to provide the home and business addresses of the applicant, the nature of the loan broker's business and information relating to any legal or other enforcement actions taken against the loan broker. The Department retains the right to refuse to register an applicant as a loan broker and, accordingly, the regulations set forth the relevant factors to be utilized by the Department in deciding whether to proffer a refusal.

Entities Affected

The number of entities that will be affected by these regulations cannot be estimated at this time as this is the first registration requirement imposed on loan brokers who are not already licensed or authorized to broker a specific type of loan. These regulations will not affect the 675 first mortgage loan brokers currently licensed by the Department or the 333 secondary mortgage loan brokers currently licensed by the Department. (Statistics are as of November 30, 1995.) These regulations will also not affect any depository institutions whose deposits are insured by the Federal Deposit Insurance Corporation, the Pennsylvania Savings Association Insurance Corporation or the National Credit Union Administration. Nor will the regulations affect real estate brokers or salespersons licensed under the Real Estate Licensing and Registration Act (63 P. S. §§ 455.101—455.902), persons registered as securities broker-dealers under section 301 of the Pennsylvania Securities Act of 1972 (70 P. S. § 301) or persons exempt

from this registration, persons admitted to the practice of law in this Commonwealth, nonprofit corporations or consumer reporting agencies as defined by the Fair Credit Reporting Act (15 U.S.C.A. §§ 1681—1681p).

Public Comment

The only comments received by the Department were from the Independent Regulatory Review Commission (IRRC).

Cost and Paperwork Requirements

These final-form regulations impose paperwork requirements on the Department to process the registration and renewal applications. The cost of the paperwork will be offset by the fees imposed.

These final-form regulations do not impose any paperwork requirements on political subdivisions and will not affect the costs of political subdivisions of the Commonwealth.

These final-form regulations impose a fee of \$300 for registration and an additional \$300 for each renewal. These regulations also impose nominal paperwork and reporting requirements on the regulated community, as loan brokers will be required to complete an annual registration or renewal registration application.

Effectiveness/Sunset Date

There is no sunset review required in the statute.

A sunset date is inapplicable as the statute imposes an ongoing requirement for registration of loan brokers and for annual renewal of those registrations.

Summary of Comments and Responses on the Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa.B. 807 (February 15, 1997).

During the public comment period, the only written comments received by the Department were from IRRC.

The Department considered the written comments received in formulating the final-form regulations. The Department has completed a review of the comments and has prepared a Comment and Response Document that addresses each comment on the proposed regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 30, 1997, the Department submitted a copy of the final-form regulations to IRRC, the Chairperson of the Senate Committee on Banking and Insurance and the Chairperson of the House Committee on Business and Economic Development. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments as well as other documentation.

The final-form regulations were deemed approved by the House and Senate Committees on November 19, 1997. IRRC met on November 20, 1997, and approved the final-form regulations.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 807.

Order

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

(a) The regulations of the Department, 10 Pa. Code, are amended by adding §§ 42.1—42.7 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form as required by law.

(c) The Secretary of the Department shall submit this order and Annex A to IRRC and the Senate Committee on Banking and Insurance and House Committee on Business and Economic Development as required by the Regulatory Review Act.

(d) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

RICHARD C. RISHEL,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6385 (December 6, 1997).)

Fiscal Note: Fiscal Note 3-31 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 42. REGISTRATION OF LOAN BROKERS

Sec.	
42.1	Definitions.
42.2	Applicability.
42.3	Registration required.
42.4	Annual renewal required.
42.5	Disapproval of registration.
42.6	Information to the Department.
42.7	Failure to register.

§ 42.1. Definitions.

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

Act—The Credit Services Act (73 P. S. §§ 2181—2192).

Applicant—A person who, in accordance with this chapter, has submitted a registration application or renewal registration application and applicable fees to the Department in an effort to register with the Department as a loan broker.

Department—The Department of Banking of the Commonwealth.

Employee—A person who receives wages reportable under Internal Revenue Service Form W-2.

Loan broker—As defined in section 2 of the act (73 P. S. § 2182), the term includes any person who acts for or on behalf of a loan broker for the purpose of soliciting borrowers. The term does not include a person licensed or otherwise regulated by the Department as a loan broker under other statutes or licensed, regulated or exempted under other statutes, including those administered by any other agency of the Commonwealth or the United States.

Principal—An officer, director, partner, joint venturer, branch manager or other person with similar managerial or supervisory responsibilities for a loan broker.

§ 42.2. Applicability.

This chapter applies to all loan brokers who act as loan brokers in this Commonwealth or on behalf of the residents of this Commonwealth.

§ 42.3. Registration required.

(a) On or after December 20, 1997, a person may not act as a loan broker in this Commonwealth without registering with the Department.

(b) To register as a loan broker, a person shall submit to the Department:

(1) A completed registration application provided by the Department.

(2) Payment to the Department of a nonrefundable registration fee of \$300.

(c) Within 60 days of receipt of a registration application, the Department will do one of the following:

(1) Notify the applicant that the application is approved and the applicant is registered as a loan broker.

(2) Under § 42.5 (relating to disapproval of registration), notify the applicant that the applicant's registration is disapproved and that the applicant is not registered as a loan broker.

(3) Notify the applicant that the registration application is incomplete and what additional information is required. In this case, the Department has 60 days from receipt of a completed registration application to notify the applicant under paragraph (1) or (2).

(d) An applicant shall be registered as a loan broker upon the Department's issuance of written notification to the applicant that the applicant has been registered by the Department as a loan broker.

(e) No abatement of the registration fee will be made for any reason, including a loan broker's initial registration period lasting for less than 1 year or the election by a loan broker to cancel its registration prior to the annual renewal date.

§ 42.4. Annual renewal required.

(a) Annually, the Department will mail to each registered loan broker an application for renewal of the loan broker's registration.

(b) On or before December 1 of each year, a loan broker shall return the following to the Department:

(1) A completed renewal registration application provided by the Department.

(2) Payment of a renewal registration fee of \$300.

(c) On or before January 15 of each year, the Department will take one of the following actions with regard to renewal applications which it received on or before December 1 of the prior year:

(1) Notify the loan broker that the loan broker's registration is renewed.

(2) Under § 42.5 (relating to disapproval of registration), notify the loan broker that the loan broker's renewal registration is rejected and that the loan broker is no longer registered as a loan broker.

(3) Notify the loan broker that the registration application was incomplete and that additional information is required. In this case, the Department has 30 days from receipt of a completed registration application to notify the loan broker under paragraph (1) or (2).

(d) A loan broker who fails to return to the Department by December 1 of each year a completed renewal registration application provided by the Department and payment of a renewal registration fee of \$300 will be subject to a late fee of \$100 upon submission to the Department of a renewal registration application.

(e) The renewal registration shall be effective from February 1 or upon the Department's issuance of written notification to the applicant that the applicant has been registered by the Department as a loan broker, whichever is later, through January 31 of the following year.

§ 42.5. Disapproval of registration.

(a) The Department may refuse to register or renew the registration of an applicant. Notifications of refusal by the Department to register or renew the registration of an applicant shall include the reason for the refusal. In determining whether to refuse to register or renew the registration of an applicant, the Department will weigh all relevant factors including the following:

(1) Whether the applicant has properly and fully completed the registration application or the registration renewal application.

(2) Whether the applicant has supplied false information or made a material misstatement to the Department.

(3) Whether the applicant or any principal or employee of the applicant has violated the act.

(4) Whether the applicant or any principal or employee of the applicant is subject to an administrative order issued by an agency of the Commonwealth, another state or the United States, which supervises or regulates any financial industry, including the lender, broker of loans, securities, annuities, insurance and tax industries.

