

# PENNSYLVANIA BULLETIN

Volume 28

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Department of Health's  
Health Facility Licensure

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

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**PENNSYLVANIA**



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## ***Pennsylvania Bulletin***

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

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

## **Adoption, Amendment or Repeal of Regulations**

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

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

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

*Bulletin* before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

## **Citation to the *Pennsylvania Bulletin***

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

## ***Pennsylvania Code***

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

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

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

## **How to Find Documents**

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

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

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### Printing Format

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [ ] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

### Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where "no fiscal impact" is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

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# List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 1998.

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## **Part II**

This part contains the  
Department of Health's  
Health Facility Licensure

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# THE GOVERNOR

## Pennsylvania State Data Center; Pennsylvania Population Projections; Notice of Public Review

The Pennsylvania State Data Center and the Population Research Institute at the Pennsylvania State University consulting with a Statewide advisory committee comprised of State agencies, regional planning agencies and academic representatives have produced preliminary State and county population projections for the Commonwealth of Pennsylvania. These preliminary projections are detailed by age, sex and race (for counties with a 1990 non-white population over 5,000). Presented as follows are county totals from the 1990 Census and projections for 2000 to 2020.

The method of projection is a cohort-component demographic projection model. That is, the base population is survived 5 years in each iteration of the projection cycle, and births are projected by applying fertility rates to survived females of childbearing age to determine the population due to natural increase. The survived population for each group is then adjusted for projected net migration by age-sex-race.

The detailed population projections and working papers relating to assumptions are on file and may be inspected and arrangements made for copying at the Pennsylvania State Data Center as indicated.

Persons wishing to comment on these preliminary population projections are invited to submit a statement to the Pennsylvania State Data Center, Penn State Harrisburg, E310 Olmsted Building, 777 W. Harrisburg Pike, Middletown, PA 17057, (717) 948-6427, within 30 days from the date of this public notice. All comments received within this 30-day period will be considered in the formulation of the final preliminary population projections. All responses should include the name, address and telephone number of the writer and a concise statement to inform the Pennsylvania State Data Center of the exact basis of any comment and the relevant facts upon which it is based.

### Preliminary Pennsylvania Population Projections by County 1990—2020

	<i>Census April 1, 1990</i>	<i>Projection July 1, 2000</i>	<i>Projection July 1, 2010</i>	<i>Projection July 1, 2020</i>	<i>% Change 1990— 2000</i>	<i>% Change 2000— 2010</i>	<i>% Change 2010— 2020</i>
<b>Pennsylvania</b>	<b>11,882,842</b>	<b>12,241,488</b>	<b>12,407,523</b>	<b>12,569,017</b>	<b>3.0</b>	<b>1.4</b>	<b>1.3</b>
Adams	78,274	89,143	97,059	103,475	13.9	8.9	6.6
Allegheny	1,336,449	1,265,184	1,187,725	1,130,284	-5.3	-6.1	-4.8
Armstrong	73,478	68,829	64,518	61,003	-6.3	-6.3	-5.4
Beaver	186,093	177,941	168,643	160,838	-4.4	-5.2	-4.6
Bedford	47,919	50,143	52,327	54,402	4.6	4.4	4.0
Berks	336,523	368,202	391,231	414,621	9.4	6.3	6.0
Blair	130,542	128,565	126,884	125,049	-1.5	-1.3	-1.4
Bradford	60,967	65,160	69,431	74,199	6.9	6.6	6.9
Bucks	541,174	606,021	634,158	645,042	12.0	4.6	1.7
Butler	152,013	163,031	171,066	177,837	7.2	4.9	4.0
Cambria	163,062	151,785	141,545	132,266	-6.9	-6.7	-6.6
Cameron	5,913	5,577	5,387	5,333	-5.7	-3.4	-1.0
Carbon	56,846	62,382	64,306	64,599	9.7	3.1	0.5
Centre	124,812	137,704	147,065	151,010	10.3	6.8	2.7
Chester	376,396	436,761	477,297	510,219	16.0	9.3	6.9
Clarion	41,699	41,997	41,762	40,781	0.7	-0.6	-2.3
Clearfield	78,097	75,965	73,427	70,760	-2.7	-3.3	-3.6
Clinton	37,182	38,170	39,104	39,839	2.7	2.4	1.9
Columbia	63,202	62,546	61,280	59,798	-1.0	-2.0	-2.4
Crawford	86,170	88,366	90,315	93,048	2.5	2.2	3.0

	<i>Census April 1, 1990</i>	<i>Projection July 1, 2000</i>	<i>Projection July 1, 2010</i>	<i>Projection July 1, 2020</i>	<i>% Change 1990— 2000</i>	<i>% Change 2000— 2010</i>	<i>% Change 2010— 2020</i>
Cumberland	195,257	225,774	249,813	269,375	15.6	10.6	7.8
Dauphin	237,813	254,948	264,378	273,483	7.2	3.7	3.4
Delaware	547,651	556,623	554,598	553,900	1.6	-0.4	-0.1
Elk	34,878	33,070	31,207	30,158	-5.2	-5.6	-3.4
Erie	275,572	283,851	288,541	292,252	3.0	1.7	1.3
Fayette	145,351	142,010	137,761	134,499	-2.3	-3.0	-2.4
Forest	4,802	5,051	5,116	5,158	5.2	1.3	0.8
Franklin	121,082	128,644	131,561	133,312	6.2	2.3	1.3
Fulton	13,837	15,092	15,996	16,565	9.1	6.0	3.6
Greene	39,550	41,058	41,724	42,484	3.8	1.6	1.8
Huntingdon	44,164	46,876	48,299	48,989	6.1	3.0	1.4
Indiana	89,994	91,628	93,589	93,834	1.8	2.1	0.3
Jefferson	46,083	43,845	42,061	40,533	-4.9	-4.1	-3.6
Juniata	20,625	20,868	21,006	21,058	1.2	0.7	0.2
Lackawanna	219,097	215,218	211,356	209,111	-1.8	-1.8	-1.1
Lancaster	422,822	486,046	540,823	597,975	15.0	11.3	10.6
Lawrence	96,246	91,028	86,452	83,259	-5.4	-5.0	-3.7
Lebanon	113,744	122,361	126,489	129,742	7.6	3.4	2.6
Lehigh	291,130	311,521	320,249	327,295	7.0	2.8	2.2
Luzerne	328,149	330,718	324,516	317,870	0.8	-1.9	-2.0
Lycoming	118,710	122,915	124,102	124,149	3.5	1.0	0.0
McKean	47,131	47,856	47,411	47,141	1.5	-0.9	-0.6
Mercer	121,003	122,293	123,152	124,609	1.1	0.7	1.2
Mifflin	46,197	46,356	45,680	45,209	0.3	-1.5	-1.0
Monroe	95,709	134,683	172,172	212,009	40.7	27.8	23.1
Montgomery	678,193	699,475	704,146	711,734	3.1	0.7	1.1
Montour	17,735	19,081	19,765	20,555	7.6	3.6	4.0
Northampton	247,105	270,230	286,983	303,586	9.4	6.2	5.8
Northumberland	96,771	96,511	94,338	92,835	-0.3	-2.3	-1.6
Perry	41,172	47,967	52,785	55,784	16.5	10.0	5.7
Philadelphia	1,585,577	1,511,074	1,473,330	1,451,337	-4.7	-2.5	-1.5
Pike	27,966	43,832	60,059	79,170	56.7	37.0	31.8
Potter	16,717	15,899	15,276	14,852	-4.9	-3.9	-2.8
Schuylkill	152,585	152,271	148,367	145,994	-0.2	-2.6	-1.6
Snyder	36,680	41,817	46,208	50,081	14.0	10.5	8.4
Somerset	78,218	76,391	73,208	70,323	-2.3	-4.2	-3.9
Sullivan	6,104	6,766	7,156	7,457	10.8	5.8	4.2
Susquehanna	40,380	44,257	45,967	47,565	9.6	3.9	3.5
Tioga	41,126	42,256	43,060	43,617	2.7	1.9	1.3
Union	36,176	41,010	44,440	47,465	13.4	8.4	6.8
Venango	59,381	55,943	53,140	50,852	-5.8	-5.0	-4.3
Warren	45,049	42,486	40,278	38,306	-5.7	-5.2	-4.9
Washington	204,584	201,414	196,872	191,085	-1.5	-2.3	-2.9
Wayne	39,944	46,392	49,748	51,333	16.1	7.2	3.2
Westmoreland	370,321	368,354	361,495	353,578	-0.5	-1.9	-2.2
Wyoming	28,076	32,210	35,187	37,202	14.7	9.2	5.7
York	339,574	382,047	403,133	415,934	12.5	5.5	3.2

CHARLES ZOGBY,  
*Director*  
*Governor's Policy Office*

[Pa.B. Doc. No. 98-881. Filed for public inspection June 5, 1998, 9:00 a.m.]

**Proclamation of Disaster Emergency**

May 23, 1998

*Whereas*, A multi-vehicle accident caused a very large and disastrous fire in the City of Chester, Delaware County, Pennsylvania, on May 23, 1998, resulting in the death of two persons and structural damage of a highway bridge which is part of Interstate 95 and the partial closing of Interstate 95; and

*Whereas*, this fire has created serious and emergent disruption to commerce and transportation in the Philadelphia area by severing the established trade and travel patterns for transporting all manner of commercial products and by seriously interfering with the ability of residents to travel from their places of residence to their places of business or other sources of livelihood; and

*Whereas*, in addition to the economic aspects of this disaster, there is serious concern for the public safety and well-being of residents located in the immediate vicinity of the damaged bridge; and

*Whereas*, it is necessary to take immediate steps to provide for the reopening of Interstate 95 and to repair and reconstruct the bridge and structures associated with the highway; and

*Whereas*, Sections 120(e) and 125 of Title 23, U. S. Code have made provision for catastrophes befalling states such as have occurred in the instance.

*Therefore*, I, Tom Ridge, Governor of the Commonwealth of Pennsylvania, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (75 Pa.C.S. Section 7101 et seq.) do hereby proclaim an emergency to exist on Interstate 95 in the City of Chester in the location of the fire which occurred today. Immediate repair and reconstruction of Interstate 95 and any related structures and facilities is vital to the security, well-being and health of the citizens of the Commonwealth of Pennsylvania, and the Federal Highway Administrator is hereby requested to concur in the declaration of emergency. In addition, I authorize the Secretary of the Department of Transportation to use all available equipment, resources and personnel of the Department and to dispense with time-consuming bid and contract procedures and formalities, in whatever manner he deems necessary, to insure that the damage to Interstate 95 and related facilities and structures is repaired as expeditiously as possible. I hereby waive any laws or regulations that would restrict the application and use of the Department's equipment, resources and personnel to respond immediately and effectively in repairing, reconstructing or replacing this highway and related facilities, in conducting any detour operations and in undertaking any new construction, as required.

*Given* under my hand and the Seal of the Governor, at the City of Harrisburg, this twenty-third day of May in the year of our Lord one thousand nine hundred and ninety-eight and of the Commonwealth the two hundred and twenty-second.

*Governor*

[Pa.B. Doc. No. 98-882. Filed for public inspection June 5, 1998, 9:00 a.m.]

# THE GENERAL ASSEMBLY

## Recent Actions During the 1998 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 1998 Regular Session.

### 1998 ACTS—ACTS 57 through 62 (numerical)

<i>Act No.</i>	<i>Enact. Date</i>	<i>Bill No.</i>	<i>Prntr's No.</i>	<i>Effective Date</i>	<i>Subject Matter</i>
1998-57	May 15	SB5	PN1924	180 days	Procurement (62 Pa.C.S.)—enactment
1998-58	May 15	SB682	PN1975	Immediately*	Agricultural operations—public nuisances limitation and definition
1998-59	May 15	SB981	PN1615	Immediately	Military and Veterans Code (51 Pa.C.S.)—adjutant general powers and duties and Armory Board construction and repair contracts
1998-60	May 15	HB9	PN2510	Immediately	Agriculture Education Loan Forgiveness Act—expiration date of law deleted
1998-61	May 15	HB2098	PN2747	Immediately	Repeals—obsolete laws relating to constables fees
1998-62	May 15	HB2194	PN2890	Immediately	Port of Philadelphia—pilotage rates and fees for certain services

\* with exceptions

### Effective Dates of Statutes

The effective dates specified above for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified of where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

### Advance Copies of Statutes

Section 1106 of Title 1 of the Pennsylvania Consolidated Statutes provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the Laws of Pennsylvania are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services shall distribute advance sheets of the Laws of Pennsylvania to each law judge of the courts, to every county and public library of this Commonwealth, and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$20.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore, State Records Center Building, 1825 Stanley Drive, Harrisburg, PA 17103, accompanied by a check or money order in the sum of \$20, payable to the "Commonwealth of Pennsylvania."

### Legislative Bills and Documents

Copies of Senate Bills and Documents may be obtained from: Document Room, Senate of Pennsylvania, Room 34A, Main Capitol Building, Harrisburg, PA 17120, (717) 787-6732.

Copies of House Bills and Documents may be obtained from: Document Room, House of Representatives, 35 Main Capitol Building, Harrisburg, PA 17120, (717) 787-5320.

CARL MEASE,  
*Director*  
*Legislative Reference Bureau*

[Pa.B. Doc. No. 98-883. Filed for public inspection June 5, 1998, 9:00 a.m.]



# THE COURTS

## Title 255—LOCAL COURT RULES

### ERIE COUNTY

#### Revision and Restatement of the Rules of Civil Procedure; No. 90524 Court Order 1998

#### Order

*And Now*, this day of April 27, 1998, the following revisions and additions to the Rules designated as the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania, are hereby approved, adopted and promulgated as the Rules of Court. These Rule changes, revisions and deletions shall become effective thirty days after the publication of the same in the *Pennsylvania Bulletin*, and they shall apply to all actions pending at the time.

JOHN A. BOZZA,  
*President Judge*

#### Rule 206.4.

A petition shall proceed upon a rule to show cause, the issuance of which shall be as of course in accordance with the procedure set forth in Pa.R.C.P. No. 206.6. The petitioner shall file the petition with the prothonotary with a copy to the assigned judge, together with a proposed order in conformity with Pa.R.C.P. No. 206.6. The assigned judge shall issue the appropriate order, and the petitioner shall provide notice of entry of the order to all parties as contemplated by Pa.R.C.P. No. 206.6.

#### Rule 302.

\* \* \* \* \*

(e) All motions and petitions requiring decisions and other matters not within the scope of Erie L. R. 212.1 shall be filed with the Prothonotary and, as set forth in Erie L. R. 392(f) and (i), a copy shall be delivered to the assigned judge for the scheduling of the matter for argument.

(f) Motions for judgment on the pleadings, motions for summary judgment, discovery motions and any motion not within the scope of the subsections (g), (i) and (j) below, together with a supporting brief, shall be filed with the Prothonotary and a copy of the motion and brief shall be contemporaneously delivered to the assigned judge. Within thirty (30) days of receipt of the moving party's brief, the non moving party shall file a brief and, if appropriate, a response with the Prothonotary and shall deliver a copy to the assigned judge. Any depositions, answers to interrogatories or affidavits in support of or in opposition to the motion shall be filed with the Prothonotary not later than the due date of the respective party's brief.

(g) Preliminary objections not raising an issue of fact shall be filed with the Prothonotary, and within thirty (30) days of such filing, the moving party shall file a supporting brief. At that time, a copy of the preliminary objections and brief shall be delivered to the assigned judge. Within twenty (20) days of receipt of the moving party's brief, the non moving party shall file a brief and, if appropriate, a response and shall deliver copies of the same to the assigned judge.

(h) If the briefs of either the moving party or responding party are not timely filed within the periods above stated, unless the time shall be extended by the Court or by stipulation, the Court may then, or any time subsequent thereto:

(1) Dismiss the motion, exceptions or other matter where the moving party has failed to comply, or

(2) Grant the requested relief where the responding party has failed to comply and where the requested relief is supported by law, or

(3) Prohibit the noncomplying party from participating in oral argument although all parties will be given notice of oral argument and shall be permitted to be present at oral argument and/or

(4) Impose such other legally appropriate sanction upon a noncomplying party as the Court shall deem proper including the award of reasonable costs and attorney's fees incurred as a result of the noncompliance.

(i) All motions or petitions requiring transcription of a trial record or the production and transmittal of the record from a determination which is subject to judicial review by this Court shall be filed with the Prothonotary by the moving party within the applicable time frame. A copy of said motion and supporting brief shall be delivered to the assigned judge within twenty (20) days of the filing of the transcript or record with the Prothonotary. Any response to said motion shall be filed within twenty (20) days of receipt of the moving party's brief and a copy shall be delivered to the assigned judge.

(j) All other motions or petitions including petitions to open a judgment shall be disposed of pursuant to Pa.R.C.P. 206 et seq., as appropriate.

(k) There shall be oral argument on any motion, petition or preliminary objection unless all parties waive argument by failing to demand such at the time of the filing of the motion, preliminary objection, response and/or brief. Demand for oral argument shall be stated on the caption thereof. Notice of each argument for which a timely demand is made shall be given by the Court to each attorney of record or unrepresented party by United States mail, facsimile transmission, or personal delivery to a business address or courthouse box.

#### Rule 1302.

\* \* \* \* \*

**(b) Mediation is available at the request of all parties. [ In cases where the amount in controversy is not greater than \$20,000.00, the parties shall still be entitled to three arbitrators provided they first submit the matter to a District Justice or mediation as provided in this Rule. ]** The Prothonotary, upon request for appointment of a mediator shall appoint said mediator to conduct the process. If mediation is unsuccessful, the case shall proceed to arbitration **[ where the parties shall be entitled to a three member arbitration panel ]**.

**[ In the event the parties do not wish to go through the mediation process as a pre-condition to the right of arbitration, they shall waive their right to three arbitrators and only one arbitrator shall be appointed. ]**

The following procedure shall guide the mediation process **[unless mediation is waived]** when requested by the parties:

(1) Mediation shall be conducted in cases where the amount in controversy is not greater than **[\$20,000.00]** **\$30,000.00**.

(2) The mediator shall be selected by the Prothonotary's Office from a list supplied by the Court.

(3) The mediator shall designate the time for hearing with written notice to each party or their counsel. Hearings may be held at the mediator's office.

(4) All parties including counsel are required to attend the mediation hearing.

(5) The parties/counsel shall immediately notify the mediator if the matter has been resolved prior to the scheduled hearing.

(6) The mediator shall file a **[pleading]** report with the Court, with copies to the parties or their counsel, stating mediation was successful or unsuccessful. If unsuccessful, the case shall proceed to arbitration.

[Pa.B. Doc. No. 98-884. Filed for public inspection June 5, 1998, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that Raymond S. Wittig, who resides outside the Commonwealth of Pennsylvania, having been suspended from the practice of law in the

District of Columbia for a period of three years, the Supreme Court of Pennsylvania issued an Order dated May 21, 1998 suspending Raymond S. Wittig from the practice of law in this Commonwealth for a period of three (3) years, retroactive to January 22, 1997. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney has never practiced in Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Executive Director & Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 98-885. Filed for public inspection June 5, 1998, 9:00 a.m.]

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### Notice of Transfer of Attorney to Inactive Status

Notice is hereby given that James Wilson Bush of St. Paul, MN has been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated April 14, 1998, pursuant to Rule 219, Pa.R.D.E. The Order became effective May 14, 1998.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

ELAINE M. BIXLER  
*Executive Director & Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 98-886. Filed for public inspection June 5, 1998, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 22—EDUCATION

### DEPARTMENT OF EDUCATION

#### [22 PA. CODE CH. 101]

#### Private Driver Training Schools

The Secretary of Education (Secretary) amends Chapter 101 (relating to private driver training schools) to read as set forth in Annex A. These amendments are promulgated under authority of the Private Driver Training Schools Act (act) (24 P. S. §§ 2831—2931).

#### *Scope and Purpose*

Chapter 101 includes the requirement that a private driver training school teacher contracted for driver safety instruction in public schools meet the requirements in section 1519(b) of the Public School Code of 1949 (24 P. S. § 15-1519(b)). A 5 year limit is placed on the time that a private driver training school must maintain student records. Also, driving schools will now be permitted to advertise that they are licensed by the Department of Education (Department) for the classroom or for behind-the-wheel instruction, to offer discounts and other inducements for the purpose of soliciting prospective students to enroll, and to use private academic or trade school buildings as classroom sites and public school buildings as temporary classroom locations.

Furthermore, professional staff of private licensed driver training schools may now be employed by more than one driving school, and the holder of a valid Pennsylvania Teaching Certificate, with certification in Driver and Safety Education, is now exempted from the theoretical and practical examinations to be licensed as a driving school teacher. Finally, other changes brought about by the revisions of Chapter 101 include the requirement that a driving school teacher must submit a Criminal History Background Check and a Pennsylvania Child Abuse History Clearance prior to employment, and the requirement that the owner or director of a driving school have at least 2 years of successful driver education teaching experience.

#### *Comments*

The Department received comments from one driving school owner in response to publication of the proposed rulemaking as well as from the Independent Regulatory Review Commission (IRRC) and the House Education Committee. The Secretary considered all public and Legislative comments received and made some revisions to Chapter 101.

IRRC recommended that the amendments include a reference to section 1519 of the Public School Code of 1949 (24 P. S. § 15-1519) for situations when school districts contract with private driver training schools to instruct their students. This was raised due to a concern that the Department would not be able to require private driver training school teachers to have the proper amount of college credits to be able to instruct in public schools within this Commonwealth. However, under the Public School Code of 1949, "[n]o person shall teach in a public school in the Commonwealth unless he has met the certification requirements as established by the State Board of Education," which certification requirements include the requisite number of college credits. See 24 P. S. § 12-1252. Therefore, the Department decided not to

add specific wording that would require private driver training school instructors to have 3-to-12 credits in Driver and Safety Education to teach the classroom phase of driver education in a private driver training school setting. Instead, § 101.102(f) (relating to laws applicable to driver training schools) has been added to list section 15-1519(b) of the Public School Code of 1949 as one of the laws that are applicable to private driver training schools.

Secondly, IRRC questioned whether the Department was authorized to license the agents of private driver training schools. The Department has reviewed this issue and concluded that the Department does have authority to license agents under section 5 of the act (24 P. S. § 2835). Thus, no change was made in this regard.

Another concern raised by IRRC and the House Education Committee was the 10-year recordkeeping requirement for student records. As a result, § 101.104 (relating to records) has been changed to require schools keep student records for only 5 years. IRRC had suggested that a two-tier system be established whereby records of students who are 16 years old are retained for a 7-year period and the records of older students are maintained for shorter periods of time. However, the Department believes that this system would be too complex and would defeat the purpose of an efficient and timely method of student record disposal. The House Education Committee, on the other hand, had recommended that the time period for maintenance of records be reduced from 10 to 7 years. After considering these recommendations, the Department has concluded that the simplicity of the universal 5 year retention requirement best addresses both IRRC's and the House Education Committee's concerns that private driver training schools are overburdened by lengthy recordkeeping requirements.

Since the amendments provide for the ownership of a driver training school by individuals 18 years of age or older, the House Education Committee was concerned with possible legal limitations on business ownership by individuals under 21 years of age. After looking into this matter, the Department concluded that the act of June 16, 1972 (P. L. 434, No. 130) which amended the act of January 18, 1952 (P. L. (1951) 2128, No. 605) allows for the ownership of a driver training school by an individual 18 years of age or older. Also, section 4(8)(a) of the act (24 P. S. § 2834(8)(a)) reflects this amendment and states that the age requirement for ownership of a school is 18 years of age. Therefore, there is no need to list this provision specifically in § 101.102 since it already makes reference to section (8)(a) of the act.

In addition, the House Education Committee recommended that the word "supervisor" be used in place of the word "director" throughout the amendments due to the connotation of a "supervisor" being an immediate superior, whereas the term "director" could be confused with the owner of the school. To remain consistent with the statute, however, the Department decided not to change the terminology.

The House Education Committee commented that the level of medical payment insurance coverage in the proposed rulemaking was insufficient. The Department consulted with the Private Driver Training School Advisory Committee which suggested that the insurance coverage be kept at the statutory minimum amount of \$5,000. Following this suggestion, no change was made.

Finally, the following other changes were made in the amendments as a result of the comments received:

- § 101.101 (relating to definitions) was changed to include the statutory definition of "school," as suggested by IRRC.
- § 101.132 (relating to prohibited locations) was changed to include the language of section 4(1)(a)(i) and (ii) of the act, as suggested by IRRC.
- § 101.114 (relating to fees) was changed to include the entire schedule for license and renewal fees from section 606-A of The Administrative Code of 1929 (71 P. S. § 240.6A) and section 10 of the act (24 P. S. § 2840), as suggested by IRRC.
- § 101.153 (relating to locations) was changed to include the Department's address, as suggested by IRRC.
- § 101.181 (relating to outlines to Department) was changed to include the language of section 4(4)(b) and (c), as suggested by IRRC.
- The amendment were changed so that references of "teachers," "owners," "directors," and the like, were changed from the plural to the singular, as suggested by the House Education Committee.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 26, 1997, the Department submitted a copy of notice of proposed rulemaking, published at 27 Pa.B. 1648 to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Secretary also provided IRRC and the Committees with copies of the comments received and with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

In preparing these final-form regulations, the Secretary considered the comments received from the House Education Committee on May 14, 1997, from IRRC on June 5, 1997, and from the public during the official comment period. These final-form regulations were approved by the House and Senate Committees on March 9, 1998 and by IRRC on March 12, 1998, in accordance with section 5.1(c) of the Regulatory Review Act.

*Cost and Paperwork Estimates*

It is estimated that the cost for background checks and clearances for 150 licensed driving schools will total \$3,000 per year. There will be no new legal, accounting or consulting procedures for local governments; therefore, there are no additional costs for local governments.

The Department and the Department of Transportation will experience a savings because teacher examinations will no longer be administered to teachers who are certified in driver and safety education. However, the additional time involved in processing background checks and clearances will offset the time saved in testing. As a result, there will be no additional costs or savings to the Commonwealth associated with the implementation of the amendments.

*Effective Date*

These amendments will become effective upon final publication in the *Pennsylvania Bulletin*.

*Sunset Date*

These amendments will be reviewed every 3 years from the final publication date.

*Contact Person*

The official responsible for information on the Department's process of promulgating these amendments is Robert E. Roush, Jr., School Safety Education Advisor, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-6595.

*Findings*

The Secretary finds that:

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

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

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

*Order*

The Secretary orders that:

(a) The regulations of the Department, 22 Pa. Code Chapter 101, are amended by deleting §§ 101.1—101.3, 101.11—101.18, 101.21—101.25, 101.31—101.36, 101.41—101.46, 101.51—101.55, 101.61—101.64, 101.71—101.76, 101.81 and 101.91—101.93; and by adding §§ 101.101—101.105, 101.111—101.117, 101.131—101.137, 101.141—101.147, 101.151—101.157, 101.161—101.164, 101.171—101.176 and 101.181 to read as set forth in Annex A.

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

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

EUGENE W. HICKOK,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 1601 (March 28, 1998).)*

**Fiscal Note:** Fiscal Note 6-257 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 22. EDUCATION**

**PART VI. BUREAU OF PRIVATE SCHOOLS AND VETERANS EDUCATION**

**CHAPTER 101. PRIVATE DRIVER TRAINING SCHOOLS**

**PRELIMINARY PROVISIONS**

- Sec. 101.101. Definitions.
- 101.102. Laws applicable to private driver training schools.
- 101.103. Correspondence.
- 101.104. Records.
- 101.105. Advertising.

**APPLICATION FOR SCHOOL LICENSING**

- 101.111. Application forms.
- 101.112. Additional application materials.
- 101.113. Certification under the Fictitious Names Act.

- 101.114. Fees.
- 101.115. Changes in applications or school information.
- 101.116. Lost or destroyed license.
- 101.117. School license renewal applications.

#### SCHOOL PLANT

- 101.131. School licenses.
- 101.132. Prohibited locations.
- 101.133. Fire regulations.
- 101.134. Space allotment of indoor instruction areas.
- 101.135. Classroom equipment.
- 101.136. Lighting and seating arrangements.
- 101.137. Lavatory facilities.

#### PROFESSIONAL STAFF

- 101.141. Professional staff applications.
- 101.142. Additional staff application materials.
- 101.143. Driving records.
- 101.144. Owner and directors; experience.
- 101.145. Foreign agents.
- 101.146. Incomplete applications.
- 101.147. Professional staff renewal applications.

#### APPLICANT EXAMINATIONS

- 101.151. Prerequisite evidence.
- 101.152. Opportunities to pass.
- 101.153. Locations.
- 101.154. Identification cards.
- 101.155. Lost or destroyed identification cards.
- 101.156. Loss of operating privilege.
- 101.157. Time limits.

#### REEMPLOYMENT

- 101.161. Reemployment within 12 months.
- 101.162. Reemployment after 12 months.
- 101.163. Notice of employment.
- 101.164. Termination of employment.

#### VEHICLES AND INSURANCE

- 101.171. Insurance coverage for vehicles.
- 101.172. Vehicle identification card.
- 101.173. Age of vehicles.
- 101.174. Changes or additions to the fleet.
- 101.175. Vehicle identification card renewal applications.
- 101.176. Lost or destroyed vehicle identification cards.

#### PROGRAM OF INSTRUCTION

- 101.181. Outlines to Department.

#### PRELIMINARY PROVISIONS

##### § 101.101. Definitions.

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

*Act*—The act of January 18, 1952 (P. L. (1951) 2128, No. 605) (24 P. S. §§ 2831—2931), known as the Private Driver Education or Training School Act.

*Agent*—A person, whether employed by a private driver education or training school or operating in his own behalf, or whether acting in behalf of a school located within or outside of this Commonwealth, who personally solicits an individual within this Commonwealth to enroll in a school.

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

*Director*—The supervisor or director of a private driver education or training school.

*Identification card*—A card issued by the Department to a private driver education or training school for a teacher employed by the school.

*Location*—Either the business address for a specific licensed private driver education or training school or the address of the site of the school's theoretical or classroom driver training area.

*Owner*—A person or business entity which owns a private driver education or training school but does not necessarily oversee the daily operation thereof.

*Professional staff member*—An agent, teacher or director of a private driver education or training school.

*School*—A school maintained, classes conducted or instruction offered by an individual, association, partnership or corporation, for a consideration, profit or tuition, the purpose of which is to educate individuals, either practically or theoretically, or both, to operate or drive a motor vehicle.

*Teacher*—A person who provides classroom instruction or practical behind-the-wheel instruction.

*Vehicle*—A car or truck weighing up to 11,000 pounds.

##### § 101.102. Laws applicable to private driver training schools.

In addition to the act, the following laws apply to private driver training schools:

(1) *Fictitious Names Act*. 54 Pa.C.S. §§ 301—322 which states that an entity which either alone or in combination with another entity conducts business in this Commonwealth under or through a fictitious name shall register the fictitious name by filing an application for the registration of a fictitious name in the Department of State.

(2) *Untrue, false and misleading advertising*. 18 Pa.C.S. § 4107 which provides that it is unlawful for a person to make, in the course of business, a false statement in an advertisement for the purpose of promoting the purchase or sale of property or services.

(3) *Restraint of unlicensed activities*. The act of April 18, 1949 (P. L. 482, No. 106) (71 P. S. § 1036.1) which authorizes the Department to prohibit and restrain an unlicensed person, association, partnership or corporation from engaging in any activity for which a license is required or issued.

(4) *Cancellation of licenses*. Section 811 of The Administrative Code of 1929 (71 P. S. § 279.2) which authorizes the cancellation of a certificate, license, permit or registration obtained through fraud or misrepresentation.

(5) *Fire and panic regulations*. The fire and panic regulations drafted in accordance with the duties imposed on the Department of Labor and Industry by the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235.1) and pertain to Class I buildings as well as private schools located in places other than Philadelphia, Pittsburgh and Scranton.

(6) *The Public School Code of 1949, section 1519(b)*. A private driver training school teacher contracted for driver safety instruction in public schools shall meet the requirements in section 1519(b) of the Public School Code of 1949 (24 P. S. § 15-1519(b)).

##### § 101.103. Correspondence.

(a) Inquiries and correspondences shall be directed to Private Driver Training Schools, Department of Education, 333 Market Street, Harrisburg, Pennsylvania 17126-0333.

(b) The Department will assist persons in meeting the requirements which underlie school and agent licensure and relicensure.

##### § 101.104. Records.

Every school shall maintain adequate records of students, and shall maintain a permanent cumulative record for 5 years after the student completes driver training. The cumulative record shall include the number of clock hours of instruction received by each student, and shall

contain information on attendance, test scores, personal characteristics, health and other information deemed pertinent by the school. The records shall be current and available for inspection by the representatives of the Department during regular school hours.

**§ 101.105. Advertising.**

Licensed schools may advertise as "licensed for classroom by the Pennsylvania Department of Education" or "licensed for behind-the-wheel instruction by the Pennsylvania Department of Education."

**APPLICATION FOR SCHOOL LICENSING**

**§ 101.111. Application forms.**

- (a) An application for a license to conduct a school shall be made on forms furnished by the Department.
- (b) An applicant for a school license shall certify, through completion of the self-authenticating document provided by the Department, its compliance with the act.
- (c) An application shall be accompanied by a sworn affidavit certifying the truth of the statements made in the application. An application may not be submitted to the Department by facsimile because of the required notary public certification.
- (d) The Department will provide its approval of applications either by mail or facsimile.

**§ 101.112. Additional application materials.**

At the time of application, the following materials shall also be submitted:

- (1) For each individual proprietor of a school, each member of the partnership, association or company that owns a school, and each officer or director of a corporation that owns a school, who is directly connected with the conduct and operation of the education program:
  - (i) A statement certifying that the applicant is of good moral character and at least 18 years of age.
  - (ii) A list of names, addresses and telephone numbers of three persons serving as character references, none of whom are related to the applicant or are in any way connected to the school.
- (2) A statement certifying that persons employed by or directly connected with the conduct and operation of schools are not addicted to the use of alcoholic liquors, morphine, cocaine or other drugs that have a similar effect.

**§ 101.113. Certification under the Fictitious Names Act.**

- (a) An applicant for a license who is incorporated or subject to 54 Pa.C.S. Chapter 3 (relating to Fictitious Names Act) shall attach to the application a statement or certification from the Department of State verifying that the applicant has complied with the applicable statute.
- (b) The application shall be filed under the fictitious name of the school with the individual, partnership or corporate name added thereto.

**§ 101.114. Fees.**

- (a) The amount of all license fees and renewal fees are as follows:
  - (1) *School fees:*
    - (i) Initial. . . . . \$500
    - (ii) Renewal. . . . . \$300
  - (2) *Instructor fees:*

- (i) Initial. . . . . \$30
- (ii) Renewal. . . . . \$20
- (3) *Agent fees:*
  - (i) Initial. . . . . \$5
  - (ii) Renewal. . . . . \$5
- (4) *Vehicle identification registration:*
  - (i) Initial. . . . . \$10
  - (ii) Renewal/transfer. . . . . \$5
- (b) All license fees and renewal fees shall be paid by money order or check, payable to the "Pennsylvania Department of Revenue" and shall be attached to the application for a license or license renewal.

**§ 101.115. Changes in applications or school information.**

- (a) If changes occur in the facts set forth in an original application for licensure or an application for relicensure, subsequent or supplemental information shall be filed with the Department, and be approved prior to the date the changes go into effect.
- (b) The Department will accept changes in applications in person, by mail or by facsimile.
- (c) A school wishing to change its location or the location of a practice private training area shall notify the Department in writing or by facsimile prior to the actual change.
- (d) A change in a school's location or a change of address of the residence of an owner, director, teacher or agent shall be filed with the Department by mail or by facsimile prior to the actual change.

**§ 101.116. Lost or destroyed license.**

If a license is lost, mutilated or destroyed, the Department will replace the license without charge. To obtain a replacement, the school shall surrender the mutilated license or attest by affidavit that the license was lost or destroyed.

**§ 101.117. School license renewal applications.**

- (a) A license renewal shall be made on an application furnished by the Department.
- (b) An application for license renewal shall be filed with the Department on or before April 30 of each year. Applications filed after this date may result in the issuance of licenses or teacher identification cards after June 30.
- (c) An incomplete application for license renewal may be returned to the school. License renewal may be delayed or denied when the full information requested is not supplied.

**SCHOOL PLANT**

**§ 101.131. School licenses.**

An applicant for a school license shall certify, through completion of the self-authenticating document issued by the Department, its compliance with section 4(1)(a)(i) and (ii) of the act (24 P. S. § 2834(1)(a)(i) and (ii)).

**§ 101.132. Prohibited locations.**

- (a) Only one school may be licensed for a particular location.
- (b) A public school building will not be approved as the primary classroom site for a private driver training school.

(c) The situs of a school, branch school and practice driver training area shall be a distance of at least 1,500 feet from an official examination point used by the Department of Transportation for examining motor vehicle operators, which distance shall be measured along the public streets by the nearest route from the school, branch school or private driver training area to the official examination point.

(d) The outdoor area used during the first 3 hours of practical instruction by persons who hold a learner's permit shall be one which is reasonably free of pedestrian and vehicular traffic, and may not include primary traffic arteries, main highway routes or other thoroughfares that carry large amounts of traffic.

**§ 101.133. Fire regulations.**

(a) Indoor instruction areas will be approved by the Department of Labor and Industry in accordance with the fire and panic regulations cited in § 101.102(e) (relating to laws applicable to private driver training schools). Each applicant for a school license and each applicant for a change of location of the indoor instructional area shall submit a statement or certificate from the proper authority certifying that the indoor instructional area has been approved.

(b) The indoor instructional areas of schools located in Philadelphia, Pittsburgh and Scranton, if occupied by five or more students at the same time, shall be approved from the standpoint of public safety by the respective fire marshal or other officers having jurisdiction.

**§ 101.134. Space allotment of indoor instruction areas.**

The indoor area used for the theoretical instruction of a group of five or more students shall provide a minimum of 15 square feet of floor area per student and 120 cubic feet of air space per pupil.

**§ 101.135. Classroom equipment.**

An applicant or licensee offering indoor group theoretical instruction to five or more students shall provide in each classroom the following items:

(1) A desk or an equivalent work station and a chair for each student in attendance.

(2) A writing board containing an area of at least 24 square feet.

**§ 101.136. Lighting and seating arrangements.**

A school or licensee may not use any seating plan or arrangement in the indoor instructional areas which faces the students toward a source of natural or artificial illumination.

**§ 101.137. Lavatory facilities.**

A school offering theoretical instruction to a group of five or more students shall provide lavatory and toilet facilities which meet State or local requirements.

**PROFESSIONAL STAFF**

**§ 101.141. Professional staff applications.**

(a) Professional staff members who are initially employed by a school, or who were employed by one school and obtain employment with another school after June 6, 1998, shall submit an application for approval to the Department upon the form provided by the Department.

(b) The application of a teacher and a director shall also serve as the application for the written theoretical and practical examinations.

(c) A person who holds a valid Pennsylvania Teaching Certificate, with certification in Driver and Safety Education, will be exempted from the theoretical and practical examinations. An exempted person shall apply for and obtain a valid teacher identification card from the Department prior to being employed by a private driver training school. A person desiring to teach driver education for a fee shall apply for a private driver training school license and teacher identification card.

**§ 101.142. Additional staff application materials.**

A professional staff member shall submit the following to the Department with the administrative and instructional staff application:

(1) A statement certifying that the applicant is of good moral character, a citizen of the United States and at least 18 years of age.

(2) A list of names, addresses and telephone numbers of three persons serving as character references, none of whom are related to the applicant or are in any way connected to the school in which the applicant is seeking employment.

(3) Criminal history background checks which comply with section 111 of the Public School Code of 1949 (24 P. S. §§ 1—111), known as Act 34 of 1985 and §§ 8.1—8.4 (relating to criminal history background checks).

(4) Official clearance statements which comply with 23 Pa.C.S. §§ 6354—6358 (relating to background checks for employment in schools).

**§ 101.143. Driving records.**

The following information shall also be submitted at the time of the staff application:

(1) *Driving experience.* By one of the following methods, a teacher and director shall produce evidence that he has driven a minimum of 15,000 miles as a licensed operator, under all kinds of weather conditions in both urban and rural areas:

(i) Submitting statements from previous or current employers, in affidavit form, that attest to the specified requirements.

(ii) Making certification on his own behalf, if never employed to operate a motor vehicle, attesting to the specified requirements.

(iii) Combining statements from previous or current employers, in affidavit form, with a certification made on his own behalf, all of which together attest to the specified requirements.

(2) *Accidents.* A teacher and director shall provide a 3-year driving abstract obtained from the Bureau of Driver Licensing, Department of Transportation. The abstract shall establish that he has not had more than one reportable accident resulting in a suspension or revocation of his motor vehicle operator's license during the 3-year period preceding the date of application for approval for instructional service. A "reportable accident" means any accident involving the injury or death of a person, or damage to a vehicle to the extent that it cannot be driven in a customary manner under its own power without further damage or hazard to the vehicle, to other traffic elements or to the roadway, and therefore requires towing.

**§ 101.144. Owners and directors; experience.**

A private driver training school owner or director shall submit documentary evidence of a minimum of 2 years of successful driver education teaching experience in a pri-

vate driver training school, private high school or public high school. The documentary evidence shall set forth the names of the schools or classes and the place, dates and length of instructional service, including a statement from the official head of the school or class certifying that the teaching experience was successful and attesting to the place, dates and length of the service.

**§ 101.145. Foreign agents.**

An individual who acts as an agent representing a school located outside this Commonwealth shall, in addition to the professional staff application, provide evidence clearly demonstrating that the owner of his school has fulfilled all statutory requirements of the Commonwealth relating to the registration of fictitious names, foreign corporations and business activities carried on in this Commonwealth by persons having commercial headquarters elsewhere.

**§ 101.146. Incomplete applications.**

Prior to the day on which an applicant is scheduled for examination, the applicant shall file with the Department a completed school staff application together with the required list of three references and the 3 year driving abstract. Failure to do so will preclude an applicant from taking the examination.

**§ 101.147. Professional staff renewal applications.**

(a) A professional staff license renewal shall be made on an application furnished by the Department

(b) An application for a professional staff license renewal shall be filed with the Department on or before April 30 of each year. Applications filed after this date may result in the issuance of licenses or identification cards after June 30.

(c) An incomplete application for license renewal may be returned to the school. License renewal may be delayed or denied when the full information requested is not supplied.

**APPLICANT EXAMINATIONS**

**§ 101.151. Prerequisite evidence.**

To qualify as a teacher in a private driver training school, an applicant shall successfully complete written and practical examinations. Prior to testing, an applicant shall obtain a valid Pennsylvania Class A, B or C driver's license, file a completed school staff application with the Department and submit written evidence that the applicant has done one of the following:

- (1) Secured employment in an established, licensed private driver training school.
- (2) Filed an application for a license to conduct a private driver training school.
- (3) Is a prospective employe of a school not yet licensed but whose application for an original license has been properly filed with the Department.

**§ 101.152. Opportunities to pass.**

For each original staff application filed with the Department, the applicant will be granted three opportunities to pass the written examination and three opportunities to pass the practical examination after passing the written examination.

