

# RULES AND REGULATIONS

## Title 10—BANKS AND BANKING

### DEPARTMENT OF BANKING [10 PA. CODE CHS. 11, 13, 17, 35 AND 41]

The Department of Banking (Department), under the authority contained in sections 201 and 202 of the Department of Banking Code (71 P.S. §§ 733-201 and 733-202), section 103 of the Banking Code of 1965 (7 P.S. § 103) and section 12 of the Consumer Discount Company Act (7 P.S. § 6212), deletes the following regulations: §§ 13.2(b) and (c); 13.3(a)(3) and (b); 41.3(i); Chapter 11; Chapter 17; Chapter 35.

#### *Purpose*

The regulations targeted for deletion have been deemed by the Department to be obsolete, preempted or unnecessary for the conduct of the business of banking or the making of consumer loans.

#### *Explanation of Regulatory Requirements*

The Department is unable to articulate the purposes of or necessity for the provisions listed as follows. These provisions are not enforced by Department examiners and are deemed to be unnecessary for the safety and soundness of regulated institutions. Furthermore, the Department is unable to ascertain any consumer protection which is derived from these subsections.

#### *§ 13.2(b) and (c) (relating to participation in evidences of indebtedness and agreements for payment of money).*

Department personnel are unable to articulate the purposes of or necessity for these provisions. These provisions are not enforced by Department examiners and are deemed by the Department to be unnecessary for the safe and sound conduct of the business of banking.

#### *§ 13.3(a)(3) (relating to participants in pools of evidences of indebtedness or agreements for the payment of money).*

Department personnel are unable to articulate the purposes of or necessity for these provisions. These provisions are not enforced by Department examiners and are deemed by the Department to be unnecessary for the safe and sound conduct of the business of banking. This regulation is substantially similar to another regulation being deleted, § 13.2(c).

#### *§ 13.3(b)*

This provision contributes little or nothing to the safety and soundness of State-chartered institutions. Additionally, this provision is not enforced by examiners and is deemed by the Department to be unnecessary for the safe and sound conduct of the business of banking.

#### *Chapter 11 (relating to reserves against deposits).*

Chapter 11 sets forth reserve requirements for State-chartered banking institutions. However, in light of more restrictive Federal regulations applicable to State-chartered banking institutions as found in regulation D, 12 CFR Part 204 (relating to reserve regulations of

depository institutions (Regulation D)), this chapter is deemed to be obsolete.

#### *Chapter 17 (relating to audits and examination).*

Chapter 17 sets forth the minimum standards for director's audits of State-chartered banking institutions. This chapter is redundant and essentially meaningless. It sets forth no requirements other than notifying State-chartered institutions that the Department maintains instructions with regard to minimum requirements for internal audits.

#### *Chapter 35 (relating to mortgage loans).*

Chapter 35 sets forth restrictions on service charges and premiums charged by savings associations with regard to mortgage loans. In light of broad Federal preemption with regard to mortgage lending found in section 207(b)(11) the Depository Institution Deregulation and Monetary Control Act of 1980 (12 U.S.C.A. § 1735f-7a) and in the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C.A. §§ 3801—3805), Chapter 35 is obsolete.

#### *§ 41.3(i)-second sentence (relating to contracts with consumers).*

The second sentence of § 41.3(i) requires consumer discount companies which are licensed by the Department to obtain a license for places of business at which payments are received from borrowers. This section has been overridden by recent amendments to the Consumer Discount Company Act (7 P.S. §§ 6201—6219). The amendment which nullifies the second sentence of § 41.3(i) is found at section 8 of the Consumer Discount Company Act (7 P.S. § 6208).

#### *Entities Affected*

As the regulations targeted for elimination are largely obsolete, preempted or not enforced by the Department, the eliminations of these regulations will have no effect on the regulated community. Section 41.3(i) governs the extension of credit by the 620 licensed consumer discount companies in this Commonwealth. The rest of the regulations targeted for elimination are applicable to the 176 Pennsylvania-chartered banks, bank and trust companies and savings banks.

#### *Cost and Paperwork Requirement*

The regulations targeted for deletion are obsolete or preempted by other laws. Therefore, these regulations impose no cost or burdens to the regulated community and, thus, their elimination will have no effect on costs or paperwork requirements.

#### *Summary of Comments and Responses on the Proposed Rulemaking*

Notice of proposed rulemaking was published at 27 Pa.B. 1813 (April 12, 1997). During the public comment period, no public comments were received by the Department.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 1, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Banking and

Insurance and House Committee on Business and Economic Development. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with other documentation. Neither the Committees nor the IRRC commented on the proposed version of this rulemaking. The regulations were deemed approved by IRRC.

*Findings of the Department*

The Department finds that:

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

(2) A public comment period was provided as required by law, but no comments were submitted.

(3) This rulemaking does not enlarge the purpose of the proposal published at 27 Pa.B. 1813.

*Order*

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

(a) The regulations of the Department, 10 Pa. Code Chapters 11, 13, 17, 35 and 41, are amended by deleting §§ 11.1—11.5, 13.2, 13.3, 17.1, 35.1—35.3 and amending § 41.3 to read as set forth at 27 Pa.B. 1813.

(b) The Secretary of the Department shall submit this order and 27 Pa.B. 1813 to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form as required by law.

(c) The Secretary of the Department shall submit this order and 27 Pa.B. 1813 to IRRC and the Senate Committee on Banking and Insurance and House Committee on Business and Economic Development as required by the Regulatory Review Act.

(d) The Secretary of the Department shall certify this order and 27 Pa.B. 1813 and deposit them with the Legislative Reference Bureau, as required by law.

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

RICHARD RISHEL,  
*Secretary*

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

**Fiscal Note:** Fiscal Note 3-32 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 98-8. Filed for public inspection January 2, 1998, 9:00 a.m.]

**Title 25—ENVIRONMENTAL PROTECTION**

**ENVIRONMENTAL QUALITY BOARD**

**[25 PA. CODE CH. 86]**

**Small Operator Assistance Program (SOAP)**

The Environmental Quality Board (Board) by this order amends Chapter 86, Subchapter C (relating to the Small Operator Assistance Program). The amendments clarify

and eliminate redundant language and correct regulatory citations used in cross references which the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) has indicated are beyond the scope of services authorized by the Small Operator Assistance Program (SOAP).

The amendments were adopted by the Board at its meeting of October 21, 1997.

*A. Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

*B. Contact Persons*

For further information, contact David C. Hogeman, Chief, Division of Environmental Analysis and Support, Bureau of Mining and Reclamation, Room 213 Executive House, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-4761, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This rulemaking is available electronically through the Department of Environmental Protection's (Department) Website (<http://www.dep.state.pa.us>).

*C. Statutory Authority*

These amendments are promulgated under the authority of sections 4.2, 4.3 and 18.7 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4b, 1396.4c and 1396.18g) which provide for the creation of the Small Operators' Assistance Fund and generally set forth the rulemaking authority of the Department to regulate coal mining; section 5 of The Clean Streams Law (35 P. S. § 691.5), which sets forth the rulemaking authority of the Department to implement The Clean Streams Law; and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which sets forth the rulemaking authority of the Board to adopt regulations for the Department to carry out its responsibilities.

*D. Background and Purpose*

In 1995, the Department began a review of its existing regulations under Secretary Seif's Regulatory Basics Initiative. In 1996, Governor Ridge issued Executive Order 1996-1 which directed executive agencies to undertake a review of existing regulations. This rulemaking package was prepared following the review required under the Regulatory Basics Initiative and Executive Order 1996-1 and it is consistent with the regulatory directives contained within these initiatives.

Sections 86.81—86.95 are being restructured and changed to provide better clarity, eliminate redundant language and correct regulatory citations used in cross references, which the Federal OSMRE has indicated are beyond the scope of services authorized by SOAP. Three sections of the existing regulations have been eliminated through this restructuring. No substantial changes to the content of these regulations have been made.

Under the Regulatory Basics Initiative, the Department solicited public input through a notice in the *Pennsylvania Bulletin* and the Department's Website. The amendments being adopted at this time are the result of suggestions from the public and the Department's own review of its regulations.

The amendments were discussed with the Mining and Reclamation Advisory Board (MRAB) at its meeting on October 3, 1996. The MRAB recommended that these amendments be approved for final rulemaking.

*E. Summary of Comments and Responses on Proposed Rulemaking*

No public comments were received concerning these amendments. The Independent Regulatory Review Commission (IRRC) provided several suggestions to improve the clarity and organization of the regulatory language. Specifically, IRRC suggested that a definition section be added to the regulations in Subchapter C to define the terms "qualified consultant" and "qualified laboratory"; that § 86.87 (relating to data requirements) be retained in the regulations; and that time frames be added to § 86.85(d) and (e) (relating to application approval and notice) to provide clarity concerning notification of Department actions. IRRC also noted that the proposed changes to § 86.82 (relating to responsibilities), inappropriately mixed duties and responsibilities of prospective consultants and laboratories with those of the Department.

In response to these comments the final-form regulations have been changed to incorporate the suggestions of IRRC.

*F. Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

*Benefits*

The benefits contained in these amendments are primarily to provide clarity and consistency with Federal language for any person having reason to refer to the regulations. Some minor procedural and administrative changes are also being made.

*Compliance Costs*

The changes will impose no additional compliance costs on the regulated community.

*Compliance Assistance Plan*

Since SOAP is an established program in this Commonwealth, and no substantive changes have been made, compliance assistance will be limited to a simple effort to inform the industry of the specific changes in the program.

*Paperwork Requirements*

The amendments will impose no additional paperwork on the regulated community.

*G. Sunset Review*

These final-form regulations will be reviewed in accordance with the sunset review schedule, published by the Department, to determine whether the final-form regulations effectively fulfill the goals for which they were intended.

*H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 10, 1997, the Board submitted a copy of proposed rulemaking, published at 27 Pa.B. 1446 (March 22, 1997) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC.

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committees on November 25, 1997. IRRC met on December 11, 1997, and deemed approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

*I. Findings*

The Board finds that:

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

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 1447 (March 22, 1997).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

*J. Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 86, are amended by amending §§ 86.81, 86.83 and 86.94 and deleting §§ 86.86, 86.87, 86.91 and 86.95 to read as set forth at 27 Pa.B. 1447 and by adding § 86.80 and amending §§ 86.82, 86.84, 86.85, 86.87 and 86.92 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order, 27 Pa.B. 1447 and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order, 27 Pa.B. 1447 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 27 Pa.B. 1447 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

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

JAMES M. SEIF,  
*Chairperson*

*(Editor's Note: The proposal to add § 86.80 and to amend § 86.92 was not included in the proposed rulemaking at 27 Pa.B. 1447.)*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6878 (December 27, 1997).)*

**Fiscal Note:** Fiscal Note 7-308 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE I. LAND RESOURCES**

**CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL**

**Subchapter C. SMALL OPERATOR ASSISTANCE PROGRAM**

**§ 86.80. Definitions.**

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

*Qualified consultant and qualified laboratory*—A designated public agency, private consulting firm, institution or analytical laboratory which can provide the required services under this program in accordance with § 86.92 (relating to basic qualifications).

**§ 86.82. Responsibilities.**

(a) The Department will:

(1) Develop and maintain a list of qualified consultants and qualified laboratories, and select and pay consultants for services rendered.

(2) Conduct periodic onsite evaluations of the program activities with the appropriate small operator.

(3) Participate with the Office of Surface Mining Reclamation and Enforcement in data coordination activities with the United States Geological Survey, the EPA and other appropriate agencies or institutions.

(4) Participate with the Office of Surface Mining Reclamation and Enforcement in auditing the applicant's statement of eligibility.

(b) The Department and the Office of Surface Mining Reclamation and Enforcement will insure that applicable equal opportunity in employment provisions are included within contracts or other procurement documents.

**§ 86.84. Applications for assistance.**

(a) An application for assistance shall contain the following information:

(1) A statement of intent to file a permit application under this chapter.

(2) The names and addresses of:

(i) The intended permit applicant.

(ii) The intended operator, if different from the applicant.

(3) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under this section. For each location, the schedule shall include:

(i) The name under which coal is or will be mined.

(ii) The permit number and Mining Enforcement and Safety Administration identification number, if available.

(iii) The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant.

(iv) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant.

(4) A description of:

(i) The method of coal mining activities proposed.

(ii) The anticipated starting and termination dates of mining operations.

(iii) The number of acres of land to be affected by the proposed mining.

(iv) A general statement on the probable depth and thickness of the coal resource.

(5) A United States Geological Survey topographic map of 1:24,000 scale or larger which clearly shows:

(i) The area of land to be affected and the natural drainage above and below the affected area.

(ii) The names of property owners within the area to be affected and of adjacent lands.

(iii) The location of existing structures and developed water sources within the area to be affected and of adjacent lands.

(iv) The location of existing and proposed test boring or core samples and the location and extent of known working of any underground mines.

(6) Copies of documents which show that the legal right of entry necessary to meet the provisions of § 86.64 (relating to right of entry) have been obtained by the applicant.

(7) The mine operator's license number.

(b) The application shall be attested by a notary public or district justice.

**§ 86.85. Application approval and notice.**

(a) If the Department finds the applicant eligible for assistance and does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it will:

(1) Determine the minimum data requirements necessary to meet the provisions of § 86.81 (relating to program services).

(2) Select the services of one or more qualified consultants to perform the required work.

(3) Provide the applicant a copy of the contract or other appropriate work order for the qualified consultants' services and the consultants' report within 15 days of the Department's final approval.

(b) The granting of assistance under this program does not imply that the Department will approve a subsequent permit application.

(c) Within 45 days of receipt of a complete application for assistance, the Department will inform the applicant in writing if the application is denied and will state the reason for denial.

**§ 86.87. Determination of data requirements.**

(a) The Department will determine the data collection requirements to meet the objectives of the program for each applicant or group of applicants. Development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities if specifically authorized by the Department in an approved work order.

(b) The data requirements will be based on:

(1) The extent of currently available hydrologic and core analysis data for the applicable area provided by the Department.

(2) The data collection and analysis guidelines developed and provided by the Department.

**§ 86.92. Basic qualifications.**

(a) To be designated as a qualified consultant or qualified laboratory, the consultant or laboratory shall demonstrate that it:

(1) Is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed as a water laboratory, overburden laboratory or consulting firm.

(2) Is capable of collecting necessary field data and samples.

(3) Has adequate space for material preparation, cleaning and sterilizing necessary equipment, stationary equipment, storage and space to accommodate periods of peak work loads.

(4) Meets the requirements of the Occupational Safety and Health Act of 1970, the act of December 29, 1970 (Pub.L. No. 91-596) (84 Stat. 1590).

(5) Has the financial capability and business organization necessary to perform the work required.

(6) Has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in:

(i) The current edition of *Standard Methods of the Examination of Water and Waste Water*.

(ii) *Methods of Chemical Analysis of Water and Wastes*, as amended. The standards contained therein are incorporated by reference. Available from ORD Publications, CERTI, EPA, Cincinnati, Ohio 45278 March 1983 (EPA-600/4-79-020).

(iii) The EPA standards as described in 40 CFR Part 136 (relating to guidelines establishing test procedures for the analysis of pollutants).

(iv) The Department's *Overburden Sampling and Testing Manual*.

(7) Has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods or by appropriate methods or guidelines for data acquisition recommended by the Department.

(b) The qualified consultant shall be capable of performing the services under § 86.81 (relating to program services). Subcontractors may be used to provide the services required if the use is defined in the application for designation and approved by the Department.

(c) Persons who desire to be included in the list of qualified consultants or qualified laboratories established by the Department under § 86.82 (relating to responsibilities) shall apply to the Department and provide the information necessary to establish the qualifications required by this section.

[Pa.B. Doc. No. 98-9. Filed for public inspection January 2, 1998, 9:00 a.m.]