(5) Whether the applicant, any principal of the applicant or any organization with which the applicant or any principal of the applicant was associated as an officer, director or principal, has applied to any state or to the Federal government for a license or authority to broker loans or to lend money and had the application for a license rejected, and the reasons for the rejection.

(6) Whether the applicant, any principal of the applicant or any organization with which the applicant or any principal of the applicant was associated as an officer, director or principal, which was licensed or authorized by any state or the Federal government to broker loans or to lend money, had the license suspended, canceled or revoked.

(7) Whether the applicant or any principal or employee of the applicant has ever pleaded guilty, pleaded nolo contendere or has ever been found guilty by a judge or jury for violation of any state or Federal law involving financial crimes, including those involving lending, brokering of loans, securities, annuities, insurance and tax matters.

(8) Whether the applicant or any principal or employee of the applicant is subject to a civil or criminal proceeding by any state or Federal agency involving any financial matter, including lending, brokering loans, securities, insurance and tax matters.

(b) The applicant for an initial or renewal registration whose application is disapproved by the Department may appeal the disapproval through the administrative hearing process contained under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 42.6. Information to the Department

(a) In completing the registration application or renewal registration application, the applicant shall provide the Department with the following information:

(1) The name, address and telephone number of the applicant.

(2) The address at which the applicant acts or intends to act as a loan broker.

(3) The names and addresses of all agents and employees of the loan broker who act or will act as a loan broker on behalf of the loan broker.

(4) The names and addresses of all loan brokers or lenders on whose behalf the applicant acts or will act.

(5) The names and addresses of all principals of the applicant.

(6) A copy of its articles of incorporation or fictitious name filing to the extent applicable to the applicant.

(7) Other information required by the Department consistent with § 42.5(a) (relating to disapproval of registration) and related matters.

(b) A loan broker shall inform the Department within 15-calendar days of any change in address of the loan broker office, changes in ownership, principals and employees of the loan broker. The broker shall include background information regarding new owners, principals or employees of the loan broker consistent with § 42.5(a)(4)–(8), which information also is required by the Department to be provided by the loan broker in a registration application or renewal registration application.

§ 42.7. Failure to register.

A person who acts or holds himself out as a loan broker and is not registered with the Department under this chapter is in violation of the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1–209-6.)

[Pa.B. Doc. No. 97-2033. Filed for public inspection December 19, 1997, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Amendments to Administrative Manual—Rules of Practice and Procedure

At its November 19, 1997, business meeting, the Delaware River Basin Commission (Commission) amended its Administrative Manual—Rules of Practice and Procedure for clarification and conformance with existing Commission interpretations and practices.

Effective Date

November 19, 1997.

Addresses

Copies of the Commission's Administrative Manual—Rules of Practice and Procedure are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

For Further Information Contact

Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, (609) 883-9500 Ext. 203.

Supplementary Information

On October 22, 1997, the Commission held a public hearing on proposed amendments to its Rules of Practice and Procedure as noticed in the *Pennsylvania Bulletin* issues of September 13, 1997, and October 18, 1997. In response to comments received on that proposal, the Commission made several modification to its initial proposal, providing further clarification, correcting typographical errors and revising language concerning assessment of Hearing costs.

A Resolution to amend the Administrative Manual—Rules of Practice and Procedure for clarification and conformance with existing Commission interpretations and practices.

Whereas, the Rules of Practice and Procedure of the Delaware River Basin Commission have been periodically modified since they were originally adopted December 13, 1961; and

Whereas, there has not been a comprehensive review of these rules for more than twenty years; and

Whereas, the continued inclusion of suspended sections has caused confusion and misunderstanding and deletion of Article 4 relating to environmental assessments is timely and appropriate; and

Whereas, The Commission's review of projects will continue to require all projects to comply with all environmental and other policies in the Commission's Comprehensive Plan; and

Whereas, two administrative changes designed to reduce the project review activity of Commission staff were adopted by the Commission in 1976 but are not currently in use and should be deleted; and

Whereas, the Commission is now proposing that all rules regarding hearings be consolidated in Article 6; and

Whereas, a number of other modifications and deletions are proposed to eliminate unnecessary, confusing, inaccurate or duplicative sections as well as clarify, consolidate and broaden other sections; and

Whereas, the amended Rules of Practice and Procedure were the subject of a public hearing on October 22, 1997; now therefore

Be it Resolved by the Delaware River Basin Commission:

1. The Administrative Manual—Rules of Practice and Procedure is hereby amended as follows:

a. INTRODUCTION is revised to read as follows:

DELAWARE RIVER BASIN COMMISSION
RULES OF PRACTICE AND PROCEDURE
INTRODUCTION

The Delaware River Basin Compact requires the Commission to formulate and adopt a Comprehensive Plan and Water Resources Program. In addition, the Compact provides in Section 3.8 that no project having a substantial effect on the water resources of the Basin shall be undertaken unless it shall have been first submitted to and approved by the Commission. The Commission is required to approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan. Section 3.8 further provides that the Commission shall provide by regulation for the procedure of submission, review and consideration of projects and for its determinations pursuant to Section 3.8.

The Comprehensive Plan consists of all public and those private projects and facilities which the Commission has directed be included therein. It also includes those documents and policies which the Commission has determined should be included within the Comprehensive Plan as being needed to insure optimum planning, development, conservation, use, management and control of the water resources of the Delaware Basin to meet present and future needs. The Comprehensive Plan is subject to periodic review and revision as provided in Sections 3.2 and 13.1 of the Compact.

The Water Resources Program is based upon the Comprehensive Plan. It is required to be updated annually and to include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the Commission may determine, balanced by existing and proposed projects required to satisfy such needs. The Commission's review and modification of the Water Resources Program is conducted pursuant to the provisions of Articles 3.2 and 13.2 of the Compact.

The Commission's Rules of Practice and Procedure govern the adoption and revision of the Comprehensive Plan, the Water Resources Program, the exercise of the Commission's authority pursuant to the provisions of Article 3.8 and other actions of the Commission mandated or authorized by the Compact.

These Rules of Practice and Procedure extend to the following areas of Commission responsibility and regulation:

Article 1—Comprehensive Plan.

Article 2—Water Resources Program.

Article 3—Project Review Under Section 3.8 of the Compact

Article 4—(Reserved).

Article 5—Appeals or Objections to Decisions of the Executive Director in Water Quality Cases.

Article 6—Administrative and Other Hearings.

Article 7—Penalties and Settlements in Lieu of Penalties.

Article 8—Public Access to the Commission's Records and Information.

Article 9—General Provisions.

These rules are subject to Commission revision and modification from time to time as the Commission may determine. The Commission reserves the right to waive any Rule of Practice and Procedure it determines should not be applicable in connection with any matter requiring Commission action. All actions by the Commission, however, shall comply fully with the applicable provisions of the Compact.

b. ARTICLE 1—COMPREHENSIVE PLAN is revised to read as follows:

ARTICLE 1

COMPREHENSIVE PLAN

Section 2.1.1 Scope. This article shall govern the submission, consideration, and inclusion of projects into the Comprehensive Plan.

2.1.2 Concept of the Plan. The Comprehensive Plan shall be adopted, revised and modified as provided in Sections 3.2 and 13.1 of the Compact. It is the Commission's responsibility to adopt the Comprehensive Plan, after consultation with water users and interested public bodies, for the immediate and long-range development and uses of the water resources of the Basin. The Plan shall include the public and private projects and facilities which the Commission determines are required for the optimum planning, development, conservation, utilization, management and control of the water resources of the Basin to meet present and future needs. In addition to the included projects and facilities, the Comprehensive Plan consists of the statements of policies, and programs that the Commission determines are necessary to govern the proper development and use of the River Basin. The documents within the Comprehensive Plan expressing the Commission's policies and programs for the future, including the means for carrying them out, may be set forth through narrative text, maps, charts, schedules, budgets and other appropriate means.