**§ 101.153. Locations.**

Examinations shall be given at various stipulated locations throughout this Commonwealth. Times and places may be ascertained by contacting the Department at

Private Driver Training Schools; Department of Education; 333 Market Street; Harrisburg, Pennsylvania 17126-0333.

**§ 101.154. Identification cards.**

(a) After an applicant has passed the written and practical examinations, the Department will issue a valid identification card to the school for each teacher. An Instructor's Examination Permit bearing the stamp of the Department of Transportation may serve as a temporary identification card for 45 days from the date that the driving examination was passed.

(b) A teacher shall hold a valid identification card made out in the name of the school employing the teacher and issued to that school by the Department.

(c) A teacher or director who gives practical driver training shall carry an identification card on his person.

(d) Upon terminating a teacher's employment, the school shall file a termination of employment form and return the teacher identification card to the Department.

(e) To teach classroom or behind-the-wheel instruction for more than one private driver training school, a teacher shall obtain separate cards from the Department by completing the proper applications.

**§ 101.155. Lost or destroyed identification cards.**

If an identification card is lost, mutilated or destroyed, the Department will replace the card without charge. To receive replacements for lost, stolen or destroyed identification cards, the teacher shall surrender the mutilated identification card or attest by affidavit that it was lost or destroyed.

**§ 101.156. Loss of operating privilege.**

A teacher who loses his privilege to operate a motor vehicle in this Commonwealth shall immediately surrender his identification card to the Department. A teacher shall also give written notification to his employer and to the Department of the violations, all pertinent facts and the dates upon which the behind-the-wheel instructional activities ceased.

**§ 101.157. Time limits.**

Applications for teacher identification cards and vehicle identification cards filed after April 30 will be valid until June 30 of the following year.

**REEMPLOYMENT**

**§ 101.161. Reemployment within 12 months.**

A teacher changing employment to another school within 12 months of employment shall complete an instructional staff application and submit a criminal history background check to secure a valid identification card.

**§ 101.162. Reemployment after 12 months.**

When a continuous period of 12 months or more has elapsed without employment as a driver training teacher, the applicant shall comply with the requirements stated in §§ 101.141—101.143 (relating to professional staff; additional staff application materials; and driving records).

**§ 101.163. Notice of employment.**

A school, upon the employment of a new teacher or the reinstatement of a former employe, shall immediately notify the Department of the dates that the employes were employed.



**§ 101.164. Termination of employment.**

A school shall immediately notify the Department upon terminating the employment of a teacher, stating the starting date of employment and the termination date. This information shall be supplied on the forms provided by the Department.

**VEHICLES AND INSURANCE****§ 101.171. Insurance coverage for vehicles.**

(a) Each school shall provide and maintain insurance on all vehicles used in practical driver training and file a current, valid certificate of insurance for each vehicle with the Department.

(b) The minimum required insurance coverage on each vehicle is: \$50,000—\$100,000, public liability; \$5,000, property damage; and \$5,000, medical payment.

(c) A certificate of insurance shall set forth the year, make and serial number of the vehicle covered, the expiration date of the coverage, and the amounts of medical payment, property damage and public liability coverage carried under that certificate.

(d) A licensee shall immediately notify the Department when any of the required insurance is cancelled.

**§ 101.172. Vehicle identification card.**

Each vehicle used for practical driver training shall carry an identification card issued by the Department. It shall be affixed to the right sun visor or in a manner that makes the identification visible to the vehicle's occupants.

**§ 101.173. Age of vehicles.**

(a) A vehicle used for practical driver training may not be more than 5 years old or have more than 50,000 miles, whichever occurs later.

(b) The date appearing on the face of the original certificate of title shall be used as the date the vehicle was placed in service. Five years from that date will determine the permissible period of operation.

**§ 101.174. Changes or additions to the fleet.**

A school shall immediately report changes or additions to the teaching fleet to the Department prior to the vehicle being placed in service. Each vehicle added to the school fleet shall be registered with the Department by filing a current, valid insurance certificate containing the required information and an affidavit setting forth the year, make, serial number and registration plate of the new vehicle and the fact that the vehicles are equipped with:

- (1) An operable extra brake pedal, and in the case of vehicles equipped with standard transmission an operable extra clutch pedal.
- (2) A defroster and heater in working order.
- (3) A rear-view mirror placed on the inside of the car in the vicinity of the cowl and two outside rear-view mirrors, one on each side of the vehicle.
- (4) Cushions for the proper seating of the student.

**§ 101.175. Vehicle identification card renewal applications.**

(a) A vehicle identification card renewal shall be made on an application furnished by the Department.

(b) An application for a vehicle identification card renewal shall be filed with the Department on or before

April 30 of each year. Applications filed after this date may result in the issuance of vehicle identification cards after June 30.

(c) An incomplete application for vehicle identification card renewal may be returned to the school. Vehicle identification card renewal may be delayed or denied when the full information requested is not supplied.

**§ 101.176. Lost or destroyed vehicle identification cards.**

If a vehicle identification card is lost, mutilated or destroyed, the Department will replace the card without charge. To receive replacements for lost, stolen or destroyed vehicle identification cards, the licensee shall surrender the mutilated identification card or attest by affidavit that it was lost or destroyed.

**PROGRAM OF INSTRUCTION****§ 101.181. Outlines to Department.**

(a) In addition to the requirements in §§ 101.111—101.115, an applicant for an original license shall provide the Department with an outline for the theoretical and practical instruction in driver education.

(b) Theoretical instruction in driver education shall include subject matter relating to rules and regulations of the road, safe driving practices, pedestrian safety, care and mechanics of motor vehicles, driver responsibility, theory of driving, types of automobile insurance and the use of automobile safety devices.

(c) Practical instruction in driver education shall include the demonstration of and actual instruction in starting, stopping, shifting, turning, backing, parking and steering in a training vehicle.

[Pa.B. Doc. No. 98-887. Filed for public inspection June 5, 1998, 9:00 a.m.]

## Title 49—PROFESSIONAL AND VOCATIONAL AFFAIRS

### STATE BOARD OF OPTOMETRY

#### [49 PA. CODE CH. 23]

#### Therapeutic Drugs

The State Board of Optometry (Board) amends Chapter 23 (relating to State Board of Optometry) by: (1) adding a new definition in § 23.1 (relating to definitions); (2) amending § 23.82 (relating to continuing education hour requirements); and (3) adding §§ 23.201 and 23.202 (relating to qualifications for certification; and application procedure) to read as set forth in Annex A.

*A. Effective Date*

The amendments will be effective upon publication in the *Pennsylvania Bulletin*.

*B. Statutory Authority*

The amendments are authorized under sections 3(b)(14) and 4.1 of the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.3(b)(14) and 244.4a).

*C. Background and Purpose*

The amendments implement the act of October 30, 1996 (P. L. 719, No. 129) (Act 130). Act 130 amends the act (63 P. S. §§ 244.1—244.12), to require the certification

and regulation of the prescription and administration by optometrists of pharmaceutical agents for therapeutic purposes (therapeutic drugs). The Board is required to certify eligible optometrists in two categories. The first requires an applicant to have: (1) graduated from an accredited school of optometry where a condition for graduation is or was the successful completion of a minimum of 100 hours in therapeutic drugs; and (2) passed a licensure examination to practice optometry which included therapeutic drugs. The second requires an applicant to have: (1) completed a Board-approved course of a minimum of 100 hours in therapeutic drugs; and (2) passed an examination in therapeutic drugs prepared and administered by a qualified and approved professional testing organization.

New provisions also require optometrists to obtain 30 hours of approved continuing optometric education every 2 years beginning with license renewals in 1998. For optometrists certified in therapeutic drugs, 6 of those hours must concern the prescription and administration of these drugs. Prior law required a minimum of 24 hours of continuing education every 2 years.

Finally, Act 130 empowers the Secretary of Health to approve the drugs which a Board-certified optometrist may use. The approved therapeutic drug list will be established in separate rulemaking by the Department of Health.

#### *D. Summary of Comments on Proposed Rulemaking and Board Responses*

Notice of proposed rulemaking was published at 27 Pa. B. 4466 (August 30, 1997). The Board received comments from 97 public commentators, including the Pennsylvania Optometric Association, the Pennsylvania College of Optometry, individual optometrists, Legislators, a physician and an attorney. The House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC) also provided comments and recommendations which the Board has considered in preparing final rulemaking.

The vast majority of commentators expressed concern that the proposed amendments treated optometrists who graduated from optometric school prior to April of 1993 differently from those who graduated after April of 1993. In particular, the commentators objected to the requirement that those who graduated prior to April of 1993 take a 100-hour course in therapeutic drugs offered subsequent to October 30, 1996, as well as passing the Treatment and Management of Ocular Disease (TMOD) examination subsequent to completing the course. Both the House Committee and IRRC suggested that the Legislative intent of mandating current training and testing would be achieved by requiring optometrists who graduated prior to April of 1993 to have completed a 100-hour course in therapeutic drugs and passed the TMOD after April of 1993. Additionally, IRRC recommended that a date certain, that is, April 1, 1993, be used as the transition date.

In response to these comments and recommendations, the Board has in final rulemaking applied the April 1, 1993, transition date to all applicants for certification. Accordingly, optometrists who graduated on or after April 1, 1993, will be certified to prescribe and administer therapeutic drugs upon proof of graduation from an accredited school of optometry where a condition for graduation is or was the successful completion of a minimum of 100-hours in therapeutic drugs and successful passage of a licensure examination to practice optom-

etry which included therapeutic drugs. Optometrists who graduated prior to April 1, 1993, will be required to complete a Board-approved course of 100 hours in therapeutic drugs offered on or after April 1, 1993, and pass the TMOD on or after April 1, 1993. The foregoing would apply to applicants for licensure by examination or by reciprocity.

In this final rulemaking, the Board has also removed the language requiring that the TMOD be passed after completion of the 100-hour course. In this way, the Board has resolved the concerns expressed by certain commentators that they would be required to retake the TMOD examination which they had already passed on or after April 1, 1993.

A number of commentators suggested that optometrists in neighboring states who were authorized by those states' licensure laws and who have been prescribing and administering therapeutic drugs in those states should be certified in this Commonwealth without having to meet additional requirements. IRRC also suggested that section 6(c) of the act (63 P. S. § 244.6(c)) provides the necessary statutory authority for the Board to issue therapeutic drug certification based on the licensure and experience of optometrists in other states.

In reviewing this suggestion, the Board carefully examined Act 130's amendments to its licensure law. The Board observed that section 6(c) of the act authorizes the Board to issue a license without examination to an applicant who has practiced in another state for a minimum of 4 years preceding application. The section does not, the Board observed, reference therapeutic drug certification, which the act identifies as a separate certification obtainable by licensed optometrists who have fulfilled the further requirements of section 4.1 of the act.

The Board further noted that IRRC's suggestion appears to run counter to the Legislative intent expressed by the House Committee. Likewise, permitting out-of-State optometrists to avoid the certification requirements of section 4.1 of the act imposed on in-State practitioners may implicate constitutional equal protection concerns.

Several commentators also suggested that the Board review individual credentials on a case-by-case basis to determine competency in the prescription and administration of therapeutic drugs. The act does not, however, provide exceptions to the certification requirements of section 4.1 of the act, nor does it authorize the Board to do case-by-case credentialing.

Additional commentators suggested that optometrist educators who have been teaching approved courses in therapeutic drugs at accredited optometric institutions be exempt from the certification requirements. The act does not, however, as the Board has noted, exempt educators or others who may otherwise be qualified to prescribe and administer therapeutic drugs.

Several commentators also suggested that prohibitions in Act 130 regarding the treatment of glaucoma and the use of steroids fail to recognize the education of optometrists in these areas. The Board cannot address these concerns because they relate solely to the Legislation and not to the Board's implementing regulations.

The Board does find merit in numerous commentators' contention that additional training and examination requirements are unnecessary for three groups of pre-1993 graduates. Those groups involve optometrists who have: (1) been prescribing therapeutic drugs in surrounding

states where drug authorization is broader; (2) successfully completed more than 100 hours in therapeutic drugs both in school and through continuing education since the 1980's; or (3) passed the TMOD which has remained basically unchanged since its first administration in 1985. The final rulemaking, however, is designed to track the Legislative intent expressed by a unanimous House Committee.

#### *E. Compliance with Executive Order 1996-1*

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendments the Board solicited input from the regulated community as well as the Secretary of Health, the Pennsylvania Optometric Association, the Pennsylvania College of Optometry and the Pennsylvania Academy of Ophthalmology. The Board reviewed and incorporated many of the comments of the various individuals and professional organizations in the amendments.

#### *F. Fiscal Impact and Paperwork Requirements*

The amendments will have no fiscal impact on the Commonwealth or its political subdivisions. Applicants for certification in therapeutic drugs will be required to pay a small fee to cover the costs of certification. Similarly, the applicants may be required to pay additional costs for specified therapeutic drug training and examinations. The public may benefit from reduced costs of health care in that optometrists will be permitted to treat minor eye diseases and conditions without multiple examinations by various health care providers.

#### *G. Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### *H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 30, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 4466 to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were approved by the House Committee on April 22, 1998, and deemed approved by the Senate Committee on April 26, 1998. IRRC met on May 7, 1998, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

#### *I. Public Information*

Interested persons may obtain information regarding the amendments by writing to Deborah L. Smith, Board Administrator, State Board of Optometry, P. O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

#### *J. 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 the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

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

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 4466.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this Preamble.

#### *K. Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 23, are amended by amending §§ 23.1 and 23.82 to read as set forth at 27 Pa.B. 4466 and by adding §§ 23.201 and 23.202 to read as set forth in Annex A.

(b) The Board shall submit this order, 27 Pa.B. 4466 and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order, 27 Pa.B. 4466 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

JAY B. TANNER, O.D.,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)*

**Fiscal Note:** Fiscal Note 16A-525 remains valid for the final adoption of the subject regulations.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 23. STATE BOARD OF OPTOMETRY CERTIFICATION IN PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES**

#### **§ 23.201. Qualifications for certification.**

(a) *Category 1.* To obtain certification to prescribe and administer pharmaceutical agents for therapeutic purposes, an applicant licensed by examination to practice optometry in this Commonwealth or another jurisdiction on or after April 1, 1993, shall meet the following requirements:

(1) Graduation from an accredited optometric educational institution in the United States or Canada where a condition for graduation at the time the applicant graduated was the successful completion of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(2) A passing score on one of the following examinations taken on or after April 1, 1993:

(i) The TMOD portion of Part II (Clinical Sciences) of the National Board Examination.

(ii) The TMOD.

(iii) An examination for licensure in another jurisdiction which required passing scores on the prescription and administration of pharmaceutical agents for therapeutic purposes.

(b) *Category 2.* To obtain certification to prescribe and administer pharmaceutical agents for therapeutic purposes, an applicant licensed by examination to practice optometry in this Commonwealth or another jurisdiction before April 1, 1993, shall meet the following requirements:

(1) Successful completion of a course offered on or after April 1, 1993, consisting of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes offered by an accredited optometric educational institution in the United States or Canada.

(2) A passing score as determined by the NBEO on the TMOD taken on or after April 1, 1993.

**§ 23.202. Application procedure.**

(a) An applicant for certification under Category 1 shall submit the following to the Board:

(1) A completed application obtained from the Board together with the certification fee required by § 23.91 (relating to fees).

(2) Certification on a form provided by the Board from an accredited optometric educational institution in the United States or Canada that the applicant graduated from the institution and that a condition for the applicant's graduation was the successful completion of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(3) Certification from the NBEO that the applicant obtained a passing score on the TMOD portion of Part II (Clinical Sciences) of the National Board Examination taken on or after April 1, 1993, or a passing score on the TMOD taken on or after April 1, 1993, or certification on a form provided by the Board from the appropriate licensing authority of another jurisdiction that the applicant obtained a passing score on a licensing examination in that jurisdiction taken on or after April 1, 1993, which required a passing score on the prescription and administration of pharmaceutical agents for therapeutic purposes at the time the applicant passed the examination.

(b) An applicant for certification under Category 2 shall submit the following to the Board:

(1) A completed application obtained from the Board together with the certification fee required by § 23.91 (relating to fees).

(2) Certification on a form provided by the Board from an accredited optometric educational institution in the United States or Canada that the applicant has successfully completed its course offered on or after April 1, 1993, consisting of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(3) Certification from the NBEO that the applicant has obtained a passing score on the TMOD taken on or after April 1, 1993.

(c) On and after June 6, 1998, applicants for licensure as optometrists by examination who meet the qualifications, including a passing score on the TMOD portion of

Part II (Clinical Sciences) of the National Board Examination and graduation from an accredited optometric educational institution in the United States or Canada shall be certified to prescribe and administer pharmaceutical agents for therapeutic purposes without further application.

[Pa.B. Doc. No. 98-888. Filed for public inspection June 5, 1998, 9:00 a.m.]

**STATE BOARD OF DENTISTRY  
[49 PA. CODE CH. 33]**

**Fees**

The State Board of Dentistry (Board) amends § 33.3 (relating to fees) to read as set forth at 27 Pa.B. 1577 (March 29, 1997).

*A. Effective Date*

The amendment will be effective upon publication in the *Pennsylvania Bulletin*.

*B. Statutory Authority*

Sections 4(a) and 11.7(b) of the Dental Law (act) (63 P. S. §§ 123(a) and 130h(b)) require the Board to fix the fees for licenses, certificates and temporary permits by regulation.

*C. Background and Purpose*

This amendment establishes application, temporary permit, verification and renewal fees for expanded function dental assistants (EFDAs) and increases the application fees for dentists and dental hygienists. The fees offset the identifiable costs incurred by the Board to process the documents and defray a portion of the Board's overhead.

The act of December 27, 1994 (P. L. 1361, No. 160) amended the act throughout to require the certification and regulation of EFDAs. In accordance with section 11.7 of the act, the Board issued temporary permits to qualified EFDA applicants. To date, approximately 1,700 temporary permits have been issued but no fee has been charged.

In processing the temporary permit applications, the clerical staff spends approximately 15 minutes on each application. The applications are reviewed for completeness, the education and experience are verified and the applicants are requested to provide missing information. If the application is acceptable, it is processed through the computer and the applicant is notified. Applications deemed deficient on their face are forwarded to a Committee of the Board for review. If necessary, additional information is requested and reviewed, and the applicant is notified of the final action. The \$15 fee is a combination of these processing costs and the administrative overhead.

The biennial renewal, criteria approval, verification and certification fees for EFDAs match those charged to dentists and dental hygienists. These fees are based upon the average biennial regulatory expense per certificate holder added to the average biennial regulatory expense per certificate holder.

The application fee for dentists and dental hygienists has also been increased from \$15 to \$20 to cover processing costs.

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

Notice of proposed rulemaking was published at 27 Pa.B. 1577. The Board received no public comment.

*E. Compliance with Executive Order 1996-1*

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendment, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals.

*F. Fiscal Impact and Paperwork Requirements*

The amendment requires dentists, dental hygienists and EFDAs who wish to practice in this Commonwealth to pay for the Board's expenses in processing their applications for licenses, certificates or temporary permits. There is no fiscal impact on the private sector, the general public or the political subdivisions.

The only additional paperwork requirement will be on the Board which will have to alter its application forms to reflect the new fees.

*G. Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

*H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 29, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 1577 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

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

This final-form regulation was approved by the House Committee on April 22, 1998, and deemed approved by the Senate Committee on May 3, 1998. IRRC met on May 7, 1998, and approved the amendment in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a).

*I. Public Information*

Interested persons may obtain information regarding the amendment by writing to June L. Barner, Board Administrator, State Board of Dentistry, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649.

*J. 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 the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 1577.

(4) This amendment is necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

*K. Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 33, are amended by amending § 33.3 to read as set forth at 27 Pa.B. 1577.

(b) The Board shall submit this order and 27 Pa.B. 1577 to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and 27 Pa.B. 1577 and deposit them with the Legislative Reference Bureau as required by law.

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

EDWIN F. WEAVER, III, D.D.S.,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)*

**Fiscal Note:** Fiscal Note 16A-463 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 98-889. Filed for public inspection June 5, 1998, 9:00 a.m.]

# PROPOSED RULEMAKING

## LIQUOR CONTROL BOARD

[40 PA. CODE CH. 11]

### Wine in Kegs; Sale by Limited Winery Licensees

The Liquor Control Board (Board) under the authority of section 207(i) of the Pennsylvania Liquor Code (47 P. S. § 2-207(i)), proposes to amend §§ 11.104 and 11.111 (relating to wine in kegs; and sale by limited winery licensees).

#### Purpose

In accordance with Executive Order 1996-1, the Board has reviewed its regulations and determined that the regulations prohibit the sale of wine in containers larger than 5 liters in this Commonwealth. These proposed amendments would permit the sale of sparkling grape wines, as defined in 27 CFR 4.21(b)(1)–(3) (relating to the standards of identity), in glass containers larger than 5 liters by the Board's liquor stores and by limited wineries for sale within this Commonwealth.

#### Summary of Amendments

*Section 11.104.* This proposal permits the Board to sell sparkling grape wines as defined in 27 CFR 4.21(b)(1)–(3), in glass containers larger than 5 liters.

*Section 11.111.* This proposal permits limited winery licensees to sell sparkling grape wines as defined in 27 CFR 4.21(b)(1)–(3), in glass containers larger than 5 liters. Size restrictions do not apply to wines sold for delivery outside of this Commonwealth.

#### Affected Parties

These proposed amendments would affect liquor stores, wine consumers, retail liquor licensees and limited winery licensees in this Commonwealth to the extent that they choose to sell, purchase or manufacture, as the case might be, sparkling wines in glass containers larger than 5 liters.

#### Paperwork Requirements

The proposed amendments will not increase paperwork requirements for the Board, retail liquor licensees or limited wineries.

#### Fiscal Impact

These proposed amendments would have no fiscal impact on the regulated community, the State or local governments.

#### Effective Date/Sunset Date

The proposed amendments will become effective upon their publication in final form in the *Pennsylvania Bulletin*. No sunset date has been assigned.

#### Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed amendments in the *Pennsylvania Bulletin*. Comments should be addressed to Jerry Danyluk, Regulatory Coordinator, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 11, 1998, the Board submitted a copy of the proposed rulemaking to the Independent

Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control and the Senate Committee on Law and Justice. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Board, the Governor and the General Assembly prior to final publication of the amendments.

JOHN E. JONES, III,  
*Chairperson*

**Fiscal Note:** 54-54. No fiscal impact; (8) recommends adoption.

### Annex A

### TITLE 40. LIQUOR

### CHAPTER 11. PURCHASES AND SALES

### Subchapter C. WINES

### DISPENSING OF WINE

#### § 11.104. Wine in kegs.

Wine in kegs of any capacity will not be purchased or sold by the Board. [A] No wine will [not] be sold through the Board in containers exceeding a capacity of 5 liters **except that the Board may sell sparkling grape wine (as defined in 27 CFR 4.21(b)(1)–(3) (relating to the standards of identity)) in glass containers larger than 5 liters.**

### LIMITED WINERIES

#### § 11.111. Sale by limited winery licensees.

(a) A limited winery licensee, licensed under § 3.62 (relating to creation), may sell wines produced on the licensed premises in accordance with the Liquor Code and this part, under the conditions of this subsection.

\* \* \* \* \*

(3) Wine sold and destined to points within this Commonwealth shall be in sealed original containers of not less than 3/16 liters nor more than 5 liters **except that sparkling grape wine (as defined in 27 CFR 4.21(b)(1)–(3) (relating to the standards of identity)) may be sold in glass containers larger than 5 liters.** These container size restrictions do not apply to wines sold for delivery outside this Commonwealth.

\* \* \* \* \*

[Pa.B. Doc. No. 98-890. Filed for public inspection June 5, 1998, 9:00 a.m.]

# NOTICES

## DEPARTMENT OF AGRICULTURE

### Fertilizer Nutrient Values

The Secretary of Agriculture, under the authority of § 8 of the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law (3 P. S. §§ 68.1—68.9) hereby establishes the commercial values per pound of nitrogen, phosphoric acid and potash.

The values are established as follows:

nitrogen	\$0.22 per pound
phosphoric acid	\$0.26 per pound
potash	\$0.14 per pound

### Further Information

Further information is available by contacting John W. Breitsman, Program Specialist, Division of Agronomic Services, Bureau of Plant Industry, Department of Agriculture, 2301 N. Cameron Street, Harrisburg, PA 17110-9408, telephone number: (717) 787-4843.

### Effective Date

These commercial values are effective commencing July 1, 1998, and shall remain effective until further notice.

SAMUEL E. HAYES, Jr.,  
*Secretary*

[Pa.B. Doc. No. 98-891. Filed for public inspection June 5, 1998, 9:00 a.m.]

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending May 26, 1998.

### BANKING INSTITUTIONS

#### Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
5-19-98	Citizens Bancshares, Inc., Salineville, Ohio, to acquire up to 10.13% of the common stock of NSD Bankcorp, Inc., Pittsburgh, Pennsylvania	Salineville, OH	Filed

#### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-20-98	Jefferson Bank, Haverford, and Regent National Bank, Philadelphia Surviving Institution— Jefferson Bank, Haverford	Haverford	Filed

#### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-19-98	Fulton Bank Lancaster Lancaster County	Cumberland Business Park Upper Allen Township Cumberland County	Approved
5-19-98	Community Bank & Trust Company Forest City Susquehanna County	Corner of Main and Lackawanna Aves. Dickson City Lackawanna County	Approved
5-19-98	First Capitol Bank York York County	5 West High Street Red Lion York County	Filed
5-20-98	S & T Bank Indiana Indiana County	162 S. Second Avenue Clarion Clarion County	Approved

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-26-98	Summit Bank Bethlehem Northampton County	Genuardi's Family Market Roslyn Shopping Center Easton and Susquehanna Rds. Roslyn Montgomery County	Filed
5-26-98	Summit Bank Bethlehem Northampton County	Pathmark Supermarket 421 South 69th Blvd. Upper Darby Delaware County	Filed

**Branch Relocations**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-21-98	C & G Savings Bank Altoona Blair County	<i>To:</i> Shoemaker Street Nanty Glo Cambria County  <i>From:</i> 920 Chestnut Street Nanty Glo Cambria County	Approved

**SAVINGS ASSOCIATIONS**

No activity.

**CREDIT UNIONS**

No activity.

RICHARD C. RISHEL,  
*Secretary*

[Pa.B. Doc. No. 98-892. Filed for public inspection June 5, 1998, 9:00 a.m.]

## DEPARTMENT OF EDUCATION

### Application of Temple University of the Commonwealth System of Higher Education and Pennsylvania College of Podiatric Medicine for Approval of an Affiliation Agreement; Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6504 (relating to Fundamental Changes), the Department of Education (Department) will consider the application of Temple University of the Commonwealth System of Higher Education and Pennsylvania College of Podiatric Medicine (PCPM) for a Certificate of Authority approving an affiliation Agreement between Temple University and the Pennsylvania College of Podiatric Medicine. PCPM will become part of Temple as a separate school within the University known as the Temple University School of Podiatric Medicine. PCPM will amend its articles of incorporation and bylaws to convert to a membership corporation with Temple as its sole member.

In accordance with 24 Pa.C.S. § 6503(e), the Department will act upon the application without hearing, unless within 30 days after the publication of this notice

in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code § 35.23 and 35.24 (relating to protest) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

All petitions to intervene, protest and request for hearing shall be filed with Dr. Warren D. Evans, Chartering/Governance/Accreditation Specialist, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-6576 on or before 4 p.m. on the due date prescribed by this notice. Persons wishing to review the application should phone or write to the aforementioned office to schedule a time for an in-office review. Duplicate copies of the application are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate, should contact Suzanne B. Markowicz at (717) 787-6576 to discuss how the Department of Education may best accommodate their needs.

EUGENE W. HICKOK,  
*Secretary*

[Pa.B. Doc. No. 98-893. Filed for public inspection June 5, 1998, 9:00 a.m.]



# DEPARTMENT OF ENVIRONMENTAL PROTECTION

## Applications, Actions and Special Notices

### APPLICATIONS

#### APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

#### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

##### (Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of preliminary review and application of lawful standards and regulations the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated, the EPA, Region III, Regional Administrator has waived his right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the Field Office indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Field Office of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Managers will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the Field Office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

#### Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.

*Southeast Regional Office: Regional Manager, Water Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.*

**PA 0057452.** Sewage, **Kenneth Beer**, P. O. Box 477, Perkasio, PA 18944. This application is for issuance of an NPDES permit to discharge treated sewage from small flow sewage treatment plant in Hilltown Township, **Bucks County**. This is a new discharge to Dry Swale to Pleasant Spring Creek.

The receiving stream is classified for the following uses: trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 500 gpd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10	20
Suspended Solids	20	40
Total Nitrogen	10	20
Total Residual Chlorine	monitor/report	monitor/report
Fecal Coliform	200 colonies/100 ml as a geometric average	
pH	within limits of 6.0—9.0 standard units at all times	

The EPA waiver is in effect.

**PA 0057495.** Industrial waste, **Sun Company, Inc.**, 10 Penn Center, 20th Floor, 1801 Market Street, Philadelphia, PA 19103. This application is for issuance of an NPDES permit to discharge treated groundwater from a groundwater remediation system in Uwchlan Township, **Chester County**. This is a new discharge to Pine Creek.

The receiving stream is classified for the following uses: high quality trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 6 gpm are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Benzene	0.001	0.002	0.0025
Total BETX	0.1	0.2	0.25
Ethylbenzene	monitor/report	monitor/report	
Toluene	monitor/report	monitor/report	
Total Xylene	monitor/report	monitor/report	

*Other Conditions:*

The EPA waiver is in effect.

**PA 0011681.** Industrial waste, **PECO Electric Company**, West Conshohocken Gas Plant, 300 Front Street, Conshohocken, PA 19428. This application is for renewal of an NPDES permit to discharge untreated cooling water from the PECO West Conshohocken Gas Plant in West Conshohocken Borough, **Montgomery County**. This is existing discharge to Gulph Creek (outfall 001) and the Schuylkill River (outfall 002).

The receiving streams are classified for the following uses: warm water fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 0.025 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Temperature			110°F
pH	within limits of 6.0—9.0 standard units at all times		

The proposed effluent limits for Outfall 002, based on an average flow of 0.036 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Temperature			110°F
pH	within limits of 6.0—9.0 standard units at all times		
Total Residual Oxidant		0.2	0.5

The EPA waiver is in effect.

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*Northeast Region: Environmental Protection Manager, Water Management, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2553.*

**PA 0021580.** Sewerage, **Borough of Catasauqua**, 118 Bridge Street, Catasauqua, PA 18032-2598. This proposed action is for renewal of an NPDES permit to discharge treated sewage into the Lehigh River in Catasauqua Borough, **Lehigh County**.

The receiving stream is classified for the following uses: trout stocking fishery, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply (PWS) considered during the evaluation is City of Allentown located on the Lehigh River.

The proposed effluent limits for Outfall 001 based on a design flow of 2.25 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	8	12	16
(11-1 to 4-30)	20	30	40
Dissolved Oxygen	a minimum of 5.0 mg/l at all times		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0—9.0 standard units at all times		
Total Residual Chlorine			
1st month—24th month	monitor and report		
25th month—expiration	0.50		1.20

The EPA waiver is not in effect.

**PA 0028576.** Sewerage, **Clarks Summit—South Abington Joint Sewer Authority**, P. O. Box 199, Chinchilla, PA 18410. This proposed action is for renewal of an NPDES permit to discharge treated sewage into Leggetts Creek in South Abington Township, **Lackawanna County**.

The receiving stream is classified for the following uses: cold water fishery, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing proposed downstream potable water supply (PWS) considered during the evaluation is Danville Water Supply on Susquehanna River at Latitude 40°36'12".

The proposed effluent limits for Outfall 001 based on a design flow of 2.5 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>7 Day Average</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	2		4
(11-1 to 4-30)	6		12
Dissolved Oxygen	a minimum of 6 mg/l at all times		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0—9.0 standard units at all times		
Total Residual Chlorine			
(1st month—36th month)	monitor and report		
(37th month—expiration date)	.17		.39

The EPA waiver is not in effect.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**PA 0004278.** Industrial waste, SIC: 3295, **Lafarge Corporation**, 6715 Tippecanoe Road, Canfield, OH 44406. This application is for renewal of an NPDES permit to discharge treated process water from the Duquesne Plant in West Mifflin Borough, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Thompson, classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) is PA-American Water Company, located at 410 Cooke Lane, Pittsburgh, PA 15234, 10.1 miles below the discharge point.

*Outfall 001:* existing discharge, design flow of 0.2376 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow (mgd)	monitor and report				
Suspended Solids			35	70	
Aluminum			0.51		1.28
Iron			1.55		3.88
Manganese			1.03		2.58
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

**PA 0027570.** Sewage, **Western Westmoreland Municipal Authority**, 12441 Route 993, North Huntingdon, PA 15642-0366. This application is for renewal of an NPDES permit to discharge treated sewage from Brush Creek STP in North Huntingdon Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Brush Creek, which are classified as a trout stock fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the PA American Water Company.

*Outfall 001:* existing discharge, design flow of 4.4 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub> Day	25	37.5		50
Suspended Solids	30	45		60
Gamma BHC (Lindane)	monitor and report			
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.0			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is not in effect.

**PA 0090948, Amendment No. 1.** Industrial waste, SIC: 4953, **CBF, Inc.**, R. D. 1, Box 266, McClellandtown, PA 15458. This application is for amendment of an NPDES permit to discharge treated leachate and stormwater from a municipal landfill in German Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, tributary of Dunlap Creek, classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) is the Brownsville Water Company, located on the Monongahela River, 19 miles below the discharge point.

*Outfall 001:* existing discharge, design flow of 0.014 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Total Suspended Solids	2.9	5.8	25	50	85

(The changes in the TSS limits are the only changes in this permit amendment.)

The EPA waiver is in effect.

**PA 0217867.** Sewage, **DeSimone Personal Care Home, Inc.**, 6383 Tuscarawas Road, Midland, PA 15059. This application is for issuance of an NPDES permit to discharge treated sewage from DeSimone Personal Care Home STP in Ohioville Borough, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as drainage swale tributary to unnamed tributary of Upper Dry Run, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the City of East Liverpool, Ohio on the Ohio River.

*Outfall 001:* new discharge, design flow of 0.01 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub> Day	10			20
Suspended Solids	10			20
Ammonia Nitrogen				
(5-1 to 10-31)	2.0			4.0
(11-1 to 4-30)	5.0			10.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.10			0.24
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA 0217875.** Sewage, **Donald Thomas**, 377 Maple Springs Road, Hollsopple, PA 15935-7522. This application is for issuance of an NPDES permit to discharge treated sewage from the Donald Thomas Single Residence Sewage Treatment Plant in Jenner Township, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as an unnamed tributary of South Fork Bens Creek, which are classified as a high quality, cold water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Saltsburg Municipal Waterworks on the Conemaugh River.

*Outfall 001:* new discharge, design flow of 0.0004 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub> Day	10			20
Suspended Solids	10			20
Ammonia Nitrogen				
(5-1 to 10-31)	3			6
(11-1 to 4-30)	9			18
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	monitor and report			

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Dissolved Oxygen	not less than 3.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

*Northwest Regional Office: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**PA 0222518.** Sewage, **Alex and Linda Lazar**, 10368 Dutch Road, Waterford, PA 16441. This application is for issuance of a sewage NPDES permit to discharge treated sewage from the Lazar Subdivision sewage treatment plant to an unnamed tributary of the East Branch of LeBoeuf Creek in Greene Township, **Erie County**. This is a new discharge.

The receiving water is classified for trout stocking, aquatic life, water supply and recreation. There are no potable water supplies affected by this discharge.

The proposed effluent limits for Outfall 001, based on average design flow of 0.0012 mgd, are:

<i>Parameter</i>	<i>Effluent Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	10	20
Total Suspended Solids	20	40
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
Total Residual Chlorine	1.5	3.5
Fecal Coliform	200/100 ml as a geometric average	
pH	6.0—9.0 standard units at all times	

The EPA waiver is in effect.

**PA 0220965.** Sewage. **Jeffrey P. Leri**, 21160 Phelps Road, Meadville, PA 16335. This application is for a renewal of an NPDES Permit, to discharge treated sewage to Unnamed Tributary to Tamarack Lake in West Mead Township, **Crawford County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Franklin General Authority and French Creek located in Franklin, approximately 24 miles below point of discharge.

The proposed discharge limits, based on a design flow of 0.000500 mgd, are:

*Outfall No. 001*

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
	CBOD <sub>5</sub>	10
TSS	20	40
Fecal Coliform	200/100 ml as a geometric average	
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

**DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER**

**Applications under the Pennsylvania Clean Streams Law**

**(Part II Permits)**

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection.

Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department of Environmental Protection (Department) at the address indicated above each permit application or plan. Each written protest should contain the name, address and telephone number of the protester, identification of the

plan or application to which the protest is addressed and a concise statement or protest in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protest or protests. Each protester will be notified in writing of the time and place of any scheduled hearing or conference concerning the plan or action or application to which the protest relates. To insure consideration by the Department prior to final action on permit application and proposed plans, initial protests and additions or amendments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

**Industrial waste and sewerage applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).**

*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**A. 4598403.** Sewerage. **S.I.D.E. Corporation**, P. O. Box 1050, Blakeslee, PA 18610. Application to construct and operate Sewers and Appurtenances and Pump Station to serve New Venture Park Phase II, located in Tobyhanna Township, **Monroe County**. Application received in the Regional Office May 4, 1998.

*Southcentral Regional Office: Water Management Program Manager, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110-8200, (717) 705-4707.*

**A. 0198403.** Sewerage, submitted by **Gettysburg Municipal Authority**, 601 East Middle Street, P. O. Box 3307, Gettysburg, PA 17325-3307 in Cumberland Township, **Adams County** to construct and operate the National Park Service Sewer System was received in the Southcentral Region on May 20, 1998.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**A. 0498401.** Sewerage, **Big Beaver Municipal Authority**, 114 Forest Dr., Darlington, PA 16115. Application for the construction and operation of Sewer Extension and Pump Stations located in the Townships of Big Beaver and Homewood Borough, **Beaver County** to serve the Big Beaver Municipal Authority Sanitary Sewer System.

The Pennsylvania Infrastructure Investment Authority (Pennvest) which administers Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

**A. 3098403.** Sewerage, **Mt. Morris Water & Sewage Authority**, P. O. Box 340, Mt. Morris, PA 15349. Application for the construction and operation of Sewer Extension and Pumping Station located in the Township of Perry, **Greene County** to serve the Meadow Ridge Business Park.

*Northwest Regional Office, Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**WQM Permit No. 1698403.** Sewerage. **Schmader Lumbar Company Incorporated**, P. O. Box 24, Lucinda, PA 16235. This project is for the construction of a small flow sewage treatment facility to serve a new residence and an existing residence and a small office building in Knox Township, **Clarion County**.

**WQM Permit No. 2098405.** Sewerage, **Dwight R. and Yolanda E. Williams**, SRSTP, 17027 Townhouse Rd., Saegertown, PA 16433. This project is for the construction of a Single Residence Sewage Treatment Plant in Hayfield Township, **Crawford County**.

**INDIVIDUAL PERMITS**

**(PAS)**

The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of pre-

liminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit and special conditions. These proposed determinations are tentative. Limitations are provided in the permit as erosion and sedimentation control measures and facilities which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the Regional Office or County Conservation District Office indicated as the responsible office, within 30 days from the date of this public notice. A copy of the written comments should be sent to the County Conservation District Office. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Regional Office of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 30-day comment period, the Water Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealable to the Environmental Hearing Board.

The application and related documents, including the erosion and sedimentation control plan for the construction activity, are on file and may be inspected at the County Conservation District Office or the Department Regional Office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

*Southcentral Regional Office, Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 657-4707.*

*Cumberland County Conservation District, District Manager, Cumberland County CD, 43 Brookwood Avenue, Suite 4, Carlisle, PA 17013, (717) 240-7812.*

**NPDES Permit PAS-10-H022. Stormwater. Dickinson Estates**, 139 West High Street, Carlisle, PA 17013 has applied to discharge stormwater from a construction activity located in South Middleton Township, **Cumberland County**, to Yellow Breeches Creek.

*Lancaster County Conservation District, District Manager, Lancaster County CD, 1383 Arcadia Rd., Room 6, Lancaster, PA 17601, (717) 299-5361.*

**NPDES Permit PAS-10-O-073. Stormwater. Solanco Little League** has applied to discharge stormwater from a construction activity located in Colerain Township, **Lancaster County**, to West Branch of the Octoraro Creek.

*Northeast Regional Office, Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

Monroe County Conservation District, District Manager, 8050 Running Valley Road, Stroudsburg, PA 18360, (717) 629-3060.

**NPDES Permit PAS10S068.** Stormwater. **Water Gap Watch**, LTS Development, Inc., P. O. Box 160, Shawneeton-Delaware, PA 18356, has applied to discharge stormwater from a construction activity located in Smithfield Township, **Monroe County**, to unnamed tributaries to Marshalls Creek and Brodhead Creek.

## SAFE DRINKING WATER

### Applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Southcentral Regional Office, Sanitarian Regional Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4708.

**A. 3898501.** Public water supply. **Cloister Spring Water Company**, Millcreek Township, **Lebanon County**. *Responsible Official:* David L. Nagle, General Manager, 1600 Cloister Drive, Lancaster, PA 17601. *Type of Facility:* The construction of an additional 10,000 gallon raw water storage tank and an increase in water withdrawal from 90,000 gpd to 300,000 gpd. *Consulting Engineer:* Gregory L. Shaffer, C. E. Consultants, Inc., 400 Penn Center Boulevard, Suite 600, Pittsburgh, PA 15235.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### Under Act 2, 1995

#### Preamble 1

### Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 302 and 303 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate identifies a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background or Statewide health standard to remediate a site must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department must provide a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site, and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department and shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

For further information concerning the content of a Notice of Intent to Remediate, contact the Department of Environmental Protection Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate

regional office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

The Department of Environmental Protection has received the following Notices of Intent to Remediate:

Southcentral Regional Office, Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.

**Penn Fuel Gas, Inc.**, Shippensburg Borough, **Cumberland County**, 55 South Third Street, Oxford, PA 19363, has submitted a Notice of Intent to Remediate site soils, groundwater and surface water contaminated with lead, heavy metals, BTEX, PAHs, cyanide and phenolic compounds. The applicant proposes to remediate the site to meet a combination of the Statewide Health and site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *News Chronicle* on May 21, 1998.

Northwest Regional Office: *Craig Lobins, Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648.*

**Advanced Cast Products, Inc.**, P. O. Box 417, Mill Street, Meadville, PA 16335 has submitted a Notice of Intent to Remediate Soil. The site has been found to be contaminated with Heavy Metals. The applicant proposes to remediate the site to meet the Statewide Health Standard. The Notice of Intent to Remediate was reported to be published in the *Meadville Tribune* on April 24, 1998.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### Under Act 2, 1995

#### Preamble 2

### Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 304 and 305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use a site-specific standard or who intend to remediate a site in a Special Industrial Area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site, and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department and shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific cleanup standard, in whole or in part, and for sites determined to be located in Special Industrial Areas. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area by the person conducting remediation. For the sites identified below, a municipality may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period a municipality may request that the person identified below, as the remediator of a site, develop and implement a public involvement plan. Requests to be involved, and comments, should be directed to the remediator of a site. For further information concerning the content of a Notice of Intent to Remediate, please contact the Department of Environmental Protection Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

The Department of Environmental Protection has received the following Notices of Intent to Remediate:

*Southeast Regional Office, Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**Van Waters & Rogers, Inc.**, City of Philadelphia, **Philadelphia County**. Anthony J. Pirelli, Van Waters & Rogers, Inc., W205 N6849 Woodward Court, Menomonee Falls, WI, 53051, has submitted a Notice of Intent to Remediate site soil and groundwater contaminated with solvents and BTEX. The applicant proposes to remediate the site to meet Statewide health and site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Inquirer* on May 11, 1998.