**ENVIRONMENTAL QUALITY BOARD**

**[25 PA. CODE CH. 103]**

**Financial Assistance**

The Environmental Quality Board (Board) by this order amends Chapter 103 (relating to financial assistance). The amendments include revisions to delete provisions related to the Federal Clean Water Act Title II construction grants program, retain the sewage project priority rating system used in the Federal Clean Water Act Title VI sewage construction loan program, delete text related to an obsolete design grant program and add language to allow use of a small amount of remaining Land and Water Conservation and Reclamation Act (act) (32 P.S. §§ 5101—5121) funds for a grant to one or more economically depressed communities.

The amendments were adopted by the Board at its meeting of October 21, 1997.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information contact Peter T. Slack, Chief, Division of Municipal Financial Assistance, Bureau of Water Supply Management, P. O. Box 8466, 11th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-8466, (717) 787-3481, or Pamela E. Bishop, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, 9th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This rulemaking is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

**C. Statutory Authority**

The final rulemaking is being made under the authority of The Clean Streams Law (35 P.S. §§ 691.1—691.1001); and section 16(2) of the act (32 P.S. § 5116(2)) which authorize the Board to promulgate rules and regulations relating to the awarding of construction grants for sewage facilities to political subdivisions and municipal authorities. The final-form regulations are also adopted under the authority of section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

**D. Background and Summary**

Over the past 2 years, the Department has been conducting an overall review of its existing regulations through its Regulatory Basics Initiative as outlined at 25 Pa.B. 3343 (August 19, 1995). This initiative was designed to clarify and update regulatory requirements along with the goal of adopting environmental regulations that are no more stringent than Federal rules unless there is a compelling need for more stringent rules. In 1996, Governor Ridge issued Executive Order 1996-1 which directed executive agencies to conduct a similar review of existing regulations. This final rulemaking is one of a number of rulemakings resulting from these initiatives.

The revisions to Chapter 103, Subchapter A (relating to clean water state revolving fund project priority list ratings) delete provisions related to the Federal Clean Water Act Title II sewage treatment construction grants program. Almost all projects that received a Title II grant award for the construction of sewage treatment or conveyance facilities are nearing construction completion, and

the last one will be under construction soon. These regulations are no longer needed to administer the Title II grant program. The sewage construction project priority rating system is being retained as it will continue in use for establishing project priority ratings for projects in the Clean Water Act Title VI loan program. The Federal Title VI loan program replaced the Title II grant program and is jointly administered by the Department and the Pennsylvania Infrastructure Investment Authority (PEN-NEVEST).

The revisions to Chapter 103, Subchapter D (relating to State grants for construction of sewage facilities) delete provisions related to a State design grant program and a supplemental construction grant program. The design grant program provided funds to communities that had completed plans and specifications for a sewage treatment facility, but did not receive a Federal grant for construction of the facility. The supplemental grant program awarded a 5% grant to economically depressed communities that had received a 75% Federal construction grant. Eligible communities were identified and design and supplemental construction grants have been awarded and paid. A small amount of money remains available, and the Department proposes to award grants to one or more economically depressed communities to assist with the cost of construction of needed sewage treatment facilities. The source of these funds is the bond issue moneys made available and intended as aid to political subdivisions for the construction of sewage facilities. The \$155,000 available cannot be awarded under the existing regulations, and these revised regulations will allow award of these funds as grants to one or more economically depressed communities.

#### E. *Summary of Comments and Responses on the Proposed Rulemaking*

The only comments received were from the Independent Regulatory Review Commission (IRRC). Comments received on the revisions to Subchapter A suggested a change to the definition for the "Water Pollution Control Revolving Fund." Subsequent to publishing the proposed Subchapter A revisions for public comment, the name of the fund was changed to the "Clean Water State Revolving Fund." IRRC comment suggested the regulations should be changed to clarify that PENNEVEST administers the "fund." Both PENNEVEST and this Department share administration of the Title VI program. Also, the definitions section was revised to make the definitions of "project priority list" and "intended use plan" consistent with the definitions used in the PENNEVEST program regulations in § 965.1.

Although no comments were received on this portion of the proposed amendments, upon further consideration, the language has been amended in the final-form regulations in § 103.5(c) (relating to preparation of project lists) to clarify the relationship of the project priority rating factors to the PENNEVEST project evaluation procedure.

The comments received on the revisions to Subchapter D suggest that the Board consider retaining the definitions, clarifying the provisions to state clearly that potential grant recipients must meet both of the eligibility criteria delineated in § 103.82 (relating to eligibility) and adding a sunset repealer provision at the end of these regulations. The definitions section of these regulations does not apply to the proposed changes to these regulations. The Board elected to forego adding a new definitions section given the limited amount of money available and that only one or several grants will be awarded at this time. A change was made to the final-form regula-

tions to indicate that potential grant recipients must meet all criteria to be considered for a grant award. The suggestion for a sunset repealer action in the regulations is a good suggestion. However, there is a possibility the Department may receive funds for State grant awards in the future and these regulations may be used for grant awards for financially distressed communities at a later time.

#### F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

##### *Benefits*

The final-form regulations are intended to clarify the relationship of Subchapter A to the Federal Title VI loan program, and Subchapter D will allow award of approximately \$155,000 of act bond issue funds to one or more communities to assist with construction of sewage treatment facilities. There are no costs associated with the final revisions to Chapter 103, Subchapters A and D. The Department expects to identify at least one or more economically depressed communities that meet the eligibility criteria and award grants, as appropriate.

##### *Compliance Costs*

There are no existing or new compliance costs to be created by these revisions.

##### *Compliance Assistance Plan*

The Department plans to encourage recipients of any of the act bond issue funds to abate water pollution occurring within its political boundaries. Recipients will use the funds to comply with applicable environmental requirements.

##### *Paperwork Requirements*

There are no new forms to be created or revisions to existing forms or other paperwork requirements relating to these final-form regulations.

#### G. *Sunset Review*

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

#### H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 18, 1997, the Board submitted a copy of the proposed amendment to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking, nor were there any comments received from the public.

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committee on November 25, 1997. IRRC met on December 11, 1997, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Findings

The Board finds that:

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

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 1553 (March 29, 1997).

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

J. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 103, are amended by amending §§ 103.8, 103.11, 103.83 and 103.84 and by deleting §§ 103.2, 103.4, 103.13, 103.14, 103.71—103.76 to read as set forth at 27 Pa.B. 1553; and by amending §§ 103.1, 103.5, 103.6, 103.12 and 103.82 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order, 27 Pa.B. 1553 and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order, 27 Pa.B. 1553 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees, as required by the Regulatory Review Act.

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

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

JAMES M. SEIF,  
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6878 (December 27, 1997).)

**Fiscal Note:** Fiscal Note 7-311 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE II. WATER RESOURCES**

**CHAPTER 103. FINANCIAL ASSISTANCE**

**Subchapter A. CLEAN WATER STATE REVOLVING FUND PROJECTS PRIORITY LIST RATINGS**

**CLEAN WATER STATE REVOLVING FUND**

**§ 103.1. Definitions.**

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

\* \* \* \* \*

*CWSRF—Clean Water State Revolving Fund*—A fund administered by the Pennsylvania Infrastructure Investment Authority (PENNVEST) that provides low-interest loan funds to borrowers for the construction of facilities.

\* \* \* \* \*

*Facilities*—Any device or system for the storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or liquid industrial wastes or necessary to recycle or reuse water at the most economical cost over the useful life of the works. The term includes intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from the treatment, including land for composting sludge and temporary storage of the compost and land used for the storage of treated wastewater in land treatment systems before land application; or another method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste, including waste in combined stormwater and sanitary sewer systems.

*Federal Act*—The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1387).

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*Intended use plan*—A plan identifying the intended uses of the moneys in the Clean Water State Revolving Fund and describing how those uses support the goals of the fund.

\* \* \* \* \*

*NPDES*—The National system for the issuance of permits under section 402 of the Federal Act including, any State or interstate program which has been approved by the EPA, in whole or in part, under section 402 of the Federal Act (33 U.S.C.A. § 1342).

*Project equivalent population*—The initial population equivalent which would be served by a project implemented for the rated area at the time that the area is rated.

*Project priority list*—The list of identified public sewerage project needs in this Commonwealth established under this subchapter.

*Sewage facilities plan*—A plan developed under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) for the provision of adequate sewage facilities, adopted by municipal officials and approved by the Department.

*Small municipality*—A municipality having a population of 3,500 or less based on the most recent United States Bureau of Census figures.

\* \* \* \* \*

**§ 103.5. Preparation of project lists.**

(a) The project priority ratings developed under this subchapter are water quality based assessments of sewerage treatment needs. This priority rating system is mandated by section 216 of the Federal Act (33 U.S.C.A. § 1296) and has been approved by the EPA for ranking projects for the CWSRF project priority list and intended

use plan. To be funded under the CWSRF, a project first shall appear on a project priority list and then an intended use plan list.

(b) The Department prepares project priority lists and assists PENNVEST with preparation of intended use plan lists required by Title VI of the Federal Act (33 U.S.C.A. §§ 1381—1387). These lists are prepared in conformance with 40 CFR Part 35, Subpart K (relating to State Water Pollution Control Revolving Fund) and submitted in support of annual CWSRF capitalization grant applications to the EPA.

(c) Once the Commonwealth receives its capitalization grant award, applications for funding are evaluated under the Pennsylvania Infrastructure Investment Authority Act (35 P. S. §§ 751.1—751.20) and the regulations thereunder in Part VII (relating to Pennsylvania Infrastructure Investment Authority,) including the wastewater evaluation criteria in § 963.8 (relating to wastewater project evaluation criteria). The water pollution control rating factors described in § 103.8 (relating to water pollution control) will be used by the Department in evaluating for PENNVEST the public health and safety and environmental impact criteria in the PENNVEST project evaluation process.

**§ 103.6. Priority rating factors.**

(a) Priority among eligible projects for the purpose of creating the project priority list shall be established according to the accumulation of points for each of the following rating factors weighted as shown:

- (1) Water Pollution Control—80%
- (2) Stream Segment Priority—10%
- (3) Population Affected—10%

(b) A project's total priority points shall be the sum of the points assigned in each of the individual rating factors.

**§ 103.12. Other considerations.**

(a) If two or more projects receive the same number of total rating points, the relative rank of the projects on the project priority list will be based on points awarded under the water pollution control factor, the higher rank being assigned to that project with the higher water pollution control points. If, after this test, the projects remain tied, the factors of stream segment priority and then population affected shall be used to break ties.

(b) In the case of a regional project when the Department determines each portion of the regional project is essential to the integrity of the project, the Department will rank all portions of the project together as a single project and assign the same number of rating points to all portions of the regional project on the project priority list.

(c) Based on the findings and conclusions of the sewage facilities plan, the Department will consider the need to rerate projects for the purpose of ranking projects on the project priority list if the findings and conclusions of the sewage facilities plan significantly alter the definition of wastewater treatment need or the scope of the project.

**STATE GRANTS FOR CONSTRUCTION**

**§ 103.82. Eligibility.**

Projects which meet both of the following criteria are eligible for construction grants:

- (1) The eligible costs of the project based on construction bids or actual construction and associated costs

exceed the amount of grant funds made available from other State and Federal grant sources.

(2) The municipality to be served by the proposed project suffers from unusual financial hardship and State grant funds are available for the project. In evaluating the extent of financial hardship, the Department will consider the ratio of the median family income in the municipality to be initially served by the project to the State median family income and the annual sewer rental to be charged.

[Pa.B. Doc. No. 98-10. Filed for public inspection January 2, 1998, 9:00 a.m.]

**Title 34—LABOR  
AND INDUSTRY**  
DEPARTMENT OF LABOR AND INDUSTRY  
[34 PA. CODE CH. 65]  
Retirement Pensions and Annuities

The Bureau of Unemployment Compensation Benefits and Allowances of the Department of Labor and Industry (Department) hereby amends §§ 65.101—65.108 (relating to retirement pensions and annuities) to read as set forth in Annex A.

*Statutory Authority*

These amendments are adopted under section 201(a) of the Pennsylvania Unemployment Compensation Law (law) (43 P. S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

*Contact Person*

Questions may be directed to Pete Cope, Director, Bureau of Unemployment Compensation Benefits and Allowances, Room 615 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17121 (717) 787-3547.

*Purpose of Rulemaking*

The purpose of the rulemaking is to bring the pension and annuities section of the unemployment compensation (UC) regulations into conformity with the United States Department of Labor's (USDOL) interpretation of the Federal Unemployment Tax Act (26 U.S.C.A. §§ 3301—3307 and 3311) (FUTA), to provide for the nondeductibility of certain payments, and to ensure that the UC Trust Fund remains viable so that UC benefits are available to those who need and are entitled to them. In a global market, the Department is acutely aware that the most effective way to prevent the ills that the UC system was designed to remedy is to increase the number of good jobs available to Pennsylvanians. In balancing the impact of these regulations on employers and employees, the Department sought to reduce the amount of unemployment, while protecting those who are unemployed through no fault of their own.

The commentators raised questions and suggested changes both in substance and in wording to the proposed amendments. The Department considered all arguments and evaluated the equities involved. The comments have been reviewed; some have been adopted. Terminology was clarified and portions of the law were, by request of the Independent Regulatory Review Commission (IRRC) and



others, reiterated in the regulations to provide reassurance that no alteration of the law was contemplated.

The commentators urged the Department to change the long-standing regulatory policy embodied in the proposed amendments regarding the deductibility of lump sum pension payments taken in lieu of periodic payments. They argued that Federal law does not require lump sum pension payments to be deductible and that State law should, therefore, mandate that all lump sum payments be nondeductible.

It seemed neither fair nor equitable, however, for individuals who take large lump sum pension payments to receive the full amount of their UC benefits while those claimants who receive modest pension payments periodically would have their pensions offset against their UC benefits. That Federal law allows such a discrepancy did not serve as a persuasive argument. Since Federal law permits states to exercise discretion with respect to the deduction of lump sum pension payments and the Commonwealth has always deducted them if claimants elected to receive their pension payments in a lump sum, the Department made no change in its position with respect to this issue.

Several commentators also asked that pension payments transferred into an eligible retirement plan, as defined by the Internal Revenue Service, should not be deductible as Federal law does not require them to be offset from UC benefits. Since Federal law permits states to exercise discretion with respect to the deduction of "eligible rollovers" Federal law was not dispositive. Consistent with the view of the commentators, the Department modified its position with respect to the transfer of a lump sum pension payment into another eligible retirement vehicle. Administratively and conceptually, the Department viewed the transfers of lump sum payments differently from periodic payments, which are less likely to provide substantial retirement income and are more difficult to account for in the timely processing of UC claims. The Department, therefore, allowed for the nondeductibility of lump sum rollovers, while retaining the deductibility of all periodic payments.

The Department has balanced the interests of Pennsylvania employees and employers, consistent with the purposes of the law.

#### *Summary of Proposed Rulemaking*

The regulations in this subpart are being replaced to accomplish several purposes. The USDOL has required the Department to deduct from the weekly UC benefits payable to a claimant those periodic pension payments made when an individual has been permanently and involuntarily separated from employment prior to retirement age (§ 65.103), remove the \$40 per week floor on the deductibility of pension payments (§ 65.101) and provide for the deductibility of Social Security retirement benefits (§ 65.108). The Department has provided that certain lump sum payments which are rolled over into an eligible retirement plan are not deductible (§ 65.105), and that the return of a claimant's own contributions to a retirement plan is not deductible (§ 65.102). Language has been clarified and the method for allocating weekly deductions has been included.

#### *Paperwork Requirements*

No new paperwork is required.

#### *Fiscal Impact*

If the Commonwealth does not amend §§ 65.101—65.103, the USDOL will bring conformity proceedings

against the Commonwealth. If the Commonwealth were found to be out of conformity with Federal law, the Secretary of the USDOL could seek to withdraw certification from the State, which would abrogate funding for both the UC system and Job Centers. See 26 U.S.C.A. § 304(c)—(e). In addition, employers within the State could lose the Federal tax credits to which they are entitled by virtue of the payment of Commonwealth UC taxes.