Specific projects and facilities and statements of policy and programs may be incorporated, deleted or modified from time to time to reflect changing conditions, research results and new technology. The degree of detail described in particular projects may vary depending upon the status of their development.

2.1.3 Other Agencies. Projects of the federal agencies affecting the water resources of the Basin, subject to the limitations in Section 1.4 of the Compact, shall be governed by Section 11.1 of the Compact. Projects of the signatory states, their political subdivisions and public corporations affecting the water resources of the Basin, shall be governed by the provisions of Section 11.2 of the Compact.

Section 2.1.4 Project Applications and Proposed Revisions and Changes. Applications for inclusion of new public projects and the deletion or alteration of previously included public projects may be submitted by signatory parties and agencies or political subdivisions thereof. Owners or sponsors of privately owned projects may submit applications for the inclusion of new private projects and the deletion or alteration of previously included private projects in which the applicant has an interest. The Commission may also receive and consider

proposals for changes and additions to the Comprehensive Plan which may be submitted by any agency of the signatory parties, or any interested person, organization, or group. Any application or proposal shall be submitted in such form as may be required by the Executive Director to facilitate consideration by the Commission.

Applications for projects shall include at least the following information:

- (1) Purpose or purposes, including quantitative measures of physical benefit anticipated from the proposal;
- (2) The location, physical features and total area required;
- (3) Forecast of the cost or effect on the utilization of water resources;
- (4) Relation to other parts of the existing Comprehensive Plan;
- (5) A discussion of conformance with Commission policies included in the Comprehensive Plan; and
- (6) A discussion of the alternatives considered.

2.1.5 Review of Applications. Following staff study, examination, and review of each project application, the Commission shall hold a public hearing upon notice thereon as provided in paragraph 14.4(b) of the Compact and may take such action on a project application as it finds to be appropriate.

2.1.6 Proposed Revisions and Changes. Proposals for changes and additions to the Comprehensive Plan submitted by any agency of the signatory parties or any interested person, organization or group shall identify the specific revision or change recommended. In order to permit adequate Commission consideration of any proposal, the Executive Director may require such additional information as may be needed. Review or consideration of such proposals shall be based upon the recommendation of the Executive Director and the further direction of the Commission.

2.1.7 Further Action. The Commission will review the Comprehensive Plan in its entirety at least once every six years from the date of the initial adoption of the Comprehensive Plan (March 28, 1962). Such review may include consideration of proposals submitted by the signatory parties, agencies or political subdivision thereof or other interested parties. The amendments, additions, and deletions adopted by the Commission will be compiled and the Plan as so revised shall be made available for public inspection.

2.1.8 Public Projects Under Article 11 of the Compact.

(a) After a project of any federal, state or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and these regulations. Any project which is changed substantially from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director who will determine whether the change is deemed substantial within the meaning of these regulations.

(b) Any public project not having a substantial effect on the water resources of the Basin, as defined in Article 3 of these regulations, may proceed without reference to Article 11 of the Compact.

2.1.9 Custody and Availability. The Comprehensive Plan shall be and remain in the custody of the Executive Director. The Plan, including all maps, charts, description and supporting data shall be and remain a public record open to examination during the regular business hours of the Commission, under such safeguards as the Executive Director may determine to be necessary to preserve and protect the Plan against loss, damage or destruction. Copies of the Comprehensive Plan or any part or parts thereof shall be made available by the Executive Director for public sale at a price covering the cost of production and distribution.

c. ARTICLE 3—PROJECT REVIEW UNDER SECTION 3.8 OF THE COMPACT is revised to read as follows:

ARTICLE 3

PROJECT REVIEW UNDER SECTION 3.8 OF THE COMPACT

Section 2.3.1 Scope. This article shall govern the submission and review of projects under Section 3.8 of the Delaware River Basin Compact.

2.3.2 Concept of 3.8. Section 3.8 is intended to protect and preserve the integrity of the Comprehensive Plan. This section of the Compact provides: "No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission, subject to the provisions of Sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such Plan. The Commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction."

2.3.3 Administrative Agreements. The Executive Director is authorized and directed to enter into cooperative Administrative Agreements with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:

(a) To facilitate the submission and review of applications and the determinations required under Section 3.8 of the Compact;

(b) To avoid unnecessary duplication of staff functions and hearings required by law; and

(c) For such other and different purposes as he may deem feasible and advantageous for the administration of the Compact or any other law.

2.3.4 Submission of Project Required. Any project which may have a substantial effect on the water resources of the Basin, except as provided in paragraph (d) of this section, shall be submitted to the Commission for a determination as to whether the project impairs or conflicts with the Comprehensive Plan, as follows:

(a) Where the project is subject to review by a state or federal agency which has entered into an Administrative Agreement with the Commission, such project will be referred to the Commission in accordance with the terms of the Administrative Agreement, and appropriate in-

structions will be prepared and issued by the Executive Director for guidance of project sponsors and applicants.

(b) Where no other state or federal agency has jurisdiction to review and approve a project, or no Administrative Agreement is in force, the project sponsor shall apply directly to the Commission.

(c) Any project proposal, which may have a substantial effect on the water resources of the Basin, may be received and reviewed by the staff informally in conference with the project sponsor during the preliminary planning phase to assist the sponsor to develop the project in accordance with the Commission's requirements.

(d) Whenever a project sponsored by one of the signatory parties, or by any agency, political subdivision or public corporation thereof, has been included in the Water Resources Program in the "A List" classification, the project, to the extent of such inclusion and as described in the Program, shall be deemed approved for the purposes of Section 3.8 of the Compact.

(e) Whenever a project is subject to review and approval by the Commission under this section, there shall be no substantial construction activity thereon, including related preparation of land, unless and until the project has been approved by the Commission; provided, however, that this prohibition shall not apply to the drilling of wells for purposes of obtaining geohydrologic data, nor to in-plant control and pretreatment facilities for pollution abatement.

2.3.5 Classification of Projects for Review under Section 3.8 of the Compact.

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

(1) The construction of new impoundments or the enlargement or removal of existing impoundments, for whatever purpose, when the storage capacity is less than 100 million gallons;

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

(3) A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(4) The construction of new domestic sewage treatment facilities or alteration or addition to existing domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day

elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;

(6) A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;

(7) Deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on streams within the Basin except the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state;

(8) Periodic maintenance dredging;

(9) Encroachments on streams within the Basin caused by:

a. floating docks and anchorages and buoys and navigational aids;

b. temporary construction such as causeways, cofferdams and falsework required to facilitate construction on permanent structures;

(10) Bridges and highways unless they would pass in or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan;

(11) Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;

(12) Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;

(13) Liquid petroleum products pipelines and appurtenances designed to operate under pressures of more than 150 psi, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan, or in, on, under or across any stream within the Basin; unless such lines would involve significant disturbance of ground cover affecting water resources;

(14) Landfill projects, unless no state-level review and permit system is in effect; broad regional consequences are anticipated; or the standards or criteria used in state level review are not adequate to protect the water of the Basin for the purposes prescribed in the Comprehensive Plan;

(15) Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action (1) where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or (2) when a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to

wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;

(16) The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons;

(17) The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater;

(18) The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons; and

(19) Temporary or short term projects determined to have non-substantial impact on the water resources of the Basin by the Executive Director.

