

# PROPOSED RULEMAKING

## DELAWARE RIVER BASIN COMMISSION

[ 25 PA. CODE CH. 901 ]

### Proposed Amendments to the *Water Code* and *Comprehensive Plan* to Implement a Revised Water Audit Approach to Identify and Control Water Loss

#### Summary

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to the Commission's *Water Code* and *Comprehensive Plan* to phase in a requirement for water purveyors to follow a revised water audit approach for identifying and controlling water loss.

#### Dates

The Commission will hold an informational meeting on Wednesday, September 10, 2008, from 4 p.m. to 6 p.m. at the Commission's office building, located at 25 State Police Drive, West Trenton, NJ. Driving directions are available on the Commission's web site at [www.drbc.net](http://www.drbc.net). Do not rely on Internet mapping services as they may not provide accurate directions to the Commission.

The public hearing will be held on Thursday, September 25, 2008, at the Commission's office building, located at 25 State Police Drive, West Trenton, NJ. The hearing will begin at 1:30 p.m. and will continue until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at (609) 883-9500, Ext. 224.

Written comments will be accepted and must be received by 5 p.m. on Friday, October 3, 2008. Written comments may be submitted as follows: if by email, to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us); if by fax, to Commission Secretary at (609) 883-9522; if by U.S. Mail, to Commission Secretary, Delaware River Basin Commission, P. O. Box 7360, West Trenton, NJ 08628-0360; or if by overnight mail, to Commission Secretary, Delaware River Basin Commission, 25 State Police Drive, West Trenton, NJ 08628-0360. In all cases, include the commentator's name, address and affiliation, if any, in the comment document and include "Water Audit" in the subject line.

#### Supplementary Information

An estimated 150 million gallons of treated and pressurized water is physically lost from public water supply distribution systems in the Delaware River Basin per day and current methods to account for, track and reduce this loss are inadequate.

The purpose of the proposed amendments is to phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the American Water Works Association (AWWA) and the International Water Association (IWA). These new methods are widely regarded as superior to the existing approach, which entails tracking "unaccounted for water," which is no longer considered best practice.

The new water audit methodology provides a rational approach that will facilitate more consistent tracking and reporting than the existing approach allows. It will help water managers and regulators, including the Commission, state agencies, and utility managers, target their efforts to improve water supply efficiency, thereby reducing water withdrawals. Improving water accountability will contribute to achieving objective 1.3.C of the *Water Resources Plan for the Delaware River Basin*, which calls for ensuring maximum feasible efficiency of water use across all sectors.

The Commission's Water Management Advisory Committee (WMAC), which has taken primary responsibility for reviewing the proposed audit methodology and developing these amendments, is composed of representatives from a wide range of public and private sector organizations. WMAC membership includes: Ferdows Ali, Environmental Scientist with the New Jersey Department of Agriculture; Janet L. Bowers, Executive Director of the Chester County Water Resources Authority; Gerald Esposito, President of Tidewater Utilities; David Froehlich, of the Wissahickon Valley Watershed Association; David Jostenski, Chief of the Water Use Assessment Section of the Pennsylvania Department of Environmental Protection; Mark Hartle, of the Pennsylvania Fish and Boat Commission, Division of Environmental Services; Stewart Lovell, Supervisor of Water Allocations of the Delaware DNREC; John Mello, of Region II of the United States Environmental Protection Agency; Bruno M. Mercuri, of Mercuri and Associates, Inc.; Dr. Joseph A. Miri, of the New Jersey Department of Environmental Protection, Water Supply Element; Robert Molzahn, of the Water Resources Association of the Delaware River Basin; Howard Neukrug, of the Philadelphia Water Department; Mary Ellen Noble, of the Delaware Riverkeeper Network; Senobar Safafar, of the New York City Department of Environmental Protection, Strategic Services Division, Bureau of Water Supply; Tom Simms, Director of the Institute of Soil and Environmental Quality of the University of Delaware DGS Annex; Ronald A. Sloto, of the United States Geological Survey, Water Resources Division; Edith Stevens, of the League of Women Voters; and Glen Stevens, of the United States Army Corps of Engineers.

On May 25, 2004, the WMAC established a subcommittee to investigate the issue of water loss and water accountability in light of new methods proposed by the AWWA and the IWA. The subcommittee met on four occasions to review the Commission's current policies concerning water loss and water accountability and to discuss the new methods. The Commission's current policies are based on the concept of "unaccounted for water," which is no longer considered best practice. The new methods are based upon more precise definitions and more rational accounting procedures that will result in a clearer understanding on the part of utility managers and regulators of the causes of water loss. The new methods will thus facilitate targeted improvements that reduce system water demands, with region-wide benefits. The Commission staff participated in the development of water audit software based on the new accounting methods, in an effort led by the AWWA Water Loss Control Committee (WLCC).

On March 16, 2005, after listening to a presentation outlining the benefits of the new water accountability methods, the Commissioners asked the Commission staff

and the WMAC to develop a position statement and policy recommendations for the Commission and to engage water purveyors in the Basin in a pilot study of the newly developed water audit software to test the software and solicit feedback.

Six water purveyors from the Delaware River Basin were identified to participate in the nationwide pilot study. The comments and feedback provided to AWWA led to improvements in the software. In March 2006, the software was approved by the AWWA WLCC and was posted on the AWWA web site, where it is available at no charge to all users. Links to the software are posted on the water conservation page of the Commission's web site: [www.state.nj.us/drbc/policy.htm](http://www.state.nj.us/drbc/policy.htm).

The WMAC and its subcommittee determined that the IWA/AWWA water audit methodology represents an improvement to the Commission's current practices and can lead to multiple benefits for water utilities and other stakeholders. It is anticipated that adoption of the IWA/AWWA approach will:

- Improve upon the traditional approach for identifying "unaccounted for water," which lacks standardized terminology and a clearly defined water audit structure.
- Provide a rational water audit structure to help identify water losses and improve water supply system efficiency.
- Provide meaningful performance indicators to help identify systems with the greatest losses. These indicators allow water utility managers to make reliable comparisons of performance and to identify best practices to control water loss in an economical way.
- Identify ways to improve water supply efficiency and thereby reduce water withdrawals that have no beneficial end use.
- Help to target efforts to reduce the estimated 150 million gallons per day that is physically lost from public water supply distribution systems in the Basin.
- Enhance utility revenues by enabling utility managers to recover the significant revenue that is otherwise lost due to *apparent losses* such as theft of service, unbilled connections, meter discrepancies and data errors.
- Help utility managers and regulators identify *real losses* (such as leakage) that waste treated and pressurized water and increase operating costs. Significant real losses indicate opportunities for improved asset management that can reduce the vulnerability of utilities to disruptive water main breaks, other service disruptions and water quality upsets.

Because the water audit approach is relatively new in a regulatory context, the proposed amendments call for phased implementation. Until 2011, the Commission will promote the voluntary use of the IWA/AWWA water audit program. During this period, information will be gathered from within the Basin and Nationwide to assist in the establishment of performance indicators for water loss, which ultimately will replace the "unaccounted for water" targets. If approved, the proposed amendments will require water purveyors to perform an annual water audit conforming to the IWA/AWWA methodology, beginning with calendar year 2012.

The proposed amendments also require changes in the way data pertaining to water loss is collected by the state agencies and shared with the Commission.

#### *Further Information, Contacts*

Contact Commission Secretary Pamela Bush, (609) 883-9500, Ext. 203 with questions about the proposed rule or the rulemaking process.

PAMELA M. BUSH, ESQ.,  
Secretary

#### *Text of Proposed Amendments*

It is proposed to amend Comprehensive Plan and Article 2 of the Delaware River Basin Water Code as set forth as follows. Deleted text is denoted by strikethrough and inserted text is denoted by underscore.

§ 2.1.2A.1. e An ongoing water auditing program in accordance with section 2.1.8

§ 2.1.6 A. . . . Such a program shall at a minimum include: periodic surveys to monitor leakage, ~~enumerate unaccounted for water~~, and determine the current status of system infrastructure; recommendations to ~~monitor and control leakage~~; and a schedule for the implementation of such recommendations. Each purveyor's program shall be subject to review and approval by the designated agency in the state where the system is located.

~~"Unaccounted for water" is defined as the difference between the "metered ratio" and 100 percent. The metered ratio is the amount of water delivered through service meters divided by the amount of water entering the distribution system.~~

The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection; New York Department of Health and Pennsylvania Department of Environmental Protection.

B. ~~Each purveyor shall strive to minimize system leakage to levels as guided by IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance. Each purveyor that distributes in excess of one million gallons per day (mgd) shall submit its initial program to monitor and control leakage to the appropriate designated agency within two years and each purveyor that distributes between 100,000 gpd and 1 mgd shall submit its initial program to monitor and control leakage to the appropriate designated agency within five years of the effective date of this regulation or at such earlier date as shall be fixed by the designated state agency. Each purveyor shall prepare and submit a revised and updated program to monitor and control leakage every three years thereafter or at such earlier date as shall be required by the designated state agency. The designated state agency may require more frequent program submission from purveyors with unaccounted for water that is in excess of 15 percent.~~

C. Any project approvals hereafter granted pursuant . . . . .

§ 2.1.8 Water Auditing (*Resolution No. 2007-xx*).

- A. It shall be the policy of the commission to encourage owners of water supply systems serving the public to implement a standardized water audit methodology to ensure accountability in the management of water resources.
- B. For the period beginning [EFFECTIVE DATE] and ending December 31, 2011, owners of water supply systems serving the public, with sources or service area located in the Delaware River Basin, are encouraged to implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.
- C. Effective January 1, 2012, the owners of each water supply system serving the public, with sources or service area located in the Delaware River Basin, shall implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.
- D. Effective January 1, 2013, non-revenue water reported under section 2.50.3.B.1.b.ii. shall be computed in accordance with IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

- § 2.50.3B.1.b.ii. . . . . - Other metered (Specify)
- Non-revenue water, including unbilled authorized consumption, apparent losses, and real losses computed in accordance with section 2.1.8.D
  - ~~Unaccounted for (defined as the amount of water entering the distribution system minus the amount of water delivered through service meters) \*\*~~
  - Total . . . . .

~~\*\*Further breakdown of unaccounted for water can be provided. For example, estimated fire hydrant use, other unmetered public uses, and leakage losses.~~

**Fiscal Note:** 68-52. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIROMENTAL PROTECTION**

**PART V. DELAWARE RIVER BASIN COMMISSION**

**CHAPTER 901. GENERAL PROVISIONS**

**§ 901.2. Comprehensive Plan and water quality.**

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A [ (2007) ] (2008) and the Water Code and Water Quality standards as set forth in 18 CFR

Part 410 [ (2007) ] (2008) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 08-1459. Filed for public inspection August 8, 2008, 9:00 a.m.]

**DEPARTMENT OF TRANSPORTATION**

[ 67 PA. CODE CHS. 471, 473, 477 AND 479 ]

**Air Transportation**

The Department of Transportation (Department), under the authority contained in 74 Pa.C.S. Chapters 51—61 proposes to amend Chapters 471, 473, 477 and 479 as set forth in Annex A.

*Purpose of Chapters*

These proposed amendments set forth criteria for the rating and licensing of airports. The purpose of Chapter 471 (relating to airport rating and licensing) is to set forth the licensing criteria and requirements for aircraft landing facilities; Chapter 473 (relating to aviation development grants) sets forth criteria and requirements for the Aviation Development grant program; Chapter 477 (relating to local real estate tax reimbursement grants) sets forth criteria for the Local Real Estate Tax Reimbursement grant program; and Chapter 479 (relating to obstruction to aircraft) sets forth criteria and instructions for persons who desire to erect, add to or maintain obstructions to aircraft.

*Purpose of the Proposed Amendments*

The purpose of the amendments to Chapter 471 is to clarify the requirements and provide greater flexibility in the licensing of various categories and types of landing facilities. This includes the establishment of minimum standards based on current Federal aviation standards instead of referencing Federal regulations that can be cumbersome to interpret and apply effectively, especially at small general aviation airports. In addition, the amendments reflect the Department's goal to provide safe operating conditions at public use airports while maintaining a regulatory environment which encourages airports and airport businesses to flourish. Consequently, the amendments include a process for dealing with nonstandard conditions on a case by case basis and provide additional criteria for small privately "family" owned airports instead of "a one size fits all approach." The amendments provide the flexibility to accommodate various levels of airport operations and advances in technology that were not envisioned or available at the time the regulations were originally adopted.

These amendments do not relieve an aircraft's pilot in command of the ultimate responsibility for safety of flight operations. As set forth in applicable Federal aviation regulations, the pilot in command has final responsibility to conduct a safe flight, considering his own skills and ability, weather, the dimensions and condition of the runway and approaches, and the weight and balance, capabilities and condition of the aircraft being used. For private use airports, the owner or manager should be consulted by pilots prior to operating to or from the airport.

The purpose of the amendments to Chapter 473 is to allow for increased flexibility for the Department in providing a higher State share for granted projects and allow for a more efficient use of the aviation development grant funds available.