The Commonwealth cannot choose not to regulate pension deductibility without precluding the operation of a viable UC delivery system as administered by the Federal government with Federal funds. The UC law is designed to alleviate the devastating impact on health, general welfare and safety that unexpected unemployment brings to individuals and their families.

Both employers and employees will benefit by avoiding the costs and potential effects of conformity litigation with the USDOL. These regulations serve the interests of employees by providing that lump sum rollovers which are not subject to Federal tax are not deductible from UC benefits and that payments which represent a return of a claimant's own contributions to the pension plan are nondeductible. These regulations serve the interests of employers by providing that claimants who are permanently and involuntarily separated from employment prior to retirement date will have their UC benefits reduced by their pension payments and that lump sums which are not rolled over will also be deductible. Since the amount of money employers contribute to the UC Trust Fund is closely related to the UC benefits they pay claimants, these provisions should help reduce employers' UC costs.

The Department's Bureau of Research and Statistics has advised that data are not available to provide an analysis of the specific savings or costs associated with the regulations' implementation or with the compliance of the regulated community, local governments or State government. There would be no increase in administrative costs.

#### *Sunset Date*

These regulations will be monitored through practice and application. No sunset date is designated.

#### *Regulatory Review Act (Legislative Oversight)*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 27, 1996, the Department submitted a copy of the notice of proposed rulemaking to IRRC and to the Chairpersons of the House Committee on Labor Relations and the Senate Committee on Labor and Industry. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

In preparing these final-form regulations, the Department has considered the public comments received and the comments received from IRRC.

These final-form regulations were deemed approved by the House and Senate Committees on December 3, 1997. IRRC met on December 11, 1997, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

*Findings*

The Department finds that:

(1) Public notice of the intention to adopt these amendments was given in accordance with sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240)(45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) Modifications to the proposed text do not enlarge the original purposes or the scope of the proposed amendments.

(4) These amendments are necessary and appropriate to the administration and enforcement of the act.

*Order*

The Department, acting in accordance with the authorizing statutes, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 65, are amended by amending §§ 65.101, 65.102, 65.104, 65.105; by deleting § 65.103 and by adding § 65.108 to read as set forth in Annex A.

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

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

(d) The regulations, as set forth in Annex A, shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHNNY J. BUTLER,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6878 (December 27, 1997).)*

**Fiscal Note:** Fiscal Note 12-44 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY**

**PART II. BUREAU OF EMPLOYMENT**

**CHAPTER 65. EMPLOYE PROVISIONS**

**Subchapter E. UC ELIGIBILITY IN CONJUNCTION WITH OTHER PAYMENTS**

**RETIREMENT PENSIONS AND ANNUITIES**

**§ 65.101. Purpose.**

(a) In accordance with section 404(d)(2) of the law (43 P. S. § 804(d)(2)), section 402(c) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 402(c)) and section 3304(a)(15) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C.A. § 3304(a)(15)), the Department has promulgated regulations governing the deduction of certain pension payments from unemployment compensation benefits (UC benefits).

(b) The Department has balanced the interests of employees and employers of this Commonwealth, consistent with the law. The Department seeks to maximize the Commonwealth's share of competitive employment in a global economy, thereby serving the needs of all Pennsylvanians by reducing the number of unemployed individu-

als and ensuring that UC benefits are available to those who need and are entitled to them.

(c) For any week with respect to which a claimant is receiving certain pension payments, the Department will deduct from the weekly compensation otherwise payable to the claimant the prorated weekly amount of those pension payments which fulfill the prerequisites for deductibility specified in this chapter.

**§ 65.102. Application of the deduction.**

(a) Unless otherwise excluded from deductibility under this chapter, any pension payment received by a claimant with respect to a week for which the claimant receives unemployment compensation (UC) benefits shall be deducted from the weekly benefit amount otherwise payable to the claimant for that week.

(b) Deductible pensions include a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment which is made under a plan maintained or contributed to by the claimant's base period or chargeable employer and is based on the claimant's previous work.

(c) Similar periodic payments shall include all deductible pension payments made on other than a weekly basis which shall be prorated into a weekly amount before being deducted from the weekly benefit amount payable to the claimant.

(d) The Department will deduct all Social Security retirement pensions which are based upon the claimant's previous work or self-employment, or both, including primary Social Security, old age and retirement disability benefits.

(1) The Department will not deduct Social Security payments which are not based on the claimant's previous work, such as Supplemental Security Income.

(2) The Department will deduct pensions paid under the Social Security Act (42 U.S.C.A. §§ 301—1397e) and the Railroad Retirement Act (45 U.S.C.A. §§ 231—231s) when the claimant's base year employer contributed to the pension plan. The pensions are deductible irrespective of whether the claimant's base year employment affected the eligibility for, or increased the amount of, the pension.

(e) If the pension is entirely contributed to by the employer, 100% of the prorated weekly amount of the pension will be deducted from the weekly benefit amount payable to the claimant.

(f) If the pension is contributed to by the individual, in any amount, 50% of the prorated weekly amount of the pension will be deducted from the weekly benefit amount payable to the claimant.

(g) The weekly benefit amount payable to the claimant will not be reduced below zero by the prorated weekly amount of the pension.

(h) For any week with respect to which the claimant is not receiving but is eligible for a pension, the Department will not deduct the prorated weekly amount of the pension from the weekly benefit amount payable to the claimant.

(i) If, as a result of the claimant's ineligibility to receive a pension payment under a pension plan, the claimant receives a payment which represents only a return of the claimant's own contributions to the plan and does not include any contribution from a base period or chargeable employer, the payment is not a pension and will not be deducted from the weekly benefit amount payable to the claimant.

(j) The Department will not deduct pension payments if the services performed by the individual during the base period or the remuneration received for those services from a base period or chargeable employer did not affect the individual's eligibility for, or increase the amount of, the pension, except for pensions paid under the Social Security Act and the Railroad Retirement Act.

(k) The Department will not deduct periodic payments which are made under severance agreements, profit sharing arrangements or disability plans administered by a union, employer, workers' compensation carrier, insurance company or the Veterans Administration, unless the payments are based on retirement and fulfill all other prerequisites specified in this chapter.

(l) The Department will not deduct lump sum pension payments which represent the transfer of "eligible roll-over distributions" from a "qualified trust" to an "eligible retirement plan," as those terms are defined in section 402(c) of the Internal Revenue Code (IRC) (26 U.S.C.A. § 402(c)).

(1) If all of the requirements of section 402(c) of the IRC are met, including the transfer of the payments into an "eligible retirement plan" within 60 days of receipt by the individual, those payments do not represent a payment to the individual for the purposes of retirement and are not received by the individual under section 404(d) of the law (43 P. S. § 804(d)) and section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C.A. § 3304(a)(15)) (FUTA).

(2) If a distribution, or any part thereof, does not meet the requirements of section 402(c) of the IRC, the Department will deduct the prorated weekly amount of that portion of the lump sum payment which is received by the claimant in accordance with § 65.108 (relating to rules of attribution).

(3) If a claimant does not roll over the entire lump sum into an eligible retirement plan, as set forth in paragraph (1), the Department will determine the amount to be deducted from the claimant's weekly benefit amount by dividing the amount of the lump sum payment that is received by the claimant by the total amount the claimant could have received had the claimant opted to take the entire lump sum available to the claimant. That quotient represents the deductible share of the lump sum pension amount received by the claimant. The claimant's unreduced monthly pension is the amount the claimant could have received each month had the claimant opted to take periodic payments in lieu of a lump sum. The Department will calculate the deductible portion of that unreduced monthly amount by multiplying it by the quotient representing the deductible share of the lump sum which is received by the claimant. Using the deductible amount of that monthly pension, the Department will compute the prorated weekly deductible amount in accordance with § 65.108.

(4) If a claimant presents documented proof to the Department that the claimant has rolled over a portion of a deductible lump sum payment into an eligible retirement plan within 60 days, so that all or some of that lump sum payment is not subject to Federal Income Tax, the Department will credit the claimant for any amount deducted from the claimant's UC benefits which is properly exempt from deduction because it is attributable to the transfer of the funds into an eligible retirement plan.

#### § 65.103. (Reserved).

#### § 65.104. Initial payments.

(a) When, following the retirement of an employe and, as part of a general pension plan, an initial payment is made in lieu of or in addition to the regular pension amount to which the employe is entitled, the initial payment will be considered a pension payment, and will be subject to this chapter.

(b) Initial payments are independent of regular pension payments. To the extent that they meet the requirements for deductibility provided in this chapter, the Department will deduct them from compensation otherwise payable to a claimant even if the claimant's regular pension payments are not deductible. The Department will not deduct initial payments if they do not meet the requirements for deductibility provided in this chapter, even if the claimant's regular pension payments are deductible.

(c) When the initial payment includes an amount paid for any reason other than pension, including unused vacation, only that amount which is attributable to the pension is deductible.

(d) When the initial pension payment is received by a claimant in a lump-sum, the deduction of this initial pension amount will be calculated by dividing the initial pension amount by the number of weeks for which the pension plan specifies the initial payment is being made. The number of weeks attributable to unused vacation or other payments will not be used in determining the weekly pension amount to be deducted. The result of this calculation, if not a multiple of 1 dollar, will be computed to the next higher multiple of 1 dollar and will be considered the prorated weekly deductible amount of the initial payment and is the amount by which the weekly benefit rate will be reduced, but not below zero.

#### § 65.105. Lump-sum retirement payments.

(a) When a claimant receives a lump-sum payment in lieu of a periodic pension payment, the prorated weekly pension amount which the employe could have received will be deducted in accordance with § 65.108 (relating to rules of attribution).

(b) When a claimant cannot receive periodic pension payments and must take a mandatory lump-sum payment, no pension deduction will be made.

(c) When a claimant receives a deductible lump sum payment and transfers only a portion of that payment into an eligible retirement plan within 60 days of receipt, the remainder of the lump sum payment which is not transferred into an eligible retirement plan will be deducted, along with any other deductible pension payments made to the claimant under § 65.102 (relating to application of the deduction) and § 65.108.

#### § 65.108. Rules of attribution.

If a pension, retirement, annuity or other similar periodic payment deductible under section 404(d)(2) of the law (43 P. S. § 804(d)(2)) is received on other than a weekly basis, the amount to be deducted will be prorated as follows: The claimant's monthly pension is the amount the claimant could have received each month had the claimant opted to take periodic payments in lieu of a lump sum. The Department will use the deductible amount of that monthly pension, convert it to a yearly amount, and divide by 52. If not a multiple of one dollar, the Department will determine the prorated weekly deductible amount of the pension by rounding to the next higher multiple of one dollar. The weekly benefit amount

payable to the claimant will be reduced, but not below zero, by the prorated weekly deductible amount of the pension, in accordance with section 404(d)(2) of the law.

[Pa.B. Doc. No. 98-11. Filed for public inspection January 2, 1998, 9:00 a.m.]

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITIES

[L-00960118]

#### [52 PA. CODE CH. 58]

#### Residential Low Income Usage Reduction Programs

The Pennsylvania Public Utility Commission (Commission), on August 28, 1997, adopted a final rulemaking to amend relevant sections of Title 52 regarding residential low income usage reduction programs. The final rulemaking addresses tenant eligibility, landlord contributions and permits a covered utility to spend up to 20% of its annual budget on eligible special needs customers as defined in § 58.2 (relating to definitions). The contact persons are David Mick, Bureau of Consumer Services, (717) 783-3232 and Rhonda Daviston, Assistant Counsel, Law Bureau, (717) 787-6166.

#### *Executive Summary*

At the public meeting held August 28, 1997, the Commission adopted an order to promulgate a final rulemaking regarding continuation of the existing residential low income usage reduction programs. The final rulemaking addresses tenant eligibility, landlord contributions and permits a covered utility spending up to 20% of its annual budget on eligible special needs customers as defined in § 58.2. The program is intended to assist low income customers to conserve energy and reduce their residential energy bills. The continuation of the program without a sunset date, is consistent with the legislative intent of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801—2813.

The Commission recognizes the Low Income Usage Reduction Program's (LIURP) weatherization and conservation services have achieved significant benefits for utilities and low income customers. Analyses revealed that the program has achieved, among other goals, its initial goal of reducing energy usage, utility bills and arrearages for residential low income households.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final rulemaking, which was published as proposed at 27 Pa.B. 1165, and served on February 20, 1997, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of House Committee Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs and were approved on October 28, 1997, by the Senate Committee on Consumer Protection and Professional Licensure, and were approved by IRRC on November 6, 1997, in accordance with section 5(c) of the Regulatory Review Act.

Public Meeting held  
August 28, 1997

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson; John Hanger, Statement attached; David W. Rolka, Concurring in result; Nora Mead Brownell

#### **Final Rulemaking Order**

By order adopted September 19, 1996, and entered on September 20, 1996, at L-00960118, we initiated a proposed rulemaking to extend the LIURP, §§ 58.1—58.18, which is scheduled to expire on or before January 28, 1998. In that order, we recognized that LIURP's weatherization, usage reduction and conservation services had achieved significant benefits for both utilities and low income customers.

Analyses reveal that the LIURP has achieved its initial goal of reducing energy usage, utility bills and arrearages for residential low income households. We believe that the LIURP produces both load management and energy conservation benefits. Assisting low income customers to reduce energy demand has benefits associated with load management, avoided cost of future generation and fuel purchasing, as well as diminished environmental impacts related to energy production and transmission.

Since its inception in 1988, the LIURP, §§ 58.1—58.18, has provided conservation services to more than 115,000 low income households. Services may have included full weatherization conservation treatments, furnace repair and replacement, water heating measures and electric baseload measures.

In addition to the benefits discussed previously, the LIURP benefits can be viewed from a broader perspective. LIURP services engender improved community relations for utility companies as they become partners in addressing critical housing needs in their service territories. Because of the labor intensive nature of providing usage reduction services, the LIURP is also producing economic development benefits. At the same time, LIURP is improving the condition of the Commonwealth's existing, aging housing stock.

From the perspective of low income LIURP recipients, the program has several worthwhile benefits. These include increased comfort levels, safer living conditions through improved furnace safety and reduction in the use of secondary heating devices, and more moderate and manageable utility bills. Furthermore, reduced energy bills contribute to the availability of more affordable housing for low income families.

On October 25, 1996, the Office of Attorney General issued its approval of the proposed regulations as to form and legality. On February 20, 1997, the Commission submitted a copy of these proposed amendments to IRRC and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. The proposed rulemaking was published for comment at 27 Pa.B. 1165 (March 8, 1997) with a 30-day comment period that ended April 7, 1997. On May 7, 1997, we received comments from IRRC on the proposed regulations. We also received written comments from the following parties:

Commission on Economic Opportunity (CEO)  
 Energy Coordinating Agency of Philadelphia, Inc. (ECA)  
 GPU Energy (GPU)  
 Northern Tier Community Action Corporation (Northern Tier CAC)  
 Office of Consumer Advocate (OCA)  
 PECO Energy (PECO)  
 Peoples Natural Gas Company (Peoples)  
 UGI Utilities, Inc. - Gas Division (UGI)  
 Pennsylvania Gas Association (PGA)

Subsequent to review of comments received, we made one modification to our proposed regulations in response to the concerns raised by IRRC and other commentators. Specifically, we deleted language at § 58.2 at IRRC's request.

The current regulations have been modified to reflect certain changes in the program and prospective changes in the utility markets. The applicability of the definitions has been clarified. The definition of "covered utility" has been amended to confine the program's parameters to local distribution utilities to ensure that the utility that has direct customer access will continue to provide the LIURP.

Refrigerator replacement has been specified in the regulations so as to allow the electric utility more leeway in its program implementation. Next, a section has been added to allow for landlord contributions. Finally, the special needs customer program has been expanded to allow for spending as much as 20% of the utility's LIURP budget on customers with special needs. This will give the covered utility greater flexibility in administering its program by slightly expanding customer eligibility requirements.

We shall discuss the comments received and the modifications made as a result of these comments, section by section.