(b) All other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with these regulations for determination as to whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph (a) of this section):

(1) Impoundment of water;

(2) Withdrawal of ground water;

(3) Withdrawal of water from impoundment or streams;

(4) Diversion of water into or out of the Basin;

(5) Deepening or widening of existing stream beds, channels, anchorages, harbors or turning basins, or the construction of new or enlarged channels, anchorages, harbors or turning basins, or the dredging of the bed of any stream or lake and disposal of the dredged spoil, when the nature or location of the project would affect the quantity or quality of ground or surface waters, or fish and wildlife habitat;

(6) Discharge of pollutants into surface or ground waters of the Basin;

(7) Facilities designed to intercept and transport sewage to a common point of discharge; and pipelines and electric power and communication lines;

(8) Facilities for the direct discharge to surface or ground waters of industrial wastewater;

(9) Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries;

(10) Change in land cover on major ground water infiltration areas;

(11) Hydroelectric power projects, including pumped storage projects;

(12) Projects or facilities of federal, state and local agencies such as highways, buildings and other public works and improvements, affecting the water and related land resources of the Basin;

(13) Draining, filling or otherwise altering marshes or wetlands;

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

(15) Landfills and solid waste disposal facilities affecting the water resources of the Basin;

(16) State and local standards of flood plain regulation;

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

(18) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

(c) Whenever a state or federal agency determines that a project falling within an excluded classification (as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the Basin, such project may be referred by the state or federal agency to the Commission for action under these Rules.

(d) Except as otherwise provided by Section 2.3.8 the sponsor shall submit an application for review and approval of a project included under paragraph (b) above through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executive Director, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party.

2.3.5.1 Water Supply Projects—Conservation Requirements. Maximum feasible efficiency in the use of water is required on the part of water users throughout the Basin. Effective September 1, 1981 applications under Section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water-conserving practices and technology designed to minimize the use of water by municipal, industrial and agricultural users, as provided in this section.

(a) Applications for approval of new withdrawal from surface or ground water sources submitted by a municipality, public authority or private water works corporation whose total average withdrawals exceed one million gallons per day shall include or be in reference to a program prepared by the applicant consisting of the following elements:

(1) Periodic monitoring of water distribution and use, and establishment of a systematic leak detection and control program;

(2) Use of the best practicable water-conserving devices and procedures by all classes of users in new construction or installations, and provision of information to all classes of existing users concerning the availability of water-conserving devices and procedures; and

(3) A contingency plan including use priorities and emergency conservation measures to be instituted in the event of a drought or other water shortage condition. Contingency plans of public authorities or private water works corporations shall be prepared in cooperation with, and made available to, all municipalities in the area affected by the contingency plan, and shall be coordinated with any applicable statewide water shortage contingency plans.

(b) Programs prepared pursuant to subsection (a) of this section shall be subject to any applicable limitations of public utility regulations of the signatory party in which the project is located.

(c) Applications for approval of new industrial or commercial water withdrawals from surface or ground water sources in excess of an average of one million gallons per day shall contain (1) a report of the water-conserving procedures and technology considered by the applicant, and the extent to which they will be applied in the development of the project; and (2) a contingency plan including emergency conservation measures to be instituted in the event of a drought or other water shortage. The report and contingency plan shall estimate the impact of the water conservation measures upon consumptive and non-consumptive water use by the applicant.

(d) Applications for approval of new agricultural irrigation water withdrawals from surface or ground water sources in excess of one million gallons per day shall include a statement of the operating procedure or equipment to be used by the applicant to achieve the most efficient method of application of water and to avoid waste.

(e) Reports, programs and contingency plans required under this section shall be submitted by the applicant as part of the permit application to the state agency having jurisdiction over the project, or directly to the Commission in those cases where the project is not subject to the jurisdiction of a state agency. State agencies having jurisdiction over a project that is subject to the provisions of this section shall determine the adequacy and completeness of the applicant's compliance with these requirements and shall advise the Commission of their findings and conclusions.

2.3.6 Sequence of Approval. A project will be considered by the Commission under Section 3.8 of the Compact either before or after any other state or federal review, in accordance with the provisions of the Administrative Agreement applicable to such project.

2.3.7 Form of Referral by State or Federal Agency. Upon approval by any state or federal agency of any project reviewable by the Commission under these regulations, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

(a) The Commission will rely on the appropriate agency in each state to review and regulate the potability of all public water supplies. Applications before the Commission should address the impact of the withdrawal, use and disposal of water on the water resources of the Basin.

(b) The Commission will rely on signatory party reviews as much as possible and generally the Commission will not review the performance standards of individual components of treatment processes but will require compliance with all policies in the Comprehensive Plan including all applicable Water Quality Standards.

2.3.8 Form of Submission of Projects not Requiring Prior Approval by State or Federal Agencies. Where a project does not require approval by any other state or federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the Comprehensive Plan, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the Compact. These shall include without limitation thereto:

(a) *Exhibits to Accompany Application.* The application shall be accompanied by the following exhibits: (1) abstract of proceedings authorizing project, where applicable; (2) general map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a non-structural proposal; (3) section of the United States Geological Survey topographic map showing the territory and watershed affected; (4) maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a non-structural project; (5) written report of the applicant's engineer showing the proposed plan of operation of a structural project; (6) map of any lands to be acquired or occupied; (7) estimate of the cost of completing the proposed project, and sufficient data to indicate a workable financial plan under which the project will be carried out; and (8) analyses and conclusions of regional water supply and wastewater investigations.

(b) *Letter of Transmittal.* The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, the names and addresses to which communications may be directed to the applicant, and the names and addresses of the applicant's engineer and counsel, if any.

(c) Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies or photographic prints or reproductions may be used.

2.3.9 *Informal Conferences and Emergencies.*

(a) Whenever the Executive Director shall deem necessary, or upon request of the applicant, an informal conference may be scheduled to explain, supplement or review an application.

(b) In the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit a review, hearing and determination in the regular course of these regulations, the Executive Director with the approval of the chairman of the Commission may issue an emergency certificate authorizing an applicant to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review, hearing and determination by the Commission as otherwise required in these regulations.

2.3.10 *Limitation of Approval.*

(a) Approval by the Commission under these regulations shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

(b) Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated. Any renewed activity following that date will require submission of a new application.

d. ARTICLE 4—ENVIRONMENTAL IMPACT STATEMENTS is deleted.

ARTICLE 4 is hereby reserved for future use.

ARTICLE 4

(Reserved.)

e. ARTICLE 5—REVIEW IN WATER QUALITY CASES is revised to read as follows:

ARTICLE 5

APPEALS OR OBJECTIONS TO DECISIONS OF THE EXECUTIVE DIRECTOR IN WATER QUALITY CASES

Section 2.5.1 Scope. This article shall apply to the review, hearing and decision of objections and issues arising as a result of administrative actions and decisions taken or rendered by the Executive Director under the Basin Regulations. Any hearings shall be conducted pursuant to the provisions of Article 6.

2.5.2 Notice and Request for Hearing. The Executive Director shall serve notice of an action or decision by him under the Basin Regulations by personal service or certified mail, return receipt requested. The affected discharger shall be entitled (and the notice of action or decision shall so state) to show cause at a Commission hearing why such action or decision should not take effect. A request for such a hearing shall be filed with the Secretary of the Commission not more than 30 days after service of the Executive Director's determination. Failure to file such a request within the time limit shall be deemed to be an acceptance of the Executive Director's determination and a waiver of any further hearing.