The purpose of the amendments to Chapters 477 and 479 is to simplify and better organize these chapters in relation to Chapters 471 and 473. There were no substantive changes to these chapters.

These amendments reflect the joint effort of the Department, Bureau of Aviation, the Aviation Advisory Committee, the Aviation Council of Pennsylvania and airport officials throughout this Commonwealth.

#### *Summary of Significant Amendments*

##### *Chapter 471*

#### *Section 471.2 (relating to definitions)*

Section 471.2 has been amended to include the following terms: "grant," "occasional/infrequent operations," "operation," "prepared landing site," "project," "primary surface," "private heliport," "public heliport," "Regional Project Management Team" and the "Waiver Advisory Board." A definition of a "sponsor" has been added to include planning agency, public agency owning airports, public agencies not owning airports and a nonpublic airport owner.

#### *Section 471.3 (relating to airport licensing)*

Section 471.3 has been amended to clarify the requirements and procedures for the application of a waiver of a nonstandard condition at an airport or heliport, to allow for the transfer of a license from one owner to another which includes a Department review of the conditions, operations and waivers at the time of the transfer and requires the correction of hazardous conditions that have arisen since the issuance of the original license. The amendment removes the suspension/revocation schedule and defines deficiencies that would necessitate suspension or revocation of a license.

#### *Section 471.4 (relating to licensing fees)*

Section 471.4 has been amended to allow the Department to periodically update the license fee schedule which includes the requirement to publish the latest fee schedule in the *Pennsylvania Bulletin*.

#### *Section 471.5 (relating to airport rating—excluding heliports)*

Section 471.5 has been amended to update and expand the licensing categories for public use airports. The public business, general service and ultralight categories have been replaced with scheduled service/general aviation, basic utility and sport/ultralight airport categories, respectively. These replacement categories were added to more accurately reflect the types, conditions and operational needs of the public use airports in the State while ensuring that the level of public safety is maintained. The private airport categories have been revised by eliminating the commercial category and allow commercial operations at private airports provided it meets or exceeds the private group category. However, flight instruction to the general public is subject to Department approval. Additional language was also added to this section to clarify allowable uses of a private airport.

#### *Section 471.6 (relating to heliport rating)*

Section 471.6 has been amended to eliminate unneeded licensing categories for both public and private use heliports. These amendments are intended to more accu-

ately reflect the types, conditions and operational needs of the public use heliports. Additional language was also added to this section to clarify allowable uses of a private heliport.

#### *Section 471.7 (relating to licensing criteria and requirements)*

Section 471.7 was amended to clearly indicate that operation of a public or private airport or heliport is prohibited without first obtaining a license from the Department. This section was also amended to place a time limit for reporting unsafe or hazardous conditions that unexpectedly occur at the airport and to clarify requirements for marking/lighting vehicles operating on airport surfaces to ensure they are clearly visible to aircraft. In addition, § 471.7 was amended to clearly delineate the requirements for Department approval of nonaeronautical uses of the airport and provide a specific time line for the Department to respond to requests. Lastly, § 471.7 was amended to specifically describe the Department's airport inspection process and indicate that the Department may take legal action to prevent or restrain any violation or threatened violation of the licensing requirements.

#### *Section 471.8 (relating to suspension/revocation schedule)*

Section 471.8 was amended to remove the suspension/revocation schedule and replace it with provisions that allow for suspension or revocation of a license for any potentially hazardous condition. This change is intended to permit the Department to take immediate action as well as provide for quick resolution of those situations.

#### *Section 471.9 (relating to appeal)*

Section 471.9 was amended to include detailed instructions for appeal of a decision of the Bureau to ensure that any aggrieved person would clearly understand the time line, procedure and cost for filing an appeal.

##### *Chapter 473*

#### *Section 473.2 (relating to definitions)*

Section 473.2 was amended to simply reference the definitions included in Chapter 471.

#### *Section 473.4 (relating to limits of funding)*

Section 473.4 was amended to allow the Department to increase the maximum percentage of non-Federal aid projects to 90%. This increase will allow additional financial assistance to be made available to airport sponsors for projects that are critical safety or standard improvements, or both.

#### *Section 473.5 (relating to application procedure)*

Section 473.5 was amended to replace the application procedure with the project selection process and criteria that was updated from the previous § 473.8 (relating to grant selection process and criteria) grant selection process and criteria. This revision was done to more clearly explain the project selection process and factors used to develop the aviation development program.

#### *Section 473.6 (relating to deadlines for preapplications and applications)*

Deadlines for preapplications and applications were removed and replaced with §§ 473.5b and 473.6a (relating to important dates and notification procedure; and project execution). This was done to more clearly define the necessary actions and time lines for submission of important project information and requirements and to allow the Department greater flexibility for establishing

deadlines for the receipt of project information which will allow a more efficient use of the aviation development funds available.

*Section 473.8 (relating to grant selection process and criteria)*

Section 473.8 was rescinded and used to create the revised § 473.5.

*Section 473.9 (relating to offer and acceptance of an aviation development grant)*

Section 473.9 was amended to clarify and streamline the procedures for a sponsor to accept a grant offer.

*Chapter 477*

Section 477.2 was amended to delete redundant repetition of definitions and simply reference the definitions included in Chapter 471.

*Chapter 479*

Section 479.2 was amended to delete redundant repetition of definitions and simply reference the definitions included in Chapter 471.

*Persons and Entities Affected*

These regulations affect all owners/operators of aircraft landing facilities, including airports, heliports, seaplane bases, and the like.

*Fiscal Impact*

Implementation of these proposed amendments will not require the expenditure of any additional funds by the Commonwealth or local municipalities. While these proposed amendments do allow for fees to be adjusted periodically, any additional cost to the regulated community will be nominal.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees (committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of comments, recommendation or objections.

*Sunset Provisions*

The Department will make these regulations effective upon publication in final-form following appropriate evaluation of any comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under 74 Pa.C.S. Chapters 51—61. The Department, however, will continue to closely monitor these regulations for their effectiveness.

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Brian Gearhart, P. E., Director, Bureau of Aviation, P. O. Box 3457, Harrisburg, PA 17105 within 30 days of the publication of this notice in the *Pennsylvania Bulletin*.

*Contact Person*

The contact person for technical questions about the proposed amendments to the regulations is Brian Gearhart, P. E., Director, Bureau of Aviation, 400 North Street, Harrisburg, PA 17120, (717) 705-1200.

ALLEN D. BIEHLER, P. E.,  
*Secretary*

**Fiscal Note:** 18-409. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 67. TRANSPORTATION  
PART I. DEPARTMENT OF TRANSPORTATION  
Subpart B. NONVEHICLE CODE PROVISIONS  
ARTICLE IV. AIR TRANSPORTATION  
CHAPTER 471. AIRPORT RATING AND LICENSING**

**§ 471.2. Definitions**

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

\* \* \* \* \*

*Airport—*

(i) An area of land or water which is used, (or intended to be used for the landing and takeoff of aircraft and appurtenant areas which are used or intended to be used, for airport buildings or air navigation facilities or rights of way, together with airport buildings and facilities thereon.

(ii) The term includes heliports [and public airports] unless specifically noted.

*Aviation-related areas—*

(i) An area of an airport used, or intended to be used, in the direct operation of the airport.

[The] (ii) For the purpose of the Real Estate Tax Rebate Grant Program, the term includes, but is not limited to, a portion of the airport used in the [landing, taking off or] surface maneuvering of an aircraft, including those protected areas that are restricted from other uses.

(iii) The term does not include hangars, terminals and any portion of the airport used for the housing of aircraft or areas dedicated to hotels, motels, shops, restaurants, parking areas, and garages and other for-profit establishments whose purpose is unrelated to the landing and taking off of aircraft.

\* \* \* \* \*

**Based aircraft—An aircraft stored at a specific airport or heliport for more than 30 days.**

\* \* \* \* \*

**Commercial operations—Operations of an aircraft for compensation or hire, including, but not limited to, flight instruction, aircraft maintenance, sale of aircraft, parts and fuel.**

\* \* \* \* \*

**Grant**—An agreement and its accompanying assurances between the Department and a sponsor to provide funding assistance.

\* \* \* \* \*

**Landing area**—An area used, or intended to be used, for the landing [ , ] and taking off [ or surface maneuvering ] of aircraft.

**Operation**—An aircraft take-off or landing.

\* \* \* \* \*

**Prepared landing site**—An area that has a wind direction indicator or markings or lights or the surface has been improved with the intent to receive aircraft. A prepared landing site requires a license.

**Primary surface**—The area on the ground centered on a runway, provided to enhance the safety of aircraft operations by having the area free of objects, except for objects that need to be located in the primary surface for air navigation or aircraft ground maneuvering purposes.

\* \* \* \* \*

**Private heliport**—A heliport which is privately owned and which is not open or intended to be open to the public.

**Project**—A compilation of all tasks or activities associated with an approved grant on behalf of an eligible sponsor qualified to receive grant assistance.

\* \* \* \* \*

**Public heliport**—A heliport, which is either publicly or privately owned and which is open to the public.

**Regional Project Management Team**—Bureau staff assigned responsibility for each step of the project completion process.

**Sponsor**—A person applying for, or having received, an aviation development grant for a public airport. The following are different types of sponsors eligible for funds:

(i) **Planning agency.** An agency designated by the Bureau that is authorized by the laws of the State or political subdivisions concerned to engage in area wide planning for the areas in which the grant assistance is to be used. Typical planning agencies include planning offices, aeronautics commissions and departments of transportation.

(ii) **Public agencies owning airports.** A State, municipality, county, airport authority or other political subdivision, or a tax supported organization or an Indian tribe or pueblo.

(iii) **Public agencies not owning airports.** A public agency as defined in subparagraph (ii) that does not own an airport seeking master planning grants for new airports, acquisition of existing airports and noise program implementing projects which are included in a noise compatibility program prepared by a local airport sponsor and not disapproved by the FAA.

(iv) **Privately owned public use airport owner.** An individual, partnership, corporation, or other legal entity that owns a public use airport

**Visual [ utility ] runway**—A runway that is constructed for and [ intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and ] intended solely for the operation of aircraft using only visual approach procedures.

**Waiver Advisory Board**—A board established under the Bureau's Waiver Process described in the current Bureau Waiver Policy. Board composition will be as appointed by the Deputy Secretary for Aviation and will include representation from the Aviation Council of Pennsylvania.

### § 471.3 Airport licensing

(a) **Authority.** [ No ] A person may not establish, maintain or operate an airport, [ nor conduct ] or permit flight operations at an airport, unless authorized [ to do so ] by the Bureau. This does not apply to an airport approved or maintained by the government of the United States, [ nor ] or to infrequent operations by helicopters or aircraft with characteristics permitting operation from sites not specially prepared therefor.

(b) **Written authority required.** [ Except in emergency conditions, authority ] Authority to establish, maintain or operate an airport will be [ given ] provided in writing by the Bureau and will indicate [ therein ] whether the airport is public [ or ] use, private use, or otherwise restricted. Current licensing criteria and procedures will be provided by the Bureau on request. An airport will be licensed by the ratings under §§ 471.5 and 471.6 (relating to airport rating—excluding heliports; and heliport rating). **Commercial operations shall be limited to public use airfields, or private airports that meet or exceed criteria established for private groups. Private airport operators are prohibited from selling fuel to the general public, and from performing flight instruction to the general public, unless authorized by the Bureau.**

(c) **Temporary licenses.** A temporary license, public or private, may be issued by the Bureau for temporary operations or special occasions [ , for a limited period of time ]. An inspection fee will be charged for a temporary license in the amount as published annually in the *Pennsylvania Bulletin*.

(d) **Waiver.** The Bureau may [ waive, for good cause, compliance with the criteria or requirements, or both, in this chapter if the waiver request is not inconsistent with the code. ] issue a waiver for conditions not in compliance with criteria listed in Appendix A if control measures are put in place or if the conditions are deemed to not cause undue hazard to persons or property. Waivers may be temporary or permanent, depending on the situation and circumstances. Any conditions having a current waiver in force will be deemed to be in conditional compliance with this chapter.

(1) Waiver of criteria or requirements will be in accordance with the following procedures established by the Department:

(i) Requests for waivers must be in writing.

(ii) A sponsor shall request a waiver using forms and instructions provided by the Bureau.

(iii) A separate request shall be submitted for each item for which waiver is requested.

(iv) Bureau staff will review each request and provide a recommendation.

(v) Upon a Bureau staff recommendation of denial, the request will be forwarded to the Waiver Advisory Board.

(vi) The Waiver Advisory Board will review and analyze the waiver request and provide a recommendation for disposition to the Bureau Director.

(vii) A denial of a waiver is subject to appeal under the appeal process described in § 471.9 (relating to appeal).

(2) The Bureau will post the waiver procedure on the Department web site.

(3) A nonexhaustive list of conditions for which the Bureau may grant a waiver is included in Appendix B.

(4) Waiver of criteria or requirements may be inconsistent with this chapter.