#### *Definitions*

In the definition of the term "covered utility" we added "local distribution" to confine the program's parameters to local distribution utilities to ensure that the utility that has direct customer access will continue to provide the LIURP. Both the OCA and PECO endorsed this modification.

The ECA commented that the Commission should broaden the LIURP to include water utilities as well as electric and gas companies. Making such a change to these regulations would expand the scope of the regulations and require us to resubmit them as proposed regulations. Consequently, the Commission does not believe that it is appropriate to expand these provisions to water utilities within the boundaries of these regulations.

#### *Establishment of Residential Low Income Usage Reduction Program*

We have revised the regulations by eliminating a specified sunset date for the LIURP. As Northern Tier CAC pointed out in its comments, the elimination of the soon to be outdated time frame is consistent with the legislative intent of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801—2813. Other commentators including the OCA, ECA, GPU and PECO endorsed the elimination of a sunset date in these regulations.

Peoples suggested that the LIURP be reviewed after 5 years, to offer recommendations for improvements. We agree that the LIURP must provide a means for program review as well as a process for making improvements. Historically, we have used a two-part process for making ongoing enhancements to the LIURP, apart from the regulation process. First, the utilities perform an annual process evaluation as part of the annual program evaluation that is submitted to the Commission. Second, the Commission's Bureau of Consumer Services has performed three or four operational reviews of each company's LIURP program thus far. We believe that this system has worked effectively and we will continue this system in the future.

The PGA commented that the sunset provisions should remain in place, particularly given the continued lack of convincing evidence that the LIURP is cost effective under applicable sections of the Public Utility Code. The PGA also offered that the LIURP, if it is to be continued, should have a sunset date of January 1, 2001, to coincide with full direct access to competitive electric generation.

Initially, we point to IRRC's comments in response to the PGA's contention that there is a lack of convincing evidence that the LIURP is cost-effective and satisfies the requirements under the Public Utility Code at 66 Pa.C.S. § 1505(b) (relating to proper service and facilities established on complaint). IRRC stated that the commentators who believe that the LIURP is not cost-effective have not presented any evidence for their claim. IRRC believed that LIURP was proven to be cost-beneficial in 1992, when it commented as such at that time as the LIURP regulations were recommended for continuance by IRRC. Since then, we have released two reports to the public that we have shared with IRRC as well. The program years in these reports were for 1991 and 1992. The results of these two reports showed improvement over the early years of the LIURP. Our evaluation of the LIURP program has continued on an annual basis and we have shared our analysis of the 1993 and 1994 program years with each of the 15 covered utilities in the past 2 years. Overall, the results from these more current program years have shown a pattern of continued improvement by most utilities. We have also discussed these results with IRRC. In summation, the LIURP has shown better results since the continuance of the program in 1992. If the results of the early years of the LIURP were conclusive enough to warrant continuation in 1992, we are now even more convinced that LIURP is cost-effective in view of the improvements as indicated by the analysis of the most current program data.

IRRC also directed us to provide the public with an opportunity to review the data and Commission findings as to whether the LIURP is cost-effective. At this time, we are evaluating the 1995 program year and we will be issuing a report to the public upon its completion. Thereafter, we are committed to releasing an evaluation report of the LIURP every 2 years.

The PGA and UGI-Gas challenged the statutory basis for the LIURP and argued that the LIURP is anticompetitive and a burden for local distribution electric and gas utilities in the era of deregulation and competition. These same commentators pointed to the act and the fact that similar Legislation is now being considered by the General Assembly to deregulate portions of the natural gas industry and its utilities.

IRRC refutes these commentators by stating that although the recent Legislation places greater emphasis on competition and deregulation, the act also secures a place

for the LIURP. The act specifically mentions the LIURP in the definition of "universal service and energy conservation" at 66 Pa.C.S. § 2803 (relating to definitions). IRRRC then quotes the act at 66 Pa.C.S. §§ 2802(17) and 2804(9) (relating to declaration of policy; and standards for restructuring of electric industry) to further demonstrate the Legislative intent in support of the LIURP. IRRRC concludes that in consideration of the review criteria in section 5(d) of the Regulatory Review Act (71 P. S. § 745.5(d)), these LIURP regulations are firmly within the Commission's statutory authority and match the intent of the General Assembly in the enactment of the enabling statute. We concur with IRRRC and we will not include a sunset date for the LIURP.

#### *Program Funding*

We did not propose any changes to program funding in the proposed regulations. Nevertheless, program funding sparked the most debate among the commentators. We will briefly summarize the positions of the commentators below and follow the comments with excerpts from the Commission's Final Order Re: Guidelines for Universal Service and Energy Conservation at Docket No. M-00960890F0010 (order entered July 11, 1997). It is our intent to, at a minimum, maintain current funding levels for both electric and gas utilities in this regulation. However, we must point out that each electric distribution company will be using its electric restructuring filing to establish the LIURP funding level within its Universal Service Funding Mechanism. Since the act has invoked a process for establishing the funding level for LIURP which supersedes this regulation in this regard, we will defer the electric funding levels to the electric restructuring filings.

Northern Tier CAC recommended that the LIURP funding levels be set within a range of 0.2% to 0.3% of operating expenses. The OCA asked for a minimum requirement of at least 0.2% of revenues. The ECA proposed an increase to 0.25% of revenues and added that funding levels may be adjusted down if the utility can prove that the need does not exist in the territory. PECO remarked that the LIURP is adequately funded at its current levels. The CEO made a distinction in the funding levels between the two industries; electric at 0.25% of revenues and gas between a range of 0.25% and 0.4% of revenues. The PGA commented that the current funding floor of 0.2% of revenues for natural gas utilities is inequitable and anticompetitive in that gas is placed at a competitive disadvantage to electricity and unregulated fuels. Also, the sole regulatory standard for the LIURP funding should be a ceiling, with specific funding beneath that ceiling determined on a utility-by-utility basis. Peoples cautioned that if natural gas unbundling and deregulation continue to change the gas industry, the unbundling of services could potentially reduce the public utilities' revenue on which the LIURP funding is based. Lastly, the PGA believed that deposits into community development banks and other expenditures meeting the LIURP objectives should be eligible for crediting against the LIURP requirements. IRRRC commented that the Commission not consider any of these proposals in the final-form rulemaking. Instead, the Commission should pursue implementation of substantive changes like the LIURP funding level through a new and separate proposed rulemaking.

For the local electric distribution companies (EDCs), the Guidelines for Universal Service And Energy Conservation Programs Made Pursuant to 66 Pa.C.S. §§ 2803; 2802(17); 2804(8) and 2804(9) at Docket No. M-

00960890F0010 (the Guidelines), is the new and separate proposed rulemaking that IRRRC suggested the Commission pursue for making changes to the LIURP funding level. The following are excerpts from the Guidelines that both generically and specifically discuss the LIURP funding and provide the Commission's position on the LIURP funding:

- The primary mandate before the EDCs, the parties and the Commission as restructuring plans are adopted is to lay the groundwork for a fully competitive market for generation within a total level of rates that are capped as of January 1, 1997. Spending levels for universal service and energy conservation must be appropriate considering other spending priorities and the fundamental necessity of complying with all other aspects of the code as it now has been amended by the act. The challenge before the EDC's, the parties and the Commission is to do so with an appropriate balance that maintains funding for other aspects of safe and reliable local distribution services at least at current levels.

- The EDCs, other parties and the Commission must acknowledge that the Public Utility Code (code), as now amended by the act, for the first time imposes a mandate for universal service and energy conservation policies, programs and protections that are "appropriately funded and available in each electric distribution territory." The Commission can and will meet this mandate while meeting the other requirements of the code.

- In particular we note that neither the act nor these guidelines define "appropriately funded and available" nor specify any particular spending level for universal service and energy conservation as a whole. No inherent increase or decrease in spending is mandated, provided that the level of resources directed to universal service and energy conservation is "appropriate" and the benefits are made "available." This mandate neither can supersede nor take a back seat to the other requirements of the code as amended by the act.

- We have found that the LIURP is a cost effective program for affordable energy. Since 1988, the electric utilities have managed their programs within a fixed dollar allowance. Within this process, they have expanded the range of services to include baseload customers who are neither heating nor water heating customers. This is an example of the type of flexible process that is expected over time to make a program cost effective in its availability and delivery.

- We recognize that the electric utilities have never had a goal of 0.2% of revenues contained within their LIURP regulations at § 58.4(b) (relating to program funding). To adopt such a standard would require us to modify our regulations which would not be timely for the restructuring filings. We, therefore, decline to fix an expenditure goal at this time. Nevertheless, we believe it valuable to explore in the context of each company's restructuring proceeding, the manner in which existing funding levels will be used to meet the needs of the EDC's territory. Nothing in these guidelines prevents an EDC from voluntarily proposing a funding commitment that enhances the universal service offerings in its territory.

- The development of renewable technologies, the development of energy efficiency technologies, and the introduction of enhanced (smart) meters or net metering into the market place may add new cost-effective program measures for use in the LIURP. These new technologies and advancements may add to the total costs for individual LIURP jobs in a cost effective manner.

• We must emphasize that nothing in these guidelines mandates an increase in total expenditures directed to meet universal service and energy conservation goals. To the contrary, these guidelines emphasize improving the cost effectiveness of existing efforts by shifting expenditures from less productive efforts to more effective programs.

We believe that the guidelines contain the protocols for determining the LIURP funding levels of the EDCs through the individual electric restructuring filings. The electric restructuring filing process by the EDCs is required in the act and, as such, supersedes these final-form regulations on the issue of the funding levels for the required EDCs. However, since there is no gas industry restructuring legislation at this time, it is our intent to maintain current funding levels for the required gas distribution utilities. We also appreciate Peoples' forewarning regarding the potential impact of further gas unbundling and deregulation on gas companies' LIURP funding levels.

#### *Integration*

Both the ECA and CEO commented about ways to better coordinate program service with existing resources in the community. The ECA asked for much closer linkage to energy and housing programs. The CEO recommended that the LIURP piggyback on to Federally funded weatherization programs. We respond to both parties by pointing to § 58.7(a) (relating to integration), which already addresses the kind of coordination that is recommended. We have tried such linkages at every opportunity since the inception of the program and our efforts have produced varying results. We recognize that the utilities have not always been successful in their efforts at coordinating with existing resources. There have been some valid reasons for the mixed results. Nevertheless, we strongly encourage the required utilities to continue to explore each opportunity to coordinate with existing resources.

The CEO also commented that we should actively encourage the use of community-based organizations and prohibit the utility or its affiliate from delivering the LIURP services. We respond by reiterating that our intent at § 58.7(c) is to ensure that qualified, independent agencies provide program services. However, in the absence of qualified independent agencies a covered utility may provide services directly or solicit for-profit providers. We have not proposed any changes to this section at this time and offer this clarification that, we note, is consistent with our comments during the last revisions to the LIURP regulations at Docket No. L-920065 on January 16, 1993.

IRRC viewed the comments of both the ECA and CEO as having a basis in the act at 66 Pa.C.S. § 2804(9) and not in this notice of proposed rulemaking. Due to the fact that these proposals were not included in the notice of proposed rulemaking, IRRC recommended that the Commission not include the proposals in the final-form rulemaking. We concur and again point out that it is our intent that qualified independent agencies will provide the LIURP services.

#### *Tenant Eligibility*

In § 58.8(a) (relating to tenant eligibility) we added language that clarifies our position on the issue of the raising of rents by landlords based on the installation of usage reduction measures in a rental property using the LIURP funds. A rent increase may not be based on the

installation of the LIURP measures. All parties that commented agreed with this clarification and the commentors are Northern Tier CAC, OCA, GPU and PECO.

We added a new section, § 58.8(b), which allows a utility to seek landlord contributions without affecting a tenant's ability to receive program services. Landlord contributions are to be treated as supplemental to the Commission-approved LIURP annual budgets by the LDCs and gas utilities. All commentators favored this addition and the list of commentators includes Northern Tier CAC, OCA, GPU, Peoples and PGA.

#### *Program Announcement*

Northern Tier CAC suggested that additional outreach efforts need to be considered to educate consumers as to the availability of the LIURP as well as the potential benefits of the LIURP. This comment is directed at § 58.9 (relating to program announcement) which we have not proposed to change. We believe that the utilities have done an effective job of educating customers about the availability of the LIURP over the past 9 years as evidenced by the fact that the required spending levels have been met. Through the Commission's operational reviews of the individual utility programs, we have made a concerted attempt to recommend that program benefits be incorporated into the program solicitation process.

#### *Priority of Program Services*

We proposed an increase from 10% to 20% of a utility's annual program budget in the allowance to spend on special needs customers as defined in § 58.2. All of the comments supported this change and the list of commentators includes Northern Tier CAC, OCA, GPU, PECO, Peoples and PGA.

Although we did not propose any changes to § 58.10(a) (relating to priority of program services), the CEO recommended that we offer programs to all low income, electric customers, not just electric heat customers. We should link spending to low income demographics in a utility's service area. Finally, we should require the EDC's to develop comprehensive baseload programs.

In response to the CEO, we offer the following explanation of the eligibility criteria, targeting strategy and prioritization for the receipt of program services for electric customers, who appear to be the target of the CEO's comments. First, income must be at or below 150% of the Federal poverty guidelines. There is an exception to this rule. Up to 20% of the LIURP budget may be spent on customers with an income level in the range 150% to 200% of the Federal poverty level. Second, the LIURP experience over the past 9 years has shown that high usage is the strongest predictor of high energy savings. Consequently, each of the major electric companies has established company specific minimum usage requirements for each of the three job types for electric customers: heating, water heating and baseload. The bottom line is that all income eligible customers do not have a usage profile that warrants the provision of the LIURP services.

Prioritization for the receipt of program services is as follows. Most importantly, high usage is the driver. Once again, we emphasize that in the actual delivery of the LIURP services, each electric company has established minimum usage guidelines for each of the three electric job types. It is only after the usage requirement is met that the prioritization scheme is applied. The prioritization process then follows two steps. First, usage levels are further prioritized from highest arrearage to no arrearage. Second, a further prioritization is done to further

delineate equal usage and equal arrearage candidates. This is done by prioritizing from lowest to highest income.

#### *Energy Survey*

The program measure refrigerator replacement has been specified in these regulations so as to allow the electric utilities more leeway in its program implementation. We have included refrigerator replacement among the list of program measures that are allowable under a 12-year simple payback criterion as long as the expected lifetime of the measure exceeds the payback period. Each of the four commentators, including Northern Tier CAC, OCA, GPU and PECO, endorsed the addition of refrigerator replacement to the extended payback list.

#### *Program Measure Installation*

The CEO commented that comprehensive baseload programs for electric utilities can be piggybacked on to gas utility the LIURP jobs in order to improve the cost effectiveness of LIURP. Section 58.14(c) (relating to program measure installation) was designed in a way that promotes the concept of inter-utility coordination while providing the utilities from the two industries enough flexibility to mutually resolve coordination logistics. We recognize that there are differences in the extent of the coordination efforts among the utilities. These coordination efforts have been unprecedented. Nevertheless, we have continually stressed the importance of expanding inter-utility coordination efforts where there is an opportunity for significant enough energy savings and bill reductions to warrant more comprehensive coordination. Overall, we are satisfied with the level of coordination among the required utilities.

#### *Program Evaluation*

The ECA recommended that the utilities contract with qualified, independent evaluators to perform evaluations in three instances: whenever major changes are made in the program design; whenever a new program is initiated; and at least every 3 years. Currently, the utilities are required to evaluate their LIURPs on an annual basis and provide such an evaluation to the Commission. For example, the most current evaluation focused on the program years 1995 and 1996. This evaluation was due on April 30, 1997. The 1995 evaluation contained a data analysis of program results as well as a process evaluation. This is the most current program year for which post-installation data is available. In addition, a less extensive process evaluation was provided for the program year 1996. We believe that this reporting system is satisfactory, particularly in view of the maturity of the LIURP program.