2.5.3 Form of Request. A request for a hearing may be informal but shall indicate the name of the individual and the address to which an acknowledgment may be directed. It may be stated in such detail as the objector may elect. The request shall be deemed filed only upon receipt by the Commission.

Whenever the Executive Director determines that the request for a hearing is insufficient to identify the nature and scope of the objection, or that one or more issues may be resolved, reduced or identified by such action, he may require the objector to prepare and submit to the Commission, within such reasonable time (not less than 30 days) as he may specify, a technical report of the facts relating to the objection prior to the scheduling of the hearing. The report shall be required by notice in writing served upon the objector by certified mail, return receipt requested, addressed to the person or entity filing the request for hearing at the place indicated in the request.

2.5.4 Form and Contents of Report.

(a) Generally. A request for a report under this article may require such information and the answers to such questions as may be reasonably pertinent to the subject of the action or determination under consideration.

(b) Waste Loading. In cases involving objections to an allocation of the assimilative capacity of a stream, wasteload allocation for a point source, or load allocation for a new point source, the report shall be signed and verified by a technically qualified person having personal knowledge of the facts stated therein, and shall include such of the following items as the Executive Director may require:

(1) A specification with particularity of the ground or grounds for the objection; and failure to specify a ground for objection prior to the hearing shall foreclose the objector from thereafter asserting such a ground at the hearing;

(2) A description of industrial processing and waste treatment operational characteristics and outfall configuration in such detail as to permit an evaluation of the character, kind and quantity of the discharges, both treated and untreated, including the physical, chemical and biological properties of any liquid, gaseous, solid, radioactive, or other substance composing the discharge in whole or in part;

(3) The thermal characteristics of the discharges and the level of heat in flow;

(4) Information in sufficient detail to permit evaluation in depth of any in-plant control or recovery process for which credit is claimed;

(5) The chemical and toxicological characteristics including the processes and/or indirect discharges which may be the source of the chemicals or toxicity;

(6) An analysis of all the parameters that may have an effect on the strength of the waste or impinge upon the water quality criteria set forth in the Basin Regulations, including a determination of the rate of biochemical oxygen demand and the projection of a first-stage carbonaceous oxygen demand;

(7) Measurements of the waste as closely as possible to the processes where the wastes are produced, with the sample composited either continually or at frequent intervals (one-half hour or, where permitted by the Executive Director, one hour periods), so as to represent adequately the strength and volume of waste that is discharged; and

(8) Such other and additional specific technical data as the Executive Director may reasonably consider necessary and useful for the proper determination of a wasteload allocation.

2.5.5 Protection of Trade Secrets; Confidential Information. No person shall be required in such report to divulge trade secrets or secret processes. All information disclosed to any Commissioner, agent or employee of the Commission in any report required by these Rules shall be confidential for the purposes of Section 1905 of Title 18 of the United States Code which provides:

"Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association; or permits any income return or copy thereof to be seen or examined by any persons except as provided by law; shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, C.645, 62 Stat. 791."

2.5.6 Failure to Furnish Report. The Executive Director may, upon five days' notice to the objector dismiss the request for a hearing as to any objector who fails to file a complete report within such time as shall be prescribed in the Director's notice.

2.5.7 Informal Conference. Whenever the Executive Director deems it appropriate, he may cause an informal

conference to be scheduled between an objector and such member of the Commission staff as he may designate. The purpose of such a conference shall be to resolve or narrow the ground or grounds of the objections.

2.5.8 Consolidation of Hearings. Following such informal conferences as may be held, to the extent that the same or similar grounds for objections are raised by one or more objectors, the Executive Director may in his discretion and with the consent of the objectors, cause a consolidated hearing to be scheduled at which two or more objectors asserting that ground may be heard.

f. ARTICLE 6—CONDUCT OF HEARINGS is revised to read as follows:

ARTICLE 6 ADMINISTRATIVE AND OTHER HEARINGS

Section 2.6.1 Hearings Generally.

(a) *Scope of Article.* This article shall apply to contested cases required to be held under Articles 3 and 5 of these regulations, to the conduct of other administrative hearings involving contested cases and to proceedings which Commission regulation or the Commission directs be conducted pursuant to this article.

(b) *Definition of Contested Case.* "Contested case" means a proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are involved. Such a proceeding may involve personnel matters, project applications and docket decisions but shall not extend to the review of any proposed or adopted rule or regulation of the Commission.

(c) *Requests for Hearings.* Any person seeking a hearing to review the action or decision of the Commission or the Executive Director may request a hearing pursuant to the provisions of this article provided such a request is received by the Commission within thirty (30) days of the action or decision which is the subject of the requested hearing. Requests shall be submitted in writing to the Secretary of the Commission and shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing and a summary statement setting forth the basis for objecting to or seeking review of the action or decision. Any request filed more than thirty days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless the Commission by unanimous vote otherwise directs. Receipt of requests for hearings, pursuant to this article, whether timely filed or not, shall be submitted by the Secretary to the Commissioners for their information.

(d) *Optional Joint Hearings.* Whenever designated by a department, agency or instrumentality of a signatory party, and within any limitations prescribed by the designation, a Hearing Officer designated pursuant to this article may also serve as a Hearing Officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a Hearing Officer shall cause to be filed with the department, agency or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the Hearing Officer nor the Delaware River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a signatory party (other than the Delaware River Basin Compact).

(e) *Schedule.* The Executive Director shall cause the schedule for each hearing to be listed in advance upon a 'hearing docket' which shall be posted in public view at the office of the Commission.

(f) *Notice of Hearing.* Notice of any hearing to be conducted pursuant to this article shall comply with the provisions of Section 14.4(b) of the Compact relating to public notice unless otherwise directed by the Commission.

Section 2.6.2 Authorization to Conduct Hearings.

(a) *Written Requests for Hearings.* Upon receipt of a written request for a hearing pursuant to this article, the Executive Director shall review the record available with regard to the action or decision for which a hearing is requested. Thereafter, the Executive Director shall present the request for a hearing to the Commission for its consideration. The Commission shall grant a request for a hearing pursuant to this article if it determines that an adequate record with regard to the action or decision is not available, the contested case involves a determination by the Executive Director or staff which requires further action by the Commission or that the Commission has found that an administrative hearing is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the Compact or other applicable law or court rule.

(b) *Commission Directed Hearings.* This article shall be applicable to any proceeding which Commission regulation or the Commission directs be conducted in accordance with the provisions hereof.

2.6.3 Hearing Officer.

(a) *Generally.* Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other Hearing Officer as the Chairman may designate, except as provided in paragraph (b) below.

(b) *Wasteload Allocation Cases.* In cases involving the allocation of the assimilative capacity of a stream:

(1) The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which the discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a Hearing Officer;

(2) A quorum of the board for purposes of the hearing shall consist of two members; and

(3) Questions of practice or procedure during the hearing shall be determined by the chairman.

2.6.4 Hearing Procedure.

(a) *Participation in the Hearing.* In any hearing, the person requesting the hearing shall be deemed an interested party and shall be entitled to participate fully in the hearing procedure. In addition, any person whose legal rights may be affected by the decision rendered in a contested case shall be deemed an interested party. Interested parties shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning a contested case or desiring to present comments concerning the subject matter of the Hearing for inclusion in the record may submit a written statement to the Commission. Any interested party may request the right to examine or

cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all written statements submitted shall be included within the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

(b) *Powers of the Hearing Officer.* The Hearing Officer shall:

(1) Rule upon offers of proof and the admissibility of evidence, regulate the course of the hearings, hold conferences for the settlement or simplification of procedures or issues, and shall schedule submission of documents, briefs and the time for the hearing.

(2) Cause each witness to be sworn or to make affirmation.