(e) [ *Transfer of license.* A license issued under this chapter is not transferable unless prior written approval is granted by the Bureau. If the Bureau does provide written approvals for the transfer of a license, the new licensee shall pay the initial license and inspection fees, and the landing area shall meet current licensing criteria. ] *Change of ownership.* A change of airport ownership requires a new license through the Bureau's licensing process. Upon the change of ownership or status of an airport, a new license which includes prior waivers of nonstandard conditions, modifications of FAA standards or determinations of no hazard, as applicable, will be issued provided that a review by the Bureau verifies that conditions at the airport have not significantly changed since the time the previous license and waivers were issued.

(f) *Existing airport.* An airport presently in existence and [ authorized ] licensed under preexisting statutes and regulations is considered authorized.

(1) The Bureau may require an existing airport to correct or modify conditions which have arisen or significantly changed since the time any previous license or waiver was issued if they pose a significant threat to aviation safety.

(2) Determination that a condition poses a significant hazard to aviation safety will be based upon staff analysis by the Bureau after consultation with a Waiver Advisory Board.

(g) *Suspension or revocation of license.* The Bureau may revoke or suspend an airport license for reasonable cause, such as, but not limited to, failure to correct airport deficiencies, failure to cease unauthorized activities, [ failure to renew license ] or [ a ] any violation of this chapter. See § 471.8 (relating to suspension/revocation schedule).

\* \* \* \* \*

§ 471.4. Licensing fees (private airports only).

\* \* \* \* \*

(b) Licensing and inspection fees [ are ] will be published on an annual basis in the *Pennsylvania Bulletin* and are required as follows:

(1) [ One site inspection and one final inspection, \$25 at time of initial licensing. ] The fee for both an

initial site inspection and a final inspection shall be paid at the time of the initial application for airport license. Subsequent inspections required to receive a license will be subject to an additional fee.

(2) [ An additional site or final inspection, \$25 at time of initial licensing. ] A written request and fee are required for additional inspections.

(3) [ Licensing fee, \$10 per year. ] Licensing fees are payable in 3-year intervals.

(4) Temporary licenses, as required by § 471.3(c) (relating to airport licensing), require an inspection fee.

§ 471.5. Airport rating—excluding heliports.

(a) The following [ represents ] are rating categories to be used by the Bureau for the issuance of an airport license:

(1) *Public airport.*

(i) *Scheduled service/general aviation.* An airport [ with a paved runway, a runway lighting system, a precision instrument landing system and passenger handling facilities ] accommodating regularly scheduled air carrier or commuter service or general aviation operations, or both.

(ii) [ *Business.* An airport with a paved runway 3,500 feet or greater, a runway lighting system and a precision or nonprecision instrument landing approach. ] *Basic utility.* An airport with a visual runway, turf or paved, serving aircraft less than 12,500 pounds max gross weight, without beacon or runway edge lights, authorized for visual flight rules (VFR) use only and not intended for night time operations.

(iii) [ *General service.* An airport with a turf or paved runway with or without an instrument approach.

(iv) [ *Sport and [ Ultralight ] ultralight.* A landing area for the use of sport or ultralight aircraft, or both, as those terms are defined by applicable Federal aviation regulations (FARs).

[ (v) ] (iv) *Seaplane base.* An area of water used as a landing area.

(2) *Private airport.*

\* \* \* \* \*

(iii) [ *Commercial.* A private airport from which the licensee can conduct commercial flight operations, excluding flight instruction but including commercial operations such as maintenance, sale of aircraft or parts.

(iv) [ *Sport and [ Ultralight ] ultralight.* A landing area for the use of sport or ultralight aircraft, or both, as those terms are defined by applicable FARs.

[ (v) ] (iv) *Seaplane.* An area of water used as a landing area.

(b) *Use of landing areas by another aircraft.* [ A private airport licensee may invite another aircraft to use his landing area if the licensee has thoroughly briefed the invitee as to the peculiarities of the

landing area. The invitee's aircraft operational requirements may not exceed the dimensions of the landing area. ]

(1) Aircraft operators are authorized to land at public airports within the capabilities of the pilot-in-command and the aircraft. Pertinent information regarding public airports is located in the FAA Airport Facilities Directory and also updated and disseminated by Notice to Airmen (NOTAM).

(2) For private airports, aircraft operators shall receive authorization from the airport owner prior to operating to or from the airport. A private airport owner/licensee may invite an aircraft operator to use his landing area if the owner has thoroughly briefed the invitee on the takeoff and landing data and any peculiarities of the landing area. The invitee's aircraft expected performance values and operational requirements may not exceed the capabilities or dimensions of the landing area.

#### § 471.6. Heliport rating.

(a) **Rating categories.** The following represents rating categories to be used by the Bureau for issuance of a heliport license [ . The rating includes classifications with a lower numerical description ]:

(1) **Public heliport.** A heliport consisting of a landing area that is open to the public.

[ (i) **Business.** A heliport consisting of a landing area and offering services such as fueling, maintenance, passenger terminal and the like.

(ii) **General service.** A heliport consisting of a landing area with no support facilities to provide service such as fueling, maintenance, passenger terminals and the like. ]

(2) **Private heliport.** A heliport not intended for public use (includes hospital heliports, corporate and privately owned heliports).

[ (i) **Individual.** A private heliport used exclusively by the licensee.

(ii) **Group.** A private heliport used exclusively by a partnership, organization or corporation which is restricted to members of that entity.

(iii) **Commercial.** A private heliport from which commercial flight operation, excluding flight instruction but including commercial operations such as maintenance, sale of aircraft or parts, may be conducted. ]

(b) **Use of landing area/heliport by another aircraft.** [A private heliport licensee may invite another aircraft to use his landing area if the licensee has thoroughly briefed the invitee as to the peculiarities of the landing area. The invitee's aircraft operational requirements may not exceed the dimensions of the landing area. ]

(1) Aircraft operators are authorized to land at public heliports within the capabilities of the pilot-in-command and their aircraft. Pertinent information regarding public heliports is located in the FAA Airport Facilities Directory and also update and disseminated by Notice to Airmen (NOTAM).

(2) For private heliports, aircraft operators shall receive authorization from the heliport owner prior to operating to or from the heliport. A private

heliport owner/licensee may invite an aircraft operator to use his landing area if the owner has thoroughly briefed the invitee on the takeoff and landing data and any peculiarities of the landing area. The invitee's aircraft expected performance values and operational requirements may not exceed the capabilities or dimensions of the landing area.

#### § 471.7. Licensing criteria and requirements.

(a) Criteria for licensing of airports and heliports are [ set forth ] described in Appendix A.

(b) The following are [ requirements ] applicable to airports and heliports which [ shall obtain ] have obtained a license:

(1) An owner or operator [ , or both, ] of an airport shall operate and maintain the airport safely [ , carefully and properly ] and shall conform to existing statutes and this chapter, or as modified by existing waiver.

(2) An owner or operator [ , or both, ] of an airport shall give [ immediate ] prompt written notice to the Bureau, using Bureau Form AV-19, of a proposed physical change in the airport [ which affects ] that is likely to affect its safety or conformity with the criteria under which the airport was licensed by the Bureau.

(3) An owner or operator [ , or both, ] of an airport licensed by the Bureau shall immediately report altered, unsafe or hazardous conditions of a nontemporary nature (in excess of 72 hours) to the Bureau. Public airport owners shall also file a Notice to Airmen (NOTAM) with the FAA. Upon elimination of the condition, a report shall be submitted to the Bureau detailing corrective action taken. Information concerning permanent physical changes to the airport shall also be reported to the FAA for inclusion in the Airport Facilities Directory.

(4) An owner or operator [ , or both, ] of a public airport shall post, in a place visible to the public, written material required to be posted by the Bureau, the Commonwealth or the Federal government.

(5) [ No surface ] Surface vehicles, such as, but not limited to, automobiles, trucks, mowing machines, graders or rollers may not be operated [ upon ] in the vicinity of runways or taxiways of a public airport without the airport manager's permission and coordination with the control tower, if existent. [ The surface shall ] Surface vehicles must be marked with approved flags or flashing amber beacons in accordance with FAA guidelines when operating in air operations areas unless coordinated with the airport manager.

(6) [ No ] Remote controlled model aircraft may not be operated from a public airport unless permission has been obtained from the airport [ owner or operator, or both ] manager.

(7) [ An owner or operator, or both, of a public airport shall comply with safety criteria in this chapter. ] Nonaeronautical uses of a public airport's aviation related area require the airport sponsor to obtain Bureau approval by means of advance written notice. Failure of the Bureau to respond within 30 calendar days shall be deemed



tacit approval. Airport operators shall provide advance notice to the flying public including NOTAM.

(8) An abandoned or [ closed ] unlicensed airport shall have markers, wind direction indicators and aeronautical signs immediately removed by the owner or operator [ , or both ].

(9) The Bureau reserves the right to randomly inspect [ a landing area ] any airport or heliport to determine compliance with the code and this chapter.

(i) Periodic safety inspections will be conducted at all scheduled service, general aviation and basic utility airports. The Bureau will coordinate the inspection date with the airport owner. Following the inspection, the Bureau will provide written report of all inspection findings. Deficiencies identified should be corrected in a timely manner unless waived by the Bureau. The written report containing the inspection findings, as they specifically relate to the code or aviation regulations, will itemize the deficiencies, except conditions having a

current waiver in force. Conditions having a current waiver in force are deemed to be in conditional compliance with this chapter.

(ii) Safety inspections at private use airports will be conducted on a random basis or at the request of the owner.

(iii) Airport sponsors who cannot mitigate air-space obstructions may submit an FAA Form 7460 for FAA evaluation and subsequent consideration for Bureau waiver.

(10) The Department may maintain an action in any court of competent jurisdiction to prevent, restrain or enjoin any violation or threatened violation of this chapter.

§ 471.8. Suspension [ /revocation schedule ], penalties and revocations.

[ (a) *Suspensions.* The Department may impose suspensions on an airport licensee according to the following schedule, when the Department finds upon sufficient evidence that:

	<i>1st Action</i>	<i>2nd Action</i>	<i>3rd Action</i>	<i>4th Action</i>
The licensee has failed to correct deficiencies noted in airport inspection letter.	Written Warning	30 days	3 months	Revocation
The licensee has permitted unauthorized activities.	Written Warning	30 Days	3 months	Revocation
The licensee has failed to report change of ownership to Bureau.	Written Warning	30 days	3 months	Revocation
The licensee has failed to renew license.	Written Warning	30 Days	3 months	Revocation
The licensee has failed to report physical changes to the Bureau or to maintain airport under licensing requirements.	Written Warning	30 Days	3 months	Revocation
The licensee has knowingly made a false statement or knowingly concealed a material fact or otherwise committed a fraud to the Bureau.		30 days	6 months	Revocation

(b) *Second and subsequent violations.* Second and subsequent violations will be determined on the basis of previous violations of the same nature committed within a 3-year period. If a third or subsequent violation occurs within 3 years of the last previous violation, it will be deemed a third or subsequent violation regardless of when other previous violations occurred.

(c) *Multiple violations.* In the case of multiple violations considered at one time, the Department will impose separate penalties for a violation as required by the schedule. The Department may direct that a suspension imposed be served concurrently or consecutively.

(d) *Suspension/revocation authority reserved.* The descriptions of reasons for suspension/revocation in subsection (a) are of a general nature, and should not be deemed to limit the authority of the Department granted by section 5301 of the code (relating to authority of department). ]

The Department may suspend or revoke an airport license when the Department finds sufficient evidence that one of the following applies:

(1) A nonconforming condition exists under this chapter that is a potential hazard to the users of the airport and has been brought to the attention of the airport sponsor, by written notice, as requiring remediation under this chapter, and the airport sponsor has not responded or sought a waiver within 90 days or less of the notice as deemed necessary by the Director.

(2) A waiver request by the airport sponsor to waive a nonconforming condition has been finally denied and the airport sponsor refuses to take reasonable steps to remediate the condition to the satisfaction of the Bureau, to file an appeal to the Director of the Bureau, or to file a legal action in a court of competent jurisdiction appealing the denial of the waiver, within 90 days of notice of the waiver denial.

§ 471.9. Appeal

A person aggrieved by a decision of the Bureau to grant, deny or revoke a license may make an appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to [ practice and procedure of Commonwealth agencies and judicial review of Commonwealth agency action ] Administrative Agency Law) and 1 Pa. Code

Part II (relating to general rules of administrative practice and procedure) [ . ] in the following manner:

(1) The appeal shall be filed within 60 days of receipt of the Bureau's decision.

(2) The appeal shall be filed with the Administrative Docket Clerk, Office of Chief Counsel, 400 North Street, 9th Floor, Harrisburg, PA 17120-0064, with a \$150 filing fee.

(3) The appeal must provide a detailed description of the decisions being appealed and the reasons for the appeal.