IRRC commented that the Commission should provide the public with an opportunity to review the LIURP data and the Commission's findings as to whether the LIURP is cost effective. In the Guidelines at Docket No. M-00960890F0010, the Commission's Bureau of Consumer Services is required to report to the Commission biennially on the status of each EDC's universal service and energy conservation programs. Although those guidelines only pertain to electric utility evaluations, we intend to include the gas utilities in the LIURP evaluations. The first LIURP report will focus on the 1994 and 1995 program years and will be made public upon its completion.

#### *Advisory Panels*

The ECA recommended that the Commission should establish a Statewide advisory committee. We believe that IRRC's assessment of this request offers the appropriate

response. IRRC viewed this comment as having a basis in 66 Pa.C.S. § 2804(9) and not in this notice of proposed rulemaking. Due to the fact that this proposal was not included in the notice of proposed rulemaking, IRRC recommended that we do not include the proposal in the final-form rulemaking and we concur.

Based on the Commission's consideration of all of the comments received regarding the LIURP, including the comments by IRRC, the Commission adopts the final-form regulations. Accordingly, under 66 Pa.C.S. § 501, sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1202 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.5, we amend our regulations at §§ 58.1—58.18 to read as set forth at 27 Pa.B. 1165; *Therefore*,

#### *It Is Ordered that:*

1. The regulations of the Commission, 52 Pa. Code Chapter 56, are amended by amending §§ 58.2, 58.3, 58.8, 58.10 and 58.11 to read as set forth at 27 Pa.B. 1165.
2. The Secretary shall submit a copy of this order and 27 Pa.B. 1165 to the Office of Attorney General for review as to form and legality.
3. The Secretary shall submit a copy of this order and 27 Pa.B. 1165 to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and 27 Pa.B. 1165 for formal review by the designated standing committees of both houses of the General Assembly, and for formal review and approval by IRRC.
5. The Secretary shall duly certify this order and 27 Pa.B. 1165 and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. These regulations shall become effective immediately upon publication in the *Pennsylvania Bulletin*.
7. A copy of this order shall be served upon all persons that submitted comments in this rulemaking proceeding and upon the major jurisdictional electric and gas companies.

JAMES J. MCNULTY,  
*Secretary*

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

#### **Statement of Commissioner John Hanger**

Today, this Commission votes to adopt the final-form regulations pertaining to Low Income Usage Reduction Programs (LIURP). We initiated a proposed rulemaking to extend LIURP by order adopted September 19, 1996. The proposed rulemaking was published in the *Pennsylvania Bulletin* on March 8, 1997, and comments were solicited. Comments were received from many parties.

Since its inception in 1988, the 15 major electric and gas companies that are required to participate in the LIURP program have spent \$123.5 million to provide weatherization/usage reduction treatments to 115,659 low-income households. LIURP has been successful in achieving its goal by producing benefits in the area of demand side management, bill reduction, arrearage reduction and avoided collection costs. Specifically, according to the Bureau of Consumer Services (BCS), the energy savings and bill reductions for 1994 are as follows:



| <i>Job Type</i>        | <i>1994 Average Energy Savings</i> | <i>Estimated Annual Bill Reduction</i> |
|------------------------|------------------------------------|--|
| Electric Heating       | 11%                                | \$157                                  |
| Electric Water Heating | 7.7%                               | \$ 86                                  |
| Electric Baseload      | 11.4%                              | \$121                                  |
| Gas Heating            | 21.6%                              | \$310                                  |

I am happy to support this measure which will continue LIURP. LIURP provides low-income customers with increased comfort levels, safer living conditions and more manageable utility bills.

**Fiscal Note:** Fiscal Note 57-179 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 98-12. Filed for public inspection January 2, 1998, 9:00 a.m.]

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51, 53, 93 AND 109]

#### Administration, Commission Property and Boating

The Fish and Boat Commission (Commission) amends Chapters 51, 53, 93 and 109. The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments relate to administration, Commission property and boating.

##### A. *Effective Date*

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

##### B. *Contact Person*

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

##### C. *Statutory Authority*

The amendments are published under the statutory authority of sections 741, 2502, 5122 and 5123 of the code and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

##### D. *Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations pertaining to administration, Commission property and boating. The specific purpose for the amendments is described in more detail under the summary of changes.

##### E. *Summary of Changes*

1) *Section 51.28 (relating to report of the presiding officer).* In accordance with current practice, all proposed reports (pertaining to revocations and suspensions), regardless of whether exceptions are filed, are forwarded to the Commission's Law Enforcement Committee for review and consideration. However, under 1 Pa. Code Part II (relating to general rules of administrative practice and procedure), a proposed report becomes the final agency decision if no exceptions are filed to the proposed report within 30 days. In those instances when no exceptions are

filed, it is unnecessary for the Law Enforcement Committee to review the matter because the proposed report already represents the final agency action. To eliminate an unnecessary step in the current procedure, which will reduce the processing time of these cases, the Commission adopted an amendment to this section.

2) *Sections 51.33 and 51.61 (relating to effective date of filing licenses and trout/salmon permits; and permits required for disturbance of waterways or watersheds).* A review of these regulations revealed a need to clarify or make minor corrections to insure that anglers are able to understand them and that the original intent is contained in them. The Commission adopted changes to these regulations that do not alter or change them in any significant manner.

3) *Section 53.8 (relating to boats).* The law enforcement jurisdiction of the National Park Service (NPS) is limited to the Delaware River, shore to shore on the water only, within the confines of the scenic river area. Additionally, NPS's authority extends to the very few acres that it owns and the Commission and the New York Department of Environmental Conservation access areas where the parties have entered into formal lease agreements. The six Commonwealth access areas involved are Buckingham, Equinunk, Calicoon, Damascus, Narrowsburg and Zane Grey.

The Commission is quite fortunate to be able to rely on NPS's presence and its law enforcement efforts. However, NPS has been put in the position of having to contend with the conflicting laws and regulations of the Commonwealth and New York. The fisheries differences have been resolved for the most part, but confusion remains regarding boat registrations. Accordingly, the Commission adopted an amendment to § 53.8 to avoid confusion and the possible prosecution of unsuspecting persons using Commission access areas on the Delaware River. In addition, the Commission, under § 51.6 (relating to correction of regulations), is making a corrective amendment to § 53.8(h) and (i).

4) *Section 53.26 (relating to dogs).* In recent years, staff have seen a tremendous increase in the number of dogs roaming unsupervised on Commission owned or controlled properties. These animals are causing a number of identifiable problems by barking, growling, stalking and charging anglers and boaters as well as leaving dog "droppings" on lawn areas, paths and parking lots. Most of the dogs on Commission property are not brought there by anglers or boaters. It also is recognized that, on some properties, legitimate dog training activities can be conducted without interfering, to any great degree, with the property's intended users.

In an attempt to protect adequately the primary users of Commission properties, (that is boaters and anglers) and still allow others to walk or train their dogs, or both, the Commission needs reasonable regulations. On final rulemaking, the Commission adopted the regulation relating to control of dogs on Commission property as proposed with the following exceptions. The Commission added language that allows the use of multilength, mechanically retractable leashes in addition to leashes not exceeding 6 feet in length. The Commission also added a provision that an owner or handler need not keep his dog on a leash when he has the dog under his control onboard a boat.

5) *Section 93.13 (issuing agents).* Under section 5304 of the code (relating to issuing agents), the Commission may designate issuing agents for boat registrations. Boat

registration issuing agents, other than the Commission, issue only temporary boat registrations; they do not process renewals of boat registrations.

Boat registration issuing agents are authorized by the code to charge and retain an issuing agent fee not exceeding \$2 for each registration. Although the Commission collects and retains issuing agent fees for fishing licenses and permits issued by Commission offices, its offices have not collected the issuing agent fees for temporary boat registrations.

For the Commission to start collecting boat registration issuing agent fees for temporary boat registrations issued directly by Commission offices, the Commission adopted a clarifying amendment to the existing regulations. The amendment makes it clear that Commission offices are designated issuing agents.

6) *Section 109.4 (relating to water skiing, aquaplaning, kite skiing and similar activities).* At its January 1997 meeting, the Commission directed staff to meet with proponents of changes to regulations on water ski observers to discuss their concepts for creating a carefully-crafted limited exception to existing regulations and report back to the Commission at the May 1997 meeting. Staff met with Frank Gates to discuss his concerns and those of a group of devoted water skiers who strongly believe that they need some relief from the current requirements to fully pursue their sport. Staff and Mr. Gates discussed several alternatives, and it was decided that the proponents of change or their attorney would get back to staff with proposed wording. Later, staff were informed that the proponents of change would like the Commission to seek public comment on the proposal set forth in the January 1997 agenda.

Late in the 1996 session of the General Assembly, Legislators proposed an amendment to pending Legislation to provide (in pertinent part):

The presence of a competent observer shall not be required in a boat towing a water skier if all of the following conditions are met:

- (1) The operator of the boat meets all the qualifications of a competent observer and is wearing an approved personal flotation device while the skier is being towed.
- (2) The boat is equipped with all of the following:
  - (a) A rearview mirror which is at least 5 inches by 10 inches
  - (b) A ski platform
  - (c) A boom, towing eye or pylon mounted permanently inside the hull of the boat to which the towing rope is secured.
- (3) Only one person is being towed.
- (4) The device on which the person is riding is only attached to the person and not to the boat.
- (5) Conditions, including other boating activities or congestion in the vicinity of the proposed operation, do not impede safe and prudent boat or water skiing operations.
- (6) The water skiing takes place on a day other than a weekend or holiday.

As used in this provision, the term "competent observer" means a person who has the ability to assess when a water skier is in trouble, who knows and understands the water skiing hand signals and is capable of helping a skier.

At the request of Commission staff, this amendment was withdrawn to give the Commission staff the opportunity to meet with proponents of the changes to observer requirements and to consider possible changes to Commission regulations. In addition to policy concerns, the staff had concerns with the drafting of the proposed amendment. The Boating Advisory Board (Board) discussed the Legislative proposal at its meeting on December 20, 1996, and recommended against changing the current regulations on observer requirements, which is in § 109.4.

The proponents of change asked the Commission to consider an amendment to § 109.4(c). Although staff were not convinced that a modification of the observer requirement was necessary or appropriate, it was believed that the wording of the proposed change could be an adequate springboard for further discussion. The Commission was encouraged by members of the General Assembly to at least seek public input on a possible proposed change to this regulation.

At its May 2, 1997, meeting, the Board recommended that the Commission consider the publication of a notice of proposed rulemaking containing changes to the competent observer requirement. The Commission, at its meeting on May 5, 1997, approved the publication of a notice of proposed rulemaking seeking public comment on a possible change to § 109.4(c), provided that the notice explicitly provide that, at this stage, the Commission is only seeking public input and does not necessarily endorse the proposed change. A notice of proposed rulemaking was published at 27 Pa.B. 4441 (August 30, 1997).

During the summer of 1997, two individuals received permits under the test program approved by the Commission. No problems were reported with the implementation of that program.

At the October 4, 1997, meeting, the Commission voted to defer final action on the proposed rulemaking until further consideration by the Board. The Board, at its meeting on October 27, 1997, again considered this matter and recommended that the Commission adopt the amendment, as proposed, with the following changes: (1) that water skiing be limited to 10 a.m. everyday, not just Saturdays and Sundays; and (2) that permittees are required to carry the permit onboard. The Board also recommended that the local waterways conservation officer be responsible for reviewing, approving and recommending to the Executive Director the area where the water skiing will take place. By notational vote, the Commission adopted the amendments to § 109.4 with the additional provisions recommended by the Board.

*F. Paperwork*

The amendments will not increase paperwork and will create no new paperwork requirements.

*G. Fiscal Impact*

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose new costs on the private sector and the general public in that persons who initially register their boats at Commission offices will have to pay a \$2 issuing agent fee.

*H. Public Involvement*

A notice of proposed rulemaking containing the proposed changes was published at 27 Pa.B. 4441. Two

proposed amendments attracted public comment during the public comment period, § 53.26 and the changes to the competent observer requirement in § 109.4.

During the public comment period, the Commission received seven public comments regarding the proposed control of dogs regulation, including letters from the Obedience Training Class of Harrisburg, the Mt. Nittany Dog Training Club and the Ivy League Bulldogs. Six of the comments opposed, to a certain degree, the proposed amendments. One letter urged the Commission to entirely drop consideration of the amendments. Several letters expressed concern over the requirement that an owner or handler must keep a dog on a leash not exceeding 6 feet in length while on Commission property. Other areas of concern pertained to the maximum number of dogs that an owner or handler may have on Commission property at one time and the provisions made for retriever training. One public comment expressed support for the proposed amendments but suggested that the proposed amendments may not go far enough. Copies of these public comments were provided to the Commissioners.

During the public comment period, the Commission also received 45 public comments regarding the changes to the competent observer requirement. Two letters opposed and 43 letters supported the proposed changes. Of those who supported the proposed changes, many suggested that the permit should be good only until 10 a.m. on weekday and weekend mornings (not just on weekends, as proposed). Copies of these public comments were provided to the Commissioners.

After the public comment period, the Commission received a letter from the Upper Delaware Council strongly supporting the amendment to § 53.8.

#### *Findings*

The Commission finds that:

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

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

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

#### *Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 51, 53 and 109, are amended by amending §§ 51.28, 51.33, 51.61 and 93.13 to read as set forth at 27 Pa.B. 4441; and by amending §§ 53.8, 53.26 and 109.4 to read as set forth in Annex A.

(*Editor's Note:* Amendments to § 93.13 have been consolidated and appear at 27 Pa.B. 40 (January 3, 1997).)

(b) The Executive Director will submit this order, 27 Pa.B. 4441 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 27 Pa.B. 4441 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect January 1, 1998.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-69 remains valid for the final adoption of the subject regulations.

### **Annex A**

#### **TITLE 58. RECREATION**

#### **PART II. FISH AND BOAT COMMISSION**

#### **Subpart A. GENERAL PROVISIONS**

#### **CHAPTER 53. COMMISSION PROPERTY**

#### **§ 53.8. Boats.**

(a) An internal combustion engine may not be used to propel a boat or to provide energy to the motor on Commission lakes. Boats propelled by battery-powered electric motors and nonmechanically propelled boats, subject to restrictions on sailboats and inflatables, may be used either with or without internal combustion engines attached. Notwithstanding this subsection, internal combustion engines may be used in the performance of official duties by persons authorized by the Commission.

(b) Watercraft on Commission lakes shall have on board a Coast Guard approved Type I, II, III or V personal flotation device in good serviceable condition for each occupant. Occupants of sculls, shells and racing kayaks may substitute and use non-Coast Guard approved inflatable personal flotation devices in accordance with their design and manufacturer recommendation.

(c) Overnight mooring of boats is permitted at designated mooring areas from April 1 to November 30. A boat utilizing mooring areas shall be registered and display the official registration number and current validation stickers described under Subpart C (relating to boating) and Part III of the code (relating to boats and boating). The mooring is at the sole risk of the owner.

(d) The Commission may refuse to permit the mooring of a boat considered unseaworthy. Boats may not be rented or offered for hire at Commission lakes except for boats owned and moored by authorized concessionaires.

(e) Boats abandoned, sunken, obviously unseaworthy or unidentifiable will be impounded. The district waterways conservation officer will notify the owner, if known, of the impoundment and require the removal of the vessel within 10 days. Impounded vessels will be sold or destroyed if not claimed by the owner within 3 months.

(f) Boats may not remain at boarding piers on Commission lakes or controlled property longer than the time necessary for loading and unloading.

(g) Inflatable boats used on Commission lakes shall be at least 7 feet in length, made of durable reinforced fabric and have at least two separate buoyancy chambers exclusive of any inflatable floor or bottom.

(h) A boat using a Commission lake or access area shall be registered and display the official registration number and current validation stickers described under Subpart C and Part III of the code, except that this provision does not apply to noncommercial users of access areas on the Delaware River and West Branch of the Delaware River Bounded by the State of New York. Public service boats as defined under section 5302(3) of the code (relating to exemptions from registration) and boats par-

ticipating in events authorized under § 109.6 (relating to special marine events) are exempt from this section. Unpowered kayaks, sculls, sailboards and other low volume boats of similar design are exempt from displaying registration numbers, but shall display a current validation sticker.