(3) Limit the number of times any witness may testify, limit repetitious examination or cross-examination of witnesses or the extent to which corroborative or cumulative testimony shall be accepted.

(4) Exclude irrelevant, immaterial or unduly repetitious evidence, but the interested parties shall not be bound by technical rules of evidence and all relevant evidence of reasonably probative value may be received.

(5) Require briefs and oral arguments to the extent determined necessary which shall be included as part of the record unless otherwise ordered by the Hearing Officer.

2.6.5 Staff and Other Expert Testimony.

(a) *Presentation on Behalf of the Commission.* The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(b) *Expert Witnesses.* An interested party may submit in writing to the Hearing Officer the report and proposed testimony of an expert witness. No expert report or proposed testimony, however, shall be included in the record if the expert is not available for examination unless the report and proposed testimony shall have been provided to the Commission and all interested parties prior to the hearing and the Commission and interested parties have waived the right of cross-examination.

(c) The Executive Director may designate for inclusion in the record those records of the Commission which the Executive Director deems relevant to a decision in a contested case or to provide an understanding of applicable Commission policies, regulations or other requirements relating to the issues in the contested case. The designation of such Commission documents shall be provided to all interested parties prior to the hearing.

2.6.6 Record of Proceedings. A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the applicant, objector, or any other person who is a party to these proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The applicant, objector, or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

2.6.7 Assessment of Costs; Appeals.

(a) Whenever a hearing is conducted under this article, the costs thereof, as herein defined, shall be assessed by the Hearing Officer to the party requesting the hearing unless apportioned between the interested parties where cost sharing is deemed fair and equitable by the Hearing Officer. For the purposes of this section costs include all incremental costs incurred by the Commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of a hearing room and other related expenses.

(b) Upon scheduling of a matter for hearing, the Secretary shall furnish to the applicant and/or interested parties a reasonable estimate of the costs to be incurred under this section. The applicant and/or interested parties may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

(c) An appeal of the assessment of costs may be submitted in writing to the Commission within ten (10) days of the assessment. A copy of the appeal shall be filed with the Secretary and served on all interested parties. The filing of said appeal shall not stay the Hearing.

2.6.8 Findings, Report and Commission Review.

(a) The Hearing Officer shall prepare a report of his findings and recommendations. In the case of an objection to a waste load allocation, the Hearing Officer shall make specific findings of a recommended allocation which may increase, reduce or confirm the Executive Director's determination. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. The applicant and any objector may file objections to the report within 20 days after the service upon him of a copy of the report. A brief shall be filed together with any objections. The report of the Hearing Officer together with objections and briefs shall be promptly submitted to the Commission. The Commission may require or permit oral argument upon such submission prior to its decision.

(b) The Executive Director, in addition to any submission to the Hearing Officer, may also submit to the Commission staff comments upon, or a response to, the Hearing Officer's findings and report and, where appropriate, a draft docket or other recommended Commission action. Interested parties shall be served with a copy of such submission and may have not less than ten (10) days to respond before action by the Commission.

2.6.9 Action by the Commission.

(a) The Commission will act upon the findings and recommendations of the Hearing Officer pursuant to law.

(b) Commission Counsel shall assist the Commission with its review of the hearing record and the preparation of a Commission decision to the extent directed to do so by the Chairman.

(c) The determination of the Commission will be in writing and shall be filed together with any transcript of the hearing, report of the Hearing Officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing. All such records, papers and documents may be examined by any person at the office of the Commission, and shall not be removed therefrom except temporarily upon the written order of the Secretary after the filing of a receipt therefor in form prescribed by the Secretary. Copies of any such

records and papers may be made in the office of the Commission by any person, subject to such reasonable safeguards for the protection of the records as the Executive Director may require.

2.6.10 Appeals from Final Commission Action; Time for Appeals.

Any party participating in a hearing conducted pursuant to the provisions of this article may appeal any final Commission action. To be timely, such an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission's Compact, within forty-five (45) days of final Commission action.

g. RESOLUTION NO. 80-11: SUSPENSION OF RULES RELATING TO ENVIRONMENTAL REVIEWS is deleted.

2. This resolution shall become effective immediately.

SUSAN M. WEISMAN,
Secretary

Fiscal Note: Fiscal Note 68-35 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.1. Rules of practice and procedure.

The rules of practice and procedure as set forth in 18 CFR part 401 (1997) are hereby incorporated by reference and made part of this title.

[Pa.B. Doc. No. 97-2034. Filed for public inspection December 19, 1997, 9:00 a.m.]

**Title 49—PROFESSIONAL
AND VOCATIONAL
STANDARDS**

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Continuing Education

The State Board of Psychology (Board) amends § 41.59 (relating to continuing education) to read as set forth in Annex A.

The amendment revises the existing continuing education requirements for biennial renewal to provide more flexibility to psychologists in their choice of continuing education programs and to expand the opportunities for meeting the requisite contact hours for continuing education credit.

Notice of proposed rulemaking was published at 26 Pa. B. 2819 (June 15, 1996). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Psychological Association (PPA). The PPA expressed its strong support for the Board's proposal, commenting that the amendments accurately reflect the diversity of experiences by which psychologists keep current with changes in the knowledge base of their profession.

Following the close of the public comment period, the Board also received comments from the Independent Regulatory Review Commission (IRRC). Neither the Senate Consumer Protection and Professional Licensure Committee nor the House Professional Licensure Committee offered comments, suggestions or objections regarding the amendment.

The amendment reflected in Annex A is responsive to the comments and suggestions received by IRRC. In addition, the Board considered this rulemaking and its purpose under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. This final-form regulation is responsive to requests and suggestions from licensees on how to improve the regulation for the betterment of the profession and otherwise complies with Executive Order 1996-1.

For ease of reference, the Board will address IRRC's comments in the order in which the amendments appear.

§ 41.59(b). Continuing education requirement for biennial renewal.

As proposed, § 41.59(b) required that a psychologist take a minimum of 30 contact hours of continuing education courses which included at least 3 contact hours in ethical issues. The proposal also allowed 10 contact hours in excess of the required 30 contact hours to be carried over from one biennium to the next biennium.

IRRC commented that the regulation is not clear on the issue of whether a licensee may carry excess ethical contact hours. IRRC recommended that the Board clarify the regulation by stating whether a licensee must take at least 3 ethical contact hours per biennium or whether a licensee may carry over extra ethical contact hours to the next biennium, resulting in a licensee not having to take ethical courses from that biennium.

The Board did not consider this issue during its initial discussions, and thanks IRRC for raising this question. Having discussed the issue, the Board is of the view that a psychologist should take at least 3 contact hours per biennium in ethical issues. As stated in the Preamble to its notice of proposed rulemaking, the Board's primary objective with respect to the ethics requirement is to increase psychologists' understanding of ethical issues as they develop in today's practice and to reduce the number of complaints against psychologists which result from ethical infractions. This objective will best be accomplished by requiring psychologists to take at least 3 contact hours in ethical issues per biennium.

§ 41.59(c). Reports to the Board.

Proposed § 41.59(c) deleted the requirement that psychologists list, at the time of biennial renewal, the continuing education courses or programs attended. This information is now required only from psychologists who are randomly selected by the Board for an audit of continuing education compliance.

Although IRRC did not express opposition to this change, IRRC requested the Board to explain how the deletion of the requirement will enhance its ability to ensure compliance with the continuing education requirements.