APPENDIX A

<i>Public Airport</i>	
Scheduled Service/ General Aviation	Criteria A
[ Business	Criteria A
General Service	Criteria A ]
Basic Utility	Criteria B
Sport/Ultralight	Criteria [ H ] C
Seaplane	Criteria [ F ] D
 <i>Private Airport</i>	
[ Individual ] Group	Criteria [ B ] E
[ Group ] Individual	Criteria [ C ] F
[ Commercial	Criteria A ]
Sport/Ultralight	Criteria [ I ] G
Seaplane	Criteria [ G ] H
 <i>Public Heliport</i>	
[ Business	Criteria I
General Service	Criteria D ]
 <i>Private Heliport</i>	
[ Individual	Criteria J
Group	Criteria E
Commercial	Criteria E ]

CRITERIA A

Public Airport—Scheduled Service/General Aviation

(a) The minimum runway length is 2,200 feet plus a 7.0% additional length factor for each 1,000 feet of elevation that the runway is above mean sea level, rounded up to the nearest 5 foot increment. [Note: Figure 4-1, FAA Advisory Circular 150/5300-4B for additional runway length design standards.] Example: An airport at 500 feet above mean sea level would require a minimum length of 2,280 feet.

\* \* \* \* \*

(c) A paved runway shall have an obstacle free zone, extending 200 feet beyond the end of each visual utility runway, the same width as the primary surface [—250 feet ].

(d) A visual [utility] runway end shall have an obstruction free approach surface with a slope of 20 feet

horizontal to 1 foot vertical. The following are approach surface dimensions [ for a visual utility runway ]:

\* \* \* \* \*

(3) The approach surface shall begin at the runway end for a turf runway and [ at a point ] 200 feet beyond the end of a paved runway.

(e) A runway other than visual shall conform to applicable FAR Part 77 Civil Airport Runway Approach Surfaces. The Bureau will acknowledge and consider mitigation factors as determined by the FAA when determining compliance with this criterion.

(f) A runway shall have an obstruction free transitional surface with a slope of 7 [foot] feet horizontal to 1 foot vertical extending from the side of the runway primary surface and the sides of the approach surfaces to an elevation 150 feet above the airport elevation.

(g) Runway thresholds shall be a minimum of 200 feet from airport property line [ and 300 feet from the edge of a public road ] as measured along the runway extended centerline.

(h) A runway shall be marked.

(1) Turf runway. Turf runway [end] ends and displaced thresholds shall be marked. [Markers] Edge markers shall be placed at intervals not exceeding [400] 200 feet along each side of the runway for its entire length.

(2) Paved runway. A paved runway shall be marked [in accordance with diagram, Figure 1]. For the dimensions and spacing of the markings see the current edition of the FAA Advisory Circular [150/5340-1E] relating to runway markings.

(i) [Principle] For planning purposes, principal runway alignment [shall] for new airports should be in the direction of the prevailing winds. Runway alignment [,] other than into the prevailing winds, may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(j) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The wind indicator shall be lighted where night operations are to be conducted.

(k) The runway surface longitudinal and transverse grade may not exceed 2.0%. It is desirable that a line-of-sight standard exist along the entire length of the runway. Runway grade changes should be such that any 2 points 5 feet above the runway centerline [,] will be mutually visible for the entire length of the runway [length].

(l) If night operations are to be conducted at the airport, runway edge lighting shall be installed to define the lateral and longitudinal limits of the usable landing area. Lights shall be installed in accordance with [Figure 2. For location and spacing, see FAA AC 150/5340-24] the current edition of the FAA Advisory Circular related to runway lighting.

(m) A rotating beacon shall be installed for night operations at public airports.

(n) [A telephone] Telephone service shall be available during hours of operation. [A public telephone

shall be available 24 hours a day. ] Emergency [ and aviation ] contact information [ telephone numbers ] shall be posted near the telephone.

(o) [ An adequate ] A first aid kit shall be available.

(p) [ The ] A traffic pattern diagram [ and ] with altitudes shall be posted and visible to the aviation public.

(q) [ Final ] A favorable airspace determination by the FAA [ may ] shall be required prior to final licensing.

(r) The airport license shall be posted and visible to the aviation public.

(s) [ Adequate fire ] Fire extinguishing equipment shall be available for emergency fire protection. See NFPA [ Code 403 ] Codes and local fire codes for appropriate guidelines.

(t) When public fueling services are provided use NFPA Codes for guidelines for storage and distribution of fuels.

(u) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

**(Editor's Note: As part of this proposed rulemaking, the Department is also proposing to delete in their entirety the Figures entitled: FIGURE 1. AIRPORT MARKING and FIGURE 2. RUNWAY AND THRESHOLD LIGHTING CONFIGURATIONS which appear in 67 Pa. Code pages 471-12 and 471-13, serial pages (226970) and (226971).)**

#### CRITERIA B

**(Editor's Note: As part of this proposed rulemaking, the Department is proposing to replace the text of Criteria B which appears in 67 Pa. Code pages 471-14 and 471-15, serial pages (226972) and (226973) with the following text which has been printed in regular type to enhance readability.)**

##### Public Airport—Basic Utility

(a) The minimum runway length is 1,600 feet.

(1) The minimum required runway length will be increased where required to accommodate a family of airplanes having similar performance characteristics or a specific airplane needing the longest runway and will be based on the performance data obtained from the aircraft flight manuals.

(2) Runway length will be that length needed for take-off ground run or landing ground run whichever is greater, factored for density altitude (85° F day; runway elevation above sea level); plus a factor for grass. The grass factor may be that required by the manufacturer. If the manufacturer requires no grass factor, a factor of 10% for conventional landing gear or 15% for tricycle landing gear will be used. An additional safety factor of 20% shall also be applied.

(3) If the aircraft performance data is not available from the aircraft flight manual, due to its vintage or modifications, the Bureau may accept a written statement by the applicant-aircraft owner, as to aircraft performance and runway length needed. Performance data may be considered, using less than maximum certificated takeoff weight-down loaded condition, if requested in writing by the applicant, to meet minimum runway length requirements.

(4) Displacement of runway thresholds may be used to reduce or eliminate approach slope obstructions as long as sufficient effective runway length remains.

(b) The minimum runway primary surface width is 180 feet or 90 feet either side of the runway centerline. The landing surface shall be centered within the primary surface. The minimum width of a paved runway is 50 feet. The minimum width of a turf runway is 100 feet. The runway primary surface shall extend 200 feet beyond the end of a paved runway and to the end of a turf runway.

(c) A runway end shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are approach surface dimensions for a visual runway:

(1) The centerline of this surface shall extend outward and upward 5,000 feet along the runway extended centerline.

(2) The surface shall extend laterally from each edge of the primary surface at the runway approach threshold and increase uniformly in width to 625 feet on each side of the centerline at a point 5,000 feet from the end of the primary surface.

(3) The approach surface shall begin at the runway end for an unpaved runway and at a point 200 feet beyond the end of a paved runway.

(d) A runway shall have an obstruction free transitional surface with a slope of 7 feet horizontal to 1 foot vertical extending from the side of the runway primary surface and the sides of the approach surface to an elevation 150 feet above the airport elevation

(e) Runway landing thresholds shall be a minimum of 200 feet from the airport property line along the runway extended centerline.

(f) A runway shall be marked.

(1) *Turf runways.* Runway ends shall be marked. Edge markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(2) *Paved runway.* Runway numbers shall be marked at each end.

(3) *Marked threshold displacements.* Runway threshold displacements shall be marked.

(g) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing wind, may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(h) Operations are intended for day, visual meteorological conditions (VMC).

(i) A wind indicator shall be installed at a location that adequately indicates surface wind direction and velocity. The wind indicator shall be lighted if night operations are to be conducted.

(j) The runway longitudinal and transverse gradient should not exceed 4.0%.

(k) Telephone service should be available during hours of operation. Emergency contact information should be posted near the telephone.

(l) Fire extinguishing equipment should be available for emergency fire protection. See National Fire Protection Association (NFPA) Codes and local fire codes for appropriate guidelines.

(m) A traffic pattern diagram with altitudes shall be posted and visible to the aviation public.

(n) A favorable airspace determination from the FAA shall be required prior to license.

(o) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

#### CRITERIA C

**(Editor's Note:** As part of this proposed rulemaking, the Department is proposing to replace the text of Criteria C which appears in 67 Pa. Code pages 471-15 and 471-16, serial pages (226973) and (226974) with the following text which has been published in regular type to enhance readability.)

#### Public Airport—Sport/Ultralight

(a) The minimum runway length shall be 1,000 feet. The runway should be aligned within 40° of the prevailing wind. Longitudinal and transverse gradients should not exceed 4%.

(b) A runway end shall have an obstruction free approach surface with a slope of 15 feet horizontal to 1 foot vertical. The following are approach surface dimensions:

(1) The centerline of this surface shall extend outward and upward 1,000 feet along the extended runway centerline.

(2) The surface shall extend laterally 50 feet on each side of the centerline of the runway approach threshold and increase uniformly in width to 100 feet on each side of the centerline at a point 1,000 feet from the runway end.

(3) The approach surface shall begin at the runway end.

(c) The minimum runway width shall be 100 feet.

(d) A runway shall have an obstruction free transitional surface with a slope of 3 feet horizontal to 1 foot vertical extending from the side of the runway surface and the sides of the approach surface.

(e) Runway landing thresholds shall be a minimum of 200 feet from the airport property line as measured along the extended runway centerline.

(f) Runway ends shall be marked. Edge markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(g) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing winds may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(h) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity.

(i) Night operations are not authorized.

(j) Telephone service should be available during hours of operation. Emergency contact information should be posted near the telephone.

(k) A traffic pattern diagram with altitudes shall be posted and visible to the aviation public.

(l) The airport license shall be posted and visible to the aviation public.

(m) The airport operator should provide fire extinguishing equipment for emergency fire protection.

(n) A favorable airspace determination from the FAA shall be required prior to final licensing.

(o) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

#### CRITERIA D

**(Editor's Note:** As part of this proposed rulemaking, the Department is proposing to replace the text of Criteria D which appears in 67 Pa. Code pages 471-16—471-18, serial pages (226974)—(226976) with the following text which has been published in regular type to enhance readability.)

#### Public Airport—Seaplane

(a) The minimum landing lane length is 2,500 feet. The length of the landing lane shall be increased by 7% per 1,000 feet of elevation above sea level. The additional length factor is calculated proportionately using a ratio of 7% for each 1,000 feet of elevation that the runway is above mean sea level, rounded up to the nearest 5-foot increment (that is, an airport at 500 feet above mean sea level would require a minimum length of 2,590 feet).

(b) The minimum primary surface width is 200 feet or 100 feet each side of the landing lane centerline. The landing lane minimum width is at least 100 feet and centered within the primary surface.

(c) A minimum water depth of 3 feet is required at all points within the primary surface.

(d) A landing lane shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are the approach slope dimensions:

(1) The centerline shall extend outward and upward for 5,000 feet along the landing lane extended centerline.

(2) The surface shall extend laterally 100 feet each side of the centerline, beginning at the landing lane threshold and increase uniformly to 625 feet each side of the centerline at a point 5,000 feet from the end of the landing lane.

(e) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The wind indicator shall be lighted if night operations are to be conducted.

(f) Documentation of ownership or lease of suitable docking facilities and written authorization or permit to use the waterway shall be submitted with the application.

(g) If night operations are to be conducted at the airport, landing lane edge lighting shall be installed to define the lateral and longitudinal limits of the useable landing area.

(h) A public telephone should be available during airport operating hours. Emergency contact information telephone numbers shall be posted.

(i) The airport license shall be posted and visible to the aviation public.

(j) A traffic pattern diagram with altitudes shall be posted at the docking facility and visible to the aviation public.

(k) A powerboat shall be readily available for emergencies during normal operating hours.

(l) The airport operator should provide fire extinguishing equipment for emergency fire protection.

(m) Final airspace determination by FAA shall be required prior to final licensing.

(n) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

#### CRITERIA E

**(Editor's Note:** As part of this proposed rulemaking, the Department is proposing to replace the text of Criteria E which appears in 67 Pa. Code pages 471-18 and 471-19, serial pages (227976) and (227978) with the following text which has been published in regular type to enhance readability.)

##### Private Airport—Group

(a) The minimum runway length is 1,200 feet.

(1) The minimum required runway length will be adjusted where required to accommodate the aircraft to be operated from the airport and will be based upon the performance data obtained from the aircraft flight manuals.

(2) Runway length will be that length needed for take-off ground run or landing ground run, whichever is greater, factored for density altitude temperature (85° F day); runway elevation above sea level); plus a factor for grass. The grass factor may be that required by the manufacturer. If the manufacturer requires no grass factor, a factor of 10% for conventional landing gear or 15% for tricycle landing gear will be used. An additional safety factor of 20% shall also be applied.

(3) If the aircraft performance data is not available from the aircraft flight manual, due to its vintage, a statement by the applicant/aircraft owner as to aircraft performance and runway needed may be accepted by the Bureau.

(4) Performance data may be considered, using less than gross weight down loaded condition, if requested by the applicant, to meet minimum runway length requirements.