*Southcentral Regional Office, Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.*

**Conrad's Delicatessen**, City of York, **York County**. York Hospital Federal Credit Union, 1001 South George Street, York, PA 17405 has submitted a Notice of Intent to Remediate site soils and groundwater contaminated with BTEX, PHCs and PAHs. The applicant proposes to remediate the site to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *York Daily Record* and *York Dispatch* on May 14, 1998.

**Penn Fuel Gas, Inc.**, Shippensburg Borough, **Cumberland County**. Penn Fuel Gas, Inc., 55 South Third Street, Oxford, PA 19363, has submitted a Notice of Intent to Remediate site soils, groundwater and surface water contaminated with lead, heavy metals, BTEX, PAHs, cyanide and phenolic compounds. The applicant proposes to remediate the site to meet a combination of the Statewide Health and site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *News Chronicle* on May 21, 1998.

## SOLID AND HAZARDOUS WASTE OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Applications submitted under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate solid waste processing or disposal area or site.**

*Southwest Regional Office: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**A. 301267. Allegheny Power Company**, 800 Cabin Hill Drive, Greensburg, PA 15601-1689. Armstrong Power Station, New Ash Disposal Site, P. O. Box 897, SR 4006, near Reesedale, PA, Kittanning, PA 16201. Application for a major modification for a phase I residual waste landfill in Washington Township, **Armstrong County**. Received in the Regional Office on May 14, 1998.

### PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE

#### INFECTIOUS OR CHEMOTHERAPEUTIC WASTE

**Renewal applications received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**A-1 Medical Waste Removal, Inc.**, 209 Latimer Avenue, Staten Island, NY 10314; Sabino Colucci; License No. **PA-HC 0173**; renewal application received on May 6, 1998.

**Longview of Ocean County, Inc.**, 1301 Route 37 West, Toms River, NJ 08755; Eileen Ryan, Controller; License No. **PA-HC 0145**; renewal application received on April 29, 1998.

**Regnier's Refrigerated Express**, 648 Frenchtown Road, New Castle, PA 19720; Edward Regier, President; License No. **PA-HC 0050**; renewal application received on May 12, 1998.

## AIR POLLUTION

### Notice of Plan Approval and Operating Permit Applications

#### Non-major Sources and Modifications

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

Notice is hereby given that the Department has received applications for plan approvals and/or operating permits from the following facilities. Although the sources covered by these applications may be located at a major facility, the sources being installed or modified do not



trigger major new source review or prevention of significant deterioration requirements.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Offices identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office.

Persons wishing to file protests or comments on the proposed plan approval and/or operating permits must submit the protest or comment within 30 days from the date of this notice. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with the Department Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior to the date of the hearing.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121-143, the Federal Clean Air Act and regulations adopted under the act.

#### OPERATING PERMITS

##### Applications received and intent to issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001-4015).

*Northeast Regional Office, Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (717) 826-2531.*

**35-329-001B: Keystone Recovery Inc.** (P. O. Box 249, Dunmore, PA 18512) for the operation of seven internal combustion engines to control landfill gas in Throop Borough, **Lackawanna County**.

**39-301-079: Cedar Hill Memorial Park Inc.** (1700 Airport Road, Allentown, PA 18103) for the operation of a crematory incinerator in Whitehall Township, **Lehigh County**.

**40-310-032B: Barletta Materials and Construction Inc.** (Route 924, P. O. Box 10, Hazleton, PA 18201) for the operation of a stone crushing plant in Hazle Township, **Luzerne County**.

**48-399-038A: Filmtech Corp.** (P. O. Box 2005, Easton, PA 18044) for the operation of a film extrusion process in Williams Township, **Northampton County**.

**54-304-012: Goulds Pumps Inc.** (500 East Center Street, Ashland, PA 17921) for the operation of a thermal sand reclamation process in Ashland Borough, **Schuylkill County**.

**54-317-002A: Kay Tee Pet Foods Inc.** (55 North Sillyman Street, Cressona, PA 17929) for the operation of a grain processing system in Branch Township, **Schuylkill County**.

*Southcentral Regional Office, Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**44-03004: Guardian Industries Corp.** (One Belle Avenue, Bldg. 35, Lewistown, PA 17044-2434) for a mirror coating operation controlled by a regenerative thermal oxidizer in Granville Township, **Mifflin County**.

#### PLAN APPROVALS

##### Applications received and intent to issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001-4015).

*Northeast Regional Office, Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (717) 826-2531.*

**35-399-018A: General Dynamics Corp.** (175 East Street, Eynon, PA 18403) for the modification of the descaling and peening operation in Archbald Borough, **Lackawanna County**.

**39-301-068A: Greenwood Cemetery Assoc.** (2010 Chew Street, Allentown, PA 18104) for the construction of a crematory incinerator in Allentown, **Lehigh County**.

**39-399-047: Lutron Electronics Co., Inc.** (8240 Spring Creek Road, Alburtis, PA 18011) for the construction of a stencil cleaning operation in Lower Macungie Township, **Lehigh County**.

**48-313-070B: Praxair Distribution Inc.** (145 Shimer Road, Bethlehem, PA 18015) for the modification of the gas system in Bethlehem, **Northampton County**.

*Southcentral Regional Office, Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**38-03010: Pennsy Supply, Inc.** (P. O. Box 3331, Harrisburg, PA 17105) for the installation of a rock crushing plant controlled by wet suppression in South Lebanon Township, **Lebanon County**. The plant is subject to 40 CFR 60, Subpart OOO, Standards of Performance for New Stationary Sources.

**38-05019: AES Ironwood, Inc.** (1001 North 19th Street, Arlington, VA 22209) for the construction of a 700 MW electric generating facility in South Lebanon Township, **Lebanon County**. Under 40 CFR 60, Standards of Performance for New Stationary Sources, the two turbines are subject to Subpart GG and a No. 2 fuel oil storage tank is subject to Subpart Kb.

*Northcentral Regional Office, Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**18-399-013A: Champion Parts, Inc., Northeast Division** (279 Industrial Park Road, Beech Creek, PA 16822) for the modification of 14 carburetor test stands in Beech Creek Township, **Clinton County**.

**8-303-006A: Dalrymple Gravel and Contracting Company, Inc.** (2105 South Broadway, Pine City, NY 14871) for the construction of a drum mix asphalt concrete plant and associated air cleaning device (a fabric collector) in Athens Township, **Bradford County**. This plant is subject to Subpart I of the Federal Standards of Performance for New Stationary Sources.

#### REASONABLY AVAILABLE CONTROL TECHNOLOGY

##### (RACT)

##### Public Hearing

**Flextsys of America, L. P., Inc., Carroll Township, Washington County, Permit No. 63-000-015**

**Consolidated Coal Co., Robena Coal Prep. Plant, Monongahela Township, Greene County, Permit No. 30-000-063**

As per 40 CFR 51.102(d) notice is hereby given that the Pennsylvania Department of Environmental Protection (Department) will hold a public hearing on July 7, 1998,

at 10 a.m. in the Allegheny Conference Room, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

The hearing is to take testimony concerning the Department's intent to issue the above noted RACT Operating Permits.

Those wishing to present testimony during the hearing should contact Community Relations Coordinator, Rita Zettelmayer, at (412) 442-4183 by July 6, 1998, to register.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodations to do so should contact Rita Zettelmayer or the Pennsylvania AT&T Relay Service at 1 (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Those who are unable to attend the hearing, but wish to comment, should provide written comments to Thomas Joseph, Air Pollution Control Engineer, Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222. The comment period is open for 30 days after the appearance of this notice.

## MINING

### APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District mining office indicated above each application. Where a 401 water quality certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for such certification.

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code § 86.31—86.34 and § 77.121—77.123 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52, and 90.102) for iron, manganese,

suspended solids, settleable solids, alkalinity, and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

*Coal Applications Received:*

**11950102. SMP Boundary Revision, Laurel Land Development, Inc.** (P. O. Box 629, Carrolltown, PA 15722), the proposed 3.5 acre addition is located in Jackson Township, **Indiana County**, on the lands of James T. and Celia B. McFadden and is for support use/haulroad access to this existing surface mining permit. This proposed amended area will provide topographic drainage to a new receiving stream, an unnamed tributary to Laurel Run. However, the operator will continue to discharge treated water only to Hinckston Run and unnamed tributaries to Hinckston Run. No mineral extraction activities are to occur on this 3.5 acre added area. Total SMP acres goes from 80.0 to 83.5. Receiving streams for this operation will be Hinckston Run, unnamed tributaries to Hinckston Run, and unnamed tributary to Laurel Run. Application received May 15, 1998.

**56703124. Permit Revision. Diamond T Coal Company** (P. O. Box 260, Friedens, PA 15541), revision for a stream variance to relocate a portion of Lamberts Run beginning at a point approximately 7,900 feet upstream from the intersection of Lamberts Run and SR 1007 (south of Lambertsville) and continuing upstream approximately 800 feet to a point in Lamberts Run, in Stonycreek Township, **Somerset County**, affecting 562.1 acres, receiving stream to Lamberts Run, application received May 19, 1998.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**33860109. Ed Hanslovan Coal Company, Inc.** (R. D. 2, Box 230, Morrisdale, PA 16858) Renewal of an existing bituminous surface strip and auger operation in Washington Township, **Jefferson County** affecting 157.0 acres. Receiving streams: Unnamed tributaries to Rattlesnake Creek. Application received May 7, 1998.

**16950101. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767) Transfer of an existing bituminous surface strip operation in Clarion and Limestone Townships, **Clarion County** affecting 43.3 acres. Receiving streams: Two unnamed tributaries to Piney Creek. Transfer from Fye's Dozer Service. Application received May 21, 1998.

**16970103. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767) Transfer of an existing bituminous surface strip operation in Clarion Township, **Clarion County** affecting 104.2 acres. Receiving streams: Unnamed tributaries to Brush Run. Transfer from MAF Coal & Excavation, Inc. Application received May 21, 1998.

*McMurray District Office, 3913 Washington Road, McMurray, PA 15317.*

**11981701. Eastern Associated Coal Corp.** (P. O. Box 1233, Charleston, WV 25324), to operate the Colver IW in Blacklick Township, **Cambria County** to Elk Creek. Application received March 16, 1998.

**17841301. Manor Mining & Contracting Corp.** (P. O. Box 368, Bigler, PA 16825), to revise the permit for the Manor #44 in Girard Township, **Clearfield County**, revision to add surface area and discharge point 003 location, Bald Hill Run. Application received March 20, 1998.

**16901601. W. Duane Kiser** (101 South 3rd Ave., Clarion, PA 16214), to renew the permit for the Shippenville Tipple in Elk Township, **Clarion County**, no additional discharges. Application received April 13, 1998.

**32851302. Helvetia Coal Co.** (Box 729, Indiana, PA 15701), to revise the permit for the Lucerne No. 6 E in Blacklick Township, **Indiana County**, underground mine, subsidence control plan add (652Ac) delete (291 Ac), no additional discharges. Application received April 21, 1998.

**30810703. Consol PA Coal Co.** (P. O. Box 174, Graysville, PA 15337), to revise the permit for the Bailey Mine, Refuse Area No. 2 in Richhill Township, **Greene County**, modification to refuse area no. 2, no additional discharges. Application received April 21, 1998.

**03841302. Canterbury Coal Co.** (R. D. 1, Box 119, Avonmore, PA 15618), to renew the permit for the Dianne/David Mine in Kiskiminetas Township, **Armstrong County**, no additional discharges. Application received April 27, 1998.

**30921601. Cyprus River Processing Corp.** (145 Elm Dr., P. O. Box 1020, Waynesburg, PA 15370), to renew the permit for the Monongahela Resource Tipple in Jefferson Township, **Greene County**, no additional discharges. Application received May 7, 1998.

**30921301. Cyprus River Processing Corp.** (145 Elm Dr., P. O. Box 1020, Waynesburg, PA 15370), to renew the permit for the Monongahela Resource Mine in Jefferson Township, **Greene County**, no additional discharges. Application received May 7, 1998.

## APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

### ENCROACHMENTS

The following Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval, and requests for water quality certification have been received by the Department of Environmental Protection (Department). Section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)) requires the State to certify that the involved projects will not violate the applicable provisions of 33 U.S.C.A. §§ 1311—1313, 1316 and 1317, as well as relevant State requirements. Initial requests for 401 certification will be published concurrently with the permit application. Persons object-

ing to approval of a request for certification under Section 401 or to the issuance of a Dam Safety or Encroachment Permit or the approval of Environmental Assessments must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984.

### Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.

*Northeast Regional Office, Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.*

**E40-496. Encroachment. Pennsylvania Department of Transportation**, Engineering District 4-0, P. O. Box 111, Scranton, PA 18501. To remove the existing structure and to construct and maintain a single-span prestressed concrete box beam bridge having a clear span of 30.0 feet and an underclearance of approximately 9.0 feet across Sutton Creek (CWF). The project is located on S. R. 0092, Section 370, Segment 0130, Offset 2655, approximately 2.3 miles south of the Wyoming County/Luzerne County boundary (Ransom, PA Quadrangle N: 3.0 inches; W: 11.25 inches) in Exeter Township, **Luzerne County** (Baltimore District, U. S. Army Corps of Engineers).

**E40-497. Encroachment. Leonard Kozick**, 40 Dorchester Drive, Dallas, PA 18612. To place fill within the floodway along approximately 200 linear feet of the left (west) bank of Leonard Creek (HQ-CWF), for the purpose of preparing a site for future building construction. The project is located on the east side of S. R. 0309, approximately 1,000 feet south of the intersection of S. R. 0309 and S. R. 1026 (Centermoreland, PA Quadrangle N: 0.1 inch; W: 14.4 inches), in the Kunkle Section of Dallas Township, **Luzerne County** (Baltimore District, U. S. Army Corps of Engineers).

**E40-498. Encroachment. Leeds Property Management/Allied Services**, 506 Meadow Lane, Exton, PA 19341. To construct and maintain a stream enclosure of Coalbrook (CWF), consisting of approximately 245 linear feet of 11.4-foot by 7.25-foot corrugated aluminized steel pipe arch culvert, for the purpose of providing an access drive and parking for the Allied Services and Leeds properties. The project is located at 142 Mundy Street, approximately 300 feet east of the intersection of Mundy Street and Spring Street (Wilkes-Barre East, PA Quadrangle N: 22.0 inches; W: 14.5 inches), in Wilkes-Barre Township, **Luzerne County** (Baltimore District, U. S. Army Corps of Engineers).

**E40-499. Encroachment. Greater Hazleton Community Area New Development Organization (CANDO)**, One South Church Street, Hazleton, PA 18201. To place fill in 1.30 acres of wetlands within the drainage basin of Tomhicken Creek (CWF) for the purpose of constructing a plastics manufacturing plant. The project is located on site 55A, along Oak Ridge Road in the Humboldt Industrial Park, approximately 2 miles west of the Interchange 40 of S. R. 0081 (Conyngham, PA Quadrangle N: 9.0

inches; W: 7.3 inches) in Hazle Township, **Luzerne County** (Baltimore District, U. S. Army Corps of Engineers).

**E64-191.** Encroachment. **Pennsylvania Power and Light, Inc.**, Mailstop N-4, Two North Ninth Street, Allentown, PA 18101-1179. To remove the existing structure and to construct and maintain a road crossing of a tributary to Carley Brook (HQ-CWF) and adjacent PEM/SS wetlands consisting of an 8.17-foot by 5.75-foot corrugated pipe arch culvert. The project includes 3 minor road crossings of streams and/or wetlands, to be authorized using the Department's general permit BDWM-GP-7. A total wetland impact for the project is 0.06 acre. The purpose of the project is to improve the access roadway for maintenance of an existing aerial electric line (the West Damascus Tap Line). The project site extends from T-560 (Spry Road), at a point approximately 1,300 feet south of the intersection of T-560 and S. R. 1003, southwesterly for approximately 1 mile (Galilee, PA Quadrangle N: 5.4 inches; W: 14.2 inches) in Oregon Township, **Wayne County** (Philadelphia District, U. S. Army Corps of Engineers).

*Southeast Regional Office, Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E51-165.** Encroachment. **CSX Intermodal**, 301 West Bay St., Ste. 2400, Jacksonville, FL 32202. To perform the following activities associated with the CSX Intermodal Greenwich Yard Project: 1) To relocate approximately 1,100 feet of an unnamed manmade tributary to the Delaware River (WWF, MF) and to construct and maintain 3,000 linear feet of trapezoidal open channel with a 12-foot bottom width. Approximately 350 feet of the existing channel tidal and approximately 1,600 feet of the proposed channel will be tidal; 2) To remove 30 linear feet of 18-inch CMP and 50 linear feet of 24-inch CMP in and along the existing channel and to install and maintain 84 linear feet of 8-foot by 6-foot reinforced concrete box culvert in and along the proposed channel; 3) To construct and maintain approximately 379 linear feet of 72-inch reinforced concrete pipe to serve as a stormwater management line across wetlands (PEW, POW). This activity will temporarily impact 0.28 acre of wetlands; 4) To regrade and maintain fill associated with the track relocation of various railroad lines and the installation of drainage facilities within the 100-year floodplain of the Delaware River. The project is situated south of Interstate 95, north and east of the former Philadelphia Naval Yard, and west of the Delaware River and Columbus Boulevard (a.k.a Delaware Avenue) (Philadelphia, PA-NJ USGS Quadrangle N: 4.5 inches; W: 4.0 inches) in the **City and County of Philadelphia**.

**E46-803.** Encroachment. **Abington Township**, 1176 Old York Rd., Abington, PA 19001. To remove the existing Johnston Avenue culvert known as Johnston Avenue Bridge which spans the 100-year floodway of Sandy Run (TSF) and to construct and maintain a 23.00 feet by 7.00 feet box culvert at this location to reduce the flooding problems near this location. This site is located approximately 50 feet north of the intersection of Brookdale Avenue and Johnston Avenue (Ambler, PA Quadrangle N: 0.6 inch; W: 2.00 inches) in Abington Township, **Montgomery County**.

*Southwest Regional Office, Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E11-261.** Encroachment. **East Carroll Township**, 3350 Brick Road, Carrolltown, PA 15722. To remove the

existing structure and to construct and maintain a twin 42-inch plastic pipes (invert depressed 6") in an unnamed tributary to Little Chest Creek (CWF) located on T-527 at a point approximately 1,200 feet upstream of the confluence of said stream with the Little Chest Creek. The project includes construction and maintenance of a stream bank protection for a length of 40 feet at the culvert approaches. (Hastings, PA Quadrangle N: 0.85 inches; W: 5.9 inches) in East Carroll Township, **Cambria County**.

**E02-1231.** Encroachment. **Atlantic Pipe Line Company**, Ten Penn Center, 26th Floor, 1801 Market Street, Philadelphia, PA 19103-1699. To remove the existing structures and to restore and maintain approximately 120 feet of a tributary to Quigley Creek (WWF). The project is located on the east side of Verona Road crossing of said stream (Braddock, PA Quadrangle N: 21.1 inches; W: 11.9 inches) in Penn Hills Township, **Allegheny County**.

**E02-1229.** Encroachment. **Allegheny County Commissioners**, Department of Public Works, 501 County Office Building, Pittsburgh, PA 15219-2951. To remove the existing Gabion wall and construct and maintain a new 127 feet long by 13 feet high concrete crib wall along the left bank of Lick Run (TSF). The project is located on the west side of Broughton-Cochran Mill Road approximately 900 feet northwest of its intersection with Wilson Road (Glassport, PA Quadrangle N: 12.5 inches; W: 14.8 inches) in Jefferson Borough, **Allegheny County**.

**E26-244.** Encroachment. **PA Department of Transportation**, Engineering District 12-0, P. O. Box 459, Uniontown, PA 15401. To remove the existing bridge and to construct and maintain a reinforced concrete rigid frame bridge having a normal span of 16.0 feet and an underclearance of 7.0 feet over an unnamed tributary to Jacobs Creek (CWF). Also during construction, to construct and maintain a temporary crossing downstream and temporary coffer dams in the unnamed tributary to Jacobs Creek. The project is located along S. R. 0031 in the Village of Laurelville (Mammoth, PA Quadrangle N: 3.3 inches; W: 15.1 inches) in Bullskin Township, **Fayette County**.

**E02-1230.** Encroachment. **Allegheny County Department of Aviation**, Pittsburgh International Airport, P. O. Box 12370, Pittsburgh, PA 15231-0370. To remove existing structures; to construct and maintain an 84-inch diameter RCP stream enclosure for a distance of 918 feet in a tributary to McClarens Run (TSF); to construct and maintain a 66-inch diameter RCP stream enclosure for a distance of 361 feet in a tributary to Montour Run (TSF) and to place and maintain fill in a 0.29 acre of wetlands (PEM) for the purpose of constructing the Cargo Interchange (SR 3160 Section A03). The project is located on the northern side of the Pittsburgh International Airport along the Beaver Valley Expressway/Airport Service Road (Business Route 0060) (project begins at Ambridge, PA Quadrangle N: 1.0 inch; W: 15.1 inches and ends at Aliquippa, PA Quadrangle N: 1.7 inches; W: 0.9 inch) in Moon and Findlay Townships, **Allegheny County**. Replacement wetlands have been constructed at the Mayview Wetland located along Chartiers Creek, South Fayette Township, Allegheny County.

**E02-1234.** Encroachment. **PA Turnpike Commission**, P. O. Box 67676, Harrisburg, PA 17106-7676. To place and maintain fill in 1.3 acres of wetland (PEM) and to construct and maintain a 48-inch outfall to Peters Creek (TSF). The work is being done in conjunction with the Mon/Fayette Expressway (SR 0043), construction section 52K consisting of a four lane limited access, divided toll

highway. This construction section starts at Gill Hill Road (SR 3017) and ends at SR 0051. (Project starts at Glassport, PA Quadrangle N: 5.0 inches; W: 10.5 inches and ends at Glassport, PA Quadrangle N: 7.5 inches; W: 5.5 inches) in Jefferson Borough, **Allegheny County**. The wetland replacement was approved under PA DEP Permit No. E02-1132.

*Northwest Regional Office, Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**E10-280.** Encroachment. **Robinson Properties L. P.**, 6507 Wilkins Avenue, Pittsburgh, PA 15217-1305. To place fill in 0.308 acre of two separate wetlands as part of an industrial development of a Distribution/Warehouse Center. This project is located within the Thorn Hill Industrial Park on Keystone Drive approximately 3,000 feet south of the intersection of Freedom Road (S. R. 3020) and Commonwealth Drive. This project will also include creation of 0.58 acre of replacement wetlands adjacent to this project site and an existing wetland area (Mars, PA Quadrangle N: 9.3 inches; W: 15.4 inches) located in Cranberry Township, **Butler County**.

**E25-569.** Encroachment. **Municipal Authority of the Borough of Waterford**, 224 East Third Street, P. O. Box 49, Waterford, PA 16411. To construct and maintain a 48-foot-long by 32-foot-wide building to house water wells and control equipment within the 100-year floodplain of Trout Run on the East Side of Hazel Street between 5th and 6th Streets (Waterford, PA Quadrangle N: 12.5 inches; W: 15.2 inches) located in the Borough of Waterford, **Erie County**.

**E37-120.** Encroachment. **Engineering District 11-0**, 45 Thoms Run Road, Bridgeville, PA 15017. To remove the existing two span bridge and to construct and maintain a multi-plate super span arch with a 39-foot, 7-inch span and a 16-foot, 7-inch rise, a pipe arch culvert with 20-foot, 4-inch span and a 17-foot, 9-inch rise and associated fill on S. R. 3009 (Mount Air Road) across Hickory Run (TSF). The project is located on S. R. 3009 (Mount Air Road) approximately 2,000 feet south of the intersection of S. R. 3009 and S. R. 0108 in the Village of Mount Jackson. This project will also utilize a temporary construction of a stream crossing upstream of the bridge consisting of six 30-inch-diameter pipes and clean rock fill. (Bessemer, PA Quadrangle N: 14.8 inches; W: 8.2 inches) located in North Beaver Township, **Lawrence County**.

**E42-258.** Encroachment. **Crosby Dairy Products, Inc.**, 495 South Kendall Avenue, Bradford, PA 16701. To place fill in 0.19 acre of wetlands as part of a commercial development known as Crosby Mini Mart. This project is located on Owens Way approximately 800 feet east of the intersection of S. R. 0219, South Avenue (S. R. 4007) and T-330. This project will also include a contribution to the Wetland Replacement Fund to replace 0.19 acre of wetland impact (Bradford, PA-NY, PA Quadrangle N: 9.8 inches; W: 3.45 inches) located in Bradford Township, **McKean County**.

#### DAM SAFETY

**Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.**

*DEP Central Office: Bureau of Waterways Engineering, 400 Market Street, 6th Floor, P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.*

**D46-329.** Dam. **Goldenberg Development Corporation** (350 Sentry Parkway, Building 630, Suite 300, Blue Bell, PA 19422-2316). To construct, operate and maintain a stormwater detention dam across Plymouth Creek (WWF) (Norristown, PA Quadrangle N: 18.3 inches; W: 6.8 inches) in Plymouth Township, **Montgomery County**. This facility is designed to control stormwater from the proposed Metroplex mixed-use development.

### ACTIONS

#### FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

##### [National Pollution Discharge Elimination System Program (NPDES)]

##### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

##### (Part I Permits)

The Department of Environmental Protection has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

Any person aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

#### Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

##### Permits Issued

*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**NPDES Permit No. PA-0062961.** Industrial waste. **Laminations, Inc.**, 1008 S. Irving Avenue, Scranton, PA 18505 is authorized to discharge from a facility located in the City of Scranton, **Lackawanna County** to Stafford Meadow Brook.

**NPDES Permit No. PA-0009971.** Industrial waste. **Techneglas, Inc.**, Old Boston Road, Pittston, PA 18640-9605 is authorized to discharge from a facility located in Jenkins Township, **Luzerne County** to Lamp Black Creek and Gardner Creek.

**NPDES Permit No. PA-0043044.** Sewerage. **Ringtown Sewer Authority**, P. O. Box 202, Ringtown, PA 17967 is authorized to discharge from a facility located in Ringtown Borough, **Schuylkill County** to Dark Run.

**NPDES Permit No. PA-0063053.** Industrial waste. **Tamaqua Area Water Authority**, 320 East Broad Street, Tamaqua, PA 18252 is authorized to discharge from a facility located in Still Creek Water Treatment Plant) located in Rush Township, **Schuylkill County** to Little Schuylkill River.

**NPDES Permit No. PA-0029017.** Sewerage. **Schuylkill Haven Municipal Authority**, 12 West Main Street, Schuylkill Haven, PA 17972-1900 is authorized to discharge from a facility located in Schuylkill Haven Borough, **Schuylkill County** to the Schuylkill River.

**Permit No. 4098401.** Sewerage. **Hazle Township Municipal Authority**, P. O. Box 888, Hazleton, PA 18201. Permit to construct a Pump Station, and Sewers and Appurtenances to serve specific portions of Hazle Township, along the Airport Beltway, located in Hazle Township, **Luzerne County**.

*Southwest Regional Office, Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**NPDES Permit No. PA0027928, Amendment No. 1.** Sewerage. **Catamount Petroleum Limited Partnership**, 151 Everett Avenue, Chelsea, MA 02150 is authorized to discharge from a facility located at Neville Island Terminal, Neville Township, **Allegheny County**.

**NPDES Permit No. PA0032182.** Sewerage, **William J. Felix**, 92 Little Mingo Road, Finleyville, PA 15332 is authorized to discharge from a facility located at Hills of Mingo Estates Sewage Treatment Plant, Nottingham Township, **Washington County** to Dry Swale to a Tributary of Mingo Creek.

**NPDES Permit No. PA0098043.** Sewerage, **Gilbert Development Corporation**, P. O. Drawer D, 8535 Mason Dixon Highway, Gilbert, WV 15621 is authorized to discharge from a facility located at Gnagey Restaurant STP, Elk Lick Township, **Somerset County** to Unnamed tributary of the Casselman River.

**NPDES Permit No. PA0098493.** Sewerage, **Rocco Boni**, 6 Erie Mine Road Extension, Burgettstown, PA 15021 is authorized to discharge from a facility located at

Rocco Boni Rentals Sewage Treatment Plant, Burgettstown Borough, **Washington County** to Burgetts Fork.

**NPDES Permit No. PA0110477.** Sewerage, **Cone-maugh Township Area Sewage Authority**, 113 South Main Street, P. O. Box 429, Davidsville, PA 15928 is authorized to discharge from a facility located at Riverside Grace Brethren Church STP, Cone-maugh Township, **Somerset County** to Tributary of Soap Hollow.

**NPDES Permit No. PA0215988.** Sewerage, **Sonnynick, Inc.**, R. R. 4, Box 240, Elizabeth, PA 15037 is authorized to discharge from a facility located at Sonnynick, Inc. Sewage Treatment Plant, Menallen Township, **Fayette County** to an Unnamed Tributary of Saltlick Run.

**Permit No. 6598203.** Industrial waste, **Allegheny Ludlum Corporation**, 100 River Road, Brackenridge, PA 15014. Construction of a specialty steel mill located in the Borough of West Leechburg, **Westmoreland County** to serve the Bagdad Wastewater Treatment Plant pH Adjustment System (Outfall 015).

**Permit No. 5683409, Amendment No. 2.** Sewerage, **Cone-maugh Township Area Sewer Authority**, 113 South Main St., P. O. Box 429, Davidsville, PA 15928. Revision of the flow equalization aeration system to air induction from a venturi intake assembly. Process aeration will be installed as the backup aeration system for the equalization unit located in the Township of Cone-maugh, **Somerset County** to serve the Riverside Grace Brethren Church Sewage Treatment Plant.

**Permit No. 6397409.** Sewerage, **New Eagle Borough Municipal Sewer Authority**, 157 Main Street, New Eagle, PA 15067. Construction of a treatment plant, pump stations and sewerage facility rehabilitation located in the Borough of New Eagle, **Washington County** to serve the New Eagle Borough Pennvest Project.

*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.*

**NPDES Permit No. PA0221571.** Sewerage. **Loranger Manufacturing, Incorporated—Starbrick Facility**, 2715 Pennsylvania Avenue West, Warren, PA 16365 is authorized to discharge from a facility located in Cone-wango Township, **Warren County**.

## INDIVIDUAL PERMITS

(PAS)

**The following NPDES Individual Permits for Discharges of Stormwater from Construction Activities have been issued.**

*Northeast Regional Office, Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10U084	Penn Quaker Development Corp. P. O. Box 343 Nazareth, PA 18064	Northampton Co. Bushkill Twp.	Bushkill Crk.

*Southwest Regional Office, Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10A060-S	Port Authority of Allegheny Co. 2235 Beaver Avenue Pittsburgh, PA 15233-1080	City of Pittsburgh Carnegie Borough Crafton Borough Ingram Borough Rosslyn Farms Borough	Monongahela River Ohio River Chartiers Creek Campbells Run Oakland Run Saw Mill Run
PAS10A106	Maraden, Inc. 894 Beaver Grade Road Moon Township, PA 15108	North Fayette Twp.	Tributary to North Fork of Robinson Run
PAS10X086	Pa. Dept. of Environmental Protection Bureau of Mining Reclamation P. O. Box 8476 Harrisburg, PA 17105-8476	Municipality of Murrysville	Tributary to Steels Run
PAS10X088	Pa. Dept. of Environmental Protection Bureau of Mining Reclamation P. O. Box 8476 Harrisburg, PA 17105-8476	Washington Twp. Municipality of Murrysville	Tributary to Steels Run

*Northwest Regional Office, Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10K009-1	Fairview School District 7460 McCray Road Fairview, PA 16415 and Eriez Construction Inc. 2218 East 30 Street Erie, PA 16510	Erie County Fairview Borough	Unnamed Tributary to Trout Run
PAS10K017-1	Millcreek Mall Corporation The Cafaro Company 2445 Belmont Avenue P. O. Box 2186 Youngstown, OH 44504	Erie County Millcreek Twp.	Walnut Creek
PAS102510	Blue Sky 362 N. Park Street Sykesville, PA 15865-1198	Elk County Horton Twp. Fox Twp.	Boggy Run
PAS103312	Flying J Travel Plaza 50 West 990 South Brigham City, UT 84302	Jefferson County Brookville Borough	Clement Run North Fork Creek
PAS107203	Conewango Township Municipal Authority 4 Firemans St. Warren, PA 16365	Warren County Conewango Twp.	Morse Run

## INDIVIDUAL PERMITS

## (PAR)

The following parties have submitted Notices of Intent (NOIs) for Coverage under (1) General NPDES Permit(s) to discharge wastewater into the surface waters of this Commonwealth. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in the general permit; (2) General Permit(s) for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania. The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective general permit. The Department of Environmental Protection approves the following coverages under the specified General Permit.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision: 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangement made for copying at the contact office noted.

## List of NPDES and/or other

*General Permit Type*

PAG-1	General Permit For Discharges From Stripper Oil Well Facilities
PAG-2	General Permit For Discharges of Stormwater From Construction Activities
PAG-3	General Permit For Discharges of Stormwater From Industrial Activities
PAG-4	General Permit For Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit For Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit For Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit For Beneficial Use of Exceptional Quality Sewage Sludge By Land Application
PAG-8	General Permit For Beneficial Use of Non-Exceptional Sewage Sludge By Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit For Beneficial Use of Residential Septage By Land Application to Agricultural Land, Forest or a Land Reclamation Site

*General Permit Type—PAG 2**Facility Location*

<i>County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Lower Allen Twp. Cumberland Co.	PAR-10-H163	Penn DOT 2140 Herr St. Harrisburg, PA 17103-1699	Cedar Run	Cumberland County CD 43 Brookwood Ave. Suite 4 Carlisle, PA 17013 (717) 240-7812
Hampden Twp. Cumberland Co.	PAR-10-H140	L. B. Smith Inc. 2001 State Rd. Camp Hill, PA 17011	Conodoguinet Crk.	Cumberland County CD 43 Brookwood Ave. Suite 4 Carlisle, PA 17013 (717) 240-7812
East Hanover Twp. Dauphin Co.	PAR-10-I147	Tulli-Hall, Inc. 2841 North Front St. Harrisburg, PA 17110	Bow Crk.	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Guilford Twp. Franklin Co.	PAR-10-M151	Chambersburg Development Co. 1115 Sheller Ave. Chambersburg, PA 17201	Conococheague Crk.	Franklin County CD 550 Cleveland Ave. Chambersburg, PA 17201 (717) 264-17201



<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
West Manheim Twp. York County	PAR-10-Y308	Gary Gregory 71 Pumping Station Rd. Hanover, PA 17331	Indian Run	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Manchester Twp. York Co.	PAR-10-Y315	Christian L. Church of York 890 Taxville Rd. York, PA 17404	Willis Run	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Carroll Twp. York Co.	PAR-10-Y312	Clyde R. Strayer Trust Mellon Bank Trust Dept. 10 South 2nd St. Harrisburg, PA 17108	UNT Yellow Breeches	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
North Codorus Twp. York Co.	PAR-10-Y280	Lynnwood Phase 1 & 2 1 Spring Hill Farm Cour. Hunt Valley, MD 21030	UNT to Codorus Crk.	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Newberry Twp. York Co.	PAR-10-Y304	Whispering Waters Randy Whitley 1320 Still House Rd. Etters, PA 17319	Fishing Crk.	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
West Manchester Twp. York County	PAR-10-Y319	Indian Rock Dam Wetland Rest Fish & Wildlife Service 315 S. Allen Street Suite 322 State College, PA 16801-4850	West Branch Codorus Creek	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
East Manchester Twp. York Co.	PAR-10-Y036-R1	Asbury Pointe Parcel 2 Asbury Pointe Ltd. 125 North George St. York, PA 17401	Codorus Crk. and Susquehanna River	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Crawford Co. Greenwood Twp.	PAR102313	Meadville Area Industrial Commission 18257 Industrial Drive Meadville, PA 16335	UNT to Conneaut Outlet	Crawford Conservation District 1012 Water Street, Suite 18 Meadville, PA 16335 (814) 724-1793
Erie Co. Washington Twp.	PAR10K108	Joan Mary Rembielik P. O. Box 848 Saegertown, PA 16433	Cussewago Crk.	Erie Conservation District 12723 Route 19 P. O. Box 801 Waterford, PA 16441 (814) 796-4203
Lackawanna Co. Olyphant Boro.	PAR10N062	Robert Mericle 600 Baltimore Dr. Wilkes-Barre, PA 18702	Sterry Crk.	Lackawanna CD (717) 587-2607
Schuylkill Co. W. Brunswick Twp.	PAR105758	Hetran Inc. C. H. Klinger Inc. 1363 C Pinedale Ind. Park Orwigsburg, PA 17961	Pine Crk.	Schuylkill CD (717) 622-3742
Monroe Co. Smithfield Twp.	PAR10S021	Minisink Park Smithfield Twp. R. D. 5, Box 5229 E. Stroudsburg, PA 18301	Brodhead Crk.	Monroe CD (717) 629-3060
Monroe Co. Boro. of E. Stroudsburg	PAR10S019	Victoria Heights Prospect Hills Development 553 Main St. Stroudsburg, PA 18360	Brodhead Crk.	Monroe CD (717) 629-3060
Allegheny Co. City of Pittsburgh	PAR10A178-1	Warrior Hills Partners Crossroads Commons— Suite 301 3901 Washington Rd. McMurray, PA 15317	Saw Mill Run	Allegheny County CD (412) 241-7645

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Allegheny Co. Dravosburg Borough	PAR10A238	Robert McCormick and Ray Anthony 210 Washington Ave. Dravosburg, PA 15034-1108	Monongahela River	Allegheny County CD (412) 241-7645
Allegheny Co. Plum Borough	PAR10A267	Grasenger Homes, Inc. 8035 Saltsburg Rd. Pittsburgh, PA 15239	Plum Crk.	Allegheny County CD (412) 241-7645
Beaver Co. Brighton Twp.	PAR100242	Michael Boycura for Boycura—Brighton Proj. 445 State St. Beaver, PA 15009	Two Mile Run	Beaver County CD (724) 774-7090
Beaver Co. Harmony Twp.	PAR100245	Rhodes Holding Co., L. P. School Bus Depot c/o Robert Rhodes	Legionville Run	Beaver County CD (724) 774-7090
Cambria Co. Jackson Twp.	PAR101039	Leisure Village Mobile Home Park c/o Robert McKool	Hinkston Run	Cambria County CD (814) 472-2120
Cambria Co. Richland Twp.	PAR101046	Burley's Rink Supply, Inc. P. O. Box 250 115 School St. Salix, PA 15952-0250	UNT to Paint Run	Cambria County CD (814) 472-2120
Cambria Co. Cambria Twp.	PAR101047	Ebensburg Properties, L. P. Manor Complex, Suite 700 564 Forbes Ave. Pittsburgh, PA 15219-2903	UNT to Blacklick Crk.	Cambria County CD (814) 472-2120
Washington Co. Peters Twp.	PAR10W105	McCloskey Land Development, Inc. 120 Oakridge Rd. Venetia, PA 15367	Peters Crk.	Washington County CD (724) 228-6774
Westmoreland Co. New Stanton Borough	PAR10X053R	PA Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106	Sewickley Crk.	Westmoreland County CD (724) 837-5271
Westmoreland Co. Rostraver Twp.	PAR10X056R	Spring Grove Development, Inc. Suite 2 R. D. 2, Golfland Bldg. Belle Vernon, PA 15012	Pollock Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Hempfield Twp.	PAR10X074R	West Homes Incorporated 222 Oxford Blvd. Allison Park, PA 15101	UNT to Jacks Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Allegheny Twp.	PAR10X080R	McCutcheon Enterprises, Inc. 250 Park Rd. Apollo, PA 15613-8730	UNT to Pine Run Crk.	Westmoreland County CD (724) 837-5271
Westmoreland Co. Bell Twp.	PAR10X083R	Pa. Dept. of Transportation P. O. Box 459 Uniontown, PA 15401	Wolford Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Unity Twp.	PAR10X091R	LosCabos Development— Louis Catalano Central Medical Arts Bldg. Greensburg, PA 15601	Slate Crk.	Westmoreland County CD (724) 837-5271
Westmoreland Co. Lower Burrell City	PAR10X092R	Overlook Partners 100E Boyce Park Center Pittsburgh, PA 15239	Chartiers Crk.	Westmoreland County CD (724) 837-5271
Westmoreland Co. Hempfield Twp.	PAR10X093R	Sandra Sheilds McNulty 718 South Seventh St. Youngwood, PA 15697	Belson Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Washington Twp.	PAR10X096R	Wellington Estates 772 Pine Valley Dr. Pittsburgh, PA 15239	UNT to Thorn Run	Westmoreland County CD (724) 837-5271

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Westmoreland Co. Unity Twp.	PAS10X099R	Dept. of Environmental Protection Bureau of Abandoned Mine Reclamation P. O. Box 149 122 South Center St. Ebensburg, PA 15931-0149	Four Mile Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Allegheny Twp.	PAR10X105R	Moreland Manor, Inc. 5476 Route 8 and Cook Rd. Gibsonia, PA 15044	UNT to Pine Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. South Huntingdon Twp.	PAR10X108R	Lou Yemc 350 Arona Rd. New Stanton, PA 15672	Hunters Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Municipality of Murrysville	PAR10X111R	Franklin Township Municipal Sanitary Authority 3001 Meadowbrook Rd. Murrysville, PA 15668-1698	UNT to Haymaker Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Mount Pleasant Twp.	PAR10X116R	CNG Producing Company 303 Airport Professional Center Indiana, PA 15701	Jacobs Crk.	Westmoreland County CD (724) 837-5271
Westmoreland County Unity Twp.	PAR10X118R	Pellis/Rugh Partnership 210 Culbertson Avenue Greensburg, PA 15601	UNT to Four Mile Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Salem Twp.	PAR10X120R	Links Development Co., Inc. 3650 Hills Church Rd. Export, PA 15632	Beaver Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Hempfield Twp.	PAR10X130R	Pa. Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106-7676	Wilson's Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Rostraver Twp.	PAR10X132R	Phoenix Land and Leasing 500 National Pike West Brownsville, PA 15417	Pollock Run	Westmoreland County CD (724) 837-5271
Westmoreland Co. Hempfield Twp.	PAR10X136R	Crawford Realty Co. 4117 Old William Penn Highway Murrysville, PA 15668	UNT to Jacks Run	Westmoreland County CD (724) 837-5271
<i>General Permit Type—PAG 3</i>				
<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Montgomery Co. Pottstown Borough	PAR110043	DANA Corporation—Driveshaft Division 125 South Keim St. Pottstown, PA 19464	Sproegel's Run	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Delaware Co. City of Chester	PAR200035	Metro Machine of Pennsylvania P. O. Box 1860 Norfolk, VA 23501	Delaware River Ridley Crk.	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
City of Erie Erie Co.	PAR208327	United Brass Works, Inc. Keystone Foundry Dir. 714 South Main St. Randleman, NC 27317	Lake Erie	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
City of Hermitage Mercer Co.	PAR808302	G. D. Leasing of Indiana, Inc. P. O. Box 6105 Youngstown, OH 44501	Shenango River	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
<i>General Permit Type—PAG 04</i>				
<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
York County North Hopewell Twp.	PAG043595	Jack and Doreen Bish 5744 Herbst Rd. Red Lion, PA 17356	UNT to Muddy Run	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Washington Co. Peters Twp.	PAG046150	Frank and Cynthia Palombo 408 Hays Rd. Venetia, PA 15367	Tributary of Brush Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Dr. Pittsburgh, PA 15222-4745 (412) 442-4000
Harborcreek Twp. Erie Co.	PAG048501	John J. Antalek 5844 Lunger Rd. Erie, PA 16510	Unnamed Tributary to Six Mile Crk.	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
Pine Grove Twp. Warren Co.	PAG048513	Kurt Martin R. R. 1, Box 1385 Egypt Rd. Russell, PA 16345	Unnamed Tributary to Widdlefield Run	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
Waterford Twp. Erie Co.	PAG048505	Carol Ann Engel-Henderson 12828 Hood Rd. Waterford, PA 16441-9660	Unnamed Tributary of LeBoeuf Crk.	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
Washington Twp. Erie Co.	PAG048506	Brian G. Waldo 12302 Hamilton Rd. Edinboro, PA 16412	Unnamed Tributary of Conneauttee Crk.	DEP Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
<i>General Permit Type—PAG 7</i>				
<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Montgomery Co. Upper Dublin Twp.	PAG070002	Nutrecon, Inc. South Main and Randolph Avenue Ambler, PA 19007	None	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130

*General Permit Type—PAG 8**Facility Location*

<i>County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Mongomery County Franconia Twp.	PAG080006	Telford Sewer Authority P. O. Box 209 Telford, PA 18969	None	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Chester Co. Schuylkill Twp.	PAG080009	Valley Forge Sewer Authority WWTP 333 Pawling Rd. Phoenixville, PA 19460	None	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Lehigh County City of Allentown	PAG08-2203	City of Allentown Wastewater Treatment Plant		Northeast Regional Office Water Management Program 2 Public Square Wilkes-Barre, PA 18711 (717) 826-2511

**SEWAGE FACILITIES ACT  
PLAN APPROVAL**

**Plan approval granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).**

*Regional Office: Water Management Program Manager, Southcentral Region, 909 Elmerton Ave., Harrisburg, PA 17110-8200.*

*Location: Snyder Township, Blair County, R. D. 3, Box 119, Tyrone, PA 16686.*

The approved plan provided for extension of public sewer service from the existing Northern Blair County Sewer Authority system into the Bald Eagle and Vail areas of Snyder Township. The collection system will include three pump stations, force mains and an interceptor. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

*Location: Bedford Township, Bedford County, R. D. 1, Box 148, Bedford, PA 15522.*

The plan is disapproved because Bedford Township failed to address the remaining nine plan deficiencies identified in the Department's letter dated May 13, 1989. As discussed in the Department's August 18, 1997 letter and again in a March 13, 1998 letter, failure to respond within specified time frames would result in plan disapproval. No response was received from Bedford Township. The plan deficiencies are listed as follows.