**§ 53.26. Dogs.**

(a) Dogs are permitted on Commission property if they are licensed and otherwise in compliance with the other provisions of the Dog Law (3 P. S. §§ 459-101—459-1205).

(b) The maximum number of dogs that an owner or handler is permitted to have on Commission property at one time is two.

(c) The owner or handler shall keep the dogs on a leash not exceeding 6 feet in length or on a multilength mechanically retractable leash while on Commission property.

(d) The owner or handler shall keep the dogs under supervision and control while on Commission property.

(e) The owner or handler shall immediately scoop, contain and retain all droppings of the dog. The owner or handler may not dispose of the dog droppings on Commission property.

(f) The owner or handler is responsible for the conduct of the dog while on Commission property.

(g) Subsection (c) does not apply when an owner or handler meets one of the following:

(1) Is training a dog for water retrieval purposes and when the following apply:

(i) The dog is actually performing customary water retrieval functions.

(ii) The dog remains within 10 feet of the owner/handler while on land.

(iii) The dog is under the immediate control of the owner/handler at all times.

(iv) The dog does not interfere with anglers or boaters engaged in fishing, boating or other lawful activities.

(2) Has the dogs under his control onboard a boat.

(h) An owner or handler of a hunting dog is exempt from subsections (c) and (e) when he keeps his dog off lawn areas, trails and parking lots and when he is engaged in legal hunting or training during the seasons established by the Game Commission.

**Subpart C. Boating**

**CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES**

**§ 109.4. Water skiing, aquaplaning, kite skiing and similar activities.**

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

*Competent observer*—A person who has the ability to assess when a skier is in trouble, knows and understands the water skiing hand signals and is capable of helping a skier.

*PF*D—Personal Flotation Device.

*Trick skier*—A water skier who can be identified by body movements and skiing positions, which readily differentiate the trick skier from the ordinary “forward” skier engaged in straight skiing or slalom and jump events, and also by the following:

(i) *Skis.* Short (38 inches—40 inches) and wide (8 inches—9 inches) with no keels on bottom.

(ii) *Speed of tow.* Slow (12—18 miles per hour).

(iii) *Rope.* Short (40 to 50 feet) and often with toehold strap attached to handle.

*Water ski*—A device used by a person to be towed through or on water behind a boat. The term includes conventional water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattress, parasails, kit skis and similar devices.

(b) *Skiing hours.* Ski activities are prohibited between the hours of sunset and sunrise.

(c) *Observer required.* The following conditions apply:

(1) *General rule.* Except as otherwise provided in this subsection, it is unlawful for a person to operate a boat towing or otherwise assisting a person on water skis unless there is at least one competent observer in the boat in addition to the operator of the boat. The observer shall be positioned in the boat to observe the progress of the person being towed. It is unlawful for a person to water ski being towed by a watercraft or device not containing an operator and observer as required by this subsection.

(2) *Special conditions.* The Executive Director, or a designee, may issue a permit to allow a limited exception to paragraph (1). A permit issued under this paragraph will permit operation of a boat towing a water skier without an observer, in addition to the operator, on board the boat. These operations will be permitted only under the following conditions:

(i) Both the operator of the boat and the water skier meet safety training requirements as evidenced by documented completion of a safe boating course and active membership in a State or National water skiing organization, which provides members with information on water skiing safety.

(ii) The operator fulfills the definition of a “competent observer” as set forth in this section, wears an approved PFD and is a person 18 years of age or older.

(iii) The boat is equipped with the following:

(A) A rearview mirror which is at least 5 inches by 10 inches configured so that the operator may at all times observe the progress of the person being towed.

(B) A ski platform

(C) A boom, towing eye or pylon mounted permanently inside the hull of the boat to which the towing rope is secured.

(iv) Only one person is being towed.

(v) The water skis or other device on which the person is riding are attached only to the person and not to the boat.

(vi) Conditions, including weather, other boating activities and congestion in the vicinity of the proposed operation, do not impede safe and prudent boat or water skiing operations.

(vii) The water skiing takes place before the hour of 10 a.m. on a day other than a weekend or holiday. The Executive Director, for good cause shown, may permit water skiing under this section on a Saturday or Sunday before the hour of 10 a.m. if the Executive Director finds that other boating activities on the waters at the same time will not interfere with the water skiing.

(viii) The water skiing takes place on waters described and approved for the operations in the permit.

(ix) The water skiing takes place when the Executive Director or a designee indicates in the permit.

(x) The boat towing the water skier displays a special water ski flag of a size and design approved by the Commission.

(xi) The permittee carries the permit onboard while operating the boat towing a water skier without an observer.

(d) *Umbilical or remote controls.* A person may not operate a device which is controlled by a person connected to the power source by means of an umbilical or remote control, or both, which tows the person on or through the water.

(e) *Ski tow ropes.* Ski tow ropes may not exceed the following lengths:

(1) Conventional water skis and similar devices—80 feet.

(2) Nonreleasable kite ski—150 feet.

(3) Releasable kite ski—500 feet.

(4) Parasails—300 feet.

(f) *PFDs.* It is unlawful for a person to operate a boat on the waters of this Commonwealth for water skiing unless each person being towed is wearing a Type I, II, III or V United States Coast Guard-approved PFD. Inflatable PFDs may not be used to meet this requirement.

(g) *Water ski wetsuits.* A person engaged in slalom skiing on a marked course or a person engaged in barefoot, jump or trick skiing may elect to wear a wetsuit designed specifically for the activity in lieu of the United States Coast Guard approved PFD required in § 97.1 (relating to personal flotation devices). A United States Coast Guard approved PFD of a type described in § 97.1 shall be carried in the tow boat for each skier electing to wear a water ski wetsuit. The nonapproved water ski wetsuit device shall meet the following criteria:

(1) The device shall be marked by the manufacturer as a water ski wetsuit.

(2) The device shall be constructed of nylon covered neoprene or similar material and may have either long or short sleeves or be sleeveless. The device may have legs.

(3) The device shall be equipped with additional flotation padding material of a close cell nonabsorptive type such as PVC foam or Ensolite®. This flotation/padding shall be sewn into the device according to the following:

(i) On the front extending from the clavicle to the top of the pelvis vertically and covering the front rib cage area and covering as much of the side area as feasible. A maximum gap between padded areas on the side of the suit under the arm is 4 inches.

(ii) On the rear of the device, padding/flotation material shall cover the area from the top of the shoulder blade to the top of the pelvis and span the entire width of the back.

(iii) Padding/flotation shall be at least 1/2-inch thick. This thickness excludes the thickness of covering material.

(h) *Starting and returning from shore or dock.* Notwithstanding the slow, no wake restrictions contained in § 103.3(b) (relating to restriction for special areas), skiers

are permitted to start from the shore or dock if the traffic situation permits this to be done safely and in accordance with other water ski regulations. A water skier is not permitted to be returned to dock or shore under power. The skier shall release outside the 100-foot limit. The skier may then coast or glide toward the shore or dock, if the skier does not endanger life and property in so doing and steers clear of swimmers, docks and boats.

(i) *Ski ramps and jumps.* Ski ramps or jumps, authorized in accordance with § 113.10 (relating to permits for installation and lighting of floats, ski ramps and other floating structures) shall have attached on each side a sign which will be evidence that the installation is authorized and warn boaters against mooring or drifting within 100 feet of the jump while it is in use.

(j) *Kite skiing and parasailing.* The following additional restrictions are applicable to kite skiing and parasailing:

(1) Kite skiing and parasailing is prohibited on waters where water skiing is prohibited or is subject to special regulation.

(2) Kite skiing or parasailing is prohibited on water when other boating activities or congestion impedes safe and prudent operations.

(3) Kite skiers and parasailers may not fly over or under overhead obstructions such as power and telephone lines or bridges; nor may they fly over dams, locks, docks, launching ramps, swim areas, marinas or congested areas.

[Pa.B. Doc. No. 98-13. Filed for public inspection January 2, 1998, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### [58 PA. CODE CH. 93]

#### Boating

The Fish and Boat Commission (Commission) by this order amends Chapter 93 (relating to registration and numbering). The Commission is publishing these regulations under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The regulations relate to boat titling.

#### A. *Effective Date*

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

#### B. *Contact Person*

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

#### C. *Statutory Authority*

The regulations are published under the statutory authority of section 5325 of the code (relating to rules and regulations).

#### D. *Purpose and Background*

On July 2, 1996, Governor Ridge signed the act of July 2, 1996 (P. L. 467, No. 73) (Act 73) into law. The Act 73 authorized the Commission to issue certificates of title on or after the effective date of the regulations. The Commission will start issuing titles on March 1, 1998.

In drafting the regulations on boat titling, the Commission reviewed parallel Department of Transportation regulations on titles for motor vehicles. The Commission

also reviewed model State guidelines on boat titling and regulations and forms used for titling of snowmobiles and all-terrain vehicles. In addition, Commission staff received input from the Department of Transportation and the Department of Revenue.

Although the Commission initially intended to issue titles on or after January 1, 1998, staff encountered difficulties in computer programming for implementation of the titling program. Staff therefore recommended to the Commission on final rulemaking that titles not be required and available until on or after March 1, 1998. On final rulemaking, staff also recommended that certain changes be made to the proposed regulations. The major changes address an issue raised by the Pennsylvania Bankers' Association (PBA) concerning security interests in motors attached to boats. The PBA indicated that their members would most likely continue to require the filing of a Uniform Commercial Code (UCC) security interest statement on a motor, even though the boat is titled. In the interests of addressing this concern and saving paperwork and costs for boaters who finance their purchases, staff suggested that the regulations make clear that an internal combustion outboard motor is part of the boat subject to the title requirements. Staff also proposed clarification of the procedures applicable to clearing the title on abandoned boats. Although the proposed regulations provided procedures for boats found abandoned on private property, they did not address procedures for boats found abandoned on the waters of this Commonwealth. Staff further suggested several other minor additions and corrections to the proposed regulations.

Although suggested by several parties, one change that staff were unable to recommend was to extend the time period for dealers to submit moneys and applications to the Commission. Proposed § 93.104 states that a "dealer shall forward all moneys and applications to the Commission within 10 days of transferring ownership." This regulatory scheme is consistent with the statutory time frame of section 5304(d) the code (relating to issuing agents) which provides that "[e]very issuing agent shall forward all moneys collected, along with all appropriate forms, to the commission within ten days after receipt of each and every registration." Because this requirement is a statutory one, it can only be changed through Legislative action. Commission staff agree that the 10-day time frame is too stringent for both registration and titling and therefore will support legislation to amend the statute.

Prior to consideration of these regulations on final rulemaking, the Commission sought input from the Boating Advisory Board (Board). The Board recommended final adoption by the Commission, and the Commission adopted the changes to the regulations consistent with staff's recommendations.

E. *Summary of Changes*

Under section 5325 of the code, the Commission promulgated rules and regulations on boat titling pertaining to:

- (1) Application procedures for certificates of title.
- (2) Contents of applications.
- (3) Boats brought into this Commonwealth from outside this Commonwealth.
- (4) Boats purchased from dealers.
- (5) Boats sold or transferred privately.
- (6) Specially constructed or reconstructed boats.
- (7) Delivery of certificates of title.

- (8) Duplicate or replacement titles.
- (9) Transfer of ownership of boats.
- (10) Transfers to or from manufacturers or dealers.
- (11) Repossession of boats.
- (12) Boats which are junked, destroyed, lost, stolen or abandoned.
- (13) Voluntary titling of boats by owners prior to sale or transfer.
- (14) Suspension or cancellation of certificates of title.
- (15) Creation and perfection of security interests in boats.
- (16) Assignments of security interests.
- (17) Satisfaction of security interests.
- (18) Recordkeeping, documentation and information verification.

F. *Fiscal Impact*

Act 73 will result in estimated Boat Fund revenue in the amount of \$225,000. The Commission estimates that the costs to implement the boat titling program will be approximately equal to the additional revenues generated. The final-form regulations will have no adverse fiscal impact on the Commonwealth or its political subdivisions. Nor will the amendments impose new costs on the private sector or the general public.

G. *Paperwork*

The final-form regulations implement a statute that requires some new paperwork. However, the final-form regulations will not increase paperwork and create no new paperwork requirements.

H. *Public Involvement*

A notice of proposed rulemaking containing the proposed regulations was published at 26 Pa.B. 6093 (December 21, 1996). The notice provided for a 45-day comment period. In addition to seeking public comment by publishing a notice of proposed rulemaking in the *Pennsylvania Bulletin*, staff sent copies of the proposal to marine trade and banking associations for specific comment and input. The Commission also convened a workgroup meeting with representatives of boat dealers and finance agencies to ensure maximum input on the proposed regulations. The workgroup met on December 16, 1996.

After the public comment period, the Commission received two written comments from representatives of marine trades associations in addition to oral comments from representatives of the PBA. Copies of the written comments were provided to the Commissioners.

*Findings*

The Commission finds that:

- (1) Public notice of intention to adopt the regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided and that all comments received were considered.
- (3) The adoption of the regulations of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 93, are amended by adding §§ 93.101—93.119 to read as set forth in Annex A.

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

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

(d) This order shall take effect March 1, 1998.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-62 remains valid for the final adoption of the subject regulations.

**Annex A****TITLE 58. RECREATION****PART II. FISH AND BOAT COMMISSION****Subpart C. BOATING****CHAPTER 93. REGISTRATION AND NUMBERING****Subchapter A. REGISTRATION OF BOATS****Subchapter B. TITLING OF BOATS**

## Sec.

|         |   |
|---------|---|
| 93.101. | Definitions.  |
| 93.102. | Application procedure and contents of applications for certificates of title. |
| 93.103. | Boats brought into this Commonwealth from outside this Commonwealth.          |
| 93.104. | Boats purchased from dealers/transfer to or from manufacturer or dealer.      |
| 93.105. | Boats sold or transferred privately.  |
| 93.106. | Specially constructed or reconstructed boats.                                 |
| 93.107. | Delivery of certificate of title.   |
| 93.108. | Duplicate/replacement titles.   |
| 93.109. | Transfer or repossession of boat by operation of law.                         |
| 93.110. | Boats that are junked, destroyed, lost, stolen or abandoned.                  |
| 93.111. | Voluntary titling of boats.   |
| 93.112. | Suspension, revocation or cancellation of certificate of title.               |
| 93.113. | Creation and perfection of security interests in boats.                       |
| 93.114. | Assignments of security interests.  |
| 93.115. | Satisfaction of security interests.   |
| 93.116. | Exemption.  |
| 93.117. | Recordkeeping, documentation and information verification regarding boats.    |
| 93.118. | Prohibited acts.  |
| 93.119. | Forms.  |

**§ 93.101. Definitions**

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

*Dealer*—A person who engages in whole or in part in the business of buying, selling or exchanging new and unused boats, or used boats, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for the sale, trade and display of boats. The term includes a yacht broker.

*Manufacturer*—A person engaged in the business of manufacturing or importing new and unused boats, or new and unused outboard motors, for the purpose of sale or trade.

*Reconstructed boat*—One of the following:

(i) A boat for which a certificate of title (salvage/junk) has been issued, which is thereafter restored to operating

condition and which is substantially in conformance with the specifications of the manufacturer.

(ii) A boat that has been materially altered by the removal, addition or substitution of essential parts derived from various other makes or models, or that the Commission has determined is readily recognizable as a boat of a generally recognized make or model.

*Specially constructed boat*—One of the following:

(i) A boat not originally constructed by a generally recognized manufacturer of boats under a distinctive name and not materially altered from its original construction, but assembled from parts of various boats or kits, or both, and that would be commonly known as a "homemade" boat.

(ii) A boat that has been materially altered by the removal, addition or substitution of essential parts derived from various other makes and models and that the Commission determines cannot be readily identified as a boat of a generally recognized make or model.