(5) Displacement of runway thresholds may be used to reduce or eliminate approach slope obstructions as long as sufficient effective runway length remains.

(6) The minimum runway primary surface width shall be 180 feet or 90 feet each side of the runway centerline. The landing surface shall be centered within the primary surface. The minimum width of a turf landing surface shall be 100 feet. The minimum width of a paved landing surface shall be 50 feet. A paved runway primary surface shall extend 200 feet beyond the end of a paved runway and to the end of a turf runway.

(b) A runway end shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are the approach slope dimensions:

(1) The centerline of this surface shall extend outward and upward for 5,000 feet along the runway extended centerline.

(2) The surface shall extend laterally 90 feet on each side of the centerline of the runway approach threshold and shall increase uniformly in width to 625 feet on each side of the centerline at a point 5,000 feet from the end of the primary surface.

(c) Runway thresholds shall be a minimum of 200 feet from airport property line as measured along the runway extended centerline.

(d) A runway shall be marked.

(1) *Turf runways.* Runway ends shall be marked. Markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(2) *Paved runways.* Runway numbers shall be marked at each end.

(3) *Marked threshold displacement.* Runway threshold displacements shall be marked.

(4) *Night operations.* Displacements shall be lighted if night operations are to be conducted.

(e) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing wind, may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(f) A wind indicator shall be installed at a location that adequately indicates surface wind direction and velocity. It shall be lighted if night operations are to be conducted.

(g) The runway longitudinal and transverse gradient should not exceed 4%.

(h) If night operations are to be conducted at the airport, runway edge lighting shall be installed to define the lateral and longitudinal limits of the useable landing area. Lights will be installed in accordance with current applicable standards.

(i) Fire extinguishing equipment and first aid kits are recommended.

(j) Standard traffic patterns shall be established. Where a nonstandard traffic pattern is necessary, the information shall be made available to those authorized by the owners to use the airport.

(k) A favorable airspace determination from the FAA shall be required prior to license.

(l) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

#### CRITERIA F

**(Editor's Note:** As part of this proposed rulemaking, the Department is proposing to replace the text of Criteria F which appears in 67 Pa. Code page 471-20, serial page (226978) with the following text which has been published in regular type to enhance readability.)

##### Private Airport—Individual

(a) The minimum runway length is 1,200 feet.

(1) The minimum required runway length will be increased where required to accommodate the aircraft to be operated from the airport and will be based upon the performance data obtained from the aircraft flight manuals.

(2) Runway length will be that length needed for take-off ground run or landing ground run, whichever is greater, factored for density altitude (temperature—85° F day; runway elevation above MSL); plus a factor for grass. The grass factor may be that required by the manufacturer. If the manufacturer requires no grass factor, a factor of 10% for conventional gear or 15% for tricycle gear aircraft will be used. An additional safety factor of 20% shall also be applied.

(3) If the aircraft performance data is not available from the aircraft flight manual, due to its vintage or modifications, a statement by the applicant/aircraft owner as to the performance and runway needed may be accepted by the Bureau.

(4) Performance data may be considered, using less than maximum certificated take-off weight down loaded condition, if requested by the applicant, to meet runway length requirements.

(5) Displacement of runway thresholds may be used to reduce or eliminate approach slope obstructions as long as sufficient effective runway minimum length remains.

(b) The minimum primary surface shall be 100 feet or 50 feet either side of the runway centerline. The landing surface shall be centered within the primary surface. The minimum width of a paved landing surface shall be 50 feet. The minimum width of a turf landing surface shall be 100 feet. The runway primary surface shall extend 200 feet beyond the end of a paved runway and to the end of a turf runway.

(c) A runway end shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are approach surface dimensions for a runway:

(1) The centerline of this surface shall extend outward and upward 1,500 feet along the extended runway centerline.

(2) The surface shall extend laterally 50 feet each side of the centerline at the runway approach threshold and increase uniformly in width to 150 feet on each side of the centerline at a point 1,500 feet from the end of the primary surface.

(3) The approach surface shall begin at the runway end for an unpaved runway and at a point 200 feet beyond the end of a paved runway.

(d) The runway landing thresholds shall be a minimum of 200 feet from airport property line along the runway extended centerline.

(e) A runway shall be marked.

(1) *Turf runways.* Runway ends shall be marked. Edge markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(2) *Paved runways.* Runway numbers shall be marked at each end.

(3) *Marked threshold displacement.* Runway threshold displacements shall be marked.

(f) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing wind, may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(g) A wind indicator shall be installed at a location that adequately indicates surface wind direction and velocity.

(h) The runway longitudinal and transverse gradient should not exceed 4%.

(j) Operations are intended for day, visual meteorological conditions (VMC).

(k) Fire extinguishing equipment and first aid kits are recommended.

(l) Standard traffic patterns shall be established. Where a nonstandard pattern is necessary, the information shall be made available to those authorized by the owner to use the airport.

(m) A favorable airspace determination from the FAA shall be required prior to license.

(n) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

## CRITERIA G

**(Editor's Note:** As part of this proposed rulemaking, the Department is proposing to replace the text of Criteria G which appears in 67 Pa. Code pages 471-20 and 471-21, serial pages (226978) and (226979) with the following text which has been published in regular type to enhance readability.)

### Private Airport—Sport/Ultralight

(a) Minimum runway dimensions of 500 feet in length by 100 feet in width aligned within 40° of the prevailing wind are required. Longitudinal and transverse gradients should not exceed 4.0%.

(b) The minimum runway length will be increased to accommodate sport aircraft where applicable and will be based on the performance data obtained from the aircraft flight manuals. Runway length will be that length needed for take-off ground run or landing ground run, whichever is greater, factored for density altitude (temperature—85° F, runway elevation above MSL), plus a factor for grass. The grass factor may be that required by the manufacturer. If the manufacturer requires no grass factor, a factor of 10% for conventional gear of 15% for tricycle gear will be used. An additional safety factor of 20% shall also be applied.

(c) A runway end shall have an obstruction free approach surface with a slope of 15 feet horizontal to 1 foot vertical. The following are approach surface dimensions:

(1) The centerline of this surface shall extend outward and upward 1,000 feet along the extended runway centerline.

(2) The surface shall extend laterally 50 feet on each side of the centerline of the runway approach threshold and increase uniformly in width to 100 feet on each side of the centerline at a point 1,000 feet from the runway end.

(3) The approach surface shall begin at the runway end.

(c) Runway landing thresholds shall be a minimum of 200 feet from the airport property line as measured along the extended runway centerline.

(d) Runway ends shall be marked. Runway edges shall be marked at intervals necessary to define the lateral runway limits.

(e) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing winds may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(f) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity.

(g) A favorable airspace determination from the FAA shall be required prior to license.

(h) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

## CRITERIA H

**(Editor's Note:** As part of this proposed rulemaking, the Department is proposing to replace the text of Criteria H which appears in 67 Pa. Code pages 471-21 and 471-22, serial pages (226979) and (226980) with the following text which has been published in regular type to enhance readability.)

**Private Airport—Seaplane**

(a) The minimum landing lane length is 2,500 feet. Landing lane length may be reduced if performance data is provided which indicates required take-off and landing distances of less than 2,500 feet.

(b) The minimum primary surface and landing lane width is 100 feet or 50 feet each side of the landing lane centerline. The landing lane minimum width is at least 100 feet and centered within the primary surface.

(c) A minimum water depth of 3 feet is required at all points within the primary surface.

(d) A landing lane end shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are the approach surface dimensions:

(1) The centerline shall extend outward and upward for 1,500 feet along the landing lane extended centerline.

(2) The approach surface shall extend laterally 50 feet on each side of the centerline of the landing area, beginning at the landing lane threshold and increase uniformly in width to 300 feet at 1,500 feet from the end of the landing area.

(e) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The wind indicator shall be lighted if night operations are to be conducted.

(f) Documentation of ownership or lease of suitable docking facilities and written authorization or permit to use the waterway shall be submitted with the license application.

(g) If night operations are to be conducted at the airport, landing lane edge lighting shall be installed to define the lateral and longitudinal limits of the useable landing area.

(h) A favorable airspace approval from the FAA shall be required prior to final licensing.

(i) Standard traffic patterns shall be established. Where a nonstandard traffic pattern is necessary, the information shall be made available to those authorized by the owner to use the airport.

(j) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

**CRITERIA I**

**(Editor's Note:** As part of this proposed rulemaking, the Department is proposing to replace the text of Criteria I which appears in 67 Pa. Code page 471-22, serial page (226980) with the following text which has been published in regular type to enhance readability.)

**Public Heliport—General Aviation**

(a) The least dimension (that is, length, width or diameter) of the final approach and take-off area (FATO) shall be at least 1.5 times the overall length of the design helicopter rounded up to the next 5 foot increment, but not less than 60 feet.

(1) Helicopters located on raised platforms, piers, docks or buildings may have outer portions of the FATO extend beyond the platform.

(2) The FATO should be graded to provide a smooth surface. A slope gradient of no more than 2% is allowed for any part of the FATO on which a helicopter is expected to land.

(3) The FATO shall be free of objects.

(b) When the entire FATO is not load bearing, a paved or stabilized touch down and lift off area (TLOF) is recommended. The least dimension of the TLOF is recommended to be not less than the rotor diameter of the design helicopter.

(c) A safety area shall be provided around the FATO.

(1) The width of the safety area shall be 1/3 of the rotor diameter of the design helicopter, but not less than 20 feet.

(2) The safety area shall be free of objects.

(d) The heliport shall have two approach/take-off paths separated by an arc of at least 90° and shall have unobstructed approach/take-off surfaces with a slope of 8 feet horizontal to 1 foot vertical.

(1) The approach/take-off paths may curve to avoid objects or noise sensitive areas, or both, and to use airspace above public lands.

(2) The approach/take-off surface shall begin at the threshold, at the same width as the FATO, and shall extend outward and upward for 4,000 feet where its width is 500 feet.

(3) One approach/take-off path may be acceptable if the approaches and take-offs can be conducted safely and if it is unobstructed and crosswind to the prevailing winds.

(e) Transitional surface shall be unobstructed. Transitional surfaces shall extend outward and upward with a slope of 2 feet horizontal to 1 foot vertical from the edge of the approach/take-off surfaces and the FATO for a distance of 250 feet from the center of the FATO and from the centerline of the approach/departure path.

(f) The FATO shall be marked with FAA standard markings for heliports.

(1) The FATO shall be designated by marking the outer perimeter boundary.

(2) If applicable, the touchdown and liftoff (TLOF) shall also be marked. An H marking will identify the heliport as a public facility as well as mark the intended landing position. The H is oriented on the axis of the dominant approach/take-off path. A bar may be placed under the H when it is necessary to distinguish the preferred approach direction.

(3) In ground or surface markings may be used to define either or both the FATO and TLOF.

(4) For unpaved surfaces, the perimeter of a turf FATO shall be identified with in ground markers that will not catch helicopter skids or create barriers to helicopter maneuvering. If raised markings are used, they shall be located at the outer boundary of the safety area and be no more than 8 inches in height. Markers are placed at the corners, and as needed along the edges of the FATO.

(5) For paved surfaces, a 12-inch dashed white line defines the limits of the FATO when the entire surface is paved.

(6) A 12-inch solid white line is used to define the limits of the TLOF.

(g) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The indicator shall be lighted if night operations are to be conducted.

(h) Night operations shall comply with the following:

(1) The perimeter of the FATO and the TLOF shall be defined with lights colored in accordance with the current FAA Advisory Circular pertaining to heliport lighting. The lights may not penetrate the approach or transitional surface slopes.

(2) A minimum of four flush or raised fixtures is required per side of a square or rectangular FATO or TLOF. A light is located at each corner, with additional lights spaced uniformly between the corner lights with a maximum interval of 25 feet between lights.

(3) An even number of lights, at least eight, evenly spaced, is required to define a circular FATO or TLOF, with a maximum interval of 25 feet between lights.

(4) Raised light fixtures, modified to be not more than 8 inches in height, should be located 10 feet out from the FATO edge.

(5) Flush lights may be located on the TLOF edge or within 1 foot of the TLOF edge.

(6) When nonflush lights are used on a raised TLOF, light fixtures modified to no more than 8 inches in height may be used to define the TLOF. They shall be located 10 feet out from the TLOF edge and may not penetrate a horizontal plane at the TLOF's elevation by more than 2 inches.

(7) Flood lighting may also be used in lieu of, or to supplement, perimeter lights. The flood lights shall be installed so they do not interfere with helicopter operations or interfere with pilot vision.

(8) Obstruction lights should be installed on objects near the approach surfaces or where deemed necessary by the Bureau.

(i) A rotating beacon is recommended to be installed for night operations at public heliports.

(j) When the TLOF is on a platform elevated more than 30 inches above its surroundings, a 5-foot wide safety net or shelf shall be provided. The safety net shall have a load carrying capability of at least 25 pounds per square foot. The net or shelf may not project above the level of the TLOF.

(k) Rooftop heliports shall comply with the following:

(1) The size of the FATO and the TLOF for a rooftop or elevated heliport shall be the same as for ground level.