1. Section 9E of the Onlot Management Ordinance indicates that septic tanks could be put ahead of cesspools and that cesspools would otherwise be pumped. Cesspools are not adequate onlot sewage disposal systems and should be replaced with septic systems meeting Chapter 73 regulations. Issuance of a permit for a septic tank discharging to a cesspool is inconsistent with Chapter 73 regulations. It is suggested you inspect homes with cesspools and if malfunctioning, require that they be replaced with a septic system meeting Chapter 73 regulations. Also, the Department will not and cannot under current law issue permits for untreated or partially treated effluent to any waterway as per Section 10A of

the ordinance. It is suggested this be changed to no discharges to the waters of this Commonwealth will be permitted except under permit by the Department of Environmental Protection. Please properly modify these sections of the ordinances.

2. There is no set implementation date for the proposed Onlot Management Districts and the proposed capped sewer ordinance. Please indicate when these will take effect. Please provide dates when these ordinances will take effect.

3. The addendum of March 1989 was not adopted by the municipality, please adopt this document prior to its resubmission. Please provide a completed resolution of adoption.

4. The implementation schedule does not indicate how the projects will be funded and the sources of financing were not indicated. Please provide this information.

5. Table SSA shows a list of 13 need areas, alternatives and Estimated User Cost. Table TTA shows an implementation schedule for 5 need areas. What is proposed for the other 8 areas? Needs not cost must dictate priorities. Please address.

6. Needs documentation is not substantiated by the plan. There were no surveys of the existing onlot systems, there were no indication of where onlot repairs were permitted and whether these repairs meet Chapter 73 standards or utilized best technical guidance, where cesspools, seepage pits and other inadequate means of sewage disposal exists, and where complaints were received about sewage malfunctions. Please provide this documentation.

7. There is no analysis of the groundwater sampling received. Where problems now exist or in marginal areas of groundwater quality, what requirements will the municipality place on new land development? Please address.

8. How membership in the OLMD will be required is not clear. How will this be enforced? Please clarify.

9. The sewage agreements with Bedford Borough only covers the Turnpike/City Industrial Park Collection System. What about agreements for other areas of the Township? Please provide these agreements.

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**Plan revision approval granted May 19, 1998 under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).**

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*Regional Office: Water Management Program Manager, Southcentral Region, One Ararat Boulevard, Harrisburg, PA 17110.*

*Location: Adamstown Borough, Lancaster County, 30 Willow Street, P. O. Box 546, Adamstown, PA 19501.*

The proposed development is located on the south side of Lancaster Avenue (S. R. 0272), approximately 200 feet east of West Main Street, Adamstown Borough, Lancaster County.

The approved project consists of a 67 lot residential subdivision on 40.5 acres. An existing apartment dwelling will be removed from the site. No disturbance of wetlands is proposed for the sewer connection to the existing Adamstown Interceptor. The total sewage flows of 18,150 gallons per day (gpd) of wastewater will be treated by the Adamstown Borough Wastewater Treatment Plant.

Any required NPDES permits or WQM permits must be obtained in the name of the municipality or authority.

### SAFE DRINKING WATER

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**Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

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*Northeast Regional Office, Sanitarian Regional Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**Permit No. 5297502.** Public water supply. **Saw Creek Estates**, John Briggs, Director, PP&E, P. O. Box 447, Bushkill, PA. This proposal involves construction of water storage tanks, pump stations, transmission/distribution lines and a new supply well. It is located in Lehman Township, **Pike County**.

*Permit to Operate: April 24, 1998.*

**Permit No. 4098502.** Public water supply. **Bottling Facility**. Nature's Way Pure Water. This proposal involves the construction of a new bottling plant replacing an existing bottling facility. The new facility will utilize the Pennsylvania American Water Company Waters Treatment Facility as a source of supply serving the bottling works. The bottling facility will retain the existing bottle water label No. 2406411. It is located in Dupont, **Luzerne County**.

*Permit to Operate: April 23, 1998.*

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

**Under Act 2, 1995**

**Preamble 3**

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**The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

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Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of any final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site

investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed, and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected.

For further information concerning the final report, please contact the Environmental Cleanup Program in the Department of Environmental Protection Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

The Department has received the following final report:

*Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**Rhoads Metals Fabrication & Maintenance Services, Inc.**, Lower Moreland Township, **Montgomery County**. Darryl D. Borrelli, Manko, Gold & Katcher, has submitted a Final Report concerning remediation of site soil contaminated with lead, heavy metals, solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons and groundwater contaminated with solvents and BTEX. The report is intended to document remediation of the site to meet Statewide health standards for soil and background standard for groundwater.

*Northeast Regional Field Office, Joseph A. Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**Pennsylvania Power & Light Company (PP&L) Distribution Pole #63603S46245**, City of Allentown, **Lehigh County**. PP&L, Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101 has submitted a Final Report concerning the remediation of site soils found to have been contaminated with PCBs (polychlorinated biphenyls). The report was submitted in order to document remediation of the site to meet the Statewide human health standard.

**Pennsylvania Power & Light Company (PP&L) Distribution Pole #61478S47427**, South Whitehall Township, **Lehigh County**. PP&L, Environmental Management Division, 2 North Ninth Street, Allentown, PA 18101 has submitted a Final Report concerning the remediation of site soils found to have been contaminated with PCBs (polychlorinated biphenyls). The report was submitted in order to document remediation of the site to meet the Statewide human health standard.

## SOLID AND HAZARDOUS WASTE

### LICENSE TO TRANSPORT HAZARDOUS WASTE

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**License issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.**

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*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**EMC Environmental Services, Corp.**, 132 Rome Street, Farmingdale, NY 11735; License No. **PA-AH 0590**; license issued May 7, 1998.

**Lewis Environmental, Inc.**, P. O. Box 639, Royersford, PA 19468; License No. **PA-AH 0591**; license issued May 7, 1998.

**R&R Trucking, Incorporated**, P. O. Box 545, Duenweg, MO 64841; License No. **PA-AH 0592**; license issued May 11, 1998.

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**Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.**

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*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**American Waste Oil Corporation**, 44141 Yost Road, Belleville, MI 48111; License No. **PA-AH 0534** renewal license issued May 8, 1998.

**Bechem Transport, Inc.**, 46 River Street, New Haven, CT 06513; License No. **PA-AH 0414**; renewal license issued April 28, 1998.

**David J. Winning Company**, 5610 Aiken Road, McKees Rocks, PA 15136; License No. **PA-AH OS100**; renewal license issued May 4, 1998.

**Hub City Environmental, Inc.**, P. O. Box 817, Pearland, TX 77581; License No. **PA-AH 0530**; renewal license issued April 28, 1998.

**Laidlaw Environmental Services (Quebec)**, 7305 Marie-Victorin Boulevard, Brossard Quebec, CANADA J4W 1A6; License No. **PA-AH 0403**; renewal license issued May 13, 1998.

**Minnesota Mining and Manufacturing Co.**, 3M Center, Building 225-5N-07, St. Paul, MN 55144-1000; License No. **PA-AH 0296**; renewal license issued May 8, 1998.

**Tonawanda Tank Transport Service Inc.**, 1140 Military Road, Buffalo, NY 14217; License No. **PA-AH 0429**; renewal license issued May 13, 1998.

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**License expired under the Solid Waste Management Act (35 P. S. §§ 6018.1001—6018.1003) and regulations for license to transport hazardous waste.**

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*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**American Waste Haulers, Inc.**, P. O. Box 306, Maywood, IL 60153; License No. **PA-AH 0461**; license expired on April 30, 1998.

**FeeCorp Corporation**, 7995 Allen Road, Winchester, OH 43110; License No. **PA-AH 0515**; license expired on May 11, 1998.

**Suttles Truck Leasing, Inc.**, P. O. Box 129, Demopolis, AL 36732; License No. **PA-AH 0332**; license expired on May 11, 1998.

**PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE**

**INFECTIOUS OR CHEMOTHERAPEUTIC WASTE**

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**Licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

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*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**ARL, dba American Road Line**, 238 Mood Clinton Road, Moon Township, PA 15208; License No. **PA-HC 0205**; license issued May 13, 1998.

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**Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

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*Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**A-1 Medical Waste Removal, Inc.**, 209 Latimer Avenue, Staten Island, NY 10314; License No. **PA-HC 0173**; license issued May 13, 1998.

**Longview of Ocean County**, 1301 Route 37, West, Toms River, NJ 08755; License No. **PA-HC 0145**; license issued April 29, 1998.

**Orchard Hill Memorial Park, Inc.**, Lafayette, NJ 07059; License No. **PA-HC 0163**; renewal license issued May 13, 1998.

**AIR POLLUTION OPERATING PERMITS**

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**Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

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*Southwest Regional Office, Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174*

**04-309-038: Eastroc LCC** (P. O. Box 158, Shippingport, PA 15077) issued May 15, 1998, for the operation of a MG-lime forced oxidation system at the Shippingport Plant in Shippingport Borough, **Beaver County**.

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**General Plan Approval and Operating Permit issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

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*Northeast Regional Office, Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (717) 826-2531*

**39-302-160GP: HAB Industries Inc.** (15 South Albert Street, Allentown, PA 18103) for the construction and operation of a boiler (L82601) in Allentown, **Lehigh County**.

**39-302-161GP: HAB Industries Inc.** (15 South Albert Street, Allentown, PA 18103) for the construction and operation of a boiler (L88386) in Allentown, **Lehigh County**.

**48-399-042GP: Equipto Co.** (225 Main Street, Tatamy, PA 18085) for the construction and operation of a controlled pyrolysis furnace in Tatamy Borough, **Northampton County**.

**AIR QUALITY  
OPERATING PERMITS**

**Notice of Intent to Issue Title V Operating Permits**

Under 25 Pa. Code § 127.521, notice is given that the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the following facilities. These facilities are major facilities subject to the operating permit requirements under Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F (relating to operating permit requirements) and G (relating to Title V operating permits).

Copies of the Title V application, proposed permit and other relevant information are available for public inspection and additional information may be obtained by contacting the regional office noted below.

Interested persons may submit written comments, suggestions or objections concerning the proposed Title V permit to the regional office within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the person(s) submitting the comments, along with the reference number of the proposed permit. The commentator should also include a concise statement of any objections to the permit issuance and the relevant facts upon which the objections are based.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period and will provide notice of any scheduled public hearing at least 30 days in advance of the hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Attn: Kanubhai L. Patel, (717) 705-4702*

**67-05029: Hanover Wire Cloth** (East Middle Street, Hanover, PA 17331) located in Hanover, **York County**. The facility's major sources of emissions are five wire dip coating lines which primarily emit volatile organic compounds (VOC).

**PLAN APPROVALS**

**Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Northeast Regional Office, Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (717) 826-2531.*

**39-313-037A: Fluoro-Seal Inc.** (16360 Park 10 Place #325, Houston, TX 77084) issued May 14, 1998, for the modification of a batch reactor in Hanover Township, **Lehigh County**.

**40-310-032B: Barletta Materials and Construction Co.** (Route 924, P. O. Box 10, Hazleton, PA 18201) issued May 1, 1998, for the modification of a stone crushing operation in Hazle Township, **Luzerne County**.

**40-399-038A: Harris Semiconductor Inc.** (125 Crestwood Road, Mountaintop, PA 18707) issued May 1, 1998, for the modification of the Fab 8 manufacturing line in Wright Township, **Luzerne County**.

**54-318-008B: Air Products and Chemical Co.** (P. O. Box 351, Tamaqua, PA 18252) issued May 14, 1998, for the modification of a paint spraying operation in Rush Township, **Schuylkill County**.

*Southwest Regional Office, Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**PA-65-884A: Construction Corp.** (P. O. Box 290, Homer City, PA 15628) issued May 15, 1998, for the construction of a bituminous concrete plant at the Donegal Plant in Mt. Pleasant Township, **Westmoreland County**.

**PA-04-044B: Zinc Corp. of America** (300 Frankfort Road, Monaca, PA 15061) issued May 15, 1998, for the construction of a bulk material storage building at the Monaca Zinc Smelter in Potter Township, **Beaver County**.

**PA-56-025A: Enterprise Stone & Lime Co., Inc.** (P. O. Box 77, New Enterprise, PA 16664) issued May 15, 1998, for the installation of a jaw crusher at the Bakersville Crushing Plant in Jefferson Township, **Somerset County**.

**Plan Approvals extensions issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southwest Regional Office, Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.*

**32-000-129: CNG Transmission Corp.** (625 Liberty Avenue, Pittsburgh, PA 15222) issued May 15, 1998, for the installation of 4 inger. rand SVG-8AS engines at the Rochester Mills Station in East Mahoning Township, **Indiana County**.

**04-313-065A: Nova Chemicals, Inc.** (400 Frankfort Road, Monaca, PA 15061) issued May 15, 1998, for the installation of a dylite unit at the Beaver Valley Plant in Potter Township, **Beaver County**.

**PA-04-033A: Nova Chemicals, Inc.** (400 Frankfort Road, Monaca, PA 15061) issued May 15, 1998, at this chemical facility for the operation of a D2 liquid lube dylite process at the Beaver Valley Plant in Potter Township, **Beaver County**.

**PA-11-289A: OMG Americas** (101 Bridge Street, Johnstown, PA 15902) issued May 15, 1998, for the operation of three high-speed grinding mills at the Johnstown Plant in Johnstown, **Cambria County**.

**MINING**

**APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES**

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following



statutes: the Air Quality Control Act (35 P. S. §§ 4401—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

*Knox District Office, P. O. Box 669, Knox, PA 16232.  
Coal Issued*

**16970103. MAF Coal & Excavation, Inc.** (R. D. 1, Box 261A, Sligo, PA 16255) Commencement, operation and restoration of a bituminous strip operation in Clarion Township, **Clarion County** affecting 104.2 acres. Receiving streams: Unnamed tributaries to Brush Run. Application received: May 20, 1997. Permit Issued: May 6, 1998.

**102892-16970103-E-1. MAF Coal & Excavation, Inc.** (R. D. 1, Box 261A, Sligo, PA 16255) Application for a stream encroachment to conduct mining activities within 100 feet but no closer than 10 feet to unnamed tributary "F" to Brush Run for the purpose of support facility construction and maintenance in Clarion Township, **Clarion County**. No mineral extraction may be conducted closer than 100 feet to unnamed tributary "F" to Brush Run. Receiving streams: Unnamed tributaries to Brush Run. Application received: May 20, 1997. Permit Issued: May 6, 1998.

**24880103. Energy Resources, Inc.** (P. O. Box 259, Brockway, PA 15824) Renewal of an existing bituminous strip operation in Horton Township, **Elk County** affecting 541.0 acres. Receiving streams: Unnamed tributary to Mead Run; Unnamed tributary to Vineyard Run; Two unnamed tributaries to Laurel Run and two unnamed tributaries to West Branch Walburn Run. This renewal is issued for reclamation only. Application received: March 16, 1998. Permit Issued: May 13, 1998.

**16930101. Aspen Minerals, Inc.** (P. O. Box 269, Shippenville, PA 16254) Renewal of an existing bituminous strip and tippel refuse disposal operation in Redbank Township, **Clarion County** affecting 57.0 acres. This renewal is issued for reclamation only. Receiving streams: Leisure Run and three unnamed tributaries to Town Run. Application received: March 25, 1998. Permit Issued: May 13, 1998.

**33970113. Falls Creek Energy Co., Inc.** (R. D. 6, Box 231, Kittanning, PA 16201) Commencement, operation and restoration of a bituminous strip operation in Young Township, **Jefferson County** affecting 43.0 acres. Receiving streams: Elk Run. Application received: December 26, 1997. Permit Issued: May 18, 1998.

*McMurray District Office, 3913 Washington Road, McMurray, PA 15317.*

**03971301. DLR Mining, Inc.,** (R. D. 3, Box 115-A, Indiana, PA 15701), to operate the Ridge Mine in South Bend Township, **Armstrong County** to, new underground mine, unnamed tributary to Big Run and unnamed tributary to Whisky Run. Permit issued May 8, 1998.

**14920701. Power Operating Company, Inc.** (P. O. Box 25, Osceola Mills, PA 16666), to operate the Leslie Tipple Refuse Pile in Rush Township, **Centre County** to, new refuse pile, Moshannon Creek. Permit issued May 12, 1998.

**30831303. Cyprus Cumberland Resources Corp.** (145 Elm Drive, Waynesburg, PA 15370), to revise the permit for the Cumberland Mine in Whiteley Township, **Greene County** to, revision to add bleeder shaft and dewatering borehole, unnamed tributary to Whiteley Creek. Permit issued May 22, 1998.

*Knox District Office, P. O. Box 669, Knox, PA 16232.  
Noncoal Issued*

**16970307. Milestone Crushed, Inc.** (R. D. 3, Box 132, Emlenton, PA 16373) Commencement, operation and restoration of a limestone operation in Beaver, Richland and Licking Townships, **Clarion County** affecting 111.3 acres. Receiving streams: Unnamed tributary to Turkey Run. Application received: December 16, 1997. Permit Issued: May 1, 1998.

**25870302. James H. Glover** (900 French Creek Road, Waterford, PA 16441) Renewal of NPDES permit #PA0107808, LeBoeuf Township, **Erie County** affecting 48.0 acres. Receiving streams: French Creek. Application received: March 16, 1998. Permit Issued: May 13, 1998.

**3175SM3. A. Medure Sand & Gravel Co., Inc.** (438 Rear Line Avenue, Ellwood City, PA 16117) Renewal of NPDES permit #PA0208103, in Plain Grove Township, **Lawrence County** affecting 153.0 acres. Receiving streams: Unnamed tributary to Jamison Run and Jamison Run. Application received: March 30, 1998. Permit Issued: May 13, 1998.

**3075SM26. Neshannock Sand & Gravel, Inc.** (R. D. 1, Box 72, New Castle, PA 16105) Transfer of an existing sand and gravel operation from Cooper Brothers, Inc. in Slippery Rock Township, **Butler County** affecting 92.0 acres. Receiving streams: Unnamed tributary of Wolf Creek. Application received: February 13, 1998. Permit Issued: May 18, 1998.

**20970305. Meadville Redi-Mix Concrete, Inc.** (P. O. Box 418, Meadville, PA 16335) Commencement, operation and restoration of a sand and gravel operation in Wayne Township, **Crawford County** affecting 140.0 acres. Receiving streams: None. Application received: December 29, 1997. Permit Issued: May 18, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**54980301. Schuylkill Contracting Co., Inc.,** (R. R. 2, Box 2312, Pottsville, PA 17901), commencement, operation and restoration of a quarry operation in Foster Township, **Schuylkill County** affecting 375.0 acres, receiving stream—none. Permit issued May 21, 1998.

*Knox District Office, P. O. Box 669, Knox, PA 16232.  
Small Noncoal Granted:*

**16982801. Neiswonger Construction** (R. D. 1, Box 223, Strattanville, PA 16258) Commencement, operation and restoration of a small noncoal sand and gravel operation in Clarion Township, **Clarion County** affecting 5.0 acres. Receiving streams: none. Application received: February 10, 1998. Permit Issued: May 6, 1998.

**16980804. Gregory A. Love** (R. R. 2, Box 48, Strattanville, PA 16258) Commencement, operation and restoration of a small noncoal shale operation in Clarion Township, **Clarion County** affecting 2.5 acres. Receiving streams: none. Application received: April 3, 1998. Permit Issued: May 6, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

*General Small Noncoal Authorizations Granted*

**40980801. Dotzel Trucking,** (1898 Slocum Road, Mountaintop, PA 18707), commencement, operation and restoration of a small quarry operation in Slocum Township, **Luzerne County** affecting 9.0 acres, receiving stream—none. Authorization granted May 20, 1998.

**58970861. Murlyn Blaisure**, (R. R. 4, Box 251, Montrose, PA 18801), commencement, operation and restoration of a small bluestone quarry operation in Bridgewater Township, **Susquehanna County** affecting 1.0 acres, receiving stream—none. Authorization granted May 21, 1998.

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

*Industrial Minerals NPDES Permit Renewal Applications Issued:*

**4273SM2. H. B. Mellott Estate, Inc.** (Route 1, Box 25, Warfordsburg, PA 17267), renewal of NPDES Permit No. PA0212547, Thompson Township, **Fulton County**, receiving streams unnamed tributary to Tonoloway Creek. NPDES renewal application received March 25, 1998. Issued May 18, 1998.

## **ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT**

### **ENCROACHMENTS**

The Department of Environmental Protection has taken the following actions on previously received permit applications, requests for Environmental Assessment approval, and requests for Water Quality Certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Any person aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and notice of final action for certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).** (Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)

*Permits Issued and Actions on 401 Certifications:*

*Southeast Regional Office, Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E09-757.** Encroachment Permit. **Jeffery and Sandra Bahls**, P. O. Box 619, Quakertown, PA 18951. To construct and maintain a low flow stream crossing consisting of two-30 inch RCP culverts and place associated fill within an unnamed tributary to Cooks Creek (EV) and

approximately 0.02 acre of adjacent wetlands for the purpose of constructing a driveway access to a residential building lot. The work will necessitate a 15 linear foot relocation of a small drainage swale. The site is located approximately 2,000 feet north of the intersection of Chestnut Road with Pleasant View Road (Hellertown, PA Quadrangle, N: 4.3 inches; W: 9.4 inches) in Springfield Township, **Bucks County**.

**E23-369.** Encroachment Permit, **Carl A. Abbonizio**, Box 315, Sewell, NJ 08080. To place fill material in 0.05 acre of isolated wetland (PEM) and to install and maintain a 1,200 foot long, 36-inch C.P.P. storm sewer in and along an existing drainage channel which is an unnamed tributary to the Delaware River. This project is associated with the proposed addition to the existing parking facility used in conjunction with the Philadelphia International Airport. The project site is situated along the southern side of Tinicum Island Road, approximately 200 feet south of the intersection with Stevens Drive (Bridgeport, NJ-PA Quadrangle N: 21.0 inches; W: 2.9 inches) in Tinicum Township, **Delaware County**.

*Northeast Regional Office, Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.*

**E39-339.** Encroachment. **Pennsylvania Power and Light Company**, Mailstop N-4, Two North Ninth Street, Allentown, PA 18101-1179. To relocate approximately 290 linear feet of Hosensack Creek with the construction of approximately 190 linear feet of channel change with work consisting of the construction of a triangular channel, riprap bank stabilization and rock channel deflectors. The project is to protect an existing 138/69KV line support tower. The project is located on Hosensack Creek approximately 0.6 mile northeast of the intersection of T386 and T387 (East Greenville, PA Quadrangle N: 14.0 inches; W: 0.6 inch) in Lower Milford Township, **Lehigh County**.

**E64-185.** Encroachment. **William Anton and Paul Ludick**, R. R. 5, Box 447, Honesdale, PA 18431. To construct and maintain and channel change consisting of the relocation of approximately 350 linear feet of a Tributary to Carley Brook. The relocated section will consist of approximately 390 linear feet of rock-lined trapezoidal channel, having 2H:1V side slopes. The project includes an 8-inch intake pipe along the right bank of the relocated channel section. The project is located east of T-554, approximately 1 mile south of the intersection of T-554 and T-964 (Galilee, PA Quadrangle N: 1.8 inches; W: 16.2 inches), in Oregon Township, **Wayne County**.

*Northwest Regional Office, Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**E16-102.** Encroachment. **Donald W. Deitz**, R. D. 1, Box 308, Clarion, PA 16214-9416. To remove the existing natural gas pipeline and to install and maintain a 2-inch diameter natural gas pipeline across the Clarion River approximately 250 feet downstream of S. R. 3007 (Knox, PA Quadrangle N: 6.8 inches; W: 5.2 inches) located in Beaver and Licking Townships, **Clarion County**.

**E25-562.** Encroachment. **The Carafio Company**, 2445 Belmont Avenue, Youngstown, OH 44504-0186. To place fill in a total of 4.69 acres of three separate wetland areas, including a total of 0.62 acre of fill placed without a permit, for the construction of Millcreek Pavilions commercial retail development adjacent to the Millcreek Mall east of I-79 immediately north of S. R. 4012 (Inter-

change Road) (Erie South, PA Quadrangle N: 12.4 inches; W: 14.1 inches) in Millcreek Township, **Erie County**. This project includes the creation of 5.31 acres of replacement wetlands at the "English Site" located within the Conneaut Creek watershed west of S. R. 215 approximately 1,200 feet south of Old Albion Road (East Springfield, PA Quadrangle N: 8.7 inches; W: 3.3 inches) in Springfield Township, **Erie County**.

**E25-567.** Encroachment. **PA Department of Transportation, District 1-0**, 1140 Liberty Street, Franklin, PA 16323. To place concrete streambed paving approximately 1-foot in depth and to maintain the twin cell concrete arch structure having two 28-foot-wide by 22-foot-high waterway openings in Elk Creek on S. R. 0005, Segment 0180, Offset 1644 (Fairview, PA Quadrangle N: 3.7 inches; W: 15.1 inches) in Lake City Borough, **Erie County**.

**E43-264.** Encroachment. **Willard E. Campbell Enterprises, Inc.**, 764 Plaza Unit #1, P. O. Box 1018, Duncansville, PA 16635. To fill 0.3 acre of a 2.0 acre wetland (PEM/PSS) for the construction of a Hoss's Steak and Sea House and Restaurant associated parking lot along the north side of S. R. 208 approximately 1,700 feet west of I-79 (Mercer, PA Quadrangle N: 3.3 inches; W: 5.0 inches) in Springfield Township, **Mercer County**. Project includes construction of 0.33 acre of replacement wetland on site.

#### ENVIRONMENTAL ASSESSMENT

*Northwest Regional Office, Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

*Environmental Assessment Approvals and Actions on 401 Certifications*

**EA24-003NW.** Environmental Assessment. **North Central Pennsylvania Planning and Development Commission**, 651 Mountmorenci Avenue, Ridgway, PA 15853. To remove an abandoned cooling unit and two abandoned buildings which are across/over tributaries to Elk Creek as part of the Stackpole Center Demolition Project. The project is located within the Stackpole Center in the City of St. Marys approximately 1,600 feet northwest of the intersection of Theresia Street (S. R. 1005) and S. R. 0120 (Saint Marys PA Quadrangle N: 10.4 inches; W: 7.1 inches) located in City of Saint Marys, **Elk County**.

**EA33-003NW.** Environmental Assessment. **Robert S. Hedin**, Hedin Environmental, 634 Washington Road, Suite 216, Pittsburgh, PA 15228. To place fill in a de minimis area of wetland (0.02 acre) as part of a project to redirect an acid mine discharge (203 gpm average flow) through a 4,000 ton anoxic limestone drain and through two separate constructed wetlands (0.95 acre and 1.3 acres) to provide passive treatment prior to discharge to Beaver Run (HQ-CWF). The project is located in a strip-mined area on the west side of Beaver Run approximately 600 feet southwest of the intersection of S. R. 3022 and Conifer Road in the Village of Conifer located in Beaver Township, **Jefferson County**.

[Pa.B. Doc. No. 98-894. Filed for public inspection June 5, 1998, 9:00 a.m.]

#### Proposed Monitoring Plan Revisions

The Department of Environmental Protection, Bureau of Air Quality, is proposing to revise its ambient air pollution monitoring system and is seeking comments on this proposal.

The Environmental Protection Agency (EPA) has established new standards for fine particles (under 2.5 microns in size). States will need to measure the amount of fine particles to which their citizens are exposed. The Department of Environmental Protection (Department) is proposing to install new PM<sub>2.5</sub> monitors to fulfill this need. The Department has also taken this opportunity to review the Commonwealth's entire air quality monitoring program in order to propose necessary changes that will make the program more effective. The current monitoring program exceeds minimum EPA requirements, consistently measures levels for many pollutants well below Federal health based standards, and measures for total suspended particulate (TSP) for which a Federal standard no longer exists. The Department is proposing to restructure the program to measure the pollutants most likely to violate the National Ambient Air Quality Standards (NAAQS).

The proposal is available on the Department web site at <http://www.dep.state.pa.us> (choose Information by Subject/Air Quality/Pennsylvania's Clean Air Plans). To obtain a hard copy, call Vickie Walters at (717) 787-4310. Persons interested in submitting written comments should send the comments to J. Wick Havens, Chief, Division of Air Resource Management, P. O. Box 8468, Harrisburg, PA 17105-8468 by the close of business, July 1, 1998. Comments may also be submitted electronically to J. Wick Havens at [havens.wick@a1.dep.state.pa.us](mailto:havens.wick@a1.dep.state.pa.us).

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 98-895. Filed for public inspection June 5, 1998, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Availability of Draft Abstinence Based Education and Related Services Grant Application for Federal Fiscal Year 1999

The Department of Health is making available copies of its Federal Fiscal Year 1999 draft application for Abstinence Education and Related Services funding. This application is the Commonwealth of Pennsylvania's draft request to the United States Department of Health and Human Services for funds to implement an abstinence education and related services plan and program as set out in 42 U.S.C.A. § 705(a)(5)(F) and § 710(c)(2).

This application describing proposed services, program goals and objectives, and activities can be obtained by contacting the Department of Health, Bureau of Family Health, Division of Maternal and Child Health, Room 725, Health & Welfare Building, P. O. Box 90, Harrisburg, PA 17108, telephone (717) 783-8451 [TDD: (717) 783-6514]. Persons with a disability who require an alternative format of the application (for example, large print,

audio tape, Braille) should notify the Division of Maternal and Child Health at the above address or number, or at TDD: (717) 783-6514.

Written comments will be accepted and should be sent to the above address, and must be received by no later than 4 p.m. Tuesday, June 30, 1998.

Persons with a disability who desire to comment in alternative format (for example, large print, audio tape, Braille) should notify the Division of Maternal and Child Health at the above-referenced address or telephone numbers.

DANIEL F. HOFFMANN,  
*Secretary*

[Pa.B. Doc. No. 98-896. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Availability of Draft Maternal and Child Health Services Block Grant Application for Federal Fiscal Year 1999

The Department of Health is making copies available of the draft Maternal and Child Health Services Block Grant Application for FFY 1999, under 42 U.S.C.A. § 705(a)(5)(F). This application is the Commonwealth of Pennsylvania's draft request to the United States Department of Health and Human Services for block grant funding for Maternal and Child Health Services.

The Block Grant Application describing proposed services, program goals and objectives, and activities can be obtained by calling the Bureau of Family Health at (717) 787-7192. Persons with a disability who require an alternative format of the above mentioned application (for example, large print, audio tape, Braille) should also contact the Bureau of Family Health at (717) 787-7192 [TDD: (717) 783-6514].

Written comments will be accepted and should be sent to the Bureau of Family Health, Room 733, Health & Welfare Building, P. O. Box 90, Harrisburg, PA 17108, and should be received no later than 4 p.m., Tuesday, June 30, 1998.

Persons with a disability who desire to comment in alternative format (for example, large print, audio tape, Braille) should notify Susan Guy of the Bureau of Family Health at (717) 787-7192 [TDD: (717) 783-6514].

DANIEL F. HOFFMANN,  
*Secretary*

[Pa.B. Doc. No. 98-897. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Health Policy Board; Meeting Notice

The Health Policy Board is scheduled to hold a meeting on June 18, 1998, at 4 p.m. in Room 403, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA.

This meeting is subject to cancellation without notice.

For additional information, or for persons with a disability who desire to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Robin Bowman at (717) 783-2500.

DANIEL F. HOFFMANN,  
*Secretary*

[Pa.B. Doc. No. 98-898. Filed for public inspection June 5, 1998, 9:00 a.m.]

## DEPARTMENT OF LABOR AND INDUSTRY

### Current Prevailing Wage Act Debarments

The contractors referenced as follows have been determined to have intentionally violated the Pennsylvania Prevailing Wage Act (act) (43 P. S. §§ 165-11—165-17). This notice is published for the information and convenience of public bodies subject to the act. Under section 11(e) of the act (43 P. S. § 165-11(e)), this firm or person, or any firms, corporations or partnerships in which the firm or person has an interest, shall be awarded no contract for 3 years after the date listed.

<i>Contractor</i>	<i>Address</i>	<i>Date of Debarment</i>
Kazdal Construction Co., Inc., and Louis Kazdal	191 La Costa Drive P. O. Box 1482 Blackwood, NJ 08012	05/15/98

JOHNNY J. BUTLER,  
*Secretary*

[Pa.B. Doc. No. 98-899. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Job Creation Assistance on Behalf of Persons With Severe Disabilities in Allegheny County; Amendment

The *Pennsylvania Bulletin* notice published at 28 Pa.B. 2180 (May 9, 1998) regarding the Pennsylvania Office of Vocational Rehabilitation Request for Proposal, RFP 98-1, Job Creation Assistance on Behalf of Persons With Severe Disabilities In Allegheny County is amended to include the following information omitted from the original notice:

*Commitment to Enhance Socially/Economically Restricted Businesses (SERB)*

The Commonwealth of Pennsylvania strongly encourages the submission of proposals by SERBs in response to this Request for Proposal.

To achieve the objective of enhancing SERB participation, the Commonwealth has established SERB utilization as a selection criterion in the evaluation process.

The Bureau of Contract Administration and Business Development (BCABD) in the Department of General Services will evaluate the aforementioned criterion and assign a point value to be considered within the overall RFP total point tabulation.

Proposals submitted by individuals claiming SERB status or proposals submitted by individuals reflecting joint venture and subcontracting opportunities with SERBs must submit documentation verifying their claims.

SERBs are businesses whose economic growth and development have been restricted based on social and economic bias. The businesses are BCABD-certified minority- and women-owned businesses and certain restricted businesses whose development has been impeded because their primary or headquarters facilities are physically located in areas designated by the Commonwealth as being in enterprise zones. A business will not be considered socially/economically restricted if one of the following conditions exists:

1. The business has gross revenues exceeding \$4 million annually.
2. The concentration of an industry is such that more than 50% of the market is controlled by the same type of SERB (Minority Business Enterprise [MBE] or Women Business Enterprise [WBE]).

Proposers not considered to be socially/economically restricted businesses seeking to identify such businesses for joint venture and subcontracting opportunities are encouraged to contact:

Department of General Services  
 Bureau of Contract Administration  
 and Business Development  
 Room 502, North Office Building  
 Harrisburg, PA 17125  
 (717) 787-7380  
 Fax: (717) 787-7052

*Application Material*

The complete application package containing a detailed Request for Proposal and Guidelines for application, including detailed information concerning SERB participation, is available by writing to the following address, or by calling Raymond L. Walker, Supervisor, Infrastructure Services Section at (717) 787-5735 (TDD: 783-8917).

Office of Vocational Rehabilitation  
 Infrastructure Services Section  
 Room 1320 Labor and Industry Building  
 Seventh and Forster Streets  
 Harrisburg, PA 17120

JOHNNY J. BUTLER,  
*Secretary*

[Pa.B. Doc. No. 98-900. Filed for public inspection June 5, 1998, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Realty Transfer Tax; 1997 Common Level Ratio Real Estate Valuation Factors

The following real estate valuation factors are based on sales data compiled by the State Tax Equalization Board in 1997. These factors are the mathematical reciprocals of the actual common level ratio. For Pennsylvania Realty Transfer Tax purposes, these factors are applicable for documents accepted from July 1, 1998 to June 30, 1999, except as indicated. The date of acceptance of a document is rebuttably presumed to be its date of execution, that is, the date specified in the body of the document as the date of the instrument (61 Pa. Code § 91.102).

<i>County</i>	<i>Common Level Ratio Factor</i>	<i>County</i>	<i>Common Level Ratio Factor</i>	<i>County</i>	<i>Common Level Ratio Factor</i>
Adams	2.43	Crawford	2.21	Lehigh	1.98
Allegheny	4.93	Cumberland	14.71	Luzerne	13.33
Armstrong	1.97	Dauphin	1.78	***Lycoming	1.33
Beaver	2.58	Delaware	30.30	***McKean	4.00
Bedford	9.90	Elk	5.26	Mercer	8.77
Berks	1.02	Erie	11.24	Mifflin	8.33
Blair	8.48	Fayette	9.09	Monroe	4.18
Bradford	2.30	Forest	3.26	***Montgomery	1.00
Bucks	20.83	Franklin	13.51	Montour	9.17
Butler	7.52	Fulton	5.50	Northampton	1.87
Cambria	5.71	Greene	3.39	Northumberland	14.29
Cameron	2.61	Huntingdon	4.59	*Perry	6.67
Carbon	10.87	**Indiana	5.90	Philadelphia	3.46
Centre	2.15	Jefferson	4.88	Pike	3.19
***Chester	1.00	Juniata	6.33	Potter	7.52
**Clarion	4.12	Lackawanna	5.00	Schuylkill	2.16
Clearfield	4.48	Lancaster	1.03	Snyder	5.10
Clinton	2.80	Lawrence	6.37	***Somerset	2.00
Columbia	2.56	Lebanon	10.53	Sullivan	3.16

<i>County</i>	<i>Common Level Ratio Factor</i>	<i>County</i>	<i>Common Level Ratio Factor</i>	<i>County</i>	<i>Common Level Ratio Factor</i>
Susquehanna	1.97	Warren	2.31	Wyoming	3.36
Tioga	2.69	Washington	5.18	***York	1.00
Union	4.81	Wayne	10.53		
Venango	4.93	Westmoreland	3.75		

\*Adjusted by the Department of Revenue to reflect assessment ratio change effective February 24, 1997

\*\*Adjusted by the Department of Revenue to reflect assessment ratio change effective January 1, 1998.

\*\*\*Adjusted by the Department of Revenue to reflect assessment base change effective January 1, 1998.

ROBERT A. JUDGE, Sr.,  
*Secretary*

[Pa.B. Doc. No. 98-901. Filed for public inspection June 5, 1998, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Retention of Engineering Firms

#### Lehigh County Project Reference No. 08430AG2202

The Department of Transportation will retain a consulting firm to provide Right-of-Way Acquisition Services for the S. R. 0222, Section 002 (Trexlerstown) project in Lehigh County. The estimated construction cost of this project is \$68.6 million.

The consultant will furnish right-of-way acquisition services to the Department of Transportation for the State Route (S. R.) 0222, Section 002 project. The project is located in Lehigh County and will include land acquisition in both Upper Macungie Township and Lower Mucungie Township. This highway improvement will consist of the relocation of S. R. 0222 beginning just west of the interchange with Interstate 78, follow a course to the north of existing S. R. 0222, cross over State Route (S. R.) 100, and touch down on existing S. R. 0222 to the west of S. R. 100 near Grim Road. This project will also involve the widening and relocation of S. R. 100 between Schantz Spring Road and Spring Creek Road. The proposed project will include two (2) inchanges and significant local road adjustments. The total project length for the project is approximately seven (7) miles.

The required services for this project include, but are not limited to, relocation assistance; appraisal planning; negotiation; title services; property management and claim payment.

The assignment will involve approximately two hundred forty one (241) properties. The number of estimated total takes are eighty-six (86), with fifty-two (52) being residential, twenty-eight (28) commercial, and six (6) others. The estimated number of partial takes are one hundred fifty five (155), with ninety eight (98) being residential, forty-five (45) commercial, and twelve (12) others (community, etc.) Also, assume there will be approximately twenty-five (25) additional tenant claims (billboards, leasehold interest, etc.)

Within the numbers identified above, the project will affect approximately forty-one (41) residential relocations and twenty-three (23) commercial relocations.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

a. Ability to package and present the Letter of Interest in accordance with the "General Requirements and Information" section of the *Pennsylvania Bulletin*.

b. Familiarity with the applicable provisions of the Department's Right-of-Way Manual in compliance with Federal and State Regulations, including but not limited to the Pennsylvania Eminent Domain Code, the State Highway Law and the Real Estate Law and the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

c. Experience as a firm with personnel experienced and qualified in performing their assigned function.

d. Demonstrate ability to perform work in compliance with current Federal and State policies, procedures and regulations.

The District will announce the shortlisted firms at an open public meeting to be held at Engineering District 5-0, 1713 Lehigh Street, Allentown, PA 18103. All candidates that submitted a Letter of Interest will be notified by the District Office for the date and time of the announcement. Therefore, please specify a contact person in the Letter of Interest submission.