There is no assurance that deletion of the paperwork requirement will enhance continuing education compliance; deletion of this requirement does, however, expedite the renewal process. Moreover, in light of the audit procedure implemented by the Board, the paperwork is not necessary. Under the audit procedure, the Board

depends on random audits of 10% of its licensee population to assure continuing education compliance. Forms are no longer utilized. Since the forms are no longer utilized or reviewed by Board staff there is no justifiable reason to burden psychologists with this needless paperwork.

§ 41.59(f). Instruction.

Proposed § 41.59(f) provides, in part, that an individual course or workshop may be credited to the instructor only once. IRRC questioned whether the intent of the regulation is to allow a licensee to receive credit for teaching the same course once in the biennium and then again in a future biennium, or whether the intent is to allow credit for teaching a course only once and never again.

The original intent of this language was to guard against licensees receiving credit for presenting the same lecture in an individual course or workshop time after time. Upon further reflection, however, the Board realizes that as materials and subject matters change, the assumption is that the course content of these courses or workshops will be updated, resulting in substantively different presentations.

In an effort to reconcile its original concern with the realization that instructors should be given credit for lectures which, although similar in subject matter, are substantively different in content, the Board has amended this language to read "[a]n individual course or workshop may be credited to the instructor only once every 4 years." The Board is of the view that in a 4-year period, the course content of individual courses or workshops will be updated and revised to keep up with new and emerging issues as they develop in today's practice.

§ 41.59(f)(2). Definition of approved sponsor.

IRRC's final comment relates to the term "approved sponsor" as it appears in § 41.59(f)(2). IRRC correctly observed that the regulation allows a licensee to receive continuing education credit by teaching a workshop for an "approved sponsor," but, does not state who is considered to be an approved sponsor. IRRC therefore recommended that the Board clarify the regulation by defining who is considered to be an approved sponsor.

In its attempt to respond to this comment, the Board discovered that the terms "providers" and "sponsors" as they appear in § 41.59 are not used in their proper context. The Board's original intent was to approve sponsors of continuing education courses and programs—not providers. A sponsor is, in general terms, the person or organization that approves the provider of a continuing education course or program; a provider is generally the person who offers the course or program. The Board's regulation as adopted June 13, 1992 (22 Pa. B. 2982), has the Board approving providers when the intent (and current practice of the Board) is only to approve sponsors.

To correct this error and to respond to IRRC's concern, the Board has changed the word "providers" where it appears throughout § 41.59 to "sponsors." With this amendment, the regulation now reads correctly and responds to IRRC's suggestion by stating in paragraphs (3) and (4) who is considered to be an approved "sponsor."

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive

Order 1996-1, Regulatory Review and Promulgation. The final-form regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact

The amendment should have no negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

Paperwork Requirements

The amendment should not result in additional paperwork requirements.

Statutory Authority

The amendment is adopted under the dual authority of sections 3.2(2) and 15 of the Professional Psychologists Practice Act (act) (63 P. S. §§ 1203.2(2) and 1215). Section 3.2(2) of the act empowers the Board to adopt and from time to time, revise rules and regulations as may be necessary to carry into effect the provisions of the act. Section 15 of the act authorizes the Board to require continuing education as a condition of biennial renewal.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa. B. 2819, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing this final-form regulation, the Board has considered all comments received from IRRC and the public.

This final-form regulation was approved by the House Committee on October 22, 1997, and approved by the Senate Committee on October 28, 1997. IRRC met on November 6, 1997, and approved the regulation in accordance with section 5(c) of the Regulatory Review Act.

Contact Person

Further information may be obtained by contacting the State Board of Psychology, at P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7155.

Findings

The Board find that:

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

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

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 26 Pa. B. 2819.

(4) This amendment is necessary and appropriate for administration and enforcement of the Board's authorizing statute.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending § 41.59 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

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

(d) This order shall take effect December 1, 1997.

PATRICIA M. BRICKLIN, PH.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa. B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-632 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 41. STATE BOARD OF PSYCHOLOGY

MISCELLANEOUS

§ 41.59. Continuing education.

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

Biennium—The period from December 1 of an odd-numbered year to November 30 of the next odd-numbered year.

CEU—Continuing Education Unit—A unit for measuring contact hours of continuing education. One CEU equals 10 contact hours.

Contact hour—A unit of measure equaling 50 to 60 minutes of participation in an approved continuing education course or program.

(b) *Continuing education requirement for biennial renewal.* As a condition of biennial license renewal, a psychologist shall have completed during the preceding biennium a minimum of 30 contact hours (3 CEUs) of continuing education in acceptable courses, programs or activities which shall include at least 3 contact hours per biennium in ethical issues. Up to 10 contact hours in excess of 30 from the preceding biennium may be carried over from one biennium to the next.

(c) *Reports to the Board.* A psychologist shall certify to compliance with the contact hours requirement at the time of biennial renewal. A psychologist shall retain for at least two bienniums, certificates, transcripts or other documentation showing completion of the prescribed number of contact hours. These records are subject to audit by the Board.

(d) *Approved sponsors; acceptable courses and programs.*

(1) Courses and programs approved by Board-approved sponsors will be accepted as satisfying all or part of the continuing education requirement. It is the responsibility of the psychologist to ascertain the approval status of the sponsor before undertaking a continuing education activity.

(2) Irrespective of the sponsor, the Board reserves the right to reject a continuing education course/program submitted by a psychologist if it is outside the scope of practice of psychology or is otherwise unacceptable because of presentation or content. The Board will not accept courses/programs which are unrelated to the actual practice of psychology—for example, instruction in office management or practice building. A psychologist will be notified of a rejected course/program in writing, along with the reason for the rejection.

(3) The Board has approved the following sponsors:

(i) Accredited colleges or universities as long as the course/program corresponds to the scope of practice of psychology and generates semester/quarter hour credit.

(ii) The American Psychological Association (APA) and APA-approved sponsors.

(iii) Sponsors approved by the American Medical Association who meet the criteria of paragraph (4). Programs offered by these sponsors shall relate to the practice of psychology.

(4) The Board will consider for approval, on a biennial basis, National and regional professional associations which offer courses and programs for psychologists, and sponsors approved by these associations. An association seeking Board approval for itself or its sponsors shall submit an application to the Board. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons. The Board will not approve a sponsor unless it:

(i) Offers courses/programs with specific learning objectives.

(ii) Has a procedure for determining consumers' perceptions of the extent to which the objectives have been met.

(5) The Board may withdraw approval of a sponsor for cause. The sponsor will be notified in writing of the reasons for withdrawal of approval.

(e) *Home study.* A psychologist may accrue up to 15 of the required contact hours in home study courses offered by approved sponsors as long as the course has specific learning objectives and the sponsor evaluates the extent of learning that has taken place.

(f) *Instruction.*

(1) A psychologist may accrue up to 15 of the required contact hours by offering one of the following:

(i) A course in psychology for a regionally accredited college or university if the course generates semester/quarter hour credit.

(ii) A workshop for an approved sponsor.

(2) A clock hour of instruction equals 1 contact hour. An individual course or workshop may be credited to the instructor only once every 4 years. The hours of continuing education granted to a psychologist who participates

as a workshop instructor will be determined by dividing the number of continuing education hours granted for the workshop by the number of instructors participating in the workshop.

(g) *Professional writing.*

(1) A psychologist may accrue the equivalent of up to 10 of the required contact hours by writing one of the following:

(i) An article published in a journal abstracted in Psychlit.

(ii) A chapter, or more, in a text or trade book for psychologists published by a commercial publisher or a state or National psychological association.

(2) No more than 10 contact hour equivalents of professional writing may be granted for one article or chapter published during the preceding biennium. Ten hours per publication, divided by the number of authors, will result in the number of contact hours granted per person per publication.