(2) When the TLOF is less than the rotor diameter of the design helicopter, additional nonload bearing surface is required for support of the main rotor downwash ground effect. Load bearing surface size and designed load capacity shall be in accordance with the current edition of the FAA heliport design guide.

(l) Where practicable, wires within 500 feet of the FATO are recommended to be marked.

(m) A telephone shall be available to the public 24 hours a day. Emergency and aviation information telephone numbers shall be posted near the telephone.

(n) A traffic pattern diagram with altitudes shall be posted and visible to the aviation public.

(o) The heliport operator will provide fire extinguishing equipment for emergency fire protection.

(p) A favorable airspace determination from the FAA shall be required prior to final licensing.

(q) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

## CRITERIA J

**(Editor's Note:** The following text is new and has been printed in regular type to enhance readability.)

### Private Heliport

(a) The least dimension (that is, length, width or diameter) of the final approach and take-off area (FATO) shall be 1.5 times the overall length of the design helicopter rounded up to the nearest 5 foot increment, but not less than 60 feet.

(1) Helicopters located on raised platforms, piers, docks or buildings may have outer portions of the FATO extend beyond the platform.

(2) The FATO should be graded to provide a smooth surface. A slope gradient of no more than 2% is allowed for any part of the FATO on which a helicopter is expected to land.

(3) The FATO shall be free of objects.

(b) When the entire FATO is not load bearing, a paved or stabilized touchdown and liftoff area (TLOF) is recommended. The least dimension of the TLOF is recommended to be not less than the rotor diameter of the design helicopter.

(c) A safety area will be provided around the FATO as follows:

(1) The width of the safety area shall be 1/3 of the rotor diameter of the design helicopter, but at least 10 feet.

(2) The safety area shall be free of objects.

(d) The heliport shall have two approach/take-off paths separated by an arc of at least 90° and shall have unobstructed approach/take off surfaces with a slope of 8 feet horizontal to 1 foot vertical.

(1) Approach/take-off paths may curve to avoid objects or noise sensitive areas, or both, and to use airspace above public lands. Approach surface requirements are applicable for the entire route.

(2) The approach/take-off surface shall begin at the threshold, at the same width as the FATO and shall extend upward and outward for a distance of 1,000 feet where its width is 200 feet.

(3) One approach/take-off path may be acceptable if approaches can be conducted safely and if it is unobstructed and crosswind to the prevailing winds.

(e) The FATO shall be marked with FAA standard markings for heliports.

(1) The FATO shall be designated by marking the outer perimeter boundary.

(2) If applicable, the TLOF shall also be marked.

(3) The FATO or TLOF may be marked with company logo or name.

(4) A hospital heliport shall be identified by a red capital H centered on a white cross. The dimensions of the cross and H are described in the current edition of the FAA Heliport Design Advisory Circular.

(5) In ground or surface markings may be used to define either or both the FATO and TLOF.

(6) The perimeter of a turf FATO shall be identified with in ground markers that will not catch helicopter skids or create barriers to helicopter maneuvering. If



raised markings are used, they shall be located at the outer boundary of the safety area and be no more than 8 inches in height.

(7) A 12-inch dashed white line defines the limits of the FATO when the entire surface is paved.

(8) A 12-inch solid white line is used to define the limits of the TLOF.

(f) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The wind indicator shall be lighted if night operations are to be conducted.

(g) Night operations shall comply with the following:

(1) The perimeter of the FATO or the TLOF (but not both) shall be defined with lights colored in accordance with the current FAA Advisory Circular pertaining to heliport lighting.

(2) At least 8 evenly spaced lights are required to define a circular FATO or TLOF, with a maximum interval of 25 feet between lights.

(3) A minimum of three flush or raised fixtures is required per side of a square or rectangular FATO or TLOF. A light is located at each corner, with additional lights spaced uniformly between the corner lights with a maximum interval of 25 feet between lights.

(4) Raised light fixtures, modified to be not more than 8 inches in height, should be located 10 feet out from the FATO edge.

(5) Flush lights may be located on the TLOF edge or within 1 foot of the TLOF edge.

(6) When nonflush lights are used on a raised TLOF, light fixtures modified to no more than 8 inches in height may be used to define the TLOF. They must be located no more than 10 feet out from the TLOF edge and may not penetrate a horizontal plane at the TLOF's elevation by more than 2 inches.

(7) Flood lighting may also be used in lieu of, or to supplement, perimeter lights. The flood lights shall be installed so as not to interfere with helicopter operations or interfere with pilot vision.

(8) Obstruction lights should be installed on objects near the approach surfaces or where deemed necessary by the Bureau.

(h) When the TLOF is on a platform elevated more than 30 inches above its surroundings, a 5-foot wide safety net or shelf shall be provided. The safety net shall have a load carrying capability of at least 25 pounds per square foot. The net or shelf may not project above the level of the TLOF.

(i) Rooftop heliports shall comply with the following:

(1) The size of the FATO and TLOF for a rooftop or elevated heliport shall be the same as for ground level.

(2) When the TLOF is less than the rotor diameter of the design helicopter, additional nonload bearing surface is required for support of the main rotor downwash ground effect. Load bearing surface size and designed load capacity shall be in accordance with the current edition of the FAA heliport design guide.

(j) When practicable, wires within 500 feet of the FATO are recommended to be marked.

(k) The heliport operator shall provide fire extinguishing equipment for emergency fire protection.

(l) A favorable airspace determination from the FAA shall be required prior to final licensing.

(m) Issuance of a license does not preempt other State, Federal or local zoning or permitting requirements.

#### APPENDIX B

**(Editor's Note:** The following text is new and has been printed in regular type to enhance readability.)

(a) Section 471.3(d) (relating to airport licensing) allows the Bureau to waive, for "good cause," compliance with the licensing criteria and related requirements. It must be understood, however, that no waivers will be granted for conditions which are inconsistent with FAA Grant Assurance obligations or other applicable FAA regulation unless permission is granted by the FAA.

(b) The following is a nonexhaustive illustrative list of potential waivable conditions:

- (1) Runway length.
- (2) Runway width.
- (3) Runway obstacle free zone.
- (4) Approach surface penetrations.
- (5) Runway markings.
- (6) Runway alignment.
- (7) Longitudinal and transverse grades.
- (8) Telephone requirements.

(c) When evaluating any nonstandard condition for a waiver, the following will be considered in determining "good cause:"

- (1) Type and performance characteristics of the critical aircraft operating at the facility.
- (2) History of incidents attributable to the nonstandard conditions as determined by the FAA or National Transportation Safety Board (NTSB).
- (3) Operational limitations, such as Visual Flight Rules (VFR)-day only.
- (4) Physical constraints.
- (5) Financial feasibility of undertaking improvements to meet airport licensing criteria.
- (6) How similar issues have been handled with respect to other airports.
- (7) Facility preservation.
- (8) Availability of visual guidance systems.

#### CHAPTER 473. AVIATION DEVELOPMENT GRANTS

##### § 473.2. Definitions.

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

**Aircraft**—A contrivance, except an unpowered hang-glider or parachute, used for manned ascent into or flight through the air.

**Airport**—An area of land or water which is used, or intended to be used, for the landing and takeoff of aircraft and an appurtenant area which is used, or intended to be used, for airport buildings or air navigation facilities or rights-of-way, together with airport buildings and facilities thereon. Unless indicated otherwise, the term includes heliports and public airports.

**Aviation-related areas**—An area of an airport used, or intended to be used, in the direct opera-

tion of the airport. The term includes, but is not limited to, a portion of the airport used in the landing, taking off or surface maneuvering of an aircraft. The term does not include hangers, terminals and a portion of the airport used for the housing of aircraft or areas dedicated to hotels, motels, shops, restaurants, parking areas and garages and other for-profit establishments whose purpose is unrelated to the landing and taking off of aircraft.

**Aviation restricted account**—The account into which revenues generated from the sources in section 5103(b) of the code (relating to aviation restricted account) are deposited.

**Bureau**—The Bureau of Aviation of the Department.

**Code**—74 Pa.C.S. §§ 5101—6169 (relating to the Aviation Code).

**Department**—The Department of Transportation of the Commonwealth.

**Director**—The Director of the Bureau of Aviation.

**Grant**—An offer of funding assistance from the Department to a sponsor for a project in this chapter.

**Landing area**—An area used, or intended to be used, for the landing, taking off or surface maneuvering of aircraft.

**Person**—A corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, the Commonwealth and its political subdivisions, agencies or instrumentalities.

**Private airport**—An airport which is privately owned and which is not open or intended to be open to the public.

**Public airport**—An airport which is either publicly or privately owned and which is open to the public.

**Sponsor**—A person applying for, or having received, an aviation development grant for a public airport. ]

Words and terms used in this chapter have the same meaning as they are given in § 471.2 (relating to definitions), unless the context clearly indicates otherwise.

§ 473.3. Eligibility requirements and criteria.

(a) The minimum requirements and criteria for eligibility to apply for an aviation development grant is that the facility shall be an appropriately licensed public airport located in this Commonwealth and the applicant shall be an eligible sponsor.

(b) The following are projects eligible for consideration of an offer of an aviation development grant.

\* \* \* \* \*

(6) Runway, taxiway and apron marking and lighting.

\* \* \* \* \*

(11) [ Obstruction removal ] Removal, lighting and marking of [ airports ] obstructions.

(12) Airport safety[ / ] and security fencing.

\* \* \* \* \*

(14) Acquisition of land or easements for airport development.

(15) Equipment [ or ] and buildings, [ or both, ] dedicated to aircraft [ crash/fire/ ] rescue and firefighting purposes.

\* \* \* \* \*

(19) Necessary [ airport engineering/ ] project/planning/environmental studies/engineering plans, specifications and cost estimates.

(20) Airport [ master ] planning, including, but not limited to, master plans, noise and land use studies.

\* \* \* \* \*

(23) [ Another project ] Other projects which, in the discretion of the Department, should be considered.

§ 473.4. Limits of funding.

\* \* \* \* \*

(b) *Non-Federal aid projects.* [ The maximum grant to a sponsor may be up to 75% of the eligible amount of the project. ] The maximum grant to a sponsor for State and local participation projects will be flexible. In no case, will State participation exceed 90% of the total project cost. Projects that may be funded at the 90% level will be those projects at non-Federally eligible airports that the Bureau requires be accomplished. The Bureau will work in good faith with airport sponsors to develop feasible and practicable plans for funding any mandated project.

§ 473.5. [ Application procedure ] (Reserved).

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind § 473.5 which appears in 67 Pa. Code pages 473-4 and 473-5, serial pages (254118) and (254119).)

§ 473.5a. Project selection process and criteria.

(a) *Project selection.* Aviation development grants for projects on the 12-year plans and Airport Capital Improvement Programs (ACIPs) on file with and agreed to by the Bureau will be selected for consideration on an annual basis upon written request from sponsors.

(b) *Consideration.* Following the published closing date identified in § 473.5b (relating to important dates and notification procedure) for the receipt of applicable documentation, projects will be considered for funding for future fiscal years.

(c) *Incomplete documentation.* The Department reserves the right to consider documentation for aviation development grants which may be technically incomplete on the deadline identified in § 473.5b, but which will be made complete in a timely fashion. The decision to consider documentation which may be determined incomplete on the documentation deadline is made at the sole discretion of the Bureau.

(d) *Review process.* In evaluating the documentation, the Department may establish internal review procedures, review committees or other administrative mechanisms sufficient to handle the responsibilities of these programs. The Department will maintain an ongoing record of the specific review

mechanisms used for the consideration of the documentation and to make available to applicants an outline of the current applicable internal review procedures.

(e) *Review by Bureau.* The Bureau will review and evaluate submitted documentation with respect to applicable criteria for project funding, available funds, current priorities for development of the airport and significant environmental or economic factors.

(f) *Criteria used in review.* In considering submitted documentation, the Bureau will give weight and consideration to the following criteria:

(1) Improvement of the safety of airport operations.

(2) The effects of the project on both the overall airport system and the local airport.

(3) The impact of the project on the area surrounding the airport.

(4) Availability of local funds for airport development.

(5) The capture of Federal funds for airport development.

(6) Current policy of the Commonwealth on transportation improvements and economic development.

(7) Current and future demand for passenger service, based or itinerant aircraft and freight services.

(8) Assurance that there is a viable network and reasonable distribution of services and safe facilities throughout this Commonwealth.

(9) The extent to which the project would contribute to the welfare of the citizens of this Commonwealth.

(10) Other criteria as may be considered from time to time.

(g) *Discretion in evaluation.* In consideration of the various criteria applicable to the review of submitted documentation, the Bureau reserves the right to evaluate criteria in a manner which may take into account unique or special factors at any airport and emergency situations. Factors making an airport unique from others may include the character of the market it serves, the type and use of based aircraft, the current or future role of the airport, nearby facilities offering similar services or other significant elements contributing to the character or utilization of the facility.

§ 473.5b. Important dates and notification procedure.