The District's copy of the Letter of Interest and required forms (see general requirements and information section) shall be sent to: Mr. Walter E. Bortree, P.E., District Engineer, Engineering District 5-0, 1713 Lehigh Street, Allentown, PA 18103, Attention: Mr. Donald E. Lerch, P.E.

Any technical questions concerning the requirements for this project should be directed to: Mr. Donald E. Lerch, P.E., District 5-0, at (610) 791-6019, or Mr. Paul J. Goida, District 5-0, at (610) 791-6011.

Any questions concerning the submittal of the letter of interest can be directed to the Consultant Agreement Division at (717) 783-9309.

#### Bedford, Blair, Cambria, Fulton, Huntingdon and Somerset Counties Project Reference No. 08430AG2203

The Department of Transportation will retain an engineering firm for an Open-End Contract to provide supplementary construction inspection staff under the Department's Inspector(s)-in-Charge to perform construction inspection services on various projects in Engineering

District 9-0, that is Bedford, Blair, Cambria, Fulton, Huntingdon and Somerset Counties. The Contract will include roadway and bridge construction and permit projects, and material plant inspection. The Contract will be for a period of sixty (60) months, with a maximum cost of six hundred fifty thousand (\$650,000) dollars.

It is anticipated that a maximum supplementary construction inspection staff of thirty (30) inspectors will be required for this assignment.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Open-End Contract based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- a. Ability to package and present the Letter of Interest in accordance with "General Requirements and Information" section.
- b. Number of available inspectors in each payroll classification.
- c. Number of NICET and NECEPT certified inspectors in each payroll classification.
- d. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized experience in the Maintenance and Protection of Traffic, soils, structures, concrete and asphalt paving, drainage, wetlands, CPM schedule monitoring, and plant inspection.
- e. Understanding of Department's requirements, policies, and specifications.
- f. Ability to provide CPM scheduling.
- g. Past Performance.
- h. Work Load.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Manager 1 (TCM-1) (NICET Highway Construction Level 4 or equivalent)	1 (1)
Transportation Construction Ins. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	9 (6)
Transportation Construction Inspector—Materials (TCI-Materials) (NICET Highway Materials Level 2 or equivalent)	5 (3)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	15 (9)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

- 1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
- 2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
- 3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
- 4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.
- 5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1998:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCM-1)	\$44.93
(TCIS)	\$39.36
(TCI-Materials)	\$35.51
(TCI)	\$34.43

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a preconstruction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item; provide inspection of work being performed under Highway Occupancy Permits, at material producing plants, and of utility construction and perform other duties as may be required. Firms applying must have qualified personnel capable of climbing structures during painting, rehabilitation, or construction.

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCM-1	2
TCIS	11
TCI-M	6
TCI	18

The second copy of the letter of interest and required forms, (see general requirements and information section shall be sent to: Mr. Earl L. Neiderhiser, P.E., District Engineer, District 9-0, 1620 North Juniata Street, Hollidaysburg, PA 16648.

Any technical questions concerning the requirements for this project should be directed to: Mr. Philip J. Rampulla, District 9-0, at (814) 696-7135.

Any questions concerning the submittal of the letter of interest can be directed to the Consultant Agreement Division at (717) 783-9309.

**Monroe County  
Project Reference No. 08430AG2204**

The Department of Transportation will retain a consulting firm to provide Right-of-Way Acquisition Services for the S. R. 0209, Section 007 (Marshalls Creek) project in Monroe County. The estimated construction cost of this project is \$50 million.

The consultant will furnish right-of-way acquisition services to the Department of Transportation for the State Route (S. R.) 0209, Section 007 project. The project is located in Monroe County and will include land acquisition in both Smithfield Township and Middle Smithfield Township for the widening and relocation of S. R. 0209, intersection improvements with S. R. 0402, and enhancement of local roads to the White Birch Ridge Development. This highway improvement will begin on existing alignment of S. R. 0209 near the intersection of County Bridge Road (T-569), continue for approximately one-half mile, then relocate to the east of existing S. R. 0209 and continue in a northerly direction crossing existing S. R. 0209, and terminating at its intersection with S. R. 0402. The total project length for the project is approximately ten (10) miles.

The work contemplated hereunder will be awarded as one contract, although the Department will provide a "Total Take" plan for early acquisition of displacement properties and a "Final Right Of Way" plan for the remainder of the parcels to be acquired for State Route 0209, Section 007.

The required services for this project include, but are not limited to: relocation assistance; appraisal planning; negotiation; title services; property management and claim payment.

The assignment will involve approximately one hundred thirty (130) properties. The estimated number of total takes are thirty-seven (37), with thirty (30) being residential, five (5) commercial, and two (2) others. The estimated number of partial takes are ninety-three (93), with sixty (60) being residential, thirty (30) commercial, and three (3) others (community, etc.). Also, assume there will be approximately twenty-five (25) additional tenant claims (billboards, leasehold interest, etc.).

Within the number identified above, the project will affect approximately twenty-five (25) residential relocations and three (3) commercial relocations.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

a. Ability to package and present the Letter of Interest in accordance with the "General Requirements and Information" section of the *Pennsylvania Bulletin*.

b. Familiarity with the applicable provisions of the Department's Right-of-Way Manual in compliance with Federal and State Regulations, including but not limited to the Pennsylvania Eminent Domain Code, the State Highway Law and the Real Estate Law and the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

c. Experience as a firm with personnel experienced and qualified in performing their assigned function.

d. Demonstrate ability to perform work in compliance with current Federal and State policies, procedures and regulations.

The District will announce the short listed firms at an open public meeting to be held at Engineering District 5-0, 1713 Lehigh Street, Allentown, PA 18103. All candidates that submitted a Letter of Interest will be notified by the District Office for the date and time of the announcement. Therefore, please specify a contact person in the Letter of Interest submission.

The District's copy of the Letter of Interest and required forms (see general requirements and information section) shall be sent to: Mr. Walter E. Bortree, P.E., District Engineer, Engineering District 5-0, 1713 Lehigh Street, Allentown, PA 18103, Attention: Mr. Donald E. Lerch, P.E.

Any technical questions concerning the requirements for this project should be directed to: Mr. Donald E. Lerch, P.E., District 5-0, at (610) 791-6019, or Mr. Paul J. Goida, District 5-0, at (610) 791-6011.

Any questions concerning the submittal of the letter of interest can be directed to the Consultant Agreement Division at (717) 783-9309.

**Centre County  
Project Reference No. 08430AG2205**

The Department of Transportation will retain a firm to provide assistance in the acquisition of right-of-way to be used for the purpose of construction of S. R. 0220, Sections C10, C11 and C12 and S. R. 6026, Section C02. S. R. 0220, Sections C10, C11 and C12 contain approximately 106 claims (2 commercial, 15 agricultural, 16 residences and 82 land only) and 120 properties identified for mitigation activities resulting from impacts associated with the selected alternative. S. R. 6026, Section C02 contains approximately 27 claims (9 agricultural, 5 residential and 13 land only).

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating this Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The selected firm will be required to provide professional acquisition of right-of-way services necessary to clear the right-of-way for these projects. Right-of-way services include developing a relocation assistance plan and problem identification; relocation assistance; title services; settlement and closing services; negotiations; appraisal related services (but not actual appraisals), and other services as required.

The selected firm will be required to coordinate all work through the Department's designated representative and to provide for the assistance in compliance with Federal and State regulations, including but not limited to the Pennsylvania Eminent Domain Code, the State Highway Law and Pennsylvania Real Estate Law and the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

The majority of the work and services will be required within thirty (30) months from the notice to proceed.

On-site office space will be provided as a direct cost other than payroll thru our Agreement if the selected firm



uses a field overhead rate or the selected firm will be required to provide the on-site office space if an office overhead rate is used.

The District's copy of the Letter of Interest and required forms (see general requirements and information section) shall be sent to: Mr. George Khoury, P. E., District Engineer, Engineering District 2-0, 1924-30 Daisy Street, P. O. Box 342, Clearfield, PA 16830.

Any technical questions concerning the requirements for this project should be directed to: Mr. James Bathurst, P. E., District 2-0, at (814) 765-0437.

Any questions concerning the submittal of the letter of interest can be directed to the Consultant Agreement Division at (717) 783-9309.

### General Requirements and Information

Firms interested in providing the above work and services are invited to submit two copies of a Letter of Interest are required information for each Project Reference Number for which the applicant wishes to be considered.

The first copy of the Letter of Interest and required information must be submitted to: Mr. Charles W. Allwein, P. E., Chief, Consultant Selection Committee, 7th Floor, Forum Place, 555 Walnut Street, P. O. Box 3060, Harrisburg, Pennsylvania 17105-3060. Note: The Zip Code for express Mailing is 17101-1900.

The Letter of Interest and required information must be received within twenty (20) calendar days of this Notice. The Deadline for receipt of a Letter of Interest at the above address is 4:30 p.m. prevailing time of the twentieth day.

The second copy of the letter of interest and required information must be submitted to the appropriate District Engineer/Administrator or the Bureau Director as indicated in the individual advertisement. This copy must be postmarked or delivered on or before the deadline indicated above.

If an individual, firm, or corporation not authorized to engage in the practice of engineering desires to submit a Letter of Interest, said individual, firm, or corporation may do so as part of a Joint Venture with an individual, firm, or corporation which is permitted under the state law to engage in the practice of engineering.

If a Joint Venture responds to a project advertisement, the Department of Transportation will not accept separate Letters of Interest from the Joint Venture constituents. A firm will not be permitted to submit on more than one (1) Joint Venture for the same Project Reference Number. Also a firm that responds to a project as a prime may not be included as a designated subcontractor to another firm that responds as a prime to the project. Multiple responses under any of the foregoing situations will cause the rejection of all responses of the firm or firms involved. The above does not preclude a firm from being set forth as a designated subcontractor to more than one (1) prime responding to the project advertisement.

If a goal for Disadvantaged Business Enterprise (DBE) participation is established for an advertised project, firms expressing interest in the project must agree to ensure that Disadvantaged Business Enterprise (DBE) firms as defined in the Intermodal Surface Transportation Efficiency Act of 1991 and currently certified by the Department of Transportation shall have the maximum opportunity to participate in any subcontracting or fur-

nishing supplies or services approved under Form 442, Section 1.10(a). The Act requires that firms owned and controlled by women (WBEs) be included, as a presumptive group, within the definition of Disadvantaged Business Enterprise (DBE). The goal for DBE participation shall be as stated in the individual project advertisement. Responding firms shall make good faith efforts to meet the DBE goal using DBEs (as they were defined prior to the act, WBEs or combinations thereof).

Proposing DBE firms must be certified at the time of submission of the Letter of Interest. If the selected firm fails to meet the established DBE participation goal, it shall be required to demonstrate its good faith efforts to attain the goal.

Responses are encouraged by small firms, Disadvantaged Business Enterprise (DBE) firms, and other firms who have not previously performed work for the Department of Transportation.

Each Letter of Interest must include the following information and the information must be packaged and presented in the following order:

1. Transmittal Letter (Maximum of two (2) 8 1/2" x 11" typed pages, one side)

The subject heading of the transmittal letter must include the project reference number for which the applicant wishes to be considered, the firm's legal name, fictitious name (if applicable), and the firm's federal identification number. If the project advertisement indicated the Department will retain an engineering firm for the project, the applicant must indicate in the body of their transmittal letter the names and Professional Engineer License Number of individuals who are directing heads or employees of the firm who have responsible charge of the firm's engineering activities, and whose names and seals shall be stamped on all plans, specifications, plats, and reports issued by the firm.

2. Project Organization Chart (one page, one side, maximum size 11" x 17")

This Chart must show key staff from the prime and each subconsultant and their area of responsibility.

3. Standard Form 255, "Architect-Engineer and Related Services Questionnaire for Specific Project" (one Form 255 for the project team)

The Standard Form 255 must be signed, dated, and filled out in its entirety, including Item No. 6 listing the proposed subconsultants and the type of work or service they will perform on the project.

Under Item 4 of this form, Column A must specify only the number of subconsultant personnel and Column B must specify only the number of prime consultant personnel to be assigned to work on this project reference number. Do not include the total personnel for either the subconsultant or prime consultant under Item 4 unless the total personnel are necessary to provide the required work and services.

The prime and each subconsultant may include no more than one page each for Items 10 and 11.

If a Disadvantaged Business Enterprise (DBE) goal is specified for the project, the DBE must be currently certified by the Department of Transportation, and the name of the DBE and the work to be performed must be indicated in Item No. 6. If a Woman Business Enterprise (WBE) firm is substituted for the DBE, the WBE firm must also be presently certified by the Department of Transportation and indicated in Item 6.

4. Standard Form 254, "Architect-Engineer for Related Services Questionnaire"

A Standard Form 254, not more than one (1) year old as of the date of this advertisement, must accompany each Letter of Interest for the firm, each party to a Joint Venture, and for each subconsultant the firm or Joint Venture is proposing to use for the performance of professional services regardless of whether the subconsultant is an individual, a college professor, or a Company, unless an acceptable Standard Form 254 for the prime and each subconsultant/subcontractor is on file in both the Bureau of Design and the Engineering District Office or Central Office Bureau identified in the individual project advertisement.

If the Standard Form 254 is not submitted with the Letter of Interest, the transmittal letter shall indicate the dates that the Standard Forms 254 were submitted to the Bureau of Design and appropriate Engineering District/Central Office Bureau.

These Forms must be assembled with the prime's form first, followed by the form for each subconsultant in the same order as the subconsultants appear in Item 6 of Form 255.

5. Workload Projection Graph (Not required for Construction Inspection Services)

Separate Workload Projection Graphs for the prime and each subconsultant shown in Item 6 of the Form 255 must be included and must indicate the firm's current and anticipated workload compared to the anticipated capacity available for the next two-year time frame. The Workload Projection Graphs must be submitted for the office(s) where the work would be performed and must only include the personnel classifications required for providing the advertised services and work.

6. Authorization Letters (For Construction Inspections Services, if required)

If the advertisement requires a letter signed by individuals giving their approval to use their name in the Letter of Interest, the letters from proposed prime employees must be first, followed by subconsultant employees, in the same order as shown in Item 6 of Form 255.

7. Registration To Do Business

Firms with out-of-state headquarters or corporations not incorporated in Pennsylvania must include, with each Letter of Interest, a copy of their registration to do business in the Commonwealth as provided by the Department of State. Firms who are not registered to do business in Pennsylvania at the time of this advertisement must document that they have applied for registration to the Department of State, Corporation Bureau. The telephone number for the Corporation Bureau is (717) 787-1057 or (717) 787-2004.

8. Overhead Rates (one page)

A single page summary must indicate the latest audited overhead rate developed in accordance with Federal Acquisition Regulations (FAR) for the prime consultant and each subconsultant. If a FAR rate is not available, the latest rate available from a Certified Public Accountant must be indicated. New firms should indicate how long the firm has been in existence and when an audited overhead rate would be available.

9. Additional Information

Additional information, not to exceed ten (10) one sided 8 1/2" x 11" pages or five (5) double sided 8 1/2" x 11" pages may be included at the discretion of the submitting firm.

The assignment of the agreement/contract for the above advertisement(s) will be made to one of the firms who submitted an acceptable Letter of Interest in response to the project advertisement. The assignment will be made based on the Department's evaluation of the firm's qualification and capabilities. The Department reserves the right to reject all letters submitted, to cancel the solicitations requested under this Notice, and/or to readvertise solicitation for the work and services.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 98-902. Filed for public inspection June 5, 1998, 9:00 a.m.]

**INDEPENDENT  
REGULATORY REVIEW  
COMMISSION**

**Notice of Filing of Final-Form Rulemakings**

The Independent Regulatory Review Commission received, on the dates indicated, the following final-form regulations for review. The regulations will be considered within 30 days of their receipt at a public meeting of the Commission. To obtain the date and time of the meeting, interested parties may contact the office of the Commission at (717) 783-5417. To obtain a copy of the regulation, interested parties should contact the agency promulgating the regulation.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
#15-376	Department of Revenue Vehicle Rental Tax	5/21/98
	JOHN R. MCGINLEY, Jr., <i>Chairperson</i>	

[Pa.B. Doc. No. 98-903. Filed for public inspection June 5, 1998, 9:00 a.m.]

**INSURANCE DEPARTMENT**

**Application for Acquisition of a Domestic Health Maintenance Organization**

Health First and Highmark, Inc. have filed an application to purchase 100% of the issued and outstanding stock of Gateway Health Plan, Inc. from Gateway Health Plan, L.P. The filing was made under the requirements set forth under the Insurance Holding Company Act, 40 P. S. § 991.1402 *et. seq.* Persons wishing to comment on the acquisition are invited to submit a written statement to the Pennsylvania Insurance Department within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party, identification of the application to which the statement is addressed, and a concise statement with sufficient detail and relevant facts to inform the Pennsylvania Insurance Department of the exact basis of the statement. Written

statements should be directed to Carolyn Smith, Insurance Company Licensing Specialist, Pennsylvania Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120; FAX (717) 787-8557; email <http://www.csmith@ins.state.pa.us>.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-904. Filed for public inspection June 5, 1998, 9:00 a.m.]

### JFC Temps, Inc.; Hearing

*Appeal of JFC Temps, Inc.; Pennsylvania Compensation Rating Bureau; Doc. No. R98-04-012*

Under section 654 of the Insurance Company Law of 1921 (40 P.S. § 814), notice is hereby given that the above-captioned insured has requested a hearing concerning their Workers' Compensation rating.

The hearing will be held as follows:

*Location:* Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102

*Date:* June 30, 1998

*Time:* 10 a.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files and any necessary evidence. The insured must bring all documents, photographs, drawings, witnesses, and the like, necessary to substantiate the case. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 31 Pa. Code § 59.7(e), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing, and require an auxiliary aid service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-905. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insurer has requested a hearing as authorized by section 9(a) of the act of June 5, 1968 (P. L. 140, No. 78)(40 P. S. § 1008.9(a)) in connection with the termination of the insured's automobile policy.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Progressive Northern Insurance Co.; file no. 98-121-02185; Michael and Esther Luizzi; doc. no. P98-05-011; June 24, 1998, at 1 p.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files, documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The insured must bring any evidence which the insured may want to offer at the hearing. The hearing will be held in accordance with the requirements of sections 9 and 10 of the act (40 P.S. §§ 1008.9 and 1008.10) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-906. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insured has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their company's termination of the insured's policies.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Ronald L. and Alice A. Osmun; file no. 98-121-02499; Prudential Property and Casualty Insurance Company; doc. no. P98-05-012; June 23, 1998, at 1 p.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files and other necessary evidence. The insured must bring all documents, photo-

graphs, drawings, witnesses and the like necessary to substantiate the case. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); section 8 of the Unfair Insurance Practices Act (40 P.S. § 1171.8) and the regulations set forth at 31 Pa. Code § 59.7(e) (relating to appeal procedure). Under 31 Pa. Code § 59.7(e)(5), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 98-907. Filed for public inspection June 5, 1998, 9:00 a.m.]

## JOINT COMMITTEE ON DOCUMENTS

### Resolution 1998-1

*Whereas*, the Joint Committee on Documents is mandated by the Commonwealth Documents Law, 45 Pa.C.S. § 501 et seq., to administer the statute “. . . with a view toward encouraging the widest possible dissemination of documents among the persons affected thereby which is consistent with the due administration of public affairs”; and

*Whereas*, the Joint Committee on Documents has determined that, in certain cases where regulations must be modified because of a court order or change in an applicable statute or in Federal regulation, notice of these modifications should be published in the *Pennsylvania Bulletin*; and

*Whereas*, the Joint Committee on Documents adopted Resolution 1988-1 as published at 18 Pa.B. 1392 on March 26, 1988, Resolution 1990-1 as published at 20 Pa.B. 1615 on March 17, 1990, Resolution 1992-1 as published at 22 Pa.B. 1816 on April 11, 1992, Resolution 1994-1 as published at 24 Pa.B. 2347 on April 30, 1994, and Resolution 1996-1 as published at 26 Pa.B. 2374 on May 18, 1996, which granted the Secretary of Public Welfare the authority to publish information about these mandatory changes; and

*Whereas*, the Joint Committee on Documents has determined that Resolutions 1988-1, 1990-1, 1992-1, 1994-1 and 1996-1 should be clarified and reauthorized.

*Now, therefore*, be it known by Resolution of the Joint Committee on Documents that:

1. The Secretary of Public Welfare is encouraged to provide predictability, access and accountability to the policies and practices of the Department.

2. Notice of any change, including amendment or suspension to any Department regulation which is required by Commonwealth or Federal statutes, regulation, court order or consent decree submitted by the Department to the Legislative Reference Bureau shall be published in the *Pennsylvania Bulletin*. This notice shall address the following information at a minimum:

a. The changes to the affected regulation with appropriate introductory language to indicate that the affected sections and standards will be included in Annex A to the final rulemaking.

b. A citation to any regulation which is affected by the change, and a citation to the relevant statute or statutory provision, regulation, court order or consent decree which requires the change.

c. A statement of the consequences resulting from failure to immediately comply with the statute, regulation, court order or consent decree, and a statement of any benefits to be gained by compliance.

d. A statement that the change shall be in effect for 365 days, during which time the Department will pursue the adoption of the change in a new regulation through the rulemaking process under either section 201 or 204 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 or 1204) known as the Commonwealth Documents Law as the circumstances dictate.

e. A statement that the notice is published under this resolution.

3. Notice of the implementation of an additional component to a Department program which results in immediate access to the program or immediate additional benefit to beneficiaries of the program and which does not require repeal or suspension of any regulation may be published in the *Pennsylvania Bulletin*. The notice shall contain a description of the new program and shall state the procedure to be followed for participation in the program.

4. Notices submitted under this Resolution shall be subject to review by the Office of General Counsel and the Office of Attorney General.

5. The Secretary shall report to the JCD and Standing Committees the current status and Action Resolution Plan for any regulatory action exceeding 365 days from the respective NORC publication date.

6. Regulations securing actions issued under any or all prior JCD Resolutions must be submitted by the Secretary to the Office of General Counsel by December 31, 1998, or be deemed withdrawn.

7. DPW will submit a list of any withdrawn Notices of Rule Change to the Legislative Reference Bureau by December 31, 1998, for publication in the *Pennsylvania Bulletin*.

8. This resolution shall expire 2 years from the date of publication in the *Pennsylvania Bulletin*.

PAUL A. TUFANO,  
Chairperson

[Pa.B. Doc. No. 98-908. Filed for public inspection June 5, 1998, 9:00 a.m.]

## MILK MARKETING BOARD

### Procedure for Requesting Inclusion on the Board's Interested Persons List

Section 801 of the Milk Marketing Law requires the Milk Marketing Board to notify "interested persons" of hearings that are scheduled for the purpose of "defining milk marketing areas or fixing prices to be charged or paid for milk." The law defines "interested persons" as "all persons who may be affected by an order of the board fixing prices, and who have signified to the board in writing their desire to be notified of such hearings concerning a particular milk marketing area or areas within the Commonwealth."

The Board has been mailing hearing notices to a comprehensive list of all licensees and all subscribers to Board publications. The list is badly in need of updating. Therefore, as of August 1, 1998, hearing notices will be sent only to persons who file with the Board a written request to receive them. Failure to file such a request does not, of course, preclude participation in hearings. Hearing notices are always published in the *Pennsylvania Bulletin* and include instructions on how to become a party to the hearing. Only those on the interested persons list, however, will receive personal notification of upcoming hearings after August 1.

Persons who wish to be placed on the Board's interested persons list may direct their request to Pennsylvania Milk Marketing Board, Attention: Debbie Stubljur, 2301 North Cameron Street, Harrisburg, PA 17110. Requests must include the following:

1. Name (businesses and other organizations must designate an individual to whose attention the hearing notices are to be sent)
2. Address
3. Telephone number (also fax number and e-mail address, if any)
4. Milk marketing area or areas in which the person is interested
5. Whether the person wishes also, *or only*, to be notified of hearings concerned solely with producer pricing (for example, hearings held to consider over-order premiums)

It is the responsibility of the interested person to notify the Board when the foregoing information changes.

BEVERLY R. MINOR,  
*Chairperson*

[Pa.B. Doc. No. 98-909. Filed for public inspection June 5, 1998, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

Railroad  
With Hearing

**I-00980072. Consolidated Rail Corporation. Investigation Upon The Commission's Own Motion.** To determine the condition and disposition of the existing crossing structure carrying Cochran Street above-the-

grade of the track of Consolidated Rail Corporation's (Conrail) Shelocta Running Track in the Borough of Creekside, Indiana County (AAR 148 792 J).

An Initial Hearing on this matter will be held Wednesday, July 22, 1998 at 10 a.m. in the 11th floor hearing room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA, when and where all persons in interests may appear and be heard, if they so desire.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-910. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Solicitation of Public Comment on the Petition of The Pennsylvania Telephone Association for Waiver of the Pennsylvania Public Utility Commission's Regulation at 52 Pa. Code § 64.41

**PUC Doc. No. P-00981357.** Petition of The Pennsylvania Telephone Association for Waiver of the Pennsylvania Public Utility Commission's Regulation at 52 Pa. Code § 64.41.

On April 3, 1998, The Pennsylvania Telephone Association (PTA) filed a petition with the Pennsylvania Public Utility Commission seeking a waiver of the Commission's regulation which appears at 52 Pa. Code § 64.41. The regulation provides that interest payable by LECs on deposits shall be paid at 9% per annum annually. PTA now seeks PUC permission to utilize the standard set forth in 52 Pa. Code § 56.57, which is that the interest rate be determined by the average rate of 1-year Treasury Bills for the months of September, October and November of the previous year.

PTA states that the waiver is justified because of the increasingly competitive marketplace and the associated financial pressures that LECs now face. The Treasury Bills standard will, according to PTA, allow the calculation of interest on deposits which mirrors the present financial climate faced by LECs.

After reviewing the Petition, the Commission has determined that the solicitation of public comments is appropriate. Consequently, the Commission is providing this public notice with the deadline for comments in hand 20 days following the publication in the *Pennsylvania Bulletin*. The deadline for the filing of reply comments shall be 30 days following publication in the *Pennsylvania Bulletin*.

Any person or entity submitting comments must file an original and 15 copies of the comments or reply comments with the Secretary in PUC Docket No. P-00981357.

The contact person is Susan D. Colwell, Assistant Counsel, Law Bureau, (717) 783-3459. A copy of the Petition may be obtained from Lisa Higley at the Secretary's Office, (717) 787-1013.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-911. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Telecommunications

**A-310059F0002. Bell Atlantic-Pennsylvania, Inc. and Conestoga Communications, Inc.** Joint Petition of Bell Atlantic-Pennsylvania, Inc. and Conestoga Communications, Inc. for approval of a resale agreement under section 252(e) of the Telecommunications Act of 1996.

Bell Atlantic-Pennsylvania, Inc. and Conestoga Communications, Inc., by its counsel, filed on May 19, 1998, at the Pennsylvania Public Utility Commission, a Joint Petition for approval of a Resale Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. All comments are due on or before 20 days after the date of publication of this notice. Copies of the Bell Atlantic-Pennsylvania, Inc. and Conestoga Communications, Inc. Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-912. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Telecommunications

**A-310593. Bell Atlantic-Pennsylvania, Inc. and Sterling International Funding, Inc. d/b/a Reconex.** Joint Petition of Bell Atlantic-Pennsylvania, Inc. and Sterling International Funding, Inc. d/b/a Reconex for approval of a resale agreement under section 252(e) of the Telecommunications Act of 1996.

Bell Atlantic-Pennsylvania, Inc. and Sterling International Funding, Inc. d/b/a Reconex, by its counsel, filed on May 14, 1998, at the Pennsylvania Public Utility Commission, a Joint Petition for approval of a Resale Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. All comments are due on or before 20 days after the date of publication of this notice. Copies of the Bell Atlantic-Pennsylvania, Inc. and Sterling International Funding, Inc. d/b/a Reconex Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection. The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-913. Filed for public inspection June 5, 1998, 9:00 a.m.]

### Updating and Revising Existing Filing Requirement Regulations at 52 Pa. Code §§ 53.52 and 53.53—Telecommunication Utilities; Doc. No. L-00940095

Public Meeting held  
April 9, 1998

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

#### CORRECTED THIRD ADVANCE NOTICE OF PROPOSED RULEMAKING ORDER

*By the Commission:*

On October 18, 1994, this Commission entered an Order at the above-docketed number to initiate rulemaking proceedings for each utility industry to revise and streamline existing filing requirement regulations at 52 Pa. Code § 53.53 for general rate increases in excess of \$1 million. At the June 12, 1997 Public Meeting, we directed that the rulemaking in the above-captioned docket be re-focused and expanded to include the filing requirements at 52 Pa. Code § 53.52 for all other tariff changes that are proposed by local exchange telecommunications service providers. This docket's focus, therefore, was to review existing Commission rules and to formulate revisions to those rules that would lessen the regulatory burdens on all telecommunications providers, thereby promoting competition, to the extent consistent with the public interest and the doctrine of "regulatory parity."

In the intervening years since this docket was opened, many significant events have occurred to effectuate the deregulation of the telecommunications industry and the promotion of competition in its stead. The most significant of these events has been the enactment of the Federal Telecommunications Act of 1996 (TA-96), 47 U.S.C. §§ 251—276. Our review of the impact of these events, the actions of other state utility commissions around the country in opening up their telecommunications markets to competition, and the numerous comments filed in the instant proceeding have led this Commission to conclude that we cannot ignore the issue of "market power" as we strive to structure telecommunications regulation in a manner that achieves a transition to a fully competitive telecommunications market. To that end, while we seek "regulatory parity," that is, all providers should share the benefits and burdens of regulation equally, we understand that parity in all cases is not possible until the playing field is level for all market participants.

The Commission, therefore, is prepared to propose regulations to amend the filing requirements at 52 Pa. Code § 53.52 for local exchange telecommunications providers that will reflect the principle that "regulatory parity" with respect to rate regulation between ILECs and CLECs is not appropriate until the ILEC no longer possesses market power. In determining when regulatory parity should apply in the future, the Commission will propose utilizing the same criteria contained in 66 Pa.C.S. § 3005(a)(1) for determining whether or not a telecommunications service should be declared "competitive."

Specifically, the proposed rulemaking we contemplate adopting will reflect the principle that the services which have been classified as competitive for ILECs under Chapter 30 of the Public Utility Code, 66 Pa.C.S. §§ 3001—3009, can also be offered by CLECs as competi-

tive services without a prior competitive determination and classification by this Commission for each CLEC on a case-by-case basis. The offering of such services by the CLECs on a competitive basis will be limited to the areas the respective CLECs have been certified to serve, and to the exchanges of those ILECs that have obtained the competitive classification for these services under a Chapter 30 proceeding.

Moreover, in the interim until there is a formal finding by this Commission that a particular service is "competitive," the proposed regulation would be streamlined so that a CLEC will be relieved from any automatic obligation to provide cost support documentation whenever the rate is at or below the rate charged by the ILEC for the same service. Cost support documentation will generally not be necessary from a CLEC where its rates are the same or lower than the ILEC's, because it can be presumed that the CLEC's rates are "just and reasonable." Where the CLEC's rates are higher than the ILEC's rates, the regulation should oblige the CLEC to provide certain additional summary documentation for the affected services. Notwithstanding these streamlined filing requirements for CLECs, the Commission would retain the ability to continue to request, when it believes it is appropriate, relevant documentary support, including cost support documentation, from CLECs for their tariff filings and proposed rate changes.

In regard to the last three rulemaking issues raised in our August 1, 1997 Second Advance Notice of Proposed Rulemaking Order—local exchange carrier intraLATA toll rates, tariff filings for service packages and supporting documentation, and promotional offering tariff filings—we are prepared to propose that the principle of regulatory parity should guide the Commission with certain modifications.

Because the Commission believes that the tariff filing changes it is prepared to propose are critically important in promoting competition in the local exchange telecommunications industry, we have opened a related docket, L-00940095.F0002, to consider the proposed rulemaking changes as Interim Guidelines until the rulemaking process is completed. To accord interested parties all due process rights in that related proceeding, one or more on-the-record technical conferences will be held—the first one is scheduled for Friday, June 26, 1998. The parties will also be given the opportunity to submit written comments, including reply comments, before any such guidelines are adopted.

In the Commission's judgment, this Third Advance Notice of Proposed Rulemaking will provide an appropriate forum for all providers of local exchange telecommunications service—incumbents and new entrants—to address the contemplated proposed filing requirement changes that will streamline our existing regulations at 52 Pa. Code §§ 53.52 and 53.53; *Therefore,*

*It Is Ordered:*

1. That the Pennsylvania Public Utility Commission, through the Law Bureau, has drafted a proposed regulation pertaining to updating and revising existing tariff filing requirements for local exchange telecommunications providers. The proposed regulation, as drafted, would modify the existing regulation at 52 Pa. Code § 53.52.

2. That this Third Advance Notice of Proposed Rulemaking Order be published in the *Pennsylvania Bulletin*.

3. That a draft of the proposed regulation be made available to the public for review and comment. Anyone wishing to review the draft should contact Shirley Lem-

ing, Regulatory Coordinator, Law Bureau, Pennsylvania Public Utility Commission, North Office Building, P. O. Box 3265, Harrisburg, PA 17105-3265, (717) 772-4597. Any written comments must be received forty-five (45) days after the date the notice was published in the *Pennsylvania Bulletin*.

4. That an original and 15 copies of comments be served upon the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

5. That the contact persons for this rulemaking are C. Barney Glunz, Supervisor, Bureau of Fixed Utility Services, (717) 783-6163 (technical), and Carl S. Hisiro, Assistant Counsel, Law Bureau (717) 783-2812 (legal).

6. That a copy of this Order shall be served upon the Pennsylvania Telephone Association, all jurisdictional telecommunication utilities, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate. A copy of the proposed regulation will be sent to the Office of Consumer Advocate and the Office of Small Business Advocate.

JAMES J. MCNULTY,  
*Secretary*

*Statement of Commissioner David W. Rolka*

I concur in the proposed Motion of Commissioner Bloom. In my opinion the Commission has the authority to issue and implement interim guidelines pending the adoption of permanent regulations. Very few cases come to mind that are clearer on this point than the Commission's own ad hoc development of procedures and policies when it first considered Bell Atlantic-Pa's Petition to classify services as competitive prior to the adoption of regulations. Our authority there has only recently been affirmed by the Pennsylvania Supreme Court. The real issue here is a referendum on the issue of regulatory parity between ILECs and CLECs.

In my opinion, adherence to a policy of parity is a substantial contributing factor to the perception of this Commission as hostile to a competitive telecom industry. The market share of the CLEC industry, based on the information provided during the recent *en banc* hearing on the status of competition is less than the growth rate in the number of access lines served by Bell Atlantic-Pa. Regulatory parity in this circumstance would be an abuse of discretion by this Commission. I support the directive for an expedited process to update our interim guidelines and urge that they be reconsidered by the Commission in less than the proposed six months if possible.

[Pa.B. Doc. No. 98-914. Filed for public inspection June 5, 1998, 9:00 a.m.]

## TURNPIKE COMMISSION

### Request for Bids

The Turnpike Commission is requesting sealed bids for Loader-Mounted Snow Blowers.

*Bid Open Date:* 6-16-98 at 11:30 a.m.

Bids will be received by the Purchasing Manager not later than the time indicated above. Bid proposal Forms and Conditions may be obtained, free of charge, by communicating with the Bid Clerk, Purchasing Dept., (717) 939-9551, Ext. 2830.

JAMES F. MALONE, III,  
*Chairperson*

[Pa.B. Doc. No. 98-915. Filed for public inspection June 5, 1998, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

**EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.**

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". A qualified small business concern is an independently owned, operated for profit, business employing 100 or fewer employes and is not a subsidiary or affiliate of a corporation otherwise not qualified.

Such penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter. The small business concern must include on every invoice submitted to the Commonwealth: "(name of vendor) is a qualified small business concern as defined at 4 Pa. Code § 2.32".

For information on the required payment date and annual interest rate, please call the Pennsylvania Department of Commerce, Small Business Action Center, 483 Forum Building, 783-5700.

### Reader's Guide

#### Legal Services & Consultation—26

- ① Service Code Identification Number
- ② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services  
 Location: Harrisburg, Pa.  
 Duration: 12/1/93-12/30/93  
 Contact: Procurement Division  
 787-0000

③ Contract Information

④ Department

⑦

⑤ Location

(For Commodities: Contact:)  
 Vendor Services Section  
 717-787-2199 or 717-787-4705

⑥ Duration

#### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705



## GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, "Frequently Asked Questions About State Contracts," explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**  
 Pennsylvania State Treasury  
 Room G13 Finance Building  
 Harrisburg, PA 17120  
 717-787-2990  
 1-800-252-4700

BARBARA HAFER,  
*State Treasurer*

**Online Subscriptions At <http://www.statecontracts.com> 1-800-334-1429 x340**

### Commodities

**8161210** Construction and building materials—1 LS precast reinforced concrete box culvert.

**Department:** Transportation  
**Location:** Bellefonte, Centre County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1018388** Construction, mining, excavating and highway maintenance equipment—1 each latest model tracked dozer w/winch.

**Department:** Forestry  
**Location:** South Williamsport, Lycoming County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**8249650** Construction, mining, excavating and highway maintenance equipment—20 each tamper, hand held.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1011118** Fire fighting, rescue and safety equipment—1 each furnish and set up ready to operate, turn key purchase. Sallyport Gate, Folger Adam G operator, existing door to be utilized; door size 14' 4" x 13' 7" x 3" solid.

**Department:** Corrections  
**Location:** Graterford, Montgomery County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1041208** Fire fighting, rescue and safety equipment—16 pair goggles, Fatal Vision starter kit to include carrying bag, yellow and black "Walk The Line" tape instructor guide, reproducible student manuals and two videos, Fatal Vision No. FV-1; 4 pack Fatal Vision goggles, 6 pack, with 6 carrying bags, 6 instructors guides Fatal Vision No. 6PAC.

**Department:** State Police Academy  
**Location:** Hershey, Dauphin County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**8249440** Metal working machinery—4 each welder, 300 AMP, skid mounted.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**7314070** Paper and printing—15M PLCB-228 envelope, 32 lb. white Kraft, printed green ink.

**Department:** Liquor Control Board  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1920157** Pre-fabricated structure—1 each furnish and set in place modular storage mezzanine 16' 0" wide x 72' 0" long.

**Department:** Historical and Museum Commission  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**2039157** Pumps—1 project furnish and install two (2) Yeomans Series 4000 pneumatic sewer ejector pumps and one (1) new 15 HP Ingersoll Rand enclosed tank mounted air compressor, 208 volts, 3 phase or approved equal.

**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1695117** Surveillance equipment—1 system furnish and install fence mounted intrusion detection system.

**Department:** Corrections  
**Location:** Huntingdon, Huntingdon County, PA  
**Duration:** FY 97—98  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

# SERVICES

## Audio/Video—04

### 331 Cellular phone service for Polk Center.

**Department:** Public Welfare  
**Location:** Polk Center, Polk, Venango County, PA 16342  
**Duration:** August 01, 1998—July 31, 2003  
**Contact:** Patty Frank, Purchasing Agent, (814) 432-0229

## Construction and Construction Maintenance—09

**DGS A 220-8** Project title: New Electrical Service, Emergency Generator and Distribution System. Brief description: Install new main electrical service and two new branch circuit panelboards. Replace existing branch circuit panelboards. Install new wireways and branch circuiting. Install new stand-by generator and automatic transfer switch. Electrical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 24, 1998 at 1 p.m.

**Department:** General Services  
**Location:** PA State Police, Troop "R" Headquarters, Dunmore, Lackawanna County, PA  
**Duration:** 150 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 571-27** Project title: Replace Cell Block 'B' and Maintenance Building Roofs. Brief description: Remove slate shingles, roofing, felts, asphalt patches, built-up roofing, insulation, flashings and cants. Install standing seam metal roofing on Cell Block 'B' and reinforced EPDM on Maintenance Building. Also, install new rigid insulation on Maintenance Building, remove all skylights and install new to match existing curb sizes. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 17, 1998 at 2 p.m.

**Department:** General Services  
**Location:** State Correctional Institution, Rockview, Centre County, PA  
**Duration:** 120 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 573-27** Project title: Roof Repairs. Brief description: Replace roofs on Central Office, Chapel and Abattoir (Slaughter House) and replace perimeter flashing or reuse existing flashing as required. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 17, 1998 at 2 p.m.

**Department:** General Services  
**Location:** State Correctional Institution, Camp Hill, Cumberland County, PA  
**Duration:** 120 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS 949-4 Phase I** Project title: Chimney Repairs. Brief description: Cleaning and repair of fireplace chimneys. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 24, 1998 at 2 p.m. A Prebid Conference has been scheduled for Monday, June 15, 1998 at 9 a.m. at the Governor's Residence, Harrisburg, PA. Meet at the Guard Station. All contractors who have secured contract documents are invited and urged to attend this Prebid Conference.

**Department:** General Services  
**Location:** Governor's Residence, Harrisburg, Dauphin County, PA  
**Duration:** 60 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 970-123** Project title: Kitchen Renovations. Brief description: Kitchen renovations. Remove existing walls at coal room and custodian room to enlarge size of existing kitchen. General and mechanical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 17, 1998 at 2 p.m.

**Department:** General Services  
**Location:** Pennsylvania National Guard, Lock Haven, Clinton County, PA  
**Duration:** 120 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 1574-17** Project title: Roof Replacement. Brief description: Replace roof of Administration, 'A' Block and 'C' Block buildings with new fiberglass-asphalt shingles, No. 30 felt, metal work, downspouts and gutters. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 17, 1998 at 11 a.m.

**Department:** General Services  
**Location:** State Correctional Institution, Cresson, Cambria County, PA  
**Duration:** 140 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 1578-25** Project title: Repoint and Rebuild Walls and Parapets on Housing Units 'A' and 'B'. Brief description: Repoint masonry walls, parapets and concrete coping and band course at second floor. Rebuild the west wall of unit 'B' and west side of dormer walls on west end of roof. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 17, 1998 at 1 p.m.

**Department:** General Services  
**Location:** State Correctional Institution, Waymart, Wayne County, PA  
**Duration:** 120 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 1578-26** Project title: Install Sewage Grinder. Brief description: Install new sewage grinders and comminutor pit in existing sewage treatment plant. Plumbing construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, June 24, 1998 at 11 a.m.

**Department:** General Services  
**Location:** State Correctional Institution, Waymart, Wayne County, PA  
**Duration:** 75 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**Contract No. FBP-96-5-0051A** Demolition of existing bridge (steel I-beams, timber deck and stone masonry substructure); construction of new bridge (prestressed concrete beams, reinforced concrete abutments, wingwalls and deck); placement of gabion baskets; and architectural surface treatment. Project is located in Forest District No. 5 approximately 4 miles southwest of US Route 322 between Lewistown and State College.

**Department:** Conservation and Natural Resources  
**Location:** Brown Township, Mifflin County, PA  
**Duration:** Complete all work by September 30, 1999  
**Contact:** Construction Management Section, (717) 787-5055

**Contract No. FDC-019-276** Modifications to existing equipment (dosing tank, sand filters, chlorine contact tank) including new piping and pumps; concrete repairs; new electrical controls; excavating and grading a drainage swale.