(h) *Exemptions and prorations.*

(1) The Board will exempt from the continuing education requirement a psychologist who received a license within 2 years of the psychologist's first application for biennial renewal.

(2) A psychologist who is licensed under § 41.52 (relating to persons licensed in other states) shall comply with the continuing education requirement, but the psychologist's contact hours will be prorated on a quarterly basis from the date of licensure in this Commonwealth to the next biennial renewal date. Each quarter will consist of 3 months. Beginning with the quarter immediately following licensure in this Commonwealth, at least 3.75 contact hours (.375 CEU) shall be earned for each quarter.

(i) *Reinstatement of licensure.* Reinstatement of licensure shall be subject to the following conditions:

(1) A person whose license has lapsed or been inactive shall show compliance with the continuing education requirement during the biennium immediately preceding the request for reinstatement.

(2) A person whose license has been suspended or restricted shall show compliance with the continuing education requirement during the period of suspension or restriction.

(j) *Waivers.* A psychologist who cannot meet the continuing education requirement may apply to the Board in writing for a waiver. The request shall include a description of circumstances sufficient to show why compliance is impossible. Waiver requests will be evaluated by the Board on a case-by-case basis and will be approved or disapproved at its discretion.

(k) *Curing deficiencies.* A psychologist with a deficiency in contact hours may apply to the Board in writing for leave to make up the contact hours in arrears. The request shall include an explanation of why the deficiency occurred and a plan, along with the estimated time needed, for curing it. Requests will be evaluated by the Board on a case-by-case basis and will be approved or disapproved at its discretion.

[Pa.B. Doc. No. 97-2035. Filed for public inspection December 19, 1997, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Administration

The Fish and Boat Commission (Commission) by this order amends Chapter 51 (relating to administrative provisions). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments deal with adjustments to the royalty rates for merchantable sand and gravel extracted from Commonwealth waters.

A. Effective Date

These regulations will go into effect on January 1, 1998.

B. Contact Person

For further information on the regulations, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

The regulations are published under the statutory authority of section 503(c) of the Conservation and Natural Resources Act (CNRA) (71 P. S. § 1340.503(c)).

D. Purpose and Background

There are six companies that currently dredge material from the navigable waters of this Commonwealth and pay royalties under section 1808(d) of The Administrative Code of 1929 (71 P. S. § 468(d)). Royalties from sand and gravel extracted from Commonwealth waters are paid to the Fish Fund, which is administered under Chapter 5 of the code.

Current royalty rates for merchantable sand and gravel extracted from Commonwealth waters were set in 1970 at 10¢ per adjusted dry ton of 2,000 pounds, or alternatively, 15¢ per cubic yard based on 3,000 pounds per adjusted dry weight for usable and merchantable sand or gravel or other minerals extracted, but in any event an amount of not less than \$1,000 per year. When the royalty rates were established in 1970, the royalty payment of 10¢ per adjusted dry ton or 15¢ per cubic yard was about 6% of the selling price of the dredged material. Section 503(c) of the CNRA provides that the Commission may by regulation, with the concurrence of the Department of Environmental Protection (DEP), adjust the amount of the royalty payments per ton or cubic yard of usable or merchantable sand or gravel extracted from Commonwealth waters.

Last year, the Commission proposed regulations, with DEP's concurrence, that would increase the sand and gravel royalties to 6% of the average Free On Board (FOB) price of the material or 25¢ per dry ton/37.5¢ per cubic yard, whichever is greater (but not less than \$1,000 per year). A notice of proposed rulemaking containing the proposed changes was published at 26 Pa.B. 2792 (June 15, 1996). At its July 1996 meeting, the Commission deferred action on final rulemaking on the proposed changes to the royalty rates to permit staff further opportunities to meet with representatives of the industry and explore their views. Meetings were held and correspondence exchanged in the fall and winter of 1996. At the request of industry representatives, the Commission

deferred action on the sand and gravel royalty rates. The Commission, at its October 1997 meeting, adopted the amendments on final rulemaking, as described in greater detail under the summary of changes. The Commission is currently seeking DEP's concurrence with regard to the revised royalty schedule.

E. Summary of Changes

The Commission approved the following schedule for imposition of the new sand and gravel royalty rates:

a) 1998—15¢ per dry ton or 25¢ per cubic yard or \$1,000 (whichever is greater)

b) January 1, 1999 through June 30, 2000—20¢ per dry ton or 30¢ per cubic yard or \$1,000 (whichever is greater)

c) July 1, 2000 through December 31, 2001—25¢ per dry ton or 37.5¢ per cubic yard or \$1,000 (whichever is greater)

d) January 1, 2002 through December 31, 2002—30¢ per dry ton or 40¢ per cubic yard or \$1,000 (whichever is greater)

e) January 1, 2002 through December 31, 2010—30¢ per dry ton or 40¢ per cubic yard plus or minus an amount equal to the change in the producer price index (PPI) for sand and gravel from the base year (2002), provided that the rate per dry ton will never go lower than 25¢.

The duration of the period in which 25¢ per dry ton will be charged (July 2000 through December 2001) may be extended until completion of permitting and license processes. If this occurs, the commencement of the base year of 30¢ per dry ton will be delayed, and the Commission will undertake the necessary rulemaking at that time.

F. Fiscal Impact

The regulations adopted will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The regulations, however, will impose new costs on the private sector. These costs will total approximately \$150,000 to \$400,000 per year for all businesses engaged in dredging.

G. Paperwork

The regulations adopted will not increase paperwork and will create no new paperwork requirements.

H. Public Involvement

A notice of proposed rulemaking containing the proposed changes was published at 26 Pa.B. 2792 (June 15, 1996). The notice of proposed rulemaking attracted no public comment except from representatives of the sand and gravel industry who indicated that they would be seeking a phased implementation of the new royalty rates.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder 1 Pa. Code §§ 7.1 and 7.2.

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

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 51, are amended by adding §§ 51.91 and 51.92 to read as set forth in Annex A.

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

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

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

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-56 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter J. ROYALTIES FOR SAND AND GRAVEL PERMITS

§ 51.91. Authority.

Under section 503(c) of the Conservation and Natural Resources Act (71 P.S. § 1340.503(c)), the Commission with the concurrence of the Department of Environmental

Protection, is authorized to adjust the amount of royalty payments per ton or cubic yard of usable or merchantable, or both, sand or gravel, or both, extracted from Commonwealth waters.

§ 51.92. Royalty rates.

Persons holding permits granting them nonexclusive rights and privileges of dredging, excavating, removing and carrying away merchantable sand and gravel under agreements between the permittees and the Department of Environmental Protection shall pay royalties in accordance with the following schedule:

(1) During the period, January 1 through December 31, 1998—15¢ per dry ton or 25¢ per cubic yard; or \$1,000, whichever is greater.

(2) During the period, January 1, 1999 through June 30, 2000—20¢ per dry ton or 30¢ per cubic yard; or \$1,000, whichever is greater.

(3) During the period, July 1, 2000 through December 31, 2001—25¢ per dry ton or 37.5¢ per cubic yard; or \$1,000, whichever is greater.

(4) During the period, January 1, 2002 through December 31, 2002—30¢ per dry ton or 40¢ per cubic yard; or \$1,000, whichever is greater.

(5) During the period, January 1, 2002 through December 31, 2010—30¢ per dry ton or 40¢ per cubic yard plus or minus an amount equal to the change in the producer price index (PPI) for sand and gravel from the base year (2002), provided that the rate per dry ton may not be less than 25¢.

[Pa.B. Doc. No. 97-2036. Filed for public inspection December 19, 1997, 9:00 a.m.]