(a) The Bureau will publish annual critical dates for the upcoming calendar year in the first publication of the *Pennsylvania Bulletin* of the calendar year preceding the upcoming fiscal year. Additionally, the Bureau will provide direct notification to current sponsors.

(b) Documentation for aviation development grants is considered on an annual basis. From the completed planning documents on file for a given fiscal year, July 1 to June 30, projects will be selected for grants.

(c) Documents on file, but incomplete, may be excluded from consideration for grants in that fiscal year. The deadlines for submission of aviation development grant related documentation for a given fiscal year is the close of business of the published date (4:30 pm Eastern Time).

(d) The sponsor will receive a letter of intent for projects selected as described in § 473.9 (relating to offer and acceptance of an aviation development grant), which will authorize the sponsor to proceed with project formulation described in § 473.6a (relating to project execution).

(e) The Department will send a written conditional offer for a grant to a sponsor for a selected project in accordance with § 473.9.

§ 473.6. [ Deadlines for preapplications and applications ] (Reserved).

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind § 473.6 which appears in 67 Pa. Code page 473-5, serial page (254119).)

§ 473.6a Project execution.

(a) Upon receipt of a letter of intent in accordance with § 473.9 (relating to offer and acceptance of an aviation development grant), a sponsor may proceed with project formulation and the applicable plans, specifications, procurement of the necessary contracting services and other work necessary pursuant to the future phases of the project.

(1) If the intended project is an airport master planning, environmental planning or related planning study, or both, the applicant shall:

(i) Engage a professional planner or an engineer, or both, with appropriate experience in the particular planning area to accomplish the planning study and related work items as required.

(ii) Provide required documentation including, but not limited to, the scope of services, objectives, work schedule, detailed cost schedule and contract documents required for Department review and approval prior to granting of funds.

(2) If the intended project is land acquisition or interest therein, or both, the applicant shall:

(i) Engage a professional engineer or surveyor registered in this Commonwealth to prepare a property map and provide legal descriptions prior to negotiations.

(ii) Provide other necessary maps, reports, environmental documentation and cost estimates as may be required for Department review and approval prior to the granting of funds.

(3) If the intended project is construction or facility modification, the applicant shall:

(i) Engage a professional engineer registered in this Commonwealth to prepare detailed construction plans and specifications and to provide construction engineering, inspection and material testing as required.

(ii) Provide certified maps, reports, detailed construction plans, specifications and contract documents as may be required for Department review and approval prior to granting of funds.

(4) If the intended project is an equipment procurement—ARFF or Snow Removal—the applicant shall:

(i) Prepare detailed procurement specifications.

(ii) Provide reports, detailed procurement specifications, contract documents and cost estimates as may be required for Department review and approval prior to granting funds.

(b) At the request of the Bureau, the sponsor shall submit:

(1) The estimated cost—by item quantity and unit cost item extended to total cost.

(2) A copy of approved airport layout plan—if requested.

(3) A copy of environmental finding—if requested.

(4) A copy of airspace determination—if requested.

(5) A copy of the sponsor's certification—if required or requested by the Bureau.

(6) Other materials or information, or both, deemed necessary by the Department.

#### § 473.7. Public records.

[ **A preapplication or** ] An application [ , or both, ] for an aviation development grant made under this chapter is considered a document of public record at the time of filing, and will be made available to persons for inspection.

#### § 473.8. [ Grant selection process and criteria ] (Reserved).

(Editor Note: As part of this proposed rulemaking, the Department is proposing to rescind the text of § 473.8 which appears in 67 Pa. Code pages 473-6 and 473-7, serial pages (254120) and (284985).)

#### § 473.9. Offer and acceptance of an aviation development grant.

(a) [ **Conditional offer.** ] The Department will send a written conditional offer to a sponsor whose application has been approved. The Department's conditional offer may completely fund an eligible project as proposed, or a portion of an eligible project.

(b) [ **Application required.** Upon receipt of a conditional offer from the Department, a sponsor shall, within the time set forth in the conditional offer, submit an application under § 473.5 (relating to application procedure). ] Upon receipt of a conditional offer from the Department, a sponsor shall, within the time set forth in the conditional offer execute and submit the grant agreement.

(1) Failure of a sponsor to indicate acceptance of the terms of the grant agreement within the specified response period, will be considered as a rejection of the final offer.

(2) Acceptance of the grant agreement is not binding on a sponsor or the Department until the documents are fully executed between the Department and the sponsor.

(c) [ **Final offer.** If the Department decides to make a final offer to a sponsor, it will notify the sponsor in writing and include a grant agreement as apart of the final offer.

(d) **Acceptance.** A sponsor who has received a final offer has 30 days to indicate by registered mail, acceptance of final order.

(1) Acceptance of a final offer is not binding on a sponsor until the execution of the grant agreement between the Department and the sponsor.

(2) Failure of a sponsor to indicate acceptance of the terms of a final offer within the 30 day response period, will be considered as a rejection of the final offer and termination of the application.

(e) **Review process.** In evaluating preapplications and applications, the Department may establish internal review procedures, review committees or other administrative mechanisms sufficient to handle the responsibilities of these programs. The Department will maintain an ongoing record of the specific review mechanisms used for the consideration of preapplications and applications and to make available to applicants an outline of the current applicable internal review procedures.

(f) **Discretion of Department.** ] Unless otherwise restricted by statute, the Department has absolute discretion in the selection of projects and in the determination of funding levels, priorities, critical project selection criteria, project phasing, project design and specifications and performance criteria.

[ (g) **Amendments to projects.** ] (d) In the consideration of [ **a preapplication or an application,** ] the documentation provided, the Department may determine that a proposed project should be amended to accommodate available funding, applicable airport design criteria, anticipated use or to better accommodate potential user needs. The Department may offer an aviation development grant for a project whose specifications, terms or scope have been modified by the Department.

[ (h) **Consultation does not insure offer.** ] (e) In the event that the Department confers with a sponsor to amend a proposed project, the sponsor understands that consultation and amendment does not insure that an offer will be made.

#### § 473.13. Payment procedures.

Unless otherwise specified by the Department, the following general procedures are to be used for funds from an aviation development grant:

\* \* \* \* \*

(4) Payment requests shall be limited to monthly submissions. The Bureau reserves the right to request additional submissions to facilitate the end of year and grant closeout requirements.

### CHAPTER 477. LOCAL REAL ESTATE TAX REIMBURSEMENT GRANTS

#### § 477.2. Definitions.

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

**Aircraft**—A contrivance, except an unpowered hang-glider or parachute, used for manned ascent into or flight through the air.

**Airport**—An area of land or water which is used, or intended to be used, for the landing and takeoff of aircraft and appurtenant areas which are used, or intended to be used, for airport buildings or air navigation facilities or rights-of-way, together with airport buildings and facilities thereon. Unless indicated otherwise, airport includes heliports and public airports.

**Aviation-related areas**—An area of an airport used, or intended to be used, in the direct operation of the airport. The term includes, but is not limited to, a portion of the airport used in the landing, taking off or surface maneuvering of an aircraft. The term does not include hangars, terminals and a portion of the airport used for the housing of aircraft or areas dedicated to hotels, motels, shops, restaurants, parking areas and garages and other for-profit establishments whose purpose is unrelated to the landing and taking off of aircraft.

**Aviation restricted account**—The account into which revenues generated from sources set forth in section 5103(b) of the code (relating to aviation restricted account) are deposited.

**Bureau**—The Bureau of Aviation of the Department.

**Code**—74 Pa.C.S. §§ 5101—6169 (relating to the Aviation Code).

**Department**—The Department of Transportation of the Commonwealth.

**Director**—The Director of the Bureau.

**Grant**—An offer of funding assistance from the Department to the owner of a public airport for a local real estate tax reimbursement grant.

**Landing area**—An area used, or intended to be used, for the landing, taking off or surface maneuvering of aircraft.

**Owner**—The person holding legal or equitable title to an airport.

**Person**—A corporation, company, association, society, firm, partnership or joint stock company. The term includes an individual, the Commonwealth and all political subdivisions of the Commonwealth or agencies or instrumentalities.

**Private airport**—An airport which is privately owned and which is not open or intended to be open to the public.

**Public airport**—An airport which is either publicly or privately owned and which is open to the public. ]

Words and terms used in this chapter have the same meaning as they are given in § 471.2 (relating of definitions), unless the context clearly indicates otherwise.

**CHAPTER 479. OBSTRUCTION TO AIRCRAFT**

**§ 479.2. Definitions.**

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

**Aircraft**—A contrivance used for manned ascent into or flight through the air. The term does not include an unpowered hang-glider or parachute.

**Airport**—An area of land or water which is used, or intended to be used, for the landing and takeoff of aircraft and appurtenant areas which are used, or intended to be used, for airport buildings or air navigation facilities or rights-of-way, together with airport buildings and facilities thereon. The term includes heliports and public airports.

**Approach area**—The area lying within and above an inclined plane starting at each end of each runway of a public airport, as described by guidelines or regulations adopted by the Federal Aviation Administration.

**Bureau**—The Bureau of Aviation of the Department.

**Code**—74 Pa.C.S. §§ 5101—6169 (relating to the Aviation Code).

**Department**—The Department of Transportation of the Commonwealth.

**Director**—The Director of the Bureau.

**Person**—A corporation, company, association, society, firm, partnership or joint stock company. The term includes an individual, the Commonwealth and all political subdivisions of the Commonwealth or agencies or instrumentalities.

**Public airport**—An airport which is either publicly or privately owned and which is open to the public. ]

Words and terms used in this chapter have the same meaning as they are given in § 471.2 (relating of definitions), unless the context clearly indicates otherwise.

[Pa.B. Doc. No. 08-1460. Filed for public inspection August 8, 2008, 9:00 a.m.]

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Advance Notice of Proposed Rulemaking Order**

Public Meeting held  
July 17, 2008

*Commissioners Present:* James H. Cawley, Vice Chairperson; Robert F. Powelson; Tyrone J. Christy; Kim Pizzigrilli; Wayne E. Gardner; Absent

*Advance Notice of Proposed Rulemaking for Revision of 52 Pa. Code Chapter 57 pertaining to adding Neutral Connection Inspection and Maintenance Standards for the Electric Distribution Companies; Doc. No. L-2008-2044821*

*By the Commission:*

On May 22, 2008, the Commission entered a Final Rulemaking Order at L-00040167 which promulgated regulations at 52 Pa. Code § 57.198, establishing inspection, maintenance, repair and replacement standards for electric distribution companies (EDCs). The Final Rulemaking Order improved the Commission's ability to monitor EDC service reliability and safety. Specifically, the Commission will receive biennial inspection, maintenance, repair and replacement plans that should conform to minimum standard intervals set forth at § 57.198(n).

Based on more recent experience and information, the Commission also determined that the issue of whether EDCs should be subject to specific inspection and maintenance standards regarding neutral connections should be evaluated. Specifically, the Commission approved Commissioner Tyrone J. Christy's Motion to consider addi-

tional standards for the inspection, maintenance and repair of neutral connections by opening a new rule-making proceeding.

On December 20, 2007, in *Strickhouser v. Metropolitan Edison Company*, Docket No. C-20077273, Order entered Dec. 20, 2007, this Commission ruled on whether EDCs should be required to inspect, maintain, repair and replace damaged neutral connections. Michael Strickhouser filed his claim against Metropolitan Edison Company ("Met Ed" or "the utility") after a power surge caused damage to his home and some appliances inside the home.<sup>1</sup> The power surge resulted from a failed neutral connection,<sup>2</sup> and Mr. Strickhouser contended that the neutral connection would not have failed but for Met Ed's negligence in failing to properly monitor, inspect, repair and replace its neutral connections. Met Ed denied liability, arguing that it was not industry practice to routinely inspect neutral connections. Met Ed stated that because neutral connection failures are uncommon, it is neither practical nor feasible to physically inspect the multiple connections existing on each of Met Ed's approximately 157,000 overhead service lines, and the cost of conducting routine inspections on a million neutral connections by linesman using a bucket to ascend up the poles to the connections far outweighs the benefit because the failures are so infrequent. According to Met Ed's witness, Brian Lechman, a Met Ed regional manager with an electrical engineering degree, current practice is to check a neutral connection typically after a customer telephones the company and complains about voltage problems, i.e. flickering lights, or bright lights, or some other symptom that would indicate a neutral connection failure. *Strickhouser*, Transcript of May 30, 2007, pp. 49-50. Mr. Lechman further testified that it was not reasonable for the Company to have performed regular inspections and maintenance on thousands of neutral connections in its territory, given the small number of annual failures and that industry standards do not provide for such inspections. *Initial Decision of ALJ Melillo*, Docket No. C-20077273, at 10.