**Department:** Conservation and Natural Resources  
**Location:** Pocono Township, Monroe County, PA  
**Duration:** 120 days  
**Contact:** Construction Management Section, (717) 787-5055

**Contract No. FDC-226-423** Erosion and sedimentation control measures; excavation (30 c. y.); general fill material (30 c. y.); 36" diameter drilling shaft (600 l. f.); tank leveling; seeding; and concrete (15 c. y.); work is to rehabilitate Jamestown Water Tower at Pymatuning State Park.

**Department:** Conservation and Natural Resources  
**Location:** West Shenango Township, Crawford County, PA  
**Duration:** 90 days  
**Contact:** Construction Management Section, (717) 787-5055

**IN-766.1** Roof and brick repairs/waterproofing—Breezedale and Waller Halls. Work consists of removing existing masonry parapet walls, brick chimneys, roof slates, etc., to furnish and install new metal flashing, mortar, acrylic based coatings, etc. Work shall include, but is not necessarily limited to, furnishing of all labor, superintendence, materials, tools and equipment and performing all work necessary to complete all general construction. Notice to Contractors may be requested from IUP. Phone: (724) 357-2289. Fax: (724) 357-6480.

**Department:** State System of Higher Education  
**Location:** Indiana University of Pennsylvania, Indiana, PA 15705-1087  
**Duration:** 90 days  
**Contact:** Ronald E. Wolf, Procurement Specialist, (724) 357-4851

**UP-162** Paving Maintenance: Remove and replace existing asphaltic concrete paving, throughout the University Campus. Work may also include the installation of storm piping, inlets, bituminous curbing, paving striping, application of bituminous seal coat and site restoration. This is a unit price maintenance contract, renewable up to three years. Work will be issued on an as needed basis through work orders. Bidders may obtain a bid package by mailing a non-refundable check for \$25 payable to Slippery Rock University, to Business Services Office, Slippery Rock University, Slippery Rock, PA 16057. The time and dates for the prebid conference and bid opening will be in the bid package. The bid package is expected to be available on May 27, 1998.

**Department:** State System of Higher Education  
**Location:** Slippery Rock University of PA, Slippery Rock, Butler County, PA 16057  
**Duration:** One year open-ended term, renewable for two years  
**Contact:** J. F. Revesz, (724) 738-2255

## Engineering Services—14

**08430AG2202** To provide Right-of-Way acquisition services for the S. R. 0222, Section 002 (Trexlerstown) relocation project in Upper Macungie and Lower Macungie Townships, Lehigh County, Engineering District 5-0.

**Department:** Transportation  
**Location:** Engineering District 5-0  
**Duration:** Twenty-four (24) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2203** Open-End contract to provide supplementary construction staff to perform construction inspection services in Engineering District 9-0, that is Bedford, Blair, Cambria, Fulton, Huntingdon and Somerset Counties.

**Department:** Transportation  
**Location:** Engineering District 9-0  
**Duration:** Sixty (60) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2204** To provide Right-of-Way acquisition for the S. R. 0209, Section 007 (Marshall's Creek) project in Smithfield and Middle Smithfield Townships, Monroe County, Engineering District 5-0.

**Department:** Transportation  
**Location:** Engineering District 5-0  
**Duration:** Thirty (30) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2205** To provide assistance in the acquisition of Right-of-Way for the construction of S. R. 0220, Section C10, C11, and C12 and S. R. 6026, Section C02, Centre County.

**Department:** Transportation  
**Location:** Engineering District 2-0  
**Duration:** Thirty (30) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

## Food—19

**7061** Meat and meat products.

**Department:** Military and Veterans Affairs  
**Location:** Hollidaysburg Veterans Home, Route 220 at Meadows Intersection, P. O. Box 319, Hollidaysburg, PA 16648-0319  
**Duration:** August 1998  
**Contact:** Becky Clapper, Purchasing Agent, (814) 696-5210

**ACAD-153** Milk: milk standard, 2.0 B. F. low fat milk with vitamin "D" added; 2. chocolate milk 1% B. F.; 3. milk skim, fortified with protein, vitamins "A" and "D" added. Interested bidders may obtain bid from the Procurement and Supply Division (717) 783-5485.

**Department:** State Police  
**Location:** Pennsylvania State Police Academy, Hershey, PA  
**Duration:** July 1, 1998 through June 30, 1999  
**Contact:** Robert D. Stare, (717) 783-5485

**D-8201** Contractor shall provide cola products, to be delivered bi-weekly, the amounts to be determined by the dietary department.

**Department:** Corrections  
**Location:** State Correctional Institution Waynesburg, R. R. 1, Box 67, Waynesburg, Greene County, PA 15370  
**Duration:** July 1, 1998 through June 30, 1999  
**Contact:** Judith Cook, Purchasing Agent, (724) 852-5609

## Fuel Related Services—20

**Contract No. FDC-012-91** Removal and disposal of 2—1,000 gallon tanks (1—gasoline and 1—diesel); provide and install a dual 2,000 gallon aboveground fuel system (1,000 gallon gasoline and 1,000 gallon diesel); all necessary restoration, testing and electrical work. Work is located at the Loyalsock Maintenance Headquarters.

**Department:** Conservation and Natural Resources  
**Location:** Plunketts Creek Township, Lycoming County, PA  
**Duration:** 90 days  
**Contact:** Construction Management Section, (717) 787-5055

## HVAC—22

**Project No. 3** Provide emergency and routine repair work for plumbing system. The contractor must respond to the call within two hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid Proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military and Veterans Affairs  
**Location:** PA Air National Guard, Greater Pittsburgh Airport, Pittsburgh, PA  
**Duration:** October 1, 1998—September 30, 2001  
**Contact:** Emma Schroff, (717) 861-8518

**Project No. 005** Provide emergency and routine repair work for heating system. The contractor must respond to the call within two hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military and Veterans Affairs  
**Location:** PA Air National Guard, Greater Pittsburgh Airport, Pittsburgh, Allegheny County, PA  
**Duration:** October 1, 1998—September 30, 2001  
**Contact:** Emma Schroff, (717) 861-8518

**Project No. 011** Provide emergency and routine repair work for electrical system. The contractor must respond to the call within two hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid Proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military and Veterans Affairs  
**Location:** PA Air National Guard, Greater Pittsburgh Airport, Pittsburgh, Allegheny County, PA  
**Duration:** October 1, 1998—September 30, 2001  
**Contact:** Emma Schroff, (717) 861-8518

**Project No. 101** Provide emergency and routine repair work for heating system. The contractor must respond to the call within two hours of receiving a call either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty on parts where applicable, and further agree to guarantee workmanship and replacement parts, provided by his firm for a 90 day period. Bid Proposal forms used to submit bids are available from the State Armory Board.

**Department:** Military and Veterans Affairs  
**Location:** Various Buildings, Ft. Indiantown Gap, Annville, Lebanon County, PA  
**Duration:** October 1, 1998—September 30, 2001  
**Contact:** Emma Schroff, (717) 861-8518

**339270** Provide all labor, equipment, material and supervision for the rental of one (1) 600 hp packed fire tube boiler to supply 20,000 PPH steam at 100 PSI capable of firing fuel oil. Boiler to be equipped with flu gas recirculation assembly, valve trim and controls as specified.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1000 Sterigere Street, Norristown, PA 19401  
**Duration:** July 01, 1998 to June 30, 1999  
**Contact:** Tony Morelli, (610) 520-3300

## Lodging/Meeting—27

**BOOT-003-98** Provide lodging, meeting rooms, and food services for an exercise design and evaluation course in the State College area. Facility needed will be up to 40 single lodging rooms, meals for up to 40 persons, and conference settings. Facility must be located within the State College area.

**Department:** PA Emergency Management Agency  
**Location:** Within the State College area  
**Duration:** August 4—7, 1998  
**Contact:** Christopher Nolan, (717) 651-2191

## Medical Services—29

**328** Services of an optician for eyeglasses (lenses and frames) and eyeglass repairs for the individuals of Polk Center.

**Department:** Public Welfare  
**Location:** Polk Center, Polk, Venango County, PA 16342  
**Duration:** July 1, 1998—June 30, 2000  
**Contact:** Patty Frank, Purchasing Agent, (814) 432-0229

**Inquiry No. 8999** Physician services.

**Department:** Public Welfare  
**Location:** Selinsgrove Center, F.O.B. State Agency, Selinsgrove, Snyder County, PA 17870  
**Duration:** July 1, 1998 to June 30, 2000  
**Contact:** Sandra L. Halday, Purchasing Agent, (717) 372-5073

## Personnel, Temporary—31

**SPC225338** Contract for clerk, clerk typist and data entry operator services on an as needed basis. Contract will be utilized for short-term temporary help (six weeks or less) throughout the Department's Harrisburg offices.

**Department:** Education  
**Location:** 333 Market Street and Forum Building, Commonwealth Avenue, Harrisburg, PA  
**Duration:** July 1, 1998 to June 30, 2000  
**Contact:** Donna Fessler, (717) 787-5151

## Railroad/Airline Related Services—34

**829800** The Department of Transportation, through its Bureau of Rail Freight, Ports and Waterways, is seeking to retain a railroad appraisal firm to establish the fair market value of approximately seven (7) rail lines owned by the Department. The lines are located in Berks, Lancaster, Montgomery, Schuylkill, Pike and Wayne Counties, totalling approximately sixty-nine (69) miles. All work is expected to be completed within 4 to 6 months with final approval of the appraised values given by the Federal Railroad Administration. Please fax all requests to Randy R. Haldeman at (717) 772-5782.

**Department:** Transportation  
**Location:** Various locations throughout Eastern PA  
**Duration:** Four to six months  
**Contact:** Randy Haldeman, (717) 783-7418

## Real Estate Services—35

**829800** The Department of Transportation, through its Bureau of Rail Freight, Ports and Waterways, is seeking to retain a railroad appraisal firm to establish the fair market value of approximately seven (7) rail lines owned by the Department. The lines are located in Berks, Lancaster, Montgomery, Schuylkill, Pike and Wayne Counties, totalling approximately sixty-nine (69) miles. All work is expected to be completed within 4 to 6 months with final approval of the appraised values given by the Federal Railroad Administration. Please fax all requests to Randy R. Haldeman at (717) 772-5782.

**Department:** Transportation  
**Location:** Various locations throughout Eastern PA  
**Duration:** Four to six months  
**Contact:** Randy Haldeman, (717) 783-7418

**Sanitation—36**

**H-5601** Refuse removal consisting primarily of photographic film, plastic sheeting, and paper from the facility. To receive specifications, send written request to Beverly O. Epting, Hamburg Center, Hamburg, PA 19526, Fax (610) 562-6025.

**Department:** Public Welfare  
**Location:** Hamburg Center, Hamburg, PA 19526  
**Duration:** January 1, 1999 to December 31, 2001  
**Contact:** Beverly O. Epting, Purchasing Agent, (610) 562-6031

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**Miscellaneous—39**

**IFB 97-07-08** The contractor shall provide fiscal and administrative oversight of funds and subcontract services for the Statewide 1999 AIDS conference in the form of: facilitating a Statewide conference planning committee for assisting in the conference logistics, training for participants, participant verification of courses and scholarship awards, providing logistics support at the training event, scheduling courses and presenters, preparation of a billing system, contracting for both trainers and sites; summary reports on training evaluations, developing, printing and mailing training notices and program booklets, providing publicity for the conference, establishing and updating an automated system to manage the Statewide training system coordination which includes mailing lists and other conference logistics.

**Department:** Health  
**Location:** Within a forty mile radius of downtown Harrisburg, PA  
**Duration:** July 1, 1998—June 30, 2000  
**Contact:** Weldon King, (717) 783-0572

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**PDA 398** The PA Hardwoods Development Council is now seeking grant proposals for FY 1998/1999. The Council's mission is to promote the economic development and expansion of PA's hardwood industry. Priority areas for grant awards include: Projects that identify opportunities or initiatives involving local governments and other entities to promote access to the timber resource on both public and private lands; Projects that assist with the development of domestic and international markets for the PA forest products industry; Projects that seek to expand the development, processing, and manufacturing of value-added forest products; Projects that seek to promote public knowledge and understanding regarding the role that the forest industry and its products play in our society. Proposals are being accepted for the following grants: 1) "How to Become a Green Certified Producer" Workshops (Total Grant(s) not to exceed \$10,000); 2) Technology Needs Roundtable (Total Grant(s) not to exceed \$10,000); 3) Hardwoods Development Council Meetings and Publications (Total Grant(s) not to exceed \$10,000). Contact Bradley R. Jones or Jane Danley at: PA Hardwoods Development Council, 2301 North Cameron Street, Room 310 Agriculture Building, Harrisburg, PA 17110-9408, (717) 772-3715; Fax (717) 705-0663 to receive a grant proposal package.

**Department:** Agriculture  
**Location:** Statewide  
**Duration:** 1 year with three (3) 1-year options to extend  
**Contact:** PA Hardwoods Development Council, (717) 772-3715

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**RFP 98-1** This will amend the May 9, 1998 advertisement for the Department of Labor and industry, Office of Vocational Rehabilitation's Request for Proposal 98-1, Job Creation Assistance on Behalf of Persons with Severe Disabilities. SERB information is required. Deadline remains June 29, 1998 at 5 p.m.

**Department:** Labor and Industry  
**Location:** Office of Vocational Rehabilitation, Room 1320, Labor and Industry Building, Harrisburg, PA 17120  
**Duration:** October 1, 1998 to September 30, 1999  
**Contact:** Raymond L. Walker, (717) 787-5735

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**SP-585** Furnishing, installing, and connection of traffic signal—successful bidder shall furnish service and maintenance of the system for one year from date of substantial completion as part of bid.

**Department:** Military and Veterans Affairs  
**Location:** Hollidaysburg Veterans Home, Route 220 at Meadows Intersection, P. O. Box 319, Hollidaysburg, PA 16648-0319  
**Duration:** July 01, 1998 through June 30, 1999  
**Contact:** Ron Kuhn, Maintenance Supervisor, (814) 696-5328

[Pa.B. Doc. No. 98-916. Filed for public inspection June 5, 1998, 9:00 a.m.]

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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,  
*Secretary*

## Contract Awards

The following awards have been made by the Department of General Services, Bureau of Purchases:

Requisition or Contract #	Awarded On	To	In the Amount Of
3830-01	06/01/98	Valk Manufacturing Co.	1,251,271.50
7510-07	06/01/98	Systematic Filing Products, Inc.	184,131.00
3830-01	06/01/98	Kennametal, Inc.	106,290.00
8920-06	06/01/98	Karetas Foods, Inc.	750,000.00
8920-06	06/01/98	Mon Valley Bakery Supply Co.	100,000.00
8920-06	06/01/98	Edu Care Services, Inc.	100,000.00
8920-06	06/01/98	Deaktor/Sysco Food Service Co.	750,000.00
8920-06	06/01/98	Sysco Food Service of Central PA	750,000.00
8920-06	06/01/98	Weis Markets, Inc. d/b/a Weis Food Service	750,000.00
8920-06	06/01/98	Feeser's, Inc.	750,000.00
8920-06	06/01/98	Tova Industries, Inc.	500,000.00
8920-06	06/01/98	Lance, Inc.	300,000.00
8920-06	06/01/98	Kellogg Sales Co.	500,000.00
8920-06	06/01/98	Gage Food Products Co.	100,000.00
8920-06	06/01/98	Bernard Food Industries, Inc.	100,000.00
8920-06	06/01/98	Keebler Co.	500,000.00
1972117-01	05/27/98	Kitchen Specialties	12,894.00
8169140-01	05/27/98	Brocker Rebar Company, Inc.	14,499.46
1857117-01	05/27/98	Taylor Security and Lock Co., Inc.	7,794.00
1940117-01	05/27/98	Reich Supply Company, Inc.	10,974.30

Requisition or Contract #	Awarded On	To	In the Amount Of
7314000-01	05/27/98	Xomox Corp.	22,047.00
1910117-01	05/27/98	PA Police Supply	49,729.68
1843117-01	05/27/98	Hudson Machinery Corp.	9,750.00
6358118-01	05/27/98	Lindgren Corp.	117,750.00
1971357-01	05/27/98	Advanced Pollution Instrumentation, Inc.	105,300.00
8171540-01	05/27/98	A. C. Miller Concrete Prod., Inc.	62,412.00
8171530-01	05/27/98	A. C. Miller Concrete Prod. Inc.	42,428.00
8161200-01	05/27/98	Terre Hill Silo dba	80,498.00
1637047-01	05/27/98	Micromass, Inc.	716,561.75
1847357-01	05/27/98	Beta Star Corporation	18,530.00
1658387-01	05/27/98	National Fire Fighter Corp.	25,940.00
7314010-01	05/27/98	Stone Container Corp. (S & G Pack)	478,200.00
8504410-01	05/27/98	A. C. Miller Concrete Prod., Inc.	40,217.00
1856387-01	05/27/98	Rorabaugh Lumber Co.	111,380.00
8206690-01	05/27/98	Marc Fruchter Aviation, Inc.	21,500.00
8504280-01	05/27/98	American Decal and Mfg. Co.	475,200.00
1925157-01	05/27/98	Summit Machine Tool Mfg. Corp.	15,080.00
8504380-01	05/27/98	Terre Hill Silo Co.	32,099.00

GARY E. CROWELL,  
Secretary

[Pa.B. Doc. No. 98-917. Filed for public inspection June 5, 1998, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 28—HEALTH AND SAFETY

### DEPARTMENT OF HEALTH [28 PA. CODE CHS. 51, 136, 138, 139 AND 158] Health Facility Licensure

The Department of Health (Department) amends Part IV (relating to health facilities) by adding Chapters 51, 136, 138 and 158 and by amending Chapter 139.

#### *Scope and Purpose*

This final rulemaking amends the standards a hospital needs to satisfy to secure authorization to perform open heart surgery, cardiac catheterizations, organ transplantation surgery and to provide services to newborns under its hospital license. They also prohibit open heart surgery, cardiac catheterizations and organ transplantation surgery from being performed at nonhospital locations. Finally, they add a general information chapter which sets forth regulations which are applicable to all health care facilities.

The Health Care Facilities Act (act) (35 P. S. §§ 448.101—448.904b) provides that, to be issued a license, the applicant must show that: 1) it is a responsible person; 2) the place to be used as a health care facility is adequately constructed, equipped and maintained and safely and efficiently operated; 3) it will provide safe and efficient services adequate for the care and treatment of patients or residents; and 4) it is in substantial compliance with the rules and regulations of the Department. See section 808(a) of the act (35 P. S. § 448.808(a)).

With the sunset of the Certificate of Need (CON) Program, the Department is adopting these amendments to assure that aspects of quality of care and patient safety, previously addressed through the CON Program, will now be enforced through the licensure process.

#### *Public Comments*

Notice of proposed rulemaking was published at 27 Pa.B. 2703 (May 31, 1997) with an invitation to submit written comments within 30 days.

Within the 30-day comment period, the Department received 26 letters from various individuals and organizations involved in health care.

The Department also received comments from Senators Robert Mellow and Hardy Williams and the Independent Regulatory Review Commission (IRRC). The Department considered these comments, prepared final rulemaking and processed the final-form regulations through the regulatory process.

IRRC disapproved the proposed final-form regulations and communicated its concerns to the Department. Thereafter, the Department reviewed IRRC's concerns, contacted several entities and revised and resubmitted the final-form regulations.

The following is a discussion of the comments which the Department received and the Department's response to them:

#### *Chapter 51. General Information*

##### *§ 51.3. Notification.*

The Department received several comments from various health care organizations concerning the proposed provisions of this section which discussed the occurrence of events at health care facilities which require providing the Department with some type of notice.

Subsections (a)—(d) proposed that when any health care facility wishes to commence the provision of a new health care service, provide services in new beds, cease providing a health care service, reduce its licensed bed complement or initiate the design phase of any proposed new construction, alteration or renovation of the facility, it must first provide notice to the Department of its intention.

Most of the comments concerned the Department's response to these notification requests. The Hospital Association of Pennsylvania (HAP), Temple University Hospital (Temple), Shriner's Hospital for Children (Shriner's) and Pennsylvania Association of County Affiliated Homes (PACAH) stated that the Department should set forth a period of time within which it would respond to the facility's notification letter and questioned whether the response would constitute an approval or disapproval of the subject matter of the notification. IRRC also stated that the Department should establish such a time table.

HAP, IRRC and Allegheny Health, Education and Research Foundation (AHERF) also questioned how the Department would conduct its reviews and what criteria would be used to determine if the activity which was the subject of the notification would be approved or disapproved.

The purpose of these subsections is to assure that the Department receives proper notification of the ongoing changes occurring at health care facilities and that these changes are not inconsistent with the requirements of the Department's regulations. Thus, the criteria and standards which will be used to determine the propriety of these activities are those contained in the regulations. With the sunset of the CON provisions of the act, the Department no longer approves or disapproves activities at health care facilities, but, rather, monitors those activities for quality assurance and patient safety purposes. Receiving notification of these changes will enable the Department to remain current as to the status of the health care facilities in this Commonwealth and also assist the Department in future licensure surveys.

Subsection (l) (proposed subsection (h)) provides that no health care facility may commence the provision of new health care services or provide services in new beds until the facility has been informed by the Department that it is in compliance with all licensure requirements. This applies to the notification requirements mandated in subsections (a) and (b). Upon being informed that a new service or new beds will be provided at a health care facility, the Department may need to conduct an onsite visit to assure that any life safety code or other occupancy criteria have been met. This visit would occur shortly before the actual occupancy of the beds or commencement of the service is expected. The visits are usually coordinated with the health care facility. While the health care facility may not provide new services or open new beds until after this visit, the Department is not approving the facility for these purposes, but is assuring that the



relevant criteria have been met. The Department has followed this procedure through its licensure activity for many years.

Subsections (a)—(c) have been amended to require that the facility provide the Department with notice 60 days before the expected commencement of a new health care service, addition of new beds, reduction of the licensed bed complement or cessation of the provision of a health care service. This will give the Department and the facility sufficient time to determine that all licensure criteria have been met before the effective date occurs.

Subsection (d) has been amended after several commentators noted that providing notice prior to the initiation of the design phase of any proposed new construction, alteration or renovation to the facility would not be appropriate. At this stage, any design plans are likely to be incomplete and subject to numerous changes. The Department is concerned with receiving notification of the actual plans, rather than with plans which are still being formulated. Accordingly, the subsection has been amended to provide that architectural plans and blueprints shall be submitted to the Department at least 60 days prior to expected initiation of construction, alteration or renovation. The Department will then review these documents for compliance with the relevant life safety code and other regulatory requirements and, within 45 days of their receipt, will notify the facility of either an approval or disapproval. If the material submitted is not sufficient to determine if regulatory requirements have been met, the Department will ask the facility to submit further information. The facility may not initiate construction, alteration or renovation unless the Department has issued an approval. Again, this procedure of review and approval of architectural plans has been followed by the Department for many years. While the time frames announced are new, the procedure to be applied has been in place and is familiar to health care facilities. The Department is generally able to work with a facility to assist it in assuring that all necessary regulatory requirements are met.

Temple, AHERF, Chester County Hospital and Senator Mellow inquired as to whether the proposed requirement in subsection (a) regarding notification of a health care service which has not been previously provided at that facility is referring to those services which were previously reviewable under the CON Program.

Under CON, a list of 23 clinically reviewable health services set forth those health care services which required Department approval. As stated in the previous paragraph, the Department's interest in maintaining quality assurance is separate from its previous role in CON reviews. For quality assurance purposes, the Department needs to be informed of all of the services, additions or terminations of beds, renovations, and the like, which are occurring at a facility. By fully informing the Department of all of its ongoing changes, the facility can assure that the Department is in possession of all relevant information which it will need to assess quality assurance and to conduct an upcoming licensure survey. Thus, the reporting of health care services includes and goes beyond those previously covered under the CON Program. In determining if the Department should receive notification of a service, the facility should be guided by the understanding that it should inform the Department as much as possible of the ongoing changes at the facility so that the Department will be adequately informed and prepared for the next licensure survey.

Subsections (e) and (f) in the proposed rulemaking provided that if a facility became aware that it was not in compliance with the Department's regulations or if it became aware of a situation which could compromise quality assurance or patient safety, it was required to notify the Department of the event and the steps which the facility had taken to rectify the situation.

The comments to these proposed subsections, from HAP, AHERF, PACAH, Pennsylvania Health Care Association (PHCA) and John Reiss, Esq., centered around concerns that the regulations would be too broad and vague and that it would be unclear what type of events needed to be reported.

As explained in the previous discussion, it is the Department's intent that a facility provide the Department with all relevant information to determine if the facility is in compliance with the Department's regulations and if any situations are present which could affect patient care. Quality assurance and patient care are at the very core of the Department's mandate from the General Assembly under section 801a of the act (35 P. S. § 448.801a).

The Department does not agree with comments suggesting that only events which directly affect patient care should be reported. The Department's focus is on patient safety. Even events which indirectly affect patient care, such as, failure of the sprinkler system in a facility, can still place a patient or resident at risk. Some commentators asserted that these incidents are already reported to other agencies or entities. However, it is the Department's role to assure safe, adequate and efficient facilities and services, and to promote the health, safety and adequate care of the patients or residents of these facilities. The Department must be informed of all significant untoward events at a facility to carry out this mandate. A facility should err on the side of over-notification so as to assure that the Department will not subsequently learn of an event from another source.

However, the Department does not intend that health care facilities be required to report every possible instance of noncompliance with the regulations. A task could prove to be overly burdensome on the facilities and could also flood the Department with unnecessary information. The Department is concerned with those violations which pose imminent risks to the safety of the patients or residents in the facility. The Department has amended subsections (e) and (f) to provide that a health care facility shall provide notification of a regulatory violation or a situation or occurrence at the facility which seriously compromises quality assurance or patient safety. The addition of the word "seriously" addresses the concerns of the commentators yet still assures that the Department will receive the necessary notification to fulfill its statutory mandate.

To assist facilities in determining which incidents or violations may seriously compromise quality assurance or patient safety, the Department has added subsection (g). This subsection provides a partial list of events which would meet that standard. This list is meant to be illustrative and not exhaustive as is clearly indicated by use of the terminology "events which seriously compromise quality assurance or patient safety include, but are not limited to, the following." All facilities should be aware that incidents or violations other than those listed will also be reportable under subsections (e) and (f). Those incidents found in subsections (g)(1)—(6), (11) and (14) are taken from reportable incidents presently listed in the regulations for long-term care facilities. See

§ 201.14(c)—(e) (relating to responsibility of license). The Department has also added several other illustrations of reportable incidents or violations. Subsection (a)(13) provides that the facility's awareness of the unlicensed practice of a regulated profession shall be reported to the Department. In most instances, this refers to those professionals who are licensed to practice by the Department of State, Bureau of Professional and Occupational Affairs (such as, medical doctors, osteopaths, chiropractors, psychologists, registered nurses). While most of the list is self-explanatory, the facility should contact the Department if there is any question concerning the reportability of an incident.

The Department has also added several subsections to set forth the use which will be made of the information reported by health care facilities under subsections (e) and (f). Subsection (i) provides that the information contained in the notification will be used only by the Secretary or a representative and will only be provided to another government agency, unless a court order otherwise. This limitation on the sharing of information applies only to the actual notification report. If the facility's notification results in an investigation with the issuance of a plan of corrections and order, the information contained in the original notification may also be contained in the plan of corrections or order. These documents are public documents and are generally provided by the Department upon request. Subsection (j) provides that the information contained in the notification will be used by the Department to enforce its responsibilities under the act and other statutes within the Department's jurisdiction. While this would describe the usage of the information by the Department, under subsection (i) the Department may find that another government agency should also be provided with the information contained in the notification. Any limitations upon these agencies is not discussed in these regulations. Finally, under subsection (k), in providing the Department with the notifications required under subsections (e) and (f), facilities do not have to report any information which may be deemed confidential and not reportable to the Department under other provisions of Federal or State law or regulations. In rare instances, a facility may find that certain information is not reportable to the Department, due to other statutory or regulatory provisions. This would generally not excuse the facility from reporting the incident or violation to the Department, but may bar the facility from providing certain information to the Department which would be reported to another entity. The Department believes that the provisions of this subsection will have limited applicability and will expect a health care facility claiming the confidentiality restrictions to provide a cogent argument supporting its position.

Another issue raised was the penalty that facilities could face for failure to notify the Department as required under this section. In its comments, IRRC stated that the Department needed to indicate what action it would take when it was notified of the occurrences in this section.

The act provides for a wide range of actions which can be instituted against a health care facility for violation of the act or the Department's regulations, including assessment of a civil penalty (35 P. S. § 448.817) and revocation or nonrenewal of a license (35 P. S. § 448.811). The Department intends to rely on these statutory provisions in determining what sanctions it may levy for failure to comply with the requirements of this section. To address the concerns of IRRC and other commentators who raised the issue of sanctions, the Department has added § 51.41 (relating to change in ownership; change in management),

which sets forth the sanctions which the Department may assess for a violation of its regulations.

#### *§ 51.4. Change in ownership; change in management.*

Proposed subsection (b) required notification of a planned change in ownership of a health care facility at least 90 days prior to the actual change. Both HAP and AHERF commented that the 90 day requirement was unrealistic in today's health care environment and that the Department should change the requirement to timely notification.

While the Department understands that the ownership of health care facilities can change rapidly, the purpose of this section is to assure that the Department is aware of these changes so that it can carry out its function to assure quality health care. To perform this function, the Department must have advance notice of expected changes of the ownership of health care facilities so that it can determine the possible impact. The Department has revised subsection (b) to require notification 30 days prior to the expected date of the change of ownership.

The PACAH commented that the requirement of notification of a change of management in proposed subsection (c) could be interpreted to mean every department head at the facility; it recommended that the phrase be amended to a change in administrator.

The Department does not accept this suggestion. While a change in administrator may have a particular meaning in a long-term care facility, it has a different application in a hospital and in other health care facilities. The Department is to receive notification when a change occurs in persons onsite charged with the responsibility of running the facility. The Department believes that the second sentence accurately expresses this explanation by stating that: "A change in management occurs when the person or persons responsible for the day to day operation of the health care facility changes."

#### *§ 51.5. Building occupancy.*

Comments on this section were received from HAP, AHERF and PACAH. The PACAH recommended that the Department delete proposed subsection (b) as the same language appeared in proposed subsection (c). The Department agrees and has made this deletion.

Other concerns centered on subsection (b) (proposed subsection (c)), which would have required a health care facility to request a pre-occupancy survey at least 2 weeks prior to the anticipated occupancy of the facility. HAP believes that the 2-week time frame is insufficient for an occupancy survey to be completed. The AHERF questioned the activities which must occur within the 2 week time frame and the PACAH requested further clarification of when the Department will conduct the survey. The Department's position is that the facility should be in contact with the Department prior to the anticipated date of opening and that actual occupancy should not occur until the Department has informed the facility that occupancy may commence.

In response to comments that the proposed 2 week requirement is insufficient, it should be noted that this would have been the minimal standard. It is anticipated, and experience has shown, that most health care facilities contact the Department in the early stages of their construction projects. When this occurs, the Department is able to work with the facility and inform it of any potential problems, before actual construction or renovation commences. If the health care facility and the Department have been in contact from these early stages,

the preoccupancy survey should proceed smoothly and a lengthy period of time would not be needed to correct deficiencies revealed during the survey. However, in recognition of the concerns over the 2 week minimum, the Department has revised subsection (b) to provide that the request must be made at least 30 days prior to the date of anticipated occupancy. This should ensure that the facility has sufficient time to address deficiencies revealed through the survey before the scheduled opening is to occur.

The Department has also revised the language in subsection (b) concerning the method by which facilities will be informed of the Department's determination as to occupancy. The proposal stated that the Department could provide oral authorization, which would then be followed by a written confirmation within 30 days. The Department has decided that a more appropriate method would be to provide written authorization, which although it might not address all of the outstanding issues pertaining to the building occupancy, would give the facility the approval to commence occupancy. This would provide the facility with written proof of the determination to permit occupancy. If this written authorization indicates that other issues are outstanding and are still under review, this document will be followed by a formal authorization which will discuss these other issues and provide the Department's concerns on these ancillary matters.

*§ 51.6. Identification of personnel.*

This section was not contained in the proposed rule-making, but the Department believes it is an appropriate addition to the general information chapter. Under this section, all health care personnel working in a health care facility must wear identification labels which state their name and position. Only those persons whose professional designation is recognized by a Commonwealth agency may use an abbreviation on the name tag. For example, the abbreviations of "M.D.," "R.N.," "D.M.D." and "D.O." would be appropriate for, respectively, a medical doctor, registered nurse, dentist and doctor of osteopathy. However, an abbreviation of "P.C.A." for a personal care assistant would not be appropriate—the entire title must be printed. The language of this section closely mirrors that used in H.B. 402, currently pending in the General Assembly. This identification of personnel will assist patients, residents and their families in keeping track of the individuals who are providing treatment.

*§ 51.13. Civil rights compliance records.*

Comments on this section were received from the PACAH and John Reiss, Esq. The PACAH questioned whether the language used in proposed subsection (a)(1) meant that all of the nondiscriminatory practices must be contained in one document. The purpose of this subsection is to assure that the nondiscriminatory statements exist and are readily available to the public and to the Department. While it is not necessary that all of these statements appear on one document, they all must be issued by the facility and, under subsection (b), posted in locations accessible to the facility's staff and the general public.

The remaining comments from the PACAH and those of Attorney Reiss concerned the proposed requirements for annual publication of the nondiscriminatory policy and annual notification to physicians, social workers and others who normally refer patients or residents to the facility. IRRC recommended that the Department review reporting requirements of other agencies and assure that no duplication is involved.

The Department notes that the General Assembly specifically mandated that discrimination be prohibited in all health care facilities. See section 804(a) of the act (35 P. S. § 448.804(a)). While other agencies may enforce some aspect of civil rights protection, it is the Department's duty to ensure that the relevant nondiscriminatory policies are in place. Therefore, it is an appropriate exercise of the Department's regulatory authority to require formulation and dissemination of these policies. The Department does appreciate that annual notification requirements could prove burdensome to the facilities. Also, most physicians, social workers and others who make referrals to the facilities are aware of these nondiscriminatory requirements from other sources. The Department will delete proposed subsection (a)(2), which would have required annual notification to these individuals. The proposed subsection (a)(3) (now subsection (a)(2)) would have required annual notification to employees of the facility's nondiscriminatory policy. This subsection has been revised to remove the requirement that the notification occur annually. Also, in accordance with the PACAH's recommendation, the Department has revised subsection (a)(3) (proposed subsection (a)(4)) to require publication of the nondiscriminatory policy every 3 years, instead of annually. This is the same period of time which is required for publication of nondiscriminatory policies by long-term care facilities. See § 201.28(c)(4) (relating to nondiscriminatory policy).

IRRC also recommended that the Department either eliminate proposed subsection (a)(5) or provide a specific list of records or reports which would be required by the Department. The Department has deleted this subsection.

*§ 51.31. Principle.*

IRRC recommended that the Department clarify that exceptions cannot be granted to permit departures from provisions of the act and other State and Federal statutes. The Department has added language to this effect.

*§ 51.32. Exceptions for innovative programs.*

The PACAH recommended that the proposed section be deleted because of its concern that, without published structured guidelines, exceptions would not necessarily be granted based on the unmet needs of a community.

The Department will not delete this section. The act directs the Department to "administer [the licensure provisions of the act] to encourage innovation and experimentation in health care and health care facilities..." 35 P. S. § 448.804(c).

*§ 51.33. Requests for exceptions.*

Comments on this section were received from several sources, including Temple, the PACAH and Senator Hardy Williams. Most of these comments centered on proposed subsection (c), stating that the Department may request public comment on exception requests by publishing a notice in the *Pennsylvania Bulletin*. The commentators suggested that the Department should publish all requests for exceptions, or at least those requests which the Department intends to approve.

The Department is in agreement with this request. The Department will publish these requests for exceptions and will establish a limited period of time during which it will receive comments. By publishing requests for exceptions, the Department can assure that it has all relevant information in making a determination, as well as a method of conveying to the health care community the requests for exceptions which are received. However, in certain emergency situations, (such as fire, water dam-

age) the Department must act on the exception request immediately and the time necessary for receipt and review of public comment should not be imposed under those circumstances. Accordingly, the Department has revised subsection (c) to state that it will publish all requests for exceptions in the *Pennsylvania Bulletin* and the Department will review any comments which it receives before making a determination to approve or disapprove an exception. Subsection (c) has also been revised by adding a sentence stating that although the Department will publish requests for exceptions, in emergency situations it will not establish a public comment period.

Finally, the Department has added subsection (d) which states that all approved exceptions will be published in the *Pennsylvania Bulletin*. Although no written comments were received on this issue, the Department has become aware of the interest of the health care community in obtaining information on the exceptions which the Department has granted. At present, some health care facilities are aware of certain types of exceptions generally granted by the Department, while other health care facilities are not as well informed. This degree of knowledge varies depending upon which facility's representatives happen to possess information regarding the exceptions which the Department has granted. To assure that all facilities will be kept equally informed, the Department will publish notice of all exceptions granted. This publication will occur on a periodic basis in the *Pennsylvania Bulletin*.

IRRC recommended that the Department provide clarification as to what types of exceptions may be granted and what criteria it would use in making a decision on a request for an exception.

A facility may request an exception from any of the regulations promulgated by the Department. The criteria which the Department would use may vary depending upon the type of exception being requested. Paramount in any determination would be the consideration of the manner in which the exception would impact on quality assurance and patient safety at the facility. If the exception would negatively affect these areas, it would not be approved. Beyond these areas, the Department has to evaluate each request on its own merits to determine if an exception from the regulations is appropriate. Certainly those requests which present an innovation or improvement in the delivery of health care services and do not compromise either quality assurance or patient safety, are most likely to be favorably received by the Department. Consequently, the requested clarification has not been inserted.

#### *§ 51.34. Revocation of exceptions.*

Senator Hardy Williams noted that subsection (a) states that an exception may be revoked for any good reason. He noted that this differs from the requirement in § 101.14(a) (relating to revocation of exceptions) which states that exceptions could be revoked for any justifiable reason. He raises a concern that the word "good" could make it more difficult for the Department to revoke an exception. It was not the Department's intent to limit its ability to revoke exceptions. The Department has revised subsection (a) to substitute the word "justifiable" in place of "good."

#### *§ 51.41. Violations; penalties.*

Several commentators, including Senator Williams and IRRC, wanted to know what type of sanctions the Department would apply for violations of specific provisions. The

sanctions which the Department can issue for a violation of its regulations are in sections 811, 812, 814 and 817 of the act (35 P. S. §§ 448.811, 448.812, 448.814 and 448.817).

These sections state that the Department may refuse to renew a license or may suspend or revoke or limit a license for all or any portion of a health care facility or for any particular service offered by a facility or may suspend admissions if the licensee commits a serious violation of the regulations for licensure. A serious violation of the regulations is defined as one which poses a significant threat to the health or safety of patients or residents. See sections 811(1) of the act. Section 812 of the act provides that the Department may issue a provisional license when it finds that a health care facility has committed a serious deficiency or numerous deficiencies in failing to comply with the Department's regulations. Section 814(a) of the act states that when a violation of the Department's regulations exist, the Department can require the offending facility to submit a plan of corrections to show what action the facility will take to bring it into compliance with the regulations. Finally, section 817 of the act provides that any person who violates a provision of the regulations may be subject to a civil penalty of up to \$500 for each deficiency for each day that each deficiency continues.

Although it is not mandatory that these sanctions be repeated in the regulations, the Department has decided to include them in this chapter. This should address the concerns of those commentators as to what sanctions could be faced by those facilities or individuals who violate these regulations and any of the regulations contained in Part IV. These sanctions are in sections (b) and (c). Subsection (a) states that the Department will work with the health care facility to rectify a violation, where appropriate. The degree to which the Department will pursue this course depends on a variety of factors, including the seriousness of the violation and the degree of danger which is posed to the health and safety of the public. Also, the Department's election to work with a facility to rectify a violation does not preclude it from subsequently concluding that the levying of a sanction would be appropriate.

#### *Chapter 136. Open Heart Surgical Services.*

##### *§ 136.2. Definitions.*

*Board eligible*—Subsequent to issuance of these regulations as proposed, the Department learned that the terminology of "board eligible" was no longer recognized by the American Board of Medical Specialties. As various specialty boards used the term "board eligible" to describe the status of physicians who were not yet certified, but who were at varying stages in the process of board certification, the term became confusing and it the exact status of these physicians was unclear. The Department has avoided this problem by providing its own definition for "board eligible," which is that the physician has completed the requirements necessary to take the certification examination (usually completion of a residency program) and no more than 3 years has passed since that event occurred. To avoid terminology which is no longer recognized by the American Board of Medical Specialties and which could cause confusion to the health care community, the Department has decided to substitute the term "preboard certification status" for "board eligible." This should assure that health care facilities understand that certain health care services may be provided only by physicians who have obtained specific qualifications.

The Department has changed all of the references in these regulations from "board eligible" to "preboard certification status." These changes have been made in the following sections: §§ 136.12(1), 138.2, 138.12(b), 138.17(a), 138.18(a), 139.2, 139.22, 158.2, 158.13(a), (b)(1)—(3) and (6), 158.31(d), 158.32(c), 158.33(c), 158.34(c) and 158.37(d),(e)(1), (3) and (5) and (g).

Temple commented that the definition as proposed was confusing and suggested that the Department use the definition for "board eligible" contained in the vital organ transplantation chapter (§ 158.2 (relating to definitions)). The Department agrees that the proposed terminology was confusing and has amended the language to clarify that, for purposes of this chapter, a physician will be considered board eligible for 3 years immediately following the date upon which eligibility is first attained. After that date, the physician will no longer meet this definition of "board eligibility." The Department has also revised the proposals to place this same terminology in the chapters relating to cardiac catheterization (§ 138.2 (relating to definitions)), neonatal services (§ 139.2a (relating to definitions)) and vital organ transplantation (§ 158.2 (relating to definitions)).

This definition is designed to place a limitation on the amount of time that a physician is considered board eligible. If a physician has been eligible to take a certification examination for a period of time in excess of 3 years and has not taken and passed the examination, that person no longer meets the requirements of this definition and could not serve in any of the positions which require board certification or board eligibility. The word "preliminary" has been removed as it is redundant in the context in which it is used.

*Open heart surgery*—The Department has added a sentence to this definition to clarify that any open heart surgery program which treats adults can perform surgery on any individual who is not contained in the definition of "pediatric heart surgery." As the proposed amendments only discussed criteria for those patients who are to be treated by a pediatric heart surgery program, IRRC recommended that language be added to the scope of treatment for adult open heart surgery programs.

*Pediatric heart surgery*—Children's Hospital of Philadelphia (CHOP) took issue with the definition in the proposed amendments. That definition stated that pediatric patients were those patients under 18 years of age whose physical development precluded them from being handled as adults. CHOP stated that this definition did not reflect accepted medical standards and that, as most pediatric heart surgery deals with congenital defects, specialized training is required.

The Department recognizes that pediatric heart surgery is a highly specialized type of surgery and data shows that this type of surgery is almost exclusively done in hospitals which have developed cardiac care programs focusing specifically on pediatric patients (such as, CHOP, Children's Hospital of Pittsburgh and the Hershey Medical Center). The Department agrees that patients under 18 years of age are almost always considered pediatric patients and are best treated in facilities with these types of programs. In the final-form regulations, the Department amended the definition of "pediatric heart surgery" to indicate that patients under 18 years of age would be considered pediatric patients, unless their physical development precludes them from being treated as such.