**§ 93.102. Application procedure and contents of applications for certificates of title.**

(a) Boat owners shall apply for a certificate of title on Form REV-336, provided by the Commission. The completed form shall be forwarded to the Commission at the address listed on the application.

(b) The applicant shall provide the following information on the application (REV-336) for a title:

(1) The name, mailing address, residence address, phone number and zip code of the owner. If there are co-owners, the applicants shall provide information relating to both owners and indicate whether the boat is owned as joint tenants with right of survivorship or as tenants in common.

(2) The date of birth of the primary purchaser.

(3) The name of the person from whom the boat was purchased.

(4) The State registration number, if any, currently assigned to the boat.

(5) The hull material, such as wood, steel, aluminum, plastic, fiberglass or other.

(6) The full Hull Identification Number (HIN).

(7) The make, model and year built, if known.

(8) The length of the boat in feet and inches.

(9) The type of propulsion, such as, outboard, inboard, sterndrive or unpowered.

(10) The type of fuel, such as, gas, diesel, electric or unpowered.

(11) Capacity plate information.

(12) The primary usage such as, pleasure, rental/livery, manufacturer/dealer/jobber, commercial passenger, and the like.

(13) For boats with outboard internal combustion motors, the serial number, the manufacturer's name and the horsepower rating. If there are two motors, the applicant shall provide information for both motors.

(14) The names and addresses of each lienholder (in the order of priority).

(15) The date of lien encumbrance.

(16) The date applicant completed the form.

(17) The signature of the owner.

(18) Complete Sales and Use Tax information.

(c) An outboard motor is an integral part of a boat and is subject to title and lien requirements. If any information pertaining to the outboard motor changes from that which the applicant provided in the original application, the applicant shall apply for a new title.

(d) The Commission will not process incomplete applications.

**§ 93.103. Boats brought into this Commonwealth from outside this Commonwealth.**

(a) When the owner of a boat having a certificate of title from another state brings the boat into this Commonwealth as its state of principal use, the owner shall obtain a Pennsylvania certificate of title for the boat when the boat is registered in this Commonwealth or its ownership is transferred to another person, whichever occurs first.

(b) When the owner of a boat not having a certificate of title from another state brings the boats into this Commonwealth as its state of principal use, the owner shall obtain a Pennsylvania certificate of title when the boat is sold or is otherwise transferred to another owner. This provision does not apply to boats for which a title is not required under section 5322(a) of the code (relating to when certificate of title not required).

**§ 93.104. Boats purchased from dealers/transfer to or from manufacturer or dealer.**

(a) A dealer may not purchase or acquire a new boat without obtaining from the seller a manufacturer's or importer's certificate of origin when provided by the manufacturer or importer.

(b) When certificates of origin are provided by the manufacturer or importer, a manufacturer or dealer may not transfer ownership of a new boat without supplying the transferee with the certificate of origin signed by the manufacturer's or importer's authorized agent.

(c) A dealer transferring a boat requiring title under this subchapter shall assign ownership to the new owner, in the case of a previously titled boat, by completing the appropriate assignment portion of the certificate of title, or in the case of a new boat, by completing the assignment portion of the certificate of origin.

(d) A dealer shall forward all moneys and applications to the Commission within 10 days of transferring ownership.

(e) Except as otherwise provided in this subsection, a dealer buying or acquiring a used boat for resale need not obtain a certificate of title for the used boat if the dealer reports the acquisition to the Commission within 20 days. In lieu of submitting a report of acquisition, the dealer may apply for and obtain a certificate of title as provided in this subchapter. If a dealer buys or acquires a used unnumbered boat that is otherwise required to be titled, the dealer shall apply for a certificate of title in the dealer's name within 20 days. If a dealer buys or acquires a new boat for resale, the dealer may, but is not required to, apply for a certificate of title for the boat in the dealer's name.

(f) Every dealer shall maintain for 3 years a record of any boat the dealer's bought, sold, brokered, exchanged or received for sale or exchange. This record shall be open to inspection by Commission representatives during reasonable business hours.

(g) A dealer/lessor who leases a boat for more than 30 consecutive days shall obtain a certificate of title for the

boat unless exempt under section 5322(a) of the code (relating to when certificate of title not required). The lessor shall maintain the certificate of title of a leased boat.

**§ 93.105. Boats sold or transferred privately.**

(a) A person transferring a boat requiring title under this subchapter shall assign ownership to the new owner, in the case of a previously titled boat, by completing the appropriate assignment portion of the certificate of title, or in the case of a new boat, by completing the assignment portion of the certificate of origin.

(b) Moneys and applications shall be forwarded to the Commission within 10 days of transferring ownership.

(c) The lessor shall maintain the certificate of title of a leased boat.

**§ 93.106. Specially constructed or reconstructed boats**

(a) The owner of a specially constructed or reconstructed boat shall apply for a certificate of title as required by this subchapter.

(b) The application for certificate of title shall be accompanied by one of the following:

(1) The outstanding certificates of title.

(2) The manufacturer's certificates of origin or certificates of title (salvage/junk), issued for boats, the parts of which were used in construction of the boat, if the boats are no longer operable or able to be registered.

(3) The bills of sale for the major components of the boat for which no other proof of ownership is available.

(4) A photograph of the boat, upon the request of the Commission.

(c) The certificate of title issued for every specially constructed boat and reconstructed boat, as defined in this subchapter, shall clearly describe the boat by type as follows:

(1) The certificate of title for every specially constructed boat shall describe the make of boat as "specially constructed."

(2) The certificate of title for every reconstructed boat shall describe the boat by its original make or trade name but shall be coded to designate it as a reconstructed boat.

**§ 93.107. Delivery of certificate of title.**

The Commission will mail the original certificate of title to the first lienholder named therein, or if there is none, to the owner named therein. The Commission will retain the data necessary to generate a copy of the certificate of title.

**§ 93.108. Duplicate/replacement titles.**

(a) If a title is lost, stolen, mutilated, destroyed or becomes illegible, the lienholder in possession of the title or, if there is none, the owner named on the title, as shown by the Commission's records, may obtain a duplicate/replacement by applying to the Commission. The applicant shall furnish information concerning the original title and the circumstances of its loss, theft, mutilation or destruction. Applications for replacement titles shall be filed within 30 days of the loss, theft, mutilation or destruction. Mutilated or illegible titles shall be returned to the Commission with the application for a duplicate/replacement.



(b) The duplicate/replacement title shall be marked "duplicate" on its face and shall be mailed or delivered to the applicant.

(c) If a lost or stolen original title for which a duplicate/replacement has been issued is recovered, the original shall be surrendered to the Commission for cancellation within 20 days of its recovery.

**§ 93.109. Transfer or repossession of boat by operation of law.**

(a) If ownership of a boat is transferred by operation of law, such as by inheritance, divorce, order in bankruptcy, insolvency, replevin or executive sale, the transferee, within 30 days after acquiring the right to possession of the boat by operation of law, shall mail or deliver to the Commission a court order or other document evidencing the transfer by operation of law, together with the application for a new title and the required fee.

(b) If a lienholder repossesses a boat by operation of law and holds it for resale, the lienholder shall secure a new title and shall pay the required fee.

(c) Issuance of a certificate of title does not constitute an adjudication of issues relating to ownership of boats.

**§ 93.110. Boats that are junked, destroyed, lost, stolen or abandoned.**

(a) *Reporting requirements.* The destruction, loss, theft or abandonment of a boat titled under this subchapter shall be reported to the Commission within 5 days. The recovery of a boat that is lost, stolen or abandoned shall be reported to the Commission within 5 days of recovery.

(b) *Acquiring title to boats abandoned on private property.*

(1) Subject to the provisions of this subsection, a landowner, a lessee or an agent may acquire title to any boat abandoned on his land or waters immediately adjacent to it. This subsection applies only to boats that have been abandoned on the property of a person other than the owner of the boat for at least 3 months.

(2) A person desiring to obtain a certificate of title for an abandoned boat shall provide written notice to the Commission of intent to obtain title to the boat. The notice shall, at a minimum, set forth the date and place the boat was abandoned, a description of the boat, including the make, model and year, and, if known, the Hull Identification Number, registration number, temporary decal number and other identifying data.

(3) If a boat abandoned on a person's lands or waters has a Hull Identification Number, registration number, temporary decal number or other identifying indicia, the Commission will notify the boat's owner and lienholder, if any, that the boat has been abandoned and that the requester desires to acquire title to it.

(4) Upon receipt of the written request, the Commission will notify the owner and the lienholder by certified mail that someone desires to acquire title to the boat and if ownership is not claimed and the boat removed within 30 days, the Commission may, upon proper application and payment of fees, issue a certificate of title in the name of the person desiring to acquire title. If the owner does not respond, the Commission may notify the requester to proceed under paragraph (5). The Commission is not required to send a letter if it cannot identify a boat's owner or lienholder or ascertain an address. If the abandoned boat has a registration number, temporary decal number or other identifying indicia, evidencing that the boat is registered in another state, the Commission

will notify the other state and ask it to notify the boat's owner and lienholder by certified mail that someone desires to acquire title to the boat. The other state's notice shall provide that if ownership is not claimed and the boat removed within 30 days, the Commission may, upon proper application and payment of fees, issue a certificate of title in the name of the person desiring to acquire title. The other state is not required to send a letter if it cannot identify a boat's owner or lienholder or ascertain an address. When the other state notifies the owner and lienholder, if known, as provided in this section and advises the Commission that the transfer of title to the requester is unobjectionable to the other state, the Commission may notify the requester to proceed under paragraph (5).

(5) Regardless of whether the abandoned boat has a Hull Identification Number, registration number, temporary decal number or other identifying indicia, the person desiring to acquire title shall place a notice in a newspaper of general circulation published in the county where the boat is located for 3 consecutive days, describing the boat, its location, the date it was abandoned and any identifying number. The person shall state in the notice that if the boat is not claimed and removed within 30 days after publication in the newspaper, he will apply for title to the boat in his name.

(6) After the notices described in paragraphs (4) and (5) have expired, but no earlier than 60 days after the person desiring to obtain title has first notified the Commission, the person may apply to the Commission for a certificate of title to the boat in his name as required by this subchapter and accompanied by the following affidavits:

(i) A statement made under penalty of law that the boat has been abandoned for at least 3 months.

(ii) Proof that the applicant provided notice as set forth in paragraphs (2)—(4).

(iii) Proof that a notice was published in a newspaper as required by paragraph (5).

(7) In cases involving boats registered in other states, the Commission may extend the 60-day period described in paragraph (6) to 180 days.

(8) Upon receipt of the material required by this subsection and the payment of any fees required by law, the Commission will issue a certificate of title to the boat to the applicant. Issuance of a certificate of title divests any other person of any interest in the boat.

(9) The Commonwealth, its agencies and political subdivisions may acquire title to any boat abandoned on areas under their ownership by proceeding in the manner set forth in this subsection.

(c) *Acquiring title to boats abandoned on Commonwealth waters.*

(1) A person finding a boat abandoned on the waters of the Commonwealth (not private property) shall notify the Commission of the description and location of the found boat as well as the date on which it was found.

(2) The Commission may take possession of a boat abandoned on the waters of this Commonwealth or may authorize a salvor to take possession if the salvor complies with this section, is a vehicle salvage dealer as defined in section 1337 of the code (relating to use of "miscellaneous motor vehicle business" registration plates) and holds a current, valid certificate of authoriza-

tion issued by the Department of Transportation under section 7302 of the code (relating to certification of authorization).

(3) A salvor taking possession of a boat under this section shall notify the Commission in writing within 48 hours after taking possession.

(4) The Commission, after taking possession of an abandoned boat or after receiving notice that a salvor has taken possession of an abandoned boat, shall notify by certified mail, return receipt requested the last known registered owner of the boat and all lienholders of record. The notice shall:

(i) Describe the make, model, HIN number and registration number of the boat.

(ii) State the location where the boat is being held.

(iii) Inform the owner and any lienholders of their right to reclaim the boat within 30 days after the date of the notice upon payment of all towing and storage charges and all applicable title and registration fees.

(iv) State that failure of the owner or lienholder to reclaim the boat is deemed consent to the destruction, sale or other disposition of the abandoned boat with dissolution of all interests of the owner and lienholders.

(5) If the identity of the last registered owner and all lienholders cannot be determined, the contents of the notice described in paragraph (4) shall be published one time in a newspaper of general circulation in the area where the boat was found abandoned. If the boat is in possession of a salvor, publication of the notice shall be the responsibility of the salvor. If the boat is in possession of the Commission, publication of the notice is the responsibility of the Commission. Publication of the notice shall have the same effect as the notice sent by certified mail.

(6) The Commission, after 45 days of the date of notice sent by certified mail described in paragraph (4) or publication of the notice described in paragraph (5), may dispose of the boat if it is in its possession or may authorize the salvor to dispose of the boat in its possession as provided in paragraph (7) or (8).

(7) The Commission, if in possession of the unclaimed abandoned boat, or the salvor, if in possession of the unclaimed abandoned boat, may sell the boat at public auction if it has value. The purchaser may apply to the Commission for a title, which shall be free and clear from all previous liens and claims of ownership. From the proceeds of the sale of the abandoned boat, the Commission or the salvor, as applicable, shall be reimbursed for the cost of towing, storage, notice, publication, mailing and costs of the auction. The remainder of the proceeds of the sale shall be forwarded to the Commission, which shall hold them for 60 days from the date of sale for claim by the registered owner or lienholder. If the proceeds are not claimed, they shall be deposited in the Boat Fund for use of the Commonwealth.

(8) If an unclaimed abandoned boat is valueless except for salvage, the salvor in possession shall apply to the Commission for a salvor's certificate of title, and, upon issuance of the same, the salvor may destroy, dismantle, salvage or recycle the boat and retain any proceeds realized therefrom to offset the costs of towing, storage, notice, publication and mailing. Issuance by the Commission of a salvor's certificate of title shall divest all rights, title and interest in the boat of the registered owner and all lienholders.

**§ 93.111. Voluntary titling of boats.**

(a) An owner of a boat may voluntarily apply for a certificate of title by applying at any time and paying the fees required under section 5327 of the code (relating to fees). Once an owner voluntarily acquires a certificate of title, titling for the boat is thereafter mandatory.

(b) A boat owner who voluntarily applies for a certificate of title shall certify under penalty of law that there are no outstanding liens or encumbrances. See 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

**§ 93.112. Suspension, revocation or cancellation of certificate of title.**

(a) The Commission will initiate an action to suspend or revoke a certificate of title by filing an order to show cause under 1 Pa. Code § 35.14 (relating to orders to show cause), when authorized by statutory or other authority, or if the Commission determines that the certificate of title was fraudulently procured.

(b) The Commission has the authority to cancel a certificate of title when the Commission determines that one of the following applies:

(1) The certificate of title was erroneously issued.

(2) The boat was junked, destroyed, lost, stolen or abandoned.

(c) Suspension, revocation or cancellation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

(d) When the Commission suspends, revokes or cancels a certificate of title, the owner or person in possession of the certificate shall, upon receiving notice of the suspension, revocation or cancellation, immediately mail or deliver the certificate of title to the Commission.

(e) The Commission may seize, in accordance with the law, a certificate of title that it has suspended, revoked or canceled.

**§ 93.113. Creation and perfection of security interests in boats.**

(a) An owner creates a security interest in a boat when the owner signs a note, agreement or other instrument containing terms that create a security interest. When an owner creates a security interest in a boat:

(1) The owner shall provide lienholder information on the space on the title or on a separate form that the Commission prescribes. The information provided shall include the name and address of the secured party and the date of the security agreement. The owner shall have the title, application and fee to be delivered to the Commission.

(2) The security interest is perfected as of the time of its creation if delivery and payment to the Commission are completed within 20 days of the date of its creation; otherwise, perfection shall be as of the time of its delivery and payment.