Administrative Law Judge Kandace F. Melillo dismissed Mr. Strickhouser's claim, but ALJ Melillo required Met Ed to "commence monitoring the failure rate of its neutral connections, in connection with the age and location of these connections, to ascertain whether implementation of an inspection and replacement program is necessary to assure reasonably continuous service and avoid appliance damage." *Strickhouser*, Docket No. C-20077273, Initial Decision entered July 16, 2007. ALJ Melillo stated that while the number of connections could make periodic inspections of all such connections cost prohibitive, inspections specifically targeted to connections of a particular age and location would not be as burdensome. *Id.* at 12. Met Ed filed Exceptions to the Initial Decision, specifically challenging the neutral connection monitoring requirements.

The Commission upheld the ALJ's initial decision to dismiss Mr. Strickhouser's claim because there was no record evidence for "industry standards for neutral connection inspections and that such inspections have not been shown to be warranted to date." *Strickhouser*,

<sup>1</sup> A similar claim was made in *Kelley v. PA Electric Co.*, Docket No. C-20066673, Initial Decision on Remand entered November 7, 2007. In that case, Administrative Law Judge Robert P. Meehan dismissed Mr. Kelley's claim against PA Electric Company for failing to satisfy his burden of proof.

<sup>2</sup> A neutral connection is a wire that provides a return path to complete the flow of electricity so that all appliances can operate. *Strickhouser*, Docket No. C-20077273, Initial Decision entered July 16, 2007. A damaged neutral connection can cause an uneven flow of electricity that results in voltage fluctuations. *Id.* A bad neutral connection can be caused by weather related oxidation. *Luke Kelley v. PA Electric Co.* Docket No. C-20066673, Transcript dated September 6, 2007, p. 9.

Docket No. C-20066673, Order Entered Dec. 20, 2007. The Commission also affirmed the ALJ's ruling requiring Met Ed to monitor the failure rate of its neutral connections and to file annual reports for the years 2008-2010 based on those findings because of "the amount of harm and expense that such failures can cause." *Strickhouser*, Docket No. C-20066673, Order Entered Dec. 20, 2007. The Commission modified the ALJ's initial decision, however, by eliminating the requirement to collect data on neutral connection age when it is not available because of the small number of failures and the expense involved in making that determination.

In *Luke Kelley v. Pennsylvania Electric Company*, Docket No. C-20066673, Luke Kelley testified that in June 2006, whenever he turned on an appliance that required a large amount of amperage, such as a dryer or air conditioner, the lights in his home would brighten. Transcript February 7, 2007, pp. 13-14. At one point, when Mr. Kelley turned on his radio, his stereo system began to emit smoke. Transcript February 7, 2007, p. 15. Mr. Kelley had a failed neutral at the time.

In both the *Strickhouser* and *Kelley* cases, the EDCs argued that: neutral connection failure is a natural and foreseeable occurrence caused by corrosion; that 20 years is a reasonable amount of time for a neutral connection to last; that a bad neutral connection would not be discovered during the EDC's routine maintenance on a circuit because such connections are not visible to the naked eye; that the failure of a neutral connection is identified only after a trouble call is received from a customer; and that it is not practical or feasible for the company to inspect every neutral connection due to the large number of connections on each line. Instead of routinely inspecting and/or replacing neutral connections, the two EDCs relied on customer complaints to identify failed neutral connections.

We question whether these practices regarding neutral connection failures are adequate and reasonable.

The Public Utility Code at 66 Pa.C.S. § 2802(20) provides:

(20) Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the Commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

Additionally, the National Electrical and Safety Code at Section 214.A<sup>3</sup> provides:

A. When in service

1. Initial compliance with rules

Lines and equipment shall comply with these safety rules when placed in service.

2. Inspection

Lines and equipment shall be inspected at such intervals as experience has shown to be necessary.

*NOTE:* It is recognized that inspections may be performed in a separate operation or while performing other duties, as desired.

<sup>3</sup> 66 Pa.C.S. § 2804(1)(ii) requires EDCs to comply with the National Electrical and Safety Code regarding the installation and maintenance of transmission and distribution facilities.

### 3. Tests

When considered necessary, lines and equipment shall be subjected to practical tests to determine required maintenance.

### 4. Record of defects

Any defects affecting compliance with this Code revealed by inspection or tests, if not promptly corrected, shall be recorded; such records shall be maintained until the defects are corrected.

### 5. Remedying defects

Lines and equipment with recorded defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected, or isolated.

The Electric Power Research Institute (EPRI) is conducting a Program entitled, *128 Distribution Systems* and is investigating how EDCs can best improve reliability and system performance while dealing with the challenge of an aging infrastructure and increasing customer demands for higher reliability and power quality. The EPRI is studying, among other things, inspection and assessment of overhead distribution systems. The project aims to build a component reliability dataset by addressing components on an individual basis each year.

In view of Section 2802(20) and the two recent cases addressed by the Commission regarding neutral connections, and since the National Electrical Safety Code stresses the importance of the inspection and maintenance of lines and equipment, a rulemaking proceeding is hereby initiated at this docket to consider revising 52 Pa. Code, Chapter 57, relating to electric distribution reliability.

The Commission will be considering the establishment of inspection, maintenance, repair and replacement standards regarding neutral connections under Chapter 57 of the Pennsylvania Code. This advance notice solicits comments from electric distribution companies and other parties of interest.

Comments are requested on the following topics:

1. Whether standards should be established by the Commission for inspection, maintenance, repair, and replacement of neutral connections so as to avoid unreasonable appliance and other household or business damage to consumers and to assure reasonably continuous electric service. Comments are requested on what, if any, those standards should be.

2. What electric distribution companies' internal inspection and maintenance procedures were in 1995, 2000, and 2007 regarding monitoring the failure rates of their neutral connections, inspecting, maintaining, replacing and repairing those neutral connections.

3. What were the EDCs' internal practices in 1995, 2000, and 2007 regarding the systematic replacement of neutral connections before they failed?

4. Whether a bad neutral connection is visible to the naked eye from the ground as part of a visual inspection. If not, what steps would the EDC have to take to properly inspect a neutral connection?

5. Are there limitations to the physical inspection of a neutral connection? If so, what are they?

6. How lengthy and complicated is a proper neutral connection inspection?

7. What incremental costs would the EDCs incur if required to comply with a neutral connection inspection and maintenance program interval of no less than once every five years for every neutral connection in their service territory?

8. What additional costs would be incurred?

9. What costs would the EDCs incur if required to systematically replace a portion of their neutral connections every year, such that all neutral connections would be replaced on a rolling basis (perhaps every 20 years)?

10. If a systematic replacement program were required, what would be the optimal replacement schedule and why?

11. How many neutral connection failures have the EDCs had per year in their service territories since 1995? What percentage of their overall customer base does this represent?

12. What have the EDCs paid over the past five years annually in compensatory and/or punitive damages to customers who have had property damage and/or personal injury due to failed neutral connections?

13. Whether standards should be placed in the regulations which are specific to each individual EDC, or whether all EDCs should be held to the same standard, and how this would be monitored and regulated.

14. Whether there should be automatic civil penalties written into the regulations for failure to meet standards.

15. Can smart metering/AMI systems provide a means of identifying potential bad or failing neutral connections? If so, what capabilities, specifications and communication channels would be needed to incorporate such diagnostic systems and at what incremental cost, if available?

Due to the comprehensive nature of a rulemaking and the fact that there are no pre-existing inspection and maintenance or repair standards, interested parties will be given 60 days from the date of publication of the Advance Notice of Proposed Rulemaking in the *Pennsylvania Bulletin* for the submission of an original and 15 copies of comments and 90 days from the date of publication to submit an original and 15 copies of reply comments. Since the comment periods are ample, no extensions will be granted for the filing of comments. An electronic copy of all comments should be electronically mailed to Elizabeth Barnes at [ebarnes@state.pa.us](mailto:ebarnes@state.pa.us).

This is an advance notice of proposed rulemaking and is in addition to the normal rulemaking procedures for publication and comment established under the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law. *Therefore,*

*It Is Ordered That,*

1. A rulemaking proceeding is hereby initiated at this docket to consider the revision of the regulations appearing in 52 Pa. Code, Chapter 57, relating to neutral connection inspection and maintenance standards for electric distribution companies.

2. An Advance Notice of Proposed Rulemaking regarding revision of regulations appearing in 52 Pa. Code, Chapter 57, be published in the *Pennsylvania Bulletin*.

3. Interested parties shall have 60 days from the date of publication in the *Pennsylvania Bulletin* of the Advance Notice of Proposed Rulemaking to file written comments and 90 days from the date of publication to file reply comments.

4. Comments should, where appropriate, address the 15 issues identified in this order and should include, where applicable, a numerical reference to the existing regulation(s) which the comment(s) address, proposed language for revision, and a clear explanation for the recommendation.

5. Interested parties should file an original plus 15 copies of each comment to the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

6. An electronic copy of the comments should be electronically mailed to Elizabeth Barnes, Assistant Counsel, at [ebarnes@state.pa.us](mailto:ebarnes@state.pa.us), and these comments in turn will be placed on the Commission's website for public viewing at [www.puc.state.pa.us](http://www.puc.state.pa.us).

7. The contact persons for this rulemaking are Darren Gill (Bureau of Conservation, Economics and Energy Planning, (717) 783-5244 (technical) and Elizabeth Barnes, Law Bureau, (717) 772-5408 (legal).

JAMES J. MCNULTY,  
Secretary

[Pa.B. Doc. No. 08-1461. Filed for public inspection August 8, 2008, 9:00 a.m.]

## STATE EMPLOYEES' RETIREMENT BOARD

[ 4 PA. CODE CH. 247 ]

### Death Benefits

The State Employees' Retirement Board (Board) proposes to amend 4 Pa. Code, Chapter 247 (relating to benefits) by adding language to § 247.7(a) (relating to death benefits) pertaining to the priority of death benefit payments in the event the payments cannot be made to a designated beneficiary or the member's estate.

#### A. Effective Date

The proposed amendment will go into effect upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

#### B. Contact Person

For further information contact Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 787-9657 or Salvatore A. Darigo, Jr., Counsel, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 783-7317. Information regarding submitting comments on this proposal appears in Section H of this preamble.

#### C. Statutory Authority

This proposed amendment is being promulgated under the authority of 71 Pa.C.S. §§ 5902(h) and 5953 (relating to administrative duties of the board; and taxation, attachment and assignment of funds) of the State Employees' Retirement Code (Retirement Code).

#### D. Background and Purpose

This proposed amendment clarifies the priority for payment of a member's death benefit in the event that payment of the benefits cannot be made to a member's designated beneficiary or estate. The amendment would enable consistent application of the statute and could avoid litigation of priority issues.

#### E. Benefits, Costs and Compliance

##### Benefits

The proposed amendment is intended to alleviate confusion and prevent possible disputes with regard to conflicting demands on members' death benefits.

##### Costs

There are no costs to the Commonwealth, its citizens or State employees associated with this proposal.

##### Compliance Costs

The proposed amendment is not expected to impose any additional compliance costs on State employees.

#### F. Sunset Review

A sunset review is not applicable.

#### G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on July 25, 2008, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Finance Committee and the House State Government Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### H. Public Comments

*Written Comments.* Interested persons are invited to submit comments regarding the proposed amendment to Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716. Comments submitted by facsimile will not be accepted. The Board must receive comments, suggestions or objections within 30 days of publication in the *Pennsylvania Bulletin*.

*Electronic Comments.* Comments may be submitted electronically to the Board at [rgentzel@state.pa.us](mailto:rgentzel@state.pa.us) and must be received by the Board within 30 days of publication in the *Pennsylvania Bulletin*. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

NICHOLAS J. MAIALE,  
Chairperson

**Fiscal Note:** 31-12. No fiscal impact; (8) recommends adoption.



Annex A  
TITLE 4. ADMINISTRATION  
PART X. STATE EMPLOYEES' RETIREMENT BOARD  
CHAPTER 247. BENEFITS

§ 247.7. Death benefits.

(a) *Manner of payments.* In the event [ no living ] the member does not designate a beneficiary before death or the designation is not valid for any reason or no validly designated beneficiary survives the member by 30 days under 71 Pa.C.S. § 5709(c) (relating to the payment of benefits) to receive any of the death benefits provided in [ section 5707 of ] the code [ (relating to death benefits) ], [ such ] the benefits shall be payable to the estate of the member [ or to the next of kin under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) ].

(1) If the estate of the member is entitled to receive the member's death benefits but does not file a claim for the benefits within 60 days of the date SERS mails notice of the benefits to the estate

of the member, the entire amount of the death benefit shall be payable in the following sequential priority:

- (i) To the appointed executor or administrator of the deceased member.
- (ii) To the surviving spouse of the member.
- (iii) To any child of the member.
- (iv) To the father or mother of the member.
- (v) To any sister or brother of the member.

(2) Payments made under paragraph (i)(iii), (iv) or (v) shall be made to only one person and not divided among members of the classes identified in those subparagraphs. Upon payment of a death benefit under this section, the System shall be discharged from any further liability for the payment of the death benefits to any other person. A person to whom payment is made under this paragraph shall be answerable therefor to anyone prejudiced by the payment.

\* \* \* \* \*

[Pa.B. Doc. No. 08-1462. Filed for public inspection August 8, 2008, 9:00 a.m.]

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