Prior to the public hearing at IRRC, the Department received letters from Abington Memorial Hospital and

Senators Loeper and Greenleaf objecting to the definition of "pediatric heart surgery." Specifically, Abington objected to the lack of explanation as to what types of indicia would be used to determine the patient's physical development. Abington suggested that the definition be expanded to include consideration of body mass, weight and other physiologic characteristics. In its disapproval order, IRRC expressed its concern that the definition of "pediatric heart surgery" could limit the care of some patients, who, although they might technically meet the requirements for treatment in a pediatric heart program, might be more appropriately treated in an adult program.

While the Department does not intend to be overly prescriptive in this area, it believes that the definition originally suggested by Abington could actually serve limit those physical developments which could be considered by the physician. The Department believes that the decision as to whether a person should be treated in a pediatric or adult program most properly belongs with the patient's physician. The treating physician is the individual best qualified to assess the patient's medical condition and needs. The physician is also able to determine which type of program best meets those needs. In making this determination, the issue of the physical development of the patient will no doubt be a prime consideration. While the Department has not included a specific requirement in this area, it expects that the physician will also consider the patient's psychosocial development, that is the extent to which the adolescent is psychologically and emotionally prepared to be treated in an adult program.

As stated previously, Abington Memorial Hospital had recommended that the term "physical development" be defined to include consideration of body mass, weight and other physiologic characteristics. However, after the public hearing, the Secretary received a letter from Abington noting that its recommendations may have been too prescriptive. Abington suggested that the definitions of "pediatric heart surgery" and "pediatric cardiac catheterization" be modified to provide that the patient's physician will be entrusted with the determination of those patients whose physical development allows the patient to receive treatment safely and appropriately in other than pediatric centers.

The Department has amended the definition of "pediatric heart surgery" in § 136.2 to state that this term "includes both open heart and closed heart procedures for patients under 18 years of age except for those whose physical development, in the judgment of the patient's physician, allows the patient to receive treatment safely and appropriately in hospitals which do not have a pediatric heart program."

#### *§ 136.11. Director.*

Comments were received from HAP, the AHERF and CHOP as to the appropriate terminology to be used in describing the type of certification required. The AHERF suggested that the phrase "Board certified cardiovascular surgeon" be used. CHOP suggested that, for pediatric heart surgery programs, a sentence be added requiring the director to be a "Board certified thoracic and cardiac surgeon with an expertise in pediatrics." The Department consulted with a group of cardiologists and surgeons to determine the appropriate language to be used. The consensus was that the most appropriate terminology is "thoracic surgeon" as this is the specialty field in which open heart surgeons are trained. These specialists also agreed that the correct terminology for surgeons practicing in pediatric heart surgery programs is "pediatric and

thoracic surgeon." This assures Board certification in the two necessary specialty areas. The Department revised subsection (a) accordingly.

The Pennsylvania Medical Society (PMS) also provided comments on this section which applied generally to all of the sections in the remaining chapters which discuss the appointment of a medical director. The concern raised by the PMS is that there are situations in which, due to the termination or departure of the existing medical director, the hospital is faced with the task of immediately filling that position with a qualified physician. The PMS believes that the requirement that the physician be Board certified will prove burdensome to the hospital and will hinder its ability to fill the position on an interim basis. IRRC suggested that the Department allow for an interim period of time for the employment of a director who is neither Board certified nor Board eligible.

The Department has some concerns regarding the waiver of the Board certified director. This requirement was proposed to help assure that patients receive quality care and that the staff involved in treating patients are under the direction of a qualified physician in the specialty area. (Each of the chapters being amended or revised by this order require Board certified directors.) Any patient should expect this quality assurance aspect at any time, regardless of whether there is a permanent director or not. In most instances, the hospital should have sufficient notice from the departing director so that arrangements can be made to either hire a new qualified director or make arrangements with another health care facility to provide the temporary assistance of its director. However, in those instances where the director's departure is sudden or unexpected, the Department recognizes that these arrangements may be difficult to make.

Therefore, the Department is amending all of the sections of these regulations discussing directors to allow for the appointment of an interim director who is not Board certified. See, also §§ 138.11(b), 139.3(b) and 158.11(b) (all relating to directors). Although Board certification will not be required, the physician must demonstrate qualifications to the medical staff of the hospital and to the Department which establish that the physician is capable of fulfilling the functions of the director, even if only for a short period of time. To receive approval for this appointment, the hospital must submit a request for an exception, as detailed under §§ 51.31—51.34. The hospital provides the Department with specific and detailed information concerning the circumstances requiring the appointment of an interim director who is not Board certified. This information includes the curriculum vitae of the interim director as well as any supporting documentation of the director's qualifications. If the request for an exception is approved, the Department will include a maximum period of time for which the appointment may last.

#### *§ 136.12. Medical staff.*

The AHERF and CHOP both commented as to the correct terminology. Consistent with the revisions to previous section on the qualifications of the medical director, the Department has revised this section to provide that the medical staff shall include thoracic surgeons who are either board certified or who have attained precertification board certification status. See discussion under § 136.2, relating to definitions, regarding use of preboard certification status. Similarly, a pediatric heart surgery program shall include Board certified or Board eligible pediatric and thoracic surgeons.

IRRC commented upon § 136.12(1), which requires a sufficient number of surgeons within the service to allow for 24-hour per day continuous coverage. IRRC noted that there was no definition of the term "sufficient" and requested that the Department provide further guidance on this matter.

The Department has discussed this matter with a group of cardiologists and thoracic surgeons. To their knowledge, there is no universal standard such as a ratio of patients per surgeon dealing with this issue. The Department believes that the open heart program will be able to determine the appropriate number of medical staff which will amount to sufficient coverage of the unit. Obviously, this number will change depending on the number of patients in the program and the severity of their medical condition. The purpose of this requirement is to assure that the hospital reasonably provides for medical staff coverage of the patients in the open heart surgical program. The experience of the service and the expertise of the staff should be evaluated by the hospital in order to determine appropriate and sufficient coverage. Consequently, no definition of the term "sufficient" has been included.

#### *§ 136.13. Nursing staff; other health care personnel.*

Comments on this section were received from the Pennsylvania Nurses Association (PNA). This organization was represented on the original task forces which were organized in early 1997 to discuss the need for additional regulations as a consequence of the sunset of CON. At that time, the PNA recommended language regarding the qualifications of the nursing staff for insertion in each of the proposed chapters. That language was in this section. See also §§ 138.13, 139.4 and 158.14 (relating to nursing staff; other health care personnel.) In its comment, the PNA requested that the Department revise the provisions which it had previously recommended and provided alternative language.

Most of the recommended changes do not vary the intent of the proposed language. The Department does have concerns with the PNA's request to define "unlicensed assistive personnel" as "individuals who are trained to function in an assistive role to the registered professional nurse in the provision of patient/client care activities as delegated by and under the supervision of the registered nurse." This definition does not provide for the direction and supervision of unlicensed assistive personnel by other health care workers, in particular, physicians.

Rather than adopt changes to the nursing personnel language, the Department believes that this issue is best addressed through a review of Chapter 109 (relating to nursing services) which discusses nursing services in a hospital. See §§ 109.1—109.68. The Department is presently engaged in a full review of all of the hospital licensure regulations and will be addressing this issue. A work group has been formed to make recommendations to the Secretary. The PNA is a member of this work group. The Department will address any necessary changes to the nursing staff regulations through this mechanism.

However, the Department has added language to this section to discuss the need for other health care personnel in the program in subsection (d)(1)—(4). This language was adapted from similar language suggested by Geisinger Medical Center in the cardiac catheterization chapter. See § 138.13 (relating to nursing staff; other personnel). These additional provisions require that hospitals assure that the open heart program contain ad-

equate health care personnel to address the needs of the patients. In establishing standards for physicians, nurses and other health care personnel, the Department's goal is to provide a framework to assist the hospital in providing an open heart surgery program that will meet quality assurance criteria.

*§ 136.14. Support team in the operating room.*

The Department has eliminated the word "preferably" in the third sentence of proposed subsection (a)(2) so that all perfusionists participating in open heart surgery programs are required to possess certification. This change was made after consultation with cardiologists and thoracic surgeons who stated that most perfusionists do obtain certification. As the perfusionist's duties include the critical function of operating and monitoring the heart-lung machine during open heart surgery, the Department agrees that the certification requirement is appropriate.

In an effort to determine the appropriate level of education, training and experience which should be required, the Department found that most perfusionists attend an educational institution or School of Perfusion which specifically trains individuals in this area. Most of these schools require that the individual has obtained a bachelor degree and have some type of medical background and experience. These institutions generally issue a certificate of completion. The graduates from these schools are eligible to take a two part examination offered by the American Board of Cardiovascular Perfusion (ABCP). The graduates must first successfully complete a written basic science examination and are then eligible to take a clinical competency examination. Prior to taking this second examination, the perfusionist must document the performance of 50 independent clinical perfusions which occurred after graduation. After the graduate has passed both of these examinations, the graduate is considered board certified.

Subsection (a)(2) has been revised to require that all perfusionists obtain certification from the ABCP. In recognition of the fact that certification will not be obtained until sometime after graduation from a school of perfusion, the perfusionist is given 2 years from the start of employment at the hospital to obtain this certification. The ABCP does not recognize the concept of board eligible. The organization will report the status of a perfusionist as board certified, not certified or has been accepted for examination. As the term "board eligible" is not applicable, the Department has placed a time limit on the number of years which a hospital can employ a perfusionist who is not board certified (2 years) and has required that a perfusionist who is not board certified shall work under the supervision of a certified perfusionist, cardiologist or cardiac surgeon, until the perfusionist obtains board certification.

The other change which was made in this section was to require that the perfusionist operate the heart-lung machine in accordance with the requirements of the hospital, instead of the operating surgeon. Perfusionists should not be expected to change methods or practices at the discretion of each surgeon with whom they may work. Compliance with the hospital's standards is a more appropriate standard.

*§ 136.15. Other support services.*

The Department received a general comment from the AHERF on this section. As proposed and adopted, each of the various support services is qualified with the requirement that it be either available or onsite. The term

"onsite" is defined as "in the physical structure at which open heart surgical services are being offered or in an adjoining structure." The AHERF noted that no corresponding definition for "available" was proposed and requested that one be provided. The Work Groups and the Department were unable to arrive at a definition for this term, as the services listed vary greatly. For example, the availability of bio-engineering services (subsection (a)(15)) may differ from the availability of a cardiographic laboratory (subsection (a)(10)). Whereas the term "onsite" indicates a service that must be immediately accessible, the services required to be available, may be located on the same campus as the building housing the open heart surgery site or may be located at some distance. Therefore, the requested change was not included.

The Department expects that most hospitals who provide open heart surgery will have all of the support services listed in this section available somewhere within the hospital's facility or have some type of contractual arrangement with a facility located nearby. The important aspect is that these support services are accessible by the cardiac surgical service, as needed. The Department expects that the training and expertise of those personnel involved in the delivery of open heart surgical services will help to ensure that these support services are appropriately located.

As to specific subsections, the AHERF commented that the cardiac catheterization and interventional angiography laboratory (subsection (a)(5)), should be onsite and not available, as a hospital must be capable of performing all types of cardiac catheterization to also operate an open heart surgery program. The Department agrees and has made this change.

HAP requested clarification and justification for the requirement that the hospital contain an emergency department, staffed onsite with an advanced cardiac life support certified physician (subsection (a)(9)). After reviewing this matter, the Department has revised this subsection to provide that a physician with an advanced cardiac life support certification must be onsite. The important aspect of this requirement is that a physician with ACLS certification be nearby for those pre and post operative open heart patients who need immediate resuscitation. The full services of an emergency department are not necessary to assure that open heart patients will receive appropriate care.

In subsection (b)(2), the word "should" has been changed to "shall" to clarify the requirement that the operating room and support facilities must meet the requirements of either the Inter-society Commission on Heart Disease or the American College of Cardiology/American Hospital Association Guidelines.

*§ 136.20. Pediatric heart surgery—supplementary criteria.*

Temple noted that another proposed section of this chapter, § 136.2, defined "pediatric heart surgery" as including both open and closed heart surgery on pediatric patients, but that this section referred only to pediatric open heart surgery. Temple questioned whether the title of this section and the references in subsections (a) and (b) should be changed from "pediatric open heart surgery" to "pediatric heart surgery." The Department agrees and has made these changes.

CHOP requested that the Department add a supplementary criterion requiring the provision of special support services unique to assisting children in coping with their illness, such as a Child Life program. While the Department agrees that pediatric heart patients have

special needs and require support services different from or in addition to those needed by adult open heart patients, it believes that this criteria should be stated in terms of required training of personnel involved in the pediatric heart program, rather than in requiring the presence of a particular program. The Department has revised proposed subsection (b)(5) to provide that "all staff responsible for care of the pediatric patient shall have experience and training in pediatrics, including both physiological and psychosocial needs of the patient." The elimination of extraneous language in this subsection reflects the Department's intent that all staff be adequately and appropriately trained in caring for the pediatric heart patient.

*§ 136.21. Quality management and improvement.*

The Department received comments on this section from Temple, Sharon Regional Health System (Sharon), Valley Health System (Valley), Hershey Medical Center (Hershey), the AHERF and Senator Hardy Williams.

Sharon, Valley and Hershey took issue with proposed subsection (a)(4) which stated that the hospital must maintain and submit data on the volume of procedures performed. Proposed subsection (c) stated that the Department will publish by statement of policy the values or standards, or both, for each of the factors in subsection (a). These hospitals maintained that minimum volume standards should have been included in the regulations and that the standards are necessary to ensure quality of care. Without the establishment of a minimum number of open heart procedures which must be performed by each program, these hospitals argued, open heart programs will proliferate and compromise patient outcomes. Temple and Senator Williams questioned the Department's intent to publish the proposed values or standards, or both, through a statement of policy as the Department may not be able to enforce these standards. IRRC also commented that a statement of policy is not binding on an agency or on anyone subject to the agency's jurisdiction. IRRC recommended that if the Department intended to establish minimal volume standards and establish an enforceable quality review standard, it should publish these standards in the regulations.

In reviewing this issue, the Department has determined that there are no definitive numbers that can be assigned to the factors listed in subsection (a), which in and of themselves can prove that a program that does not meet these numbers is absolutely shown to be providing substandard care. Rather than focus on specific numbers, the Department's review is intended to identify trends of performance in the areas listed in subsection (a), so that a determination can be made if further review of that program may be appropriate. With the sunset of the CON Program, the focus of the Department is not on stopping open heart surgery programs from developing, but in assuring that the services provided in these programs meet quality standards and that the patients are receiving the proper and appropriate treatment. The main test of these criteria will be a review of the outcomes of the open heart surgery programs which will reflect whether the care there meets quality assurance standards. Therefore, instead of issuing specific values and standards for these various factors, the Department will look to the program's overall performance and any problems with quality assurance aspects of that program which may be indicated by review of the program's outcomes in these areas.

The AHERF commented that the data requested by the Department may already be available from other agen-

cies, such as the Health Care Cost Containment Council (HCCCC). The Department does not intend to burden health care facilities with compiling a report for the Department when it is already being supplied to another regulatory body and can be easily accessed by the Department. The Department will work with other regulatory agencies and with health care facilities to determine if this data is available from other sources and what the best method would be for the Department to obtain this data promptly and on a regular periodic basis.

However, the Department intends to fulfill its statutory obligation to promote and protect the public health and welfare. The Department is the agency charged with setting standards to assure safe, adequate and efficient facilities and services and to assure quality health care to patients in these facilities. See section 801a of the act. The Department believes that the collection of this data is essential to review the outcomes in open heart surgery programs and assure that quality treatment is being provided. Regardless of the functions of other agencies, the Department intends to collect this data in a timely manner from the affected health care facilities. Any burden which may occur due to the necessity of compiling and reporting this information is far outweighed by the benefit of oversight of quality assurance standards.

The Department consulted with cardiologists and thoracic surgeons regarding the requirements of this section. They advised the Department that the information which is mentioned in this section is similar to information which is voluntarily provided by most thoracic surgeons to the Risk Stratification Program run by the Society of Thoracic Surgeons. Due to this fact, the Department has added subsection (c), which permits a hospital to submit the surgeon's report to the Risk Stratification Program in lieu of the information listed in subsection (b). This information shall be submitted on a quarterly basis, as set forth in subsection (b). Those hospitals or surgeons who do not report to the Risk Stratification Program are encouraged to contact the Society of Thoracic Surgeons and obtain information on this program and the forms which are used for the submission of information.

IRRC objected to the Department's use of the term "and the like" as a descriptive phrase in proposed subsection (a)(2) and (3) and recommended that the Department list specific factors for which information may be requested. The terms for which this phrase was used are "patient risk factors" and "infections and complications." Both of these terms comprise broad categories encompassing a variety of contributing factors. An attempt to list all possible patient risk factors or all potential infections and complications would prove difficult and the inadvertent failure to list a risk factor or infection/complication does not mean that the existence of that factor in a particular patient should not be reported. Rather than attempt an exhaustive list, the Department has eliminated the examples cited in proposed subsection (a)(2) and (3) and will rely on the thoracic surgeons and the hospitals to report all relevant risk factors and infections/complications.

Senator Williams raised concerns as to what enforcement mechanisms the Department would use if it determines that the open heart surgery program is not in compliance. Section 811 of the act provides that the Department may refuse, suspend, revoke or limit a license if the facility commits a serious violation of the act or of the regulations for licensure. See section 811(1). Also, section 817 of the act provides that the Department may bring an action for an injunction against any individual who violates the regulations as well as assess a



civil penalty against a facility who violates a regulation and fails to take corrective action. See 817(a) and (b). Thus, the General Assembly has given the Department the authority to enforce its regulations by pursuing various sanctions. The Department intends to use the full range of the available sanctions in enforcement of these regulations. IRRC also raised the issue of possible sanctions which a facility could face for violation of this provision. In response to these concerns, the Department has added § 51.41 in the general information chapter, which sets forth the sanctions which can be assessed by the Department for a violation of its regulations.

*Chapter 138. Cardiac Catheterization Services*

*§ 138.1. Principle.*

Both HAP and Gnadden Huetten Memorial Hospital suggested that the Department permit catheterizations to be performed in mobile catheterization laboratories ("cath labs"). The recommendation was rejected.

The Department is not inclined to permit mobile cath labs which are entirely freestanding and unattached to a hospital, thus without the presence of immediate emergency and surgical back-up. This position is supported by the Guidelines of the American College of Cardiology and American Heart Association for Cardiac Catheterization and Cardiac Catheterization Laboratories.

The Department does recognize that a situation may arise where a hospital which already possesses a cardiac cath lab may need to temporarily close the lab for renovation or other purposes. In order not to disrupt cath lab services, the hospital may utilize a mobile cath lab which is brought onto the grounds of the hospital and usually connected to the hospital by a temporary corridor. In these instances, the Department does not object to the use of a mobile cath lab as it is only a temporary measure and treatment is rendered by qualified physicians and staff. Also, the full services of the hospital are immediately available. This position is reflected in § 138.14(c) (relating to program services) which states that "to allow for continuity of care, mobile cardiac catheterization laboratories may be utilized onsite at a hospital which is already providing cardiac catheterization services while the existing, fixed cardiac catheterization laboratory is being renovated or its equipment upgraded."

*§ 138.2. Definitions.*

*Board eligible*—Due to the discontinuance of the use of the term "board eligible" by the American Board of Medical Specialties, the Department has substituted the term "preboard certification status." See discussion under § 136.2 for open heart surgical services, for further information.

Both Temple and the PMS questioned why no definition of "board eligible" was proposed in this chapter, as other proposed chapters in these regulations allowed for both board certified and board eligible physicians.

As discussed previously, the Department has determined that all chapters should allow for medical staffs with both board certified and preboard certification status physicians. See previous discussion under § 136.2. Accordingly, this section has been amended to include a definition for "preboard certification status" consistent with the definitions in the other chapters.

*Cardiac catheterization area*—Subsequent to IRRC's disapproval, the Department revised § 138.13 (relating to nursing staff; other health care personnel). In that revised section, the Department distinguishes between staffing requirements in the cardiac catheterization labo-

ratory and in the cardiac catheterization area. To clarify this distinction, the Department has added a definition of "cardiac catheterization area" which indicates that this area includes the cardiac catheterization laboratory and any preoperative and postoperative recovery units. For further discussion of this definition, see § 138.13.

*"EPS—electrophysiology study—diagnostic" and "EPS—electrophysiology study—therapeutic"*—The wording of these definitions has been changed to clarify the distinction between diagnostic and therapeutic electrophysiology studies. A comment was received from a cardiologist, Ancil A. Jones, M.D., recommending this distinction. Dr. Jones also suggested that the phrase "procedures designed to induce ventricular or supraventricular tachycardia; activation sequence mapping of cardiac tachyarrhythmias" be moved from the definition of "therapeutic EPS" to "diagnostic EPS," as induction and sequence mapping of arrhythmias are properly considered diagnostic and not therapeutic. In response to this suggestion, the Department consulted with a group of thoracic surgeons and cardiologists. They agreed that induction and mapping are considered to be diagnostic, rather than therapeutic. The Department has revised the proposed definitions accordingly.

*Pediatric cardiac catheterization*—Similar to the definition of "pediatric heart surgery" comments were received from HAP requesting clarification and from CHOP requesting that the definition be changed to state that patients from ages 0-18 should be treated in a pediatric program. See discussion under § 136.2. The Department agrees that children should be treated in pediatric cardiac catheterization programs and has amended the definition to indicate that. Except for those instances where physical development precludes treating the individual as a pediatric patient, children aged 0-18 should be treated in a pediatric cardiac catheterization program.

As discussed in § 136.2, IRRC disapproved the proposed final-form regulations in part because of the definition of "pediatric heart surgery." The Department has revised that definition. As the definition of "pediatric cardiac catheterization" is virtually identical to the definition of "pediatric heart surgery" and similar reasoning for these definitions existed during their development, the Department has revised the definition of "pediatric cardiac catheterization" to reflect that children up to age 18 shall be treated in a hospital with a pediatric cardiac catheterization program except for those patients whose physical development, in the judgment of the patient's physician, allows the patient to receive treatment safely and appropriately in hospitals that do not have pediatric cardiac catheterization programs. As discussed more extensively in § 136.2, the Department has determined that the physician is the most appropriate person to assess whether an adolescent should receive treatment in a pediatric or adult program.

*§ 138.11. Director.*

The PMS and IRRC both questioned the provisions of this proposal which would have permitted only board certified cardiologists to serve as medical directors. Both entities stated that this varied from the requirements for directors in the remaining chapters of the proposed amendments, as board eligible directors were permitted.

A review of the proposed amendments indicates that the open heart and cardiac catheterization chapters both permitted only board certified physicians to serve as medical directors of the respective programs. The Department believes that this requirement is justified. The

medical director is responsible for the operations of the program and will often be called upon to make determinations based upon the director's medical knowledge and judgment. The presence of a board certified director will assure that a competent and qualified individual fills this important position. The Department has amended the neonatal services chapter and revised the proposed vital organ transplantation services chapter to require that the medical directors of those programs also be board certified in the appropriate specialty.

A minor amendment was made to this provision in adding the words "as appropriate" after the statement that "the director of the cardiac catheterization service shall be Board certified in cardiology or pediatric cardiology." This will clarify the Department's intent that the director of an adult cardiac catheterization service will be Board certified in cardiology and the director of a pediatric cardiac catheterization service will be Board certified in pediatric cardiology.

Both the PMS and IRRC also recommended that the Department permit the appointment of interim directors who are not board certified. This issue was discussed in the section dealing with the requirements for the director of an open heart surgical services program. See discussion in this preamble under § 136.2 (relating to definitions for open heart surgical services). The Department has added subsection (b), setting forth requirements for the appointment of an interim director.

#### *§ 138.12. Medical staff.*

Both the HAP and AHERF questioned the appropriateness of the terminology in the proposed regulation which stated that the physicians on staff shall have graduated from an accredited training program in cardiac catheterization.

The Department consulted with a group of cardiologists who advised that the correct language to be used is board certified or board eligible in cardiovascular diseases with specialized training in invasive procedures. This reflects the appropriate certification and the area in which the staff member must obtain additional or specialized training. The proposed language has been revised. See discussion in § 136.2 regarding substitution of preboard certification status for board eligible.

#### *§ 138.13. Nursing staff; other health care personnel.*

The Department received comments from nine organizations objecting to the failure to mention the role of registered cardiovascular technologists (RCVTs). These individuals receive special training and education to assist physicians in the cardiac cath lab. Most of the commentators believe that requiring a registered nurse (RN) in the cath lab does not assure that appropriate personnel are present. They claim that the RCVT is often better qualified and more appropriate to assist a physician in the cath lab than an RN. Several commentators feared that the specific requirement of an RN in the cath lab will serve to exclude RCVTs, that is, a hospital may not be able to afford to employ both, so it will hire an RN for the cath lab because of the specific regulatory requirement. Some commentators suggested that the proposal be specifically revised to require that a RCVT be present in the cath lab.

After reviewing these comments and consulting with a group of cardiologists, the Department has determined that the services of RCVTs are regularly used in the cath lab. The RCVT works closely with the physician in the cath lab in assisting in the performance of the catheterization. However, RCVTs are neither registered

nor licensed by the Commonwealth and there could be a wide variance in each individual's level of education and training. Conversely, all RNs receive standardized training in all areas of health care and must demonstrate proficiency in these areas in order to receive and maintain a license. This consistency in education and training assures the Department that the RN is capable of providing assistance to the physician in the cardiac catheterization laboratory.

The requirements of this section were not meant to exclude any qualified personnel from participating or assisting in the catheterization procedure. The Department still believes that at least one RN should be present in the cath lab. Due to the scope of practice of an RN, the presence of this individual in the cath lab setting will assist in the provision of quality care and will also impact on patient safety. However, other personnel may still be employed in the cath lab to assist the physician. Geisinger Medical Center suggested language establishing minimum requirements for other health care personnel involved in the cardiac catheterization service. The Department has amended this section to include this language. See § 138.13 (c).

At the public hearing before IRRC, several individuals testified regarding this issue. Most of these individuals were RCVTs or represented hospitals which use technologists in their cardiac catheterization programs. In its order disapproving the final-form regulations, IRRC noted that it had received letters and testimony from a number of hospitals which indicated that they were staffing their cardiac catheterization laboratories with RCVTs, who received extensive training and examination in this specialized area. In requiring these hospitals to hire a nurse to work in the catheterization laboratory, IRRC was also concerned of potential adverse economic impact on these hospitals and on the trained personnel currently working in this field.

After review of the information submitted and the Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories issued by the American College of Cardiology and the American Heart Association, the Department has concluded that a distinction can be made between the provision of nursing care and the assistance of a physician in the performance of the catheterization procedure. Nursing care, which is generally provided in the preoperative and postoperative setting and involves monitoring and assessment of the patient's medical condition, is performed by a hospital's nursing staff. However, providing assistance to a physician in conducting the actual catheterization procedure, can be performed by technicians, as this activity involves specialized knowledge of the procedure and the equipment used in that procedure. While nurses who have been trained in monitoring this equipment may assist a physician, it is also appropriate for technicians with appropriate education, training and experience to assist the physician in conducting the catheterization procedure.

The Department has revised § 138.13 to reflect the distinction between nursing care of the patient and assistance of the physician in performance of the cardiac catheterization procedures. Section 138.13(a) states that "there shall be at least one registered nurse assigned to provide nursing care for patients in the cardiac catheterization area at all times who shall have intensive care or coronary care experience and knowledge of cardiovascular medications, and experience with cardiac catheterization patients." This subsection was changed to clarify that a nurse must be assigned to the cardiac

catheterization area, rather than to the cardiac catheterization laboratory. A definition has been added to § 138.2 for the term "cardiac catheterization area." This term has been defined as "that portion of the hospital dedicated to the performance of cardiac catheterizations, including the cardiac catheterization laboratory where the invasive procedures are performed by the physician, and any preoperative and postoperative recovery units used for treatment of the cardiac catheterization patient." The addition of this term clarifies that the nurse must be assigned to the general cardiac catheterization area, and not necessarily to the cardiac catheterization laboratory itself.

Section 138.13(d) has been added to clarify the types of care which can be provided by various health care personnel and the areas in which that care can be provided. The first sentence of this section states that: "The patient's preoperative and postoperative nursing care in the cardiac catheterization area shall be provided by a registered nurse and other nursing staff as required to meet patient care needs." This statement clarifies that the care provided to cardiac catheterization patients in those areas outside of the cardiac catheterization laboratory must be provided by the nursing staff, including a registered nurse, as it involves monitoring, assessment and other duties which constitute nursing care. The second sentence of this section states that: "Either nursing personnel or other health care personnel with appropriate education, training and experience shall assist the physician in the performance of the cardiac catheterization procedures in the cardiac catheterization laboratory." This statement permits nursing personnel and other health care personnel, who are appropriately equipped to assist the physician in the performance of the catheterization in the catheterization laboratory. The Department has decided not to limit the description of "other health care personnel" to any particular group or classification, but to allow the hospital and the physician to determine those personnel who will be able to safely and appropriately assist the physician in the catheterization laboratory.

*§ 138.16. Transfer agreements for low-risk cardiac catheterization hospitals.*

The Department has corrected an inadvertent deletion which appeared in subsection (a) of the proposed regulations. The requirement is that a hospital which performs low-risk cardiac catheterizations shall have a transfer agreement with at least one hospital which performs open heart surgery. This requirement assures that the hospital in which the patient is receiving the cardiac catheterization will be able to transfer the patient to another hospital with more extensive surgical capabilities should the need arise.

HAP provided comment on this section. HAP questioned the justification for the inclusion of the requirement in subsection (a)(5) that a hospital receiving a transferred patient should not duplicate the already performed diagnostic cardiac catheterization. HAP argued that there is no need for the proposed requirement in a transfer agreement as it is controlled through other mechanisms such as utilization review and approval processes by insurers and payors.

While the Department's focus is on quality of care rather than utilization requirements, it agrees that this particular requirement can be deleted. Whether or not it may be necessary or appropriate to duplicate a cardiac catheterization will be up to the medical judgment of the physician at the hospital to which the patient is trans-

ferred. This medical judgment is subject to sufficient review mechanisms to assure that any unnecessary duplications should not occur. The questioned provision has been deleted.

*§ 138.17. Percutaneous transluminal coronary angioplasty (PTCA).*

The AHERF commented that the proposed terminology is incorrect and suggested language requiring graduation from an accredited cardiovascular training program and at least 2 years experience in cardiac catheterization and catheter interventions. The Department consulted with a group of cardiologists and thoracic surgeons on this issue. They agreed that a physician who performs PTCAs should be Board certified or Board eligible in cardiovascular diseases. However, they stated that there was nothing as an accredited training program in PTCA which was an additional requirement contained in the proposed amendments. The cardiologists did believe that training in the area of interventional cardiology was needed. The training should be specific to the type of procedure which the physician will be performing in the cath lab. Accordingly, the Department determined that a requirement that the physician must be either Board certified or have attained preboard certification status and have received "specialized and appropriate training in interventional cardiology procedures" would assure that a physician performing PTCAs will be properly educated and trained. The Department has amended subsection (a) to reflect this language. See discussion in § 136.2, relating to definitions for open heart surgical services, for further information on substitution of preboard certification status for board terminology.

The AHERF and Temple both objected to the proposed inclusion of subsection (c), which provides that a hospital which performs an emergency PTCA procedure and which does not have an open heart surgery program onsite shall report these circumstances to the Department in writing within 72 hours of the performance of the PTCA. Their argument was that inclusion of this language will encourage the performance of PTCAs at hospitals without an open heart surgery program. Another commentator, Community Hospital of Lancaster, suggested that this language was too limiting, and that PTCAs can be performed safely at hospitals without an open heart surgery program.

The Department consulted with cardiologists and thoracic surgeons who confirmed that, in certain emergency cases it may be necessary for a low-risk catheterization lab to perform an emergency PTCA. These low-risk cath labs may be located in hospitals without the presence of an open heart surgery program. However, the performance of PTCAs in such a situation should be rare. If the candidates for low-risk catheterization are properly screened, a patient who may potentially require a PTCA would be receiving a catheterization at a hospital with open heart surgery capacity.

Temple's and AHERF's concerns raise a quality assurance issue which the Department can address by monitoring the performance of the cardiac cath labs. Under § 138.20 (relating to quality management and improvement), the Department will be collecting data from the cardiac catheterization programs. One of the areas which will be reviewed is the number of emergency PTCAs which are performed at a hospital without open heart surgery. If the reports from these low-risk cath labs indicate a trend towards an increasing number of factors showing that a procedure performed on this patient should be considered a high-risk catheterization and

there are a number of so-called emergency PTCAs performed by this program, the Department will have serious concerns as to whether the cath lab is properly screening and selecting only those patients who are appropriately treated in a low-risk cath lab. A high number of emergency PTCAs may also suggest that the low-risk cath lab is not performing its catheterizations appropriately.

*§ 138.18. Electrophysiology studies.*

The AHERF questioned the terminology used in proposed subsection (a) regarding physician qualifications. The AHERF suggested that each physician should be required to have graduated from an accredited training program with at least 2 years dedicated to electrophysiology. The Department consulted with a group of cardiologists concerning this issue. They advised that the standard applied in most facilities for physicians to perform electrophysiology studies is board certification or board eligibility in cardiovascular diseases and board certification or board eligibility in clinical cardiac electrophysiology. Completion of these studies should assure qualified physicians in this area. The Department has amended subsection (a) to reflect this language. This standard is supported by the "American College of Physicians/American College of Cardiology/American Heart Association Task Force on Clinical Privileges in Cardiology" issued in April 1994. The Department has amended subsection (a) to provide that a physician performing electrophysiology studies shall be either board certified or shall have attained preboard certification status in cardiovascular diseases and shall be either board certified or shall have attained preboard certification status in clinical electrophysiology.

A cardiologist, Ancil A. Jones, M.D., suggested that the requirement in subsection (b) that implantation of automatic implantable cardioverter defibrillators be performed in hospitals with an open heart surgery program was not necessary and that this particular therapeutic electrophysiology procedure could be performed in a hospital without an open heart surgery program. The Department discussed this issue with several cardiologists. Their unanimous opinion was that this procedure does require the onsite presence of an open heart surgery program. These cardiologists agreed with the other requirements set forth in subsection (b). The Department has not made any revisions to this subsection.

*§ 138.20. Quality management and improvement.*

Most of the comments on this section were similar to those received for § 136.21 (relating to quality management and improvement for open heart surgical services), which discusses quality management and improvement for open heart surgical services. Reference should be made to that section in this Preamble for a fuller explanation of the matters discussed as follows.

The Department received comments on this section from the AHERF, Valley, Sharon, Geisinger, Ancil A. Jones, M.D. and Senator Hardy Williams.

Sharon and Valley took issue with proposed subsection (a)(4) which stated that the hospital must maintain and submit data on the volume of procedures performed. These hospitals maintained that minimum volume standards should have been included in the regulations, rather than being published in a statement of policy, as proposed in subsection (c). Senator Williams also questioned the Department's intent to publish standards and values in a statement of policy as the Department may not be able to enforce these standards. IRRC recom-

mended that, if the Department intended to establish minimal volume standards and establish an enforceable quality review standard, it should publish these standards in the regulations.

The recommended revisions have not been made. As with the issue of volume for open heart surgical services, the Department has determined that there are no definitive numbers that can be assigned to the factors in subsection (a) which in and of themselves can prove that a program that does not meet these numbers is absolutely shown to be providing substandard care. The focus of the Department is on trends of performance in the areas listed in subsection (a) and not on compliance with some arbitrary value or standard. With the sunset of CON, the Department is reviewing the quality assurance aspects of the provision of health care services. The chief test of the criteria contained in subsection (a) will be a review of the outcomes of the cardiac catheterization programs. These outcomes will indicate if the care provided meets appropriate quality assurance standards. Therefore, instead of issuing specific values and standards for these various factors, the Department will look to the program's overall performance and any problems with quality assurance aspects of that program which may be indicated by review of the program's outcomes in these areas.

The AHERF commented that the data the Department proposed to request may already be available from other agencies, such as the HCCCC. Dr. Jones also suggested that the Department seek input from cardiologists in gathering this information and stated that the Pennsylvania Chapter of the American College of Cardiology would provide representation on a restructured advisory committee. Dr. Jones' reference is to the oversight committee which was formed in 1991 under the provisions of the cardiac catheterization chapter of the SHSP. Working with this committee, the Department developed a Cardiac Catheterization Report which provided relevant information on each catheterization performed. These forms were completed by the cath labs and returned to the Department for use in assuring compliance with the requirements of the SHSP. The Department has determined that this report provides adequate information to assess the performance of a cardiac catheterization program. As those programs which obtained a CON for cardiac catheterization since 1991 have been submitting these reports regularly, continued use of this report would appear to be of minimal fiscal impact upon these hospitals. Those programs in operation prior to 1991 should find this form relatively straightforward. As the Department gathers this information, it may determine that changes should be made to the report. All parties will be notified of any changes in the forms used to report this information.

While the Department does not intend to duplicate the reports and information being supplied to other regulatory bodies, it intends to fulfill its statutory obligation to promote and protect the public health and welfare. The Department is the agency charged with setting standards to assure safe, adequate and efficient facilities and services and to assure quality health care to patients in these facilities. See section 801a of the act. The Department believes that the collection of this data is essential to review the outcomes of cardiac catheterization programs and assure that quality treatment is being provided. Another important aspect of this assessment will be to assure that high-risk catheterizations and PTCAs are performed in facilities with open heart surgery programs. As mentioned in the discussion in this Preamble on § 138.17 (relating to percutaneous transluminal coro-

nary angioplasty), the Department will be able to monitor the location of the performance of these more complex types of catheterizations and take action if a cath lab without onsite open heart surgery back-up appears to be performing an inordinate amount of high-risk catheterizations, either on a routine or emergency basis.

The Department consulted with a group of cardiologists regarding the requirements of this section. Unlike the similar requirements for open heart surgery programs, the cardiologists were unaware of any organization which collected this type of data. Although the Department has discussed this matter with HCCCC and will do so again before issuance of any report form, it does not appear that HCCCC collects this data in a manner which would prove to be of sufficient detail and timeliness for the Department's purposes.

IRRC objected to the Department's use of the term "and the like" as a descriptive phrase in proposed subsections (a)(2) and (3) and recommended that the Department list specific factors for which information may be requested. The terms for which this phrase are used are "infections and complications" and "patient risk factors." Both of these terms comprise broad categories encompassing a variety of contributing factors. Geisinger noted that there are a multitude of patient risk factors. An attempt to list all possible patient risk factors or all potential infections and complications would prove difficult and the inadvertent failure to list a risk factor or infection/complication does not mean that the existence of that factor in a particular patient should not be reported. While the previously mentioned Cardiac Catheterization Report contains a list of possible risk factors and major complications, it is recognized that even this list is not exhaustive. Rather than attempt to construct such a list for these regulations, the Department has eliminated the examples cited in proposed subsections (a)(2) and (3) and will rely on the cardiologists and the hospitals to report all relevant risk factors and infections/complications. Any form prepared by the Department will give the hospital opportunity to provide information regarding these criteria.

Senator Williams raised concerns as to what enforcement mechanisms the Department would use if it determines that the cardiac catheterization lab is not in compliance with these regulations. Section 811 of the act provides that the Department may refuse, suspend, revoke or limit a license if the facility commits "a serious violation of provisions of this act or of the regulations for licensure." See section 811(1) of the act. Also, section 817 of the act provides that the Department may bring an action for an injunction against an individual who violates the regulations as well as assess a civil penalty against a facility that violates a regulation and fails to take corrective action. See section 817(a) and (b) of the act. Thus, the General Assembly has given the Department the authority to enforce its regulations by pursuing a variety of sanctions. The Department intends to use the full range of these available sanctions in enforcement of the regulations. IRRC also raised the issue of possible sanctions. To address these concerns, the Department has added § 51.41 in the general information chapter, which sets forth the sanctions which the Department can assess for violation of its regulations.

#### *Chapter 139. Neonatal Services*

##### *General Comments*

The Department received a comment noting that the Work Group had recommended, and the Department had

agreed, to eliminate the term "newborn" and replace it with the more current and appropriate term "neonatal." The commentator noted that in several instances in the text of the regulations the term "newborn" still appeared. The Department has replaced this term with either "neonatal" or "neonate" in the following sections: §§ 139.1, 139.4(b), 139.12(a) and (c), 139.15, 139.23(a), (b)(2), (6) and (7), 139.26(d) and § 139.27(c). In addition, the Department has added a definition of "neonate" to § 139.2a (relating to definitions) to clarify that this term refers to a baby or infant.

##### *§ 139.2a. Definitions.*

The PMS commented that the definitions for "board certified" and "board eligible" should refer to the American Board of Medical Specialties, instead of the American Board of Medical Specialists. The Department has made this change and has also substituted the term "preboard certification status" for "board eligible." See discussion in § 136.2 for further information.

Both the PMS and IRRC noted that the proposed definitions for the terms "board certified" and "board eligible" varied in this chapter from definitions used in other chapters in these regulations. IRRC recommended that the terms be defined consistently or a reason given for any differences. The Department has amended the definitions for "board certified" and "board eligible" in this chapter to conform with the definitions for those terms in the other chapters. See §§ 136.2, 138.2 and 158.2 (all relating to definitions). Consistent with the definition for "board eligible" in the other chapters, the word "preliminary" has been removed from the definition as it is redundant.

A definition of "neonate" has been added to clarify the use of this term in the chapter.

##### *§ 139.3. Director.*

The PMS and IRRC noted that the proposal would allow for the appointment of a director who is board eligible, while other chapters permitted only board certified physicians to serve in this capacity. The Department has reviewed this matter and determined that a director of neonatal services should be limited to those physicians who are board certified pediatricians. Subsection (a) has been amended accordingly. The appointment of a board certified director will assure that a qualified individual serves in this capacity. The Department notes that the current "Guidelines for Perinatal Care" issued by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists also permits only board certified pediatricians to serve as medical directors in neonatal care units. Similar to the provisions of the other chapters discussing a medical director's qualifications, this section has been amended to add subsection (b), which would permit a facility to appoint an interim director after the departure of the previous director and prior to the appointment of the next permanent director. Permission for the appointment of an interim director would be obtained through the exceptions process.

##### *§ 139.4. Nursing services; other health care personnel.*

The PNA provided comments suggesting general changes in the language in this section regarding duties of nursing personnel. The language which was added to this section in the proposed amendments was suggested by the PNA. At present, the Department is reviewing all of its hospital licensure regulations and will discuss the issue of nursing services during that review. A representative of the PNA is serving on the Work Group reviewing these regulations. The Department will address any

changes to the duties of nursing personnel in this current review process. See discussion under § 136.13 (relating to nursing services; other personnel for further explanation).

However, the Department has added language to this section to discuss the need for other health care personnel in the program in subsection (e)(1)—(4). This language was adapted from similar language suggested by Geisinger Medical Center in the cardiac catheterization chapter. See § 138.13 (relating to nursing services, other personnel). These additional provisions require that hospitals assure that neonatal services units contain adequate health care personnel to address the needs of the patients. In establishing standards for physicians, nurses, and other health care personnel, the Department's goal is to provide a framework to assist the hospital in providing neonatal services that will meet quality assurance criteria.

Chester County Hospital noted that the proposed amendment of this section did not provide guidance for facilities that utilize a mother/baby couplet care model. Under this model, one registered nurse delivers care to a mother and baby who are both located in the mother's room. However, the baby is not under the constant surveillance of the registered nurse and the mother may send the baby to the neonatal unit if she wishes to rest, shower, and the like. As the baby is not physically present in the neonatal care unit, the requirements of subsection (b) would not be applicable. Even though the baby is not under constant surveillance, it would still be expected that the nursing staff would regularly check on the baby and monitor the infant's condition. When the baby is returned to the neonatal care unit at periodic intervals, subsection (b) would apply.

#### § 139.13. *Equipment and supplies.*

At the suggestion of a licensure surveyor in the Department, subsection (c) has been amended to replace wash basin with sink so as to more accurately reflect the equipment which should be present in the neonatal care unit.

Also, in subsection (d), the word "neonatal" has been inserted before "care units" to provide a more precise reference.

### *Chapter 158. Vital Organ Transplantation Services*

#### § 158.2. *Definitions.*

As discussed previously (see discussion in § 136.2, relating to definitions for open heart surgical services), the Department has substituted the term "preboard certification status" for "board eligible" throughout these amendments.

Also as discussed in previous chapters, the Department has changed the definition of "preboard certification status," to clarify that a physician is considered board eligible for the 3 years immediately following attainment of that eligibility. Also, consistent with the definition for "preboard certification status" in the other chapters, the word "preliminary" has been removed from the proposed definition as it is redundant.

The AHERF noted that the Department had defined "pediatric" in the proposed open heart surgery and cardiac catheterization services chapters, but had not provided a definition in this chapter. The Department has added a definition of a "pediatric transplantation program" and defining it as a "program where vital organ transplantation services are provided to all patients under 18 years of age, except for those whose physical

development precludes them from being handled as a pediatric patient when receiving transplantations."

#### § 158.11. *Medical director.*

The proposed amendments would have permitted board eligible medical directors. Some commentators noted that this was inconsistent with the requirements of the proposed open heart and cardiac catheterization chapters. In reviewing this matter, the Department believes that the director of the transplantation program should be board certified so as to assure that a qualified individual serves in this capacity. The language permitting board eligible medical directors has been deleted from subsection (a).

As discussed previously, both the PMS and IRRC commented on the possibility of an interim director who is not board certified. This person would serve as director after the departure of the previous director, until a board certified director could be appointed. Through utilization of the exceptions process (§§ 51.31—51.34), the Department will permit an interim director to serve for a limited period of time. (For further discussion of this issue, see this preamble at § 136.11 (relating to medical director)).

#### § 158.12. *Transplantation coordinator.*

HAP commented that the Department should revise the proposal that transplantation coordinators be certified by the American Board of Transplant Coordinators (ABTC) to state that the transplant coordinator shall have appropriate education and experience to fulfill the obligations of the position

In reviewing this issue, the Department contacted representatives of the United Network for Organ Sharing (UNOS) and transplantation personnel at several hospitals. The bylaws of UNOS do not contain any specific requirements regarding transplant coordinators. However, it is apparent that the transplant coordinator fills a vital role in the transplant program. The coordinator is generally responsible for assuring the performance of necessary preoperative tests to determine if the patient is an appropriate transplant candidate and if there are any contraindications to the performance of a transplant (such as, absence of chronic infections). While the patient is listed as a transplant candidate, the coordinator is responsible for monitoring the patient's condition to evaluate if the patient remains a viable candidate. The coordinator also evaluates and monitors living donors (kidney transplants) for suitability. For posttransplant patients, the coordinator serves as a tracker and clearing house to assure the patient is receiving the appropriate medication, evaluates the patient's health and progress, and channels any issues or questions regarding the patient to the appropriate person.

These functions are crucial to a successful transplantation. It appears that many transplant coordinators are registered nurses and have a bachelor's or master's degree. However, there does not appear to be a universal standard; some hospitals employ coordinators with experience in health care. As these coordinators can come from various backgrounds regarding training and experience, the Department has concerns that all persons who serve in this capacity have the basic training, experience and education necessary.

The test administered by the ABTC appears to fulfill this requirement. This test covers basic issues which confront transplant coordinators and, at a minimum, serves to verify their qualifications to hold this position. Additionally, to retain certification status, continuing education courses are required. The Department believes that HAP's suggestion is not sufficient to assure that a

qualified individual is serving in this position. According to the individuals contacted by the Department, most hospitals require their coordinators to successfully complete this examination. The exam is offered biannually and, in order to sit for the exam, the candidate must have at least 1 year's experience as a coordinator. The Department believes that requiring an individual to pass this examination within 2 years of assuming the position of a transplant coordinator will allow sufficient time for the coordinator to meet the preliminary requirements of the ABTC and to successfully complete the examination.

Accordingly, the Department has revised this section to require that all transplant coordinators obtain certification from the ABTC within 2 years of their employment as a coordinator. The language in this section has also been modified to reflect the fact that most transplantation centers hire more than one coordinator. Generally, each transplantation program has at least one coordinator, depending upon the size of the program. The first sentence has been revised to require that each transplant center have at least one coordinator.

*§ 158.13. Medical staff.*

This section has been revised to clarify that transplantation surgeons and transplantation physicians who serve on the medical staff shall be either board certified or shall have attained preboard certification status.

*§ 158.14. Nursing staff; other health care personnel.*

The Department has added this section to the organ transplantation chapter as proposed. As previously discussed, the chapters on open heart surgical services, cardiac catheterization services and neonatal services all contain sections discussing general requirements for nursing staff and other health care personnel. See §§ 136.13, 138.13 and 139.4 (all relating to nursing staff; other health care personnel). To be consistent, the Department has determined that a similar section should be added to this chapter.

*§ 158.19. Volume of procedures.*

Comments on this section were received from Temple, the AHERF and HAP. Most of the comments concerned the requirement that transplantation programs meet volume standards established by the OPTN. It was noted that the current organization which is the designated OPTN—the United Network for Organ Sharing (UNOS)—does not establish a volume standard for any transplantation program. Instead of reviewing volumes, the UNOS looks at the survivability rate of transplantation patients. In its bylaws, the UNOS sets forth a formula to determine if the actual observed patient survival rate falls below the expected rate by more than a threshold amount. If a transplantation program does fall below the threshold, the UNOS reviews that program to determine if the low survival rate can be accounted for by patient mix or some other unique clinical aspect of the transplantation program in question. As explained more fully in the preamble to the proposed regulations, organ transplantation is unique in that every transplantation program must belong to the OPTN in order to receive organs for transplantation. Thus, all transplantation centers and programs are subject to the bylaws of the UNOS.

The Department has redrafted subsections (b) and (c) to provide that each transplantation program shall meet the expected survival rate as established by the OPTN. Failure to meet this survival rate will result in a review to determine if there is an explanation, such as a higher amount of sicker patients or use of more marginal organs. The transplantation program should provide any evidence

of these factors to the Department for its review and assessment. If the review of this material does not adequately explain the low survival rate, concerns will be raised regarding the quality of care provided in that program. The Department would then undertake a complete review of the program to determine if these concerns are justified. As set forth more fully in previous discussions of quality management for open heart (§ 136.21) and cardiac catheterization (§ 138.20) (both relating to quality management and improvement), the Department has a wide range of sanctions available if the review of the transplantation program would show that it was not in compliance with these regulations. In addition to the Department's review of the transplantation program, the UNOS has indicated that it will inform state health department officials when it determines that a transplantation program has failed to conform to institutional membership requirements.

Subsection (c) has also been amended to specifically state that the Department will conduct a full review of a transplantation program if it is unable to explain why it did not meet the expected survival rate. This review will focus on the program's compliance with the criteria set forth in the vital organ transplantation services chapter. This should address the concerns of HAP and IRRC, which questioned the original language providing that the Department would "review the transplantation program [and] to determine its compliance with other quality assurance criteria." Both HAP and IRRC requested more specificity and clarity as to which criteria would be used in the Department's assessment.

The process in subsections (b) and (c) should ensure that the Department has a mechanism to assure that the appropriate quality of care at the transplantation program is being provided. The Department has eliminated the proposed requirement in subsection (b) that a program would have to meet the volume requirements established by the HCFA. These volume requirements had been established for only three types of organs (liver, heart and lung) and the Department was unable to find an explainable basis for the selection of these numbers.

*§ 158.37. Pediatric transplantation programs.*

The AHERF commented that the Department should clarify that transplantation of vital organs in pediatric patients should be performed in facilities where a full array of board certified pediatric subspecialists are available to attend to any possible untoward effect or complication of surgery.

The Department believes that a review of this chapter and of this section will impress upon all facilities the need to have a fully developed pediatric program when treating pediatric organ transplantation patients. This section indicates that a pediatric program must comply with all of the general and supplementary criteria in this chapter. Additionally, subsection (d) contains a specific list of specialists which must be on staff depending on the type of organ which is transplanted in the facility. Any hospital which performs pediatric transplantations is expected to have all appropriate and necessary support services available for treatment of the pediatric patient.

*Fiscal Impact*

These amendments, to ensure the quality of services being provided at licensed health care facilities, will result in some additional costs to the Department. Increased staffing may be necessary to implement the expanded quality assessment process. These resources would be needed to review submitted documentation

supporting the licensure requests, to conduct on site surveys of health care facilities and process licensure applications. Additional costs may also include stipends/fees or expenses, or both, for persons not part of the Department staff who may assist the Department in the licensure and quality assurance assessment process.

The amendments to the Department's licensure regulations will impose additional costs on health care providers to some degree. Most of the amendments require that medical directors of particular health care services in hospitals must now receive certification from a specialty board. The employment of these individuals could increase the cost of these services. Additionally, costs may be incurred for some minor construction/renovation, equipment or supply costs to meet new requirements. However, in most instances, the standards being adopted are those which the Department expects the vast majority of health care facilities to already be meeting if they provide these services.

In reviewing the fiscal impact, it should be remembered that the reason for many of these amendments is the sunset of the CON Program. Most of the amendments which are being proposed cover health care services or health care facilities which previously had to undergo CON review prior to commencement of their activity. This review involved expenses for the Department in the employment of an entire division to process and review CON applications. For CON applicants, the actual costs involved the preparation of the application, hiring health care consultants to assist with the CON process, a fee to the Department which could be as much as \$20,000 and the time and resources of the facility's staff. Indirect costs included the time which the facility had to wait until its application went through the often lengthy CON process. Although these amendments will not eliminate all of the costs which health care facilities experienced under CON, the overall effect should be a reduced fiscal impact.

#### *Paperwork Requirements*

The Department will experience some increase in paperwork related to reviews in processing licensure requests and additional regulatory requirements. Particularly in the areas of cardiac catheterization and open heart surgical services, Department staff will be reviewing additional data, not currently collected, from providers of these services, to generate reports which will be used to assess quality.

In general, there will not be a significant paperwork burden on providers to comply with the expanded licensure requirements. There will also be additional reporting responsibilities for providers of cardiac catheterization and open heart surgical services, to submit data on outcomes to the Department. Options are being explored to implement the least burdensome reporting process possible consistent with obtaining the data needed to assess quality performance.

As with fiscal impact, most of these paperwork requirements should be compared with those previously required under the CON Program. Applicants were required to submit detailed applications which, depending on the health care service proposed to be offered, could be quite lengthy and require extensive documentation.

#### *Effective Date/Sunset Date*

The final-form regulations will become effective upon final publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

Section 803(2) of the act (35 P. S. § 448.803(2)) authorizes the Department to promulgate, after consultation with the Health Policy Board, regulations necessary to carry out the purposes and provisions of the act. Section 801.1 of the act provides that a purpose of the act is to promote the public health and welfare through the establishment of regulations setting minimum standards for the operation of health care facilities. The same section provides that the minimum standards are to assure safe, adequate and efficient facilities and services, and are also to promote the health, safety and adequate care of patients or residents of the facilities.

These provisions, in combination with the Department's express authority under the definition of "health care facility" in section 802.1 of the act to employ regulations to create new categories of health care facilities as may be required due to the emergence of new modes of health care, confer upon the Department the necessarily implied authority to employ regulations to restrict certain modes of health care services to specified health care facilities to ensure the health, safety and adequate care of patients.

#### *Final Rulemaking*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 21, 1997, the Department submitted a copy of notice of proposed rulemaking, published at 27 Pa.B. 2703 to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In compliance with section 5.1(a) of the Regulatory Review Act, the Department submitted a copy of the final-form regulations to IRRC and the Committees on January 22, 1998. In addition, the Department provided IRRC and the Committees with information pertaining to commentators and a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

On February 13, 1998, the Commission considered the final-form regulations at its public meeting and voted to disapprove them. On February 18, 1998, the Commission served the Department with an order both disapproving and barring publication of the regulations. Its reasons for doing so were included with its order.

Under section 7(a) of the Regulatory Review Act (71 P. S. § 745.7(a)), within 7 days of receipt of that notice the Department notified the Governor and IRRC of its intent to resubmit revised final-form regulations. On March 30, 1998, under section 7(c) of the Regulatory Review Act, the Department submitted a report to IRRC which contained the revised final-form regulations set forth in Annex A to this order, the finding of IRRC and the Department's response to IRRC's comments. The final-form regulations were approved by the Commission on April 23, 1998.

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

#### *Contact Person*

Questions regarding these final-form regulations may be submitted to: James T. Steele, Jr., Acting Chief



Counsel, Department of Health, P. O. Box 90, Harrisburg, PA 17108-0090, (717) 783-2500. Persons with disabilities may submit questions in alternative formats, such as by audio tape, braille or by using TDD: (717) 783-6514.

Persons with disabilities who would like to obtain this document in an alternative format (that is, large print, audio tape, braille) should contact James Steele so that the necessary arrangements can be made.

#### Findings

The Department 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 thereunder, 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) The adoption of the final-form regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

#### Order

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

(a) The regulations of the Department 28 Pa. Code Chapters 51, 136, 138, 139 and 158, are amended by adding §§ 51.1—51.6, 51.11—51.13, 51.21—51.24, 51.31—51.34, 51.41, 136.1, 136.2, 136.11—136.21, 138.1, 138.2, 138.11—138.20, 139.2a, 158.11—158.20 and 158.31—158.37 and by amending §§ 139.1, 139.2, 139.3, 139.4, 139.11—139.17, 139.21—139.29 and 139.31—139.34 to read as set forth in Annex A.

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

(c) The Secretary of Health shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

(d) The Secretary of Health 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 upon publication in the *Pennsylvania Bulletin*.

DANIEL F. HOFFMANN,  
*Secretary*

**Fiscal Note:** Fiscal Note 10-148 remains valid for the final adoption of the subject regulations.

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2189 (May 9, 1998).)

### Annex A

#### TITLE 28. HEALTH AND SAFETY

#### PART IV. HEALTH FACILITIES

#### Subpart A. GENERAL PROVISIONS

#### CHAPTER 51. GENERAL INFORMATION

##### GENERAL PROVISIONS

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51.3.	Notification.
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#### GENERAL PROVISIONS

##### § 51.1. Legal base, scope and definitions.

(a) This subpart implements the act.

(b) This subpart contains standards which are applicable to all entities licensed as health care facilities under the act. It also identifies specific health care services which are restricted to specified health care facilities.

(c) The following words and terms, when used in this subpart have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Health Care Facilities Act (35 P. S. §§ 448.101—448.904b).

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

##### § 51.2. Licensed facilities.

The Department licenses the following health care facilities under the act:

- (1) Ambulatory surgical facilities.
- (2) General hospitals.
- (3) Special hospitals.
- (4) Long-term care nursing facilities.
- (5) Birth centers.
- (6) Home health care agencies.
- (7) Cancer treatment centers.

##### § 51.3. Notification.

(a) A health care facility shall notify the Department in writing at least 60 days prior to the intended commencement of a health care service which has not been previously provided at that facility.

(b) A health care facility shall notify the Department in writing at least 60 days prior to the intended date of providing services in new beds it intends to add to its approved complement of beds.

(c) A health care facility shall provide similar notice at least 60 days prior to the effective date it intends to cease providing an existing health care service or reduce its licensed bed complement.

(d) A health care facility shall submit to the Department architectural plans and blueprints of proposed new construction, alteration or renovation to the facility. This material shall be submitted at least 60 days before the initiation of construction, alteration or renovation. The Department will review these documents to assure compliance with relevant life safety code and other regulatory

requirements. The Department will respond to the facility by either issuing an approval or disapproval or requesting further information within 45 days of receipt of the facility's submission. The facility may not initiate construction, alteration or renovation until it has received an approval from the Department.

(e) If a health care facility is aware of information which shows that the facility is not in compliance with any of the Department's regulations which are applicable to that health care facility, and that the noncompliance seriously compromises quality assurance or patient safety, it shall immediately notify the Department in writing of its noncompliance. The notification shall include sufficient detail and information to alert the Department as to the reason for the failure to comply and the steps which the health care facility shall take to bring it into compliance with the regulation.

(f) If a health care facility is aware of a situation or the occurrence of an event at the facility which could seriously compromise quality assurance or patient safety, the facility shall immediately notify the Department in writing. The notification shall include sufficient detail and information to alert the Department as to the reason for its occurrence and the steps which the health care facility shall take to rectify the situation.

(g) For purposes of subsections (e) and (f), events which seriously compromise quality assurance or patient safety include, but are not limited to, the following:

- (1) Deaths due to injuries, suicide or unusual circumstances.
- (2) Deaths due to malnutrition, dehydration or sepsis.
- (3) Deaths or serious injuries due to a medication error.
- (4) Elopements.
- (5) Transfers to a hospital as a result of injuries or accidents.
- (6) Complaints of patient abuse, whether or not confirmed by the facility.
- (7) Rape.
- (8) Surgery performed on the wrong patient or on the wrong body part.
- (9) Hemolytic transfusion reaction.
- (10) Infant abduction or infant discharged to the wrong family.
- (11) Significant disruption of services due to disaster such as fire, storm, flood or other occurrence.
- (12) Notification of termination of any services vital to the continued safe operation of the facility or the health and safety of its patients and personnel, including, but not limited to, the anticipated or actual termination of electric, gas, steam heat, water, sewer and local exchange telephone service.
- (13) Unlicensed practice of a regulated profession.
- (14) Receipt of a strike notice.

(h) A health care facility shall send the written notification required under subsections (a)—(f) to the director of the division in the Department responsible for the licensure of the health care facility.

(i) Information contained in the notification submitted to the Department by a facility under subsection (e) or (f) may not, unless otherwise ordered by a court for good cause shown, be produced for inspection or copying by, nor may the contents thereof be disclosed to, a person

other than the Secretary, the Secretary's representative or another government agency, without the consent of the facility which filed the report.

(j) The Secretary and the Secretary's representative shall use the information contained in the notification from the facility only in connection with the enforcement of the Department's responsibilities under the act, or other applicable statutes within the Department's jurisdiction.

(k) The notification requirements of this section do not require a facility, in providing a notification under subsection (e) or (f), to include information which is deemed confidential and not reportable to the Department under other provisions of Federal or State law or regulations.

(l) A health care facility may not commence the provision of new health care services or provide services in new beds until it has been informed by the Department that it is in compliance with all licensure requirements.

**§ 51.4. Change in ownership; change in management.**

(a) A health care facility shall notify the Department in writing at least 30 days prior to transfer involving 5% or more of the stock or equity of the health care facility.

(b) A health care facility shall notify the Department in writing at least 30 days prior to a change in ownership or a change in the form of ownership or name of the facility. A change in ownership shall mean any transfer of the controlling interest in a health care facility.

(c) A health care facility shall notify the Department in writing within 30 days after a change of management of a health care facility. A change in management occurs when the person responsible for the day to day operation of the health care facility changes.

**§ 51.5. Building occupancy.**

(a) New construction, alterations or renovations that provide space for patient or resident rooms or services may not be used or occupied until authorization for the occupancy has been received from the Department.

(b) A health care facility shall request a preoccupancy survey at least 30 days prior to the anticipated occupancy of the facility or an addition or remodeled part thereof. The Department will conduct an onsite survey of the new or remodeled portion of the health care facility prior to granting approval for occupancy. The Department may give the authorization to occupy the new or remodeled portion of the health care facility by an interim written authorization. If interim authorization for occupancy is given, the Department will provide the health care facility with formal authorization within 30 days.

**§ 51.6. Identification of personnel.**

(a) When working in a health care facility and when clinically feasible, the following individuals shall wear an identification tag which displays that person's name and professional designation:

- (1) Health care practitioners licensed or certified by Commonwealth agencies.
- (2) Health care providers employed by health care facilities.

(b) The identification tag shall include the individual's full name. Abbreviated professional designations may be used only when the designation indicates licensure or certification by a Commonwealth agency, otherwise the full title shall be printed on the tag.

(c) The last name of the individual may be omitted or concealed when treating patients who exhibit symptoms of irrationality or violence.

### CIVIL RIGHTS

#### § 51.11. Civil rights compliance.

A health care facility shall comply with all civil rights laws. The Department may make onsite visits at its discretion to verify the civil rights compliance status of the health care facility.

#### § 51.12. Nondiscriminatory policy.

(a) A health care facility shall have a nondiscriminatory policy which applies to all patients or residents and staff. The policy shall include a prohibition on the segregation of buildings, wings, floors and rooms for reasons of race, color, national origin, ancestry, age, sex, religion, handicap or disability. The nondiscriminatory policy shall also address the following:

- (1) Inpatient or outpatient admission or care.
- (2) Assigning patients or residents to rooms, floors and sections.
- (3) Asking patients or residents about roommate preferences.
- (4) Assignments of staff to patient or resident services.
- (5) Staff privileges of professionally qualified personnel.
- (6) Utilization of the health care facility.
- (7) Transfers of patients or residents from their rooms.

(b) A health care facility is required to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e—2000e-17) and the Pennsylvania Human Relations Act (43 P. S. §§ 951—962.2) and to sign the following statement prior to receiving an initial license:

“This facility has agreed to comply with the provisions of the Federal Civil Rights Act of 1964 and the Pennsylvania Human Relations Act and all requirements imposed pursuant thereto to the end that no person shall, on the grounds of race, color, national origin, ancestry, age, sex, religious creed, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination in the provision of any care or service.”

#### § 51.13. Civil rights compliance records.

(a) A health care facility shall maintain the following records to show compliance with § 51.12 (relating to nondiscriminatory policy):

- (1) A copy of the health care facility's admission policy which includes the date of its adoption, which sets forth in clear terms nondiscriminatory practices with regard to race, color, national origin, creed, ancestry, age, sex, religion, handicap or disability.
- (2) A copy of a signed and dated notification to employees of the health care facility's nondiscrimination policy.
- (3) Evidence that the nondiscriminatory practices of the health care facility have been publicized in the community at least every 3 years by one of the following methods: newspapers, television, radio, brochure or yellow pages.

(b) Copies of the health care facility's nondiscriminatory policy shall be posted in locations accessible to the facility's staff and the general public.

(c) The health care facility shall provide the Department with a signed and dated copy of the nondiscriminatory policy within 30 days of the effective date of any change in the policy.

### RESTRICTION OF PROVISION OF HEALTH CARE SERVICES

#### § 51.21. Surgery.

Surgery shall be performed only in an acute care hospital or in a Class A, Class B or Class C ambulatory surgical facility.

#### § 51.22. Cardiac catheterization.

Cardiac catheterization shall be performed only in an acute care hospital.

#### § 51.23. Positron emission tomography.

Positron emission tomography (PET) scanning services shall be provided only in a hospital which complies with the regulations of the Department governing radiology and nuclear medicine services.

#### § 51.24. Lithotripsy.

Lithotripsy services shall be provided only in a hospital or ambulatory surgical facility authorized to provide anesthesia services under its license.

### EXCEPTIONS

#### § 51.31. Principle.

The Department may grant exceptions to this part when the policy and objectives contained therein are otherwise met, or when compliance would create an unreasonable hardship and an exception would not impair or endanger the health, safety or welfare of a patient or resident. No exceptions or departures from this part will be granted if compliance with the requirement is provided for by statute.

#### § 51.32. Exceptions for innovative programs.

This part is not intended to restrict the efforts of a health care facility to develop innovative and improved programs of management, clinical practice, physical renovation or structural design. Whenever this part appears to preclude a program which may improve the capacity of the health care facility to deliver higher quality care and services or to operate more efficiently without compromising patient or resident care, the Department encourages the health care facility to request appropriate exceptions under this chapter.

#### § 51.33. Requests for exceptions.

- (a) A health care facility shall make requests for exceptions to the Department in writing.
- (b) The Department will retain the requests on file and document whether they have been approved or disapproved.
- (c) Upon receipt of a request for exceptions, the request will be published in the *Pennsylvania Bulletin* with a public comment period. The Department will review these comments before making a determination to approve or disapprove an exception. The Department will publish requests for exceptions in emergency situations, but will not include a public comment period.

(d) The Department will publish notice of all approved exceptions in the *Pennsylvania Bulletin* on a periodic basis.

(e) The health care facility shall retain approved requests on file during the period the exception remains in effect.

**§ 51.34. Revocation of exceptions.**

(a) An exception granted under this chapter may be revoked by the Department for justifiable reason. The Department will provide notice of the revocation in writing and will include the reason for the revocation and the date upon which the exception will be terminated.

(b) In revoking an exception, the Department will provide for a reasonable period of time between the date of written notice of the revocation and the date of termination of an exception to afford the health care facility an opportunity to come into compliance with the applicable regulations.

(c) If a health care facility wishes to request a reconsideration of a denial or revocation of an exception, it shall do so in writing to the director of the appropriate division within 30 days after service of the adverse notification.

**SANCTIONS**

**§ 51.41. Violations, penalties.**

(a) When appropriate, the Department will work with the health care facility to rectify a violation of this part.

(b) A health care facility that violates this part may be subject to sanctions by the Department, which include:

- (1) Suspension of its license.
- (2) Revocation of its license.
- (3) Refusal to renew its license.
- (4) Limitation of its license as to operation of a portion of the health care facility or to the services which may be provided at the health care facility.
- (5) Issuance of a provisional license.
- (6) Submission of a plan of correction.
- (7) Limitation or suspension of admissions to the health care facility.

(c) A person who violates this part may be subject to a civil penalty, not to exceed \$500 per day.

**Subpart B. GENERAL AND SPECIAL HOSPITALS**

**CHAPTER 136. OPEN HEART SURGICAL SERVICES**

**GENERAL PROVISIONS**

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**PROGRAM, SERVICE AND PERSONNEL REQUIREMENTS**

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136.12.	Medical staff.
136.13.	Nursing staff; other health care personnel.
136.14.	Support team in the operating room.
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136.16.	Rapid mobilization.
136.17.	Observation of patients.
136.18.	Postoperative care.
136.19.	Education and training.
136.20.	Pediatric heart surgery—supplementary criteria.
136.21.	Quality management and improvement.

**GENERAL PROVISIONS**

**§ 136.1. Principle.**

Adult open heart surgical services and pediatric open and closed heart surgical services shall be performed only in hospitals and shall be performed in accordance with accepted and prevailing standards of medical practice.

**§ 136.2. Definitions.**

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

*Board certified*—A physician licensed to practice medicine in this Commonwealth who has successfully passed an examination and has maintained certification in the relevant medical specialty or subspecialty area, or both, recognized by one of the following groups:

- (i) The American Board of Medical Specialties.
- (ii) The American Osteopathic Association.
- (iii) The foreign equivalent of either group listed in subparagraph (i) or (ii).

*CABG—Coronary artery bypass graft*—A type of open heart procedure wherein a section of a blood vessel is taken from another part of the body to create an alternative path for blood to flow around a narrow or blocked portion of a coronary artery.

*Cardiac intensive care service*—Service provided to an open heart surgery patient immediately after surgery. This service is provided in a specially equipped area in a facility wherein the highest level of medical care is available. This area shall be equipped to provide invasive monitoring, including arterial pressure, Swan-Ganz catheters and intra-aortic balloon pumps.

*Cardiac surgical service*—Those personnel involved in the preparation, operation and postoperative care of patients receiving cardiac surgery.

*Onsite*—In the physical structure at which open heart surgical services are being offered or in an adjoining structure.

*Open heart surgery*—A surgical procedure to repair acquired or congenital diseases of the heart. The procedure shall do one of the following:

- (i) Include the use of an extracorporeal pump oxygenator (heart lung machine) to perform the functions of the circulatory system during the surgery.
- (ii) Employ minimally invasive procedures, which do not routinely involve the use of the extracorporeal pump oxygenator to perform the same types of surgical procedures, although its presence is required because, in a certain number of cases, this approach may have to be abandoned in favor of the other method.

*Open heart surgery program*—A service established by a hospital to evaluate, operate on and provide postoperative care to individuals with cardiovascular illness who require surgical intervention. Adult open heart surgery programs may perform any open or closed heart surgery not defined as pediatric heart surgery.

*Operating room*—The room wherein the open heart surgery is performed.

*Pediatric heart surgery*—Includes both open heart and closed heart procedures for patients under 18 years of age except for those whose physical development, in the judgment of the patient's physician, allows the patient to receive treatment safely and appropriately in hospitals which do not have a pediatric heart program.

*Preboard certification status*—A physician licensed to practice medicine in this Commonwealth who has completed the requirements necessary to take a certification examination offered by a medical specialty board recognized by the American Board of Medical Specialties, the American Osteopathic Association or the foreign equivalent.

lent of either group, and who has been eligible to take the examination for no longer than 3 years.

*Surgical suite*—That area of the hospital wherein the patient is brought for open heart surgery and which is dedicated to the preparation of the surgical team and the patient for open heart surgery and to the actual performance of that surgery.

*Twenty-four hours per day*—Refers to the availability or onsite presence of specific personnel, support services or equipment on a 24-hour-per-day, 7-days-a-week basis.

### **PROGRAM, SERVICE AND PERSONNEL REQUIREMENTS**

#### **§ 136.11. Director.**

(a) The Director of the open heart surgery program shall be a Board certified thoracic surgeon. The director of a pediatric heart surgery program shall be a Board certified pediatric and thoracic surgeon.

(b) An interim director may be appointed during the period of time between the departure of the prior director and the selection of a new director. The interim director shall be a physician who is able to demonstrate qualifications acceptable to the medical staff of the hospital and to the Department. The hospital shall apply to the Department for an exception under the procedures in §§ 51.31—51.34. If the exception is granted, the Department will specify the maximum period of time for which the interim director shall be appointed.

#### **§ 136.12. Medical staff.**

Supporting medical staff of the service shall include:

(1) Thoracic surgeons who are either Board certified or who have attained preboard certification status. There shall be a sufficient number of surgeons within the service to allow for 24-hour-per-day continuous coverage. In a pediatric service, the medical staff shall include pediatric and thoracic surgeons who are either Board certified or who have attained preboard certification status.

(2) A Board certified medical cardiologist with subspecialty certification in cardiovascular disease or who has demonstrated competence as determined by peer review. A pediatric open heart surgery program shall include a board certified pediatric cardiologist.

(3) A cardiac catheterization team with interventional ability on call 24 hours per day.

(4) A Board certified anesthesiologist experienced in open heart anesthesia. There shall be a sufficient number of anesthesiologists within the service for 24 hour per day continuous coverage. The anesthesiologists in a service performing pediatric surgery shall have experience in pediatric anesthesia.

(5) A physician who is Board certified in anatomic and clinical pathology.

#### **§ 136.13. Nursing staff; other health care personnel.**

(a) Nursing personnel shall include nurses with specialized education which includes theory, advanced technical skills, and supervised experience in a surgical intensive care unit or in a postoperative cardiovascular unit before assuming primary responsibility for the nursing care of open heart patients.

(b) There shall be nursing service goals and objectives, standards of nursing practice, procedure manuals and written job descriptions for each level of personnel which shall include the following:

(1) A means for assessing the nursing care needs of the patients and determining adequate staffing to meet those needs.

(2) Staffing patterns that are adequate to meet the nursing goals, standards of practice and the needs of the patients.

(3) An adequate number of licensed and unlicensed assistive personnel to assure that staffing levels meet the total nursing needs of the patient.

(4) Nursing personnel assigned to duties consistent with their training, experience and scope of practice, when applicable.

(c) Surgical suite nursing services shall be under the direction and supervision of a registered professional nurse with specific education and experience in dealing with cardiovascular patients.

(d) In addition to the requirements for the nursing staff in subsections (a)—(c), there shall be service goals and objectives, standards of patient care, procedure manuals and written job descriptions for each level of other health care personnel which includes the following:

(1) A means for assessing the needs of patients and determining adequate staffing to meet those needs.

(2) Staffing patterns that are adequate to meet patient care goals, standards of practice and needs of patients.

(3) An adequate number of licensed and unlicensed health care personnel to assure that staffing levels meet the total needs of patients.

(4) Health care personnel in the open heart surgical services program shall be assigned to duties consistent with their training, experience and scope of practice where applicable.

#### **§ 136.14. Support team in the operating room.**

(a) The operating room support team shall include:

(1) A circulating registered professional nurse and additional nursing personnel as required.

(2) A perfusionist. Each open heart procedure shall have a designated perfusionist in attendance. This individual shall meet the requirements for Board certification as established by the American Board of Cardiovascular Perfusion. If the perfusionist is not Board certified, all duties shall be performed under the supervision of a certified perfusionist, cardiologist or cardiac surgeon, until the perfusionist obtains Board certification. This certification shall be obtained within 2 years of the commencement of the perfusionist's employment at the hospital. The perfusionist's duties shall include the operation of the extracorporeal pump oxygenator (heart-lung machine) in accordance with the requirements of the hospital. The perfusionist shall have immediate access to hospital and surgeon specific procedure manuals for the conduct of cardiopulmonary bypass during all open heart procedures.

(b) There shall be a sufficient number of extracorporeal pump oxygenators and perfusionists to allow 24-hour-per-day coverage.

(c) A back-up extracorporeal pump oxygenator shall be available during all open heart procedures.

#### **§ 136.15. Other support services.**

(a) Supportive services within the hospital shall include the following, which shall be provided 24 hours per day and shall be either available or onsite, as noted:

(1) Medicine (cardiology onsite; availability of nuclear cardiology; hematology; pulmonary; nephrology; neurology; and infectious disease).

(2) Anesthesiology—available.

(3) Clinical laboratory services, onsite for blood banking, hematology, blood chemistry and urinalysis. These services shall be under the same direct management and quality assurance programs as the main hospital laboratories.

(4) Diagnostic radiology, including bedside X-rays—onsite.

(5) Cardiac catheterization and interventional angiography laboratory—onsite.

(6) Respiratory care services—available.

(7) Cardiac intensive care service—onsite.

(8) Inpatient service for continuing care after transfer from the intensive care unit.

(9) An advanced cardiac life support certified physician—onsite.

(10) Cardiographic laboratory, including continuous electrocardiogram monitoring—available.

(11) Echocardiography service (this may or may not be a part of the cardiographic laboratory)—available.

(12) Installation of pacemakers—available.

(13) Organized and designated cardiopulmonary resuscitation team—onsite.

(14) Bioengineering service—available.

(15) Peripheral vascular surgery and a noninvasive vascular laboratory—available.

(16) Acute inpatient dialysis—available.

(b) An operating room shall be specifically equipped for cardiac surgery, and the room and support facilities shall be of adequate size, as per Inter-society Commission on Heart Disease requirements or American College of Cardiology/American Hospital Association Guidelines.

**§ 136.16. Rapid mobilization.**

(a) An open heart surgery program shall have the capability for rapid mobilization of the cardiac surgical service and support team members for emergency procedures, 24 hours per day.

(b) There shall be an on-call schedule of physicians established and posted at each patient unit and other areas where cardiac surgical patients are admitted and at the communications center of the hospital to ensure that there is 24-hour-per-day emergency care and peri-operative care available.

**§ 136.17. Observation of patients.**

A cardiac surgical care service shall include the capability of visual observation of all patients.

**§ 136.18. Postoperative care.**

(a) An intensive surgical care service shall be available immediately after surgery to provide invasive monitoring, including Swan-Ganz catheter, arterial pressure and intra-aortic balloon pumps.

(b) The cardiac surgical service shall be responsible for postoperative care and involved in discharge planning of patients.

**§ 136.19. Education and training.**

The staff of the open heart surgical program shall engage in the following activities:

(1) Ongoing programs of continuing education in cardiovascular care.

(2) Provision of training and consultation services with other providers of cardiovascular care and others.

(3) Patient and family education.

**§ 136.20. Pediatric heart surgery—supplementary criteria.**

(a) A hospital which provides pediatric heart surgery shall meet the standards in this chapter for a cardiovascular surgery program for adults.

(b) In addition, the following criteria shall be met by a pediatric heart surgery program:

(1) The facility shall be capable of providing definitive diagnostic and therapeutic services for children with all types of cardiovascular disease.

(2) A diagnostic laboratory with radiographic and cardiac catheterization equipment generally similar to that for adults. Bi-plane cineangiography shall be readily available 24 hours per day, and laboratories (both catheterization and general chemical) shall be equipped for small volume samples.

(3) Surgical equipment appropriate for newborns, infants and children.

(4) Intensive care facilities for newborns (as defined by current American Academy of Pediatrics/American College of Obstetrics and Gynecology Guidelines for Perinatal Care), infants and children.

(5) All staff responsible for care of the pediatric patient shall have experience and training in pediatrics including both physiological and psychosocial needs of the patient.

**§ 136.21. Quality management and improvement.**

(a) A hospital performing open heart surgery shall maintain patient data on the following:

- (1) Mortality/morbidity.
- (2) Infections and complications.
- (3) Patient risk factors.
- (4) Volume of procedures performed.

(b) The hospital shall provide this information to the Department on a quarterly basis, on a form prescribed by the Department. This data shall be integrated into the hospital's quality assurance program and used to ensure necessary corrections to improve outcomes.

(c) In lieu of the information listed under subsection (a), a hospital may submit information provided by its thoracic surgeons to the Risk Stratification Program of the Society of Thoracic Surgeons.

(d) The Department will review the information submitted by the hospital and other relevant information which is available to assess the qualitative performance of the hospital's open heart surgery program.

(e) If the Department's review of this information raises concerns with the quality of care in an open heart surgery program, the Department will undertake a review of that program to determine if these concerns are valid. The hospital shall cooperate with the Department in this review.

## CHAPTER 138. CARDIAC CATHETERIZATION SERVICES

### GENERAL PROVISIONS

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### PROGRAM, SERVICE, PERSONNEL AND AGREEMENT REQUIREMENTS

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### GENERAL PROVISIONS

#### § 138.1. Principle.

Cardiac catheterizations shall be performed only in hospitals and shall be performed in accordance with accepted and prevailing standards of medical practice.

#### § 138.2. Definitions.

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

*Board certified*—A physician licensed to practice medicine in this Commonwealth who has successfully passed an examination and has maintained certification in the relevant medical specialty or subspecialty area, or both, recognized by one of the following groups:

- (i) The American Board of Medical Specialties.
- (ii) The American Osteopathic Association.
- (iii) The foreign equivalent of either group listed in subparagraph (i) or (ii).

*Cardiac catheterization*—A procedure used to diagnose and treat various cardiac and circulatory diseases that involves inserting a thin, pliable catheter, which is viewable by X-ray, into a major blood vessel of the arm or leg, and manipulating the tip of the catheter through veins or arteries to the heart.

*Cardiac catheterization area*—That portion of the hospital dedicated to the performance of cardiac catheterizations, including the cardiac catheterization laboratory where the invasive procedures are performed by the physician, and preoperative and postoperative recovery units used for treatment of the cardiac catheterization patient.

*Electrophysiology study (EPS)—diagnostic*—The use of blood vessel access to position electrode catheters in various intra cardiac locations with the help of fluoroscopy for the purpose of recording the timing of electrical events to assess the location and direction of impulse propagation. The term includes procedures designed to induce ventricular or supraventricular tachycardia and activation sequence mapping of cardiac tachyarrhythmias.

*Electrophysiology study (EPS)—therapeutic*—EPS used as or in combination with a therapeutic procedure, which includes electrode catheter ablative procedures and implantation of antitachyarrhythmia devices and implantable cardioverter defibrillators.

*High-risk cardiac catheterization*—Cardiac catheterization which presents a high risk of significant cardiac complication. The term includes diagnostic cardiac

catheterization procedures that present a high risk of significant cardiac complication, PTCA, pediatric cardiac catheterization and therapeutic electrophysiology except for the implantation of routine permanent pacemakers.

*Low-risk cardiac catheterization*—Cardiac catheterization which is not high-risk cardiac catheterization.

*Onsite*—In the physical structure at which cardiac catheterization services are being offered or in an adjoining structure.

*PTCA—Percutaneous transluminal coronary angioplasty*—A procedure which uses a balloon catheter, plaque removing device, laser device or mechanical stent to re-open collapsed, blocked or partially blocked arteries.

*Pediatric cardiac catheterization*—The performance of cardiac catheterization on a person who is under 18 years of age except for those patients whose physical development, in the judgment of the patient's physician, allows the patient to receive treatment safely and appropriately in hospitals that do not have pediatric cardiac catheterization programs.

*Preboard certification status*—A physician licensed to practice medicine in this Commonwealth who has completed the requirements necessary to take a certification examination offered by a medical specialty board recognized by the American Board of Medical Specialties, the American Osteopathic Association, or the foreign equivalent of either group, and who has been eligible to take the examination for no longer than 3 years.

*Twenty-four hours per day*—Refers to the availability or onsite presence of specific personnel, support services or equipment on a 24-hour-per-day, 7-days-a-week basis.

### PROGRAM, SERVICE, PERSONNEL AND AGREEMENT REQUIREMENTS

#### § 138.11. Director.

(a) The director of the cardiac catheterization service shall be Board certified in cardiology or pediatric cardiology, as appropriate.

(b) An interim director may be appointed during the period of time between the departure of the prior director and the selection of a new director. The interim director shall be a physician who is able to demonstrate qualifications acceptable to the medical staff of the hospital and to the Department. The hospital shall apply to the Department for an exception under the procedures in §§ 51.31—51.34 (relating to exceptions). If the exception is granted, the Department will specify the maximum period of time for which the interim director shall be appointed.

#### § 138.12. Medical staff.

(a) There shall be at least two physicians staffing the cardiac catheterization laboratory to perform angiographies.

(b) These physicians shall be either Board certified or shall have attained preboard certification status in cardiovascular diseases with specialized training in invasive procedures.

#### § 138.13. Nursing staff; other health care personnel.

(a) There shall be at least one registered nurse assigned to provide nursing care for patients in the cardiac catheterization area at all times who shall have intensive care or coronary care experience and knowledge of cardiovascular medications, and experience with cardiac catheterization patients. In pediatric units, this nurse shall also have experience in pediatric cardiac surgery units.

(b) There shall be nursing service goals and objectives, standards of nursing practice, procedure manuals and written job descriptions for each level of personnel which shall include the following:

(1) A means for assessing the nursing care needs of the patients and determining adequate staffing to meet those needs.

(2) Staffing patterns that are adequate to meet the nursing goals, standards of practice and the needs of the patients.

(3) An adequate number of