(3) Upon receipt of the title, application and the required filing fee, the Commission will endorse on the existing title or on a new title that it then issues, the name and address of all secured parties, and mail or deliver the title to the secured party.

(b) A security interest in a boat is not valid against creditors of the owner or subsequent transferees or secured parties of the boat until perfected as provided by this subchapter.

(c) The issuance of a title, other than in the case of the initial issuance to a purchaser from a dealer, does not invalidate a previously perfected security interest under 13 Pa.C.S. (relating to Uniform Commercial Code), other than a dealer's security interest in inventory.

**§ 93.114. Assignments of security interests.**

(a) A secured party may assign, absolutely or otherwise, all or part of his security interest in the boat to a person other than the owner without affecting the interest of the owner or the validity of the security interest.

(b) The assignee shall deliver to the Commission the title, if available, and an assignment by the secured party named in the title in the form the Commission may prescribe, accompanied by the filing fee required by law. The assignee's security interest is perfected as of the time of its creation if delivery and payment to the Commission are completed within 20 days of the date of its creation; otherwise, perfection is as of the time of its delivery and payment.

**§ 93.115. Satisfaction of security interests.**

(a) Within 20 days of the satisfaction of a security interest in a boat, the secured party shall mail or deliver the title with the release to the owner and notify the Commission of the release of security interest.

(b) A lien shall be deemed satisfied within 10 years of issuance, unless the lienholder otherwise notifies the Commission.

**§ 93.116. Exemptions.**

The provisions of this subchapter relating to procedures for creating, perfecting, assigning and satisfying security interests do not apply to the following:

(1) A lien given by statute or rule of law to a supplier of services or materials for the boat.

(2) A lien given by statute to the United States, the Commonwealth or a political subdivision of this Commonwealth.

(3) A security interest in a boat created by a manufacturer or dealer who holds the boat for sale, but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of the security interest.

(4) A lien arising out of an attachment of a boat.

(5) A security interest claimed on proceeds, if the original security interest did not have to be noted on the title in order to be perfected.

(6) A boat for which a title is not issued under this subchapter.

**§ 93.117. Recordkeeping, documentation and information verification regarding boats.**

(a) The Commission will maintain a record of any title it issues.

(b) Upon written request specifically identifying a particular boat, the Commission will provide the following information about a boat having a certificate of title:

- (1) The name of the owner.
- (2) The name and address of a lienholder.
- (3) The date the certificate of title was issued.
- (4) The make, model and year of the boat.

(c) The Commission will not release the home address of a title holder, except with the consent of the title holder or upon court order or subpoena.

(d) The Commission will not release mailing lists or records of title holders, except to agencies of the Federal, State and local government for official purposes.

(e) Nothing in this section affects the authority of the Commission and other agencies of Federal, State and local government to use information contained in certificates of title for official purposes.

**§ 93.118. Prohibited acts.**

(a) A person may not sell, assign or transfer a boat titled by the Commonwealth without delivering to the purchaser or transferee a title with an assignment on it showing title in the purchaser or transferee.

(b) A person may not purchase or otherwise acquire a boat required to be titled by the Commonwealth without obtaining a title for it in his name.

(c) A person may not obtain or attempt to obtain title to a boat under this subchapter through fraudulent means or provide false or misleading information in connection with an application for a certificate of title.

**§ 93.119. Forms.**

(a) The Commission will provide suitable forms of applications, title, notice of security interests, and other notices and forms necessary to carry out this subchapter.

(b) Except as otherwise provided in this subchapter, all forms and notices required in this subchapter shall be forwarded to the Fish and Boat Commission, Licensing and Registration Section, Post Office 68900, Harrisburg, Pennsylvania 17106-8900.

[Pa.B. Doc. No. 98-14. Filed for public inspection January 2, 1998, 9:00 a.m.]

**FISH AND BOAT COMMISSION**  
**[58 PA. CODE CH. 93]**  
**Boating**

The Fish and Boat Commission (Commission) by this order amends Chapter 93 (relating to boat registration and numbering). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments relate to boat registration.

**A. Effective Date**

These amendments will go into effect upon publication of an order adopting the regulations.

**B. Contact Person**

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

**C. Statutory Authority**

These amendments are published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics).

**D. Purpose and Background**

The amendments are designed to update, modify and improve Commission regulations pertaining to boat registration. The specific purpose of the amendments is described in more detail under the summary of changes.

Prior to acting on final rulemaking, the Commission solicited the advice of the Boating Advisory Board and

received two comments, both favoring the changes. The Commission adopted the regulations as proposed, with the exception of a few minor corrections to the wording of the regulations.

E. *Summary of Changes*

1) *Section 93.1 (relating to registration)*. The Commission has clarified the existing regulation to provide that 1-year registrations will not be issued.

2) *Section 93.2 (relating to permanent and temporary registration)*. In addition to some minor wording changes, the Commission has amended this section to make it clear that a person acquiring a previously registered boat must register it in the new owner's name and to provide that temporary decals will display the expiration date, instead of the issuance date, and that the expiration date will be last day of the second month after issuance. The Commission has amended the regulations to clarify the requirement that boats previously registered in this Commonwealth display temporary and new registration stickers.

3) *Section 93.3 (relating to application for boat registration)*. The Commission has amended this section to make it consistent with the titling regulations. In addition, the Commission has amended the section to make it clear that the holder of a registration who trades or replaces a previously registered boat may transfer the remaining period of registration (but not the number) to the new boat on the payment of the \$5 transfer fee. The Commission also has spelled out the procedures to be used when the last known registrant of a boat with expired registration has not signed the forms to transfer the boat to the applicant for registration.

4) *Section 93.4 (relating to certificate of registration)*. The Commission has amended this section to require that a small validation sticker be applied to the certificate of registration. To validate the registration, the certificate will have to be signed (as presently required) and the small sticker applied. A similar approach is used in Maryland.

5) *Section 93.7 (relating to duplicate certificate of registration)*. The Commission has made a clarifying change in the regulation regarding duplicate registration certificates.

6) *Section 93.10 (relating to change of address)*. The Commission has amended this section to provide that change of address notifications be made in writing.

7) *Section 93.12 (relating to dealers, manufacturers and jobbers)*. The Commission has clarified the definition of "manufacturers." In addition, the Commission has made changes to this section to deal with the registration status of boats traded in to dealers.

8) *Section 93.13 (relating to issuing agents)*. The Commission has added a provision clarifying issuing agents' responsibilities for handling of nonpublic information about persons registering boats.

9) *Section 93.14 (relating to proof of ownership)*. The Commission has clarified the requirements on proof of ownership of boats for initial registration and to require submission of a Form PFBC-734, instead of an affidavit, when other documentation is not available.

10) *Section 93.17 (relating to abandoned boats)*. This amended provision, modeled on a similar provision in the titling regulations, sets forth how an applicant can obtain registration for an abandoned boat.

F. *Paperwork*

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

G. *Fiscal Impact*

The amendments hereby adopted will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 27 Pa.B. 4445 (August 30, 1997). None of the changes attracted public comment.

*Findings*

The Commission finds that:

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

(2) Public comment period was provided and no comments were received.

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

*Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 93, are amended by amending §§ 93.1, 93.2, 93.4, 93.7, 93.10, 93.14 and 93.17 to read as set forth at 27 Pa.B. 4445 (August 30, 1997) and by amending §§ 93.3, 93.12 and 93.13 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 27 Pa.B. 4445 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 27 Pa.B. 4445 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-70 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOATING**

**Subpart C. BOATING**

**CHAPTER 93. BOAT REGISTRATION AND NUMBERING**

**Subchapter A. REGISTRATION OF BOATS**

**§ 93.3. Application for boat registration.**

(a) *New registration*. Application for a boat registration for a new boat or a used boat that was not previously registered in this Commonwealth shall conform with the following:

(1) *Forms.* The owner of a boat desiring registration shall apply on Form REV-336, provided by the Commission. The completed form shall be forwarded to the Fish and Boat Commission, Licensing and Registration Section.

(2) *Required information.* The applicant shall provide the following information on the application (REV-336) for a boat registration:

(i) The name, mailing address, residence address, phone number, county and zip code of the owner. If there is more than one owner, the principal owner shall be listed first.

(ii) The name of the person from whom the boat was purchased.

(iii) The State registration number, if any, currently assigned to the boat.

(iv) The hull material, such as, wood, steel, aluminum, plastic or fiberglass or other.

(v) The full Hull Identification Number (HIN).

(vi) The make, model and year built, if known.

(vii) The length of the boat in feet and inches.

(viii) The type of propulsion, such as, outboard, inboard sterndrive or unpowered.

(ix) The type of fuel, such as, gas, diesel or other.

(x) The capacity plate information.

(xi) The temporary validation decal number, if one was issued.

(xii) The primary usage such as, pleasure, rental/livery, manufacturer/dealer/jobber, commercial passenger, and the like.

(xiii) A certificate of ownership. For initial registration in this Commonwealth this shall be supported by title, bill of sale, a completed PFC-734 "Statement of Purchase" or other positive proof of ownership.

(xiv) The date the applicant completed the form.

(xv) The signature of the owners and certification, under penalty of law, that they are the owners of the boat and that the information contained in the application is true and correct.

(xvi) Complete Sales and Use Tax information.

(xvii) The date of birth of the primary registrant.

(3) *Manufacturers, jobbers or dealers.* Paragraph (2)(iv)—(x) and (xvi) do not apply to manufacturers, jobbers or dealers.

(4) *Boat rental business.* Paragraph (2)(viii) and (ix) does not apply to a boat rental business if a motor is not rented with the boat.

(5) *Incomplete or incorrect applications.* Incomplete or incorrect applications will not be processed until completed and may be returned by the Commission to the applicant or issuing agent.

(b) *Renewals.* Only Forms PFBC-730a and PFBC-733 shall be used to renew registrations of boats which are being kept by the same owner. If the registration has lapsed, the owner shall obtain Form PFBC-730a or PFBC-733 from the Licensing and Registration Section of the Commission to renew the lapsed registration.

(c) *Previously registered boats.* Application for a certificate of registration for a boat previously registered in this Commonwealth shall conform with the following:

(1) Form REV-336 shall be completed by the purchaser and seller and signed by the last registered owner.

(2) A bill of sale, signed by the last registered owner, may be substituted for the required signature on REV-336.

(3) If the registered owner of a boat to be transferred is deceased, the personal representative (executor/administrator) of the decedent shall sign Form REV-336 for the deceased owner. The personal representative shall indicate his capacity with his signature and shall provide documentation—an original death certificate and letters testamentary, letters of administration, original short certificate, court order filed under small estates procedures or Form PFBC-R1—certifying his capacity to act on behalf of the decedent's estate. An original death certificate is not required if Form PFBC-R1 is signed by the attending physician or funeral director. If the boat registration is to be transferred from joint ownership, when one of the joint owners is deceased, the other joint owner shall present the original death certificate to effect the transfer.

(4) When an applicant seeks to register a boat having an expired registration and the last registered owner has not signed the REV-336 or bill of sale because the applicant is not the seller of the boat, the Commission will, prior to processing the application for registration, notify the last registered owner at his last known address that the applicant is seeking to register the boat. If the last registered owner claims an ownership interest in the boat and objects to the transfer of the registration to the applicant, the Commission will defer further processing until the parties resolve the ownership issues through established civil processes. If the last registered owner does not object to the transfer or fails to respond to the notice after 30 days, the Commission may process the request for registration if it is otherwise satisfied that the applicant is the true and lawful owner of the boat and entitled to registration.

(d) *Transfer of registration to new boat.* The holder of a valid Pennsylvania registration certificate on a boat previously owned by the holder may transfer the registration certificate for the remainder of the original boat's registration period to a new boat upon payment of the transfer fee for multiyear registrations as set forth in the code and submission of a complete Form PFBC R-4. If the registration fee for the new boat is greater than the registration fee for the old boat based on the length of the boat, the applicant shall also pay the difference between the registration fees for the new and old boat. The applicant shall submit the certificate of registration for the old boat and certify that the validation stickers have been removed from the old boat at the time of transfer. The old boat's number shall remain with the old boat, and the new boat shall be issued a new number unless it was previously numbered in this Commonwealth.

#### § 93.12. Dealers, manufacturers and jobbers.

(a) Dealer, manufacturer and jobber registrations issued under section 5307 of the code (relating to dealer registration) will be issued only to businesses that prove to the satisfaction of the Commission that they are clearly recognizable as bona fide dealers, manufacturers or jobbers. Special registrations will not be issued to a person or business that fails to prove to the satisfaction of the Commission that it is regularly engaged in the business of being a boat dealer, manufacturer or jobber. It is unlawful for a person to provide false information in applying for dealer, manufacturer or jobber registrations

or to seek to obtain special registration for a boat for the purpose of avoiding applicable Commonwealth taxes.

(b) A dealer is a business regularly engaged in the business of selling new or used boats. An applicant for a dealer's registration shall demonstrate that the business is clearly recognizable as a boat dealership on a regular basis. Applicants shall provide the information requested by the Commission. Proof of bona fide boat dealer status may include the following:

(1) Maintenance of a boat display area capable of regularly displaying at least three boats or a minimum of 1,200 square feet, indoors or outdoors.

(2) Annual sales of substantial numbers of new and used boats. "Substantial sales" normally means sale of five or more boats unless the applicant can show unusual circumstances justifying lesser sales.

(3) Consistent identification of the business as a boat dealer in advertising, signs, telephone book listings, and the like. The dealership shall be clearly identifiable as such by a person who visits or deals with it.

(4) Location of a dealership in areas where zoning permits boat sales and commercial operations.

(5) Regular hours of operation between April 30 and September 30 on at least 5 days per week.

(c) To be eligible for a jobber's registration, an applicant shall demonstrate to the satisfaction of the Commission that the applicant is regularly engaged in the boat jobber business. A jobber is a person or business selling boats only to retailers or institutions.

(d) A manufacturer is a person or business engaged in building, testing or constructing boats or boat parts from raw material or parts. To be eligible for a manufacturer's registration, an applicant shall demonstrate to the satisfaction of the Commission that the applicant is regularly engaged in the business of manufacturing or testing boats or boat parts for sale.

(e) Dealer, jobber and manufacturer registrations shall be issued only in the name under which the applicant is regularly engaged in the business of selling, jobbing or manufacturing boats.

(f) The Commission may recall special registrations for dealers, jobbers and manufacturers upon finding that:

(1) The dealer, jobber or manufacturer is no longer entitled to special registration.

(2) The dealer, manufacturer or jobber has made or permitted to be made an unlawful use of a watercraft, certificate of registration, registration number or validation decal.

(g) Boat dealers, jobbers or manufacturers who take in trade a boat bearing previous Pennsylvania boat registration are required, within 15 days of obtaining the boat, to place the boat under the dealer/jobber/manufacturer's dealer registration. The dealer, jobber or manufacturer shall complete Form 336 and forward it to the Boat Registration Section. No fee is applicable to a transaction when dealers place boats taken in trade under their dealer registrations. It is unlawful for a boat dealer, jobber or manufacturer to operate or allow to be operated a boat received in trade bearing a Pennsylvania boat registration until the boat is placed under their dealer registration under this subsection.

**§ 93.13. Issuing agents.**

(a) The designation of issuing agents for temporary boat registrations shall be limited to the Commission and Commission offices, county treasurers and businesses dealing in boats, boating equipment or sporting goods.

(b) To maintain an agency, the agent shall issue at least 25 temporary boat registrations during the calendar year.

(c) If the Executive Director determines that a sufficient number of agents are not available in an area reasonably to address the needs of the boating public, the Executive Director may appoint additional agents from other interested individuals or reduce the number of temporary boat registrations that existing agents are required to issue during the year.

(d) Issuing agents shall have access to nonpublic information concerning holders of boat registrations and titles, including their home addresses. Issuing agents who are provided nonpublic information about boat registration holders or boat owners in the course of their duties may not release or disclose the nonpublic information except for official purposes.

[Pa.B. Doc. No. 98-15. Filed for public inspection January 2, 1998, 9:00 a.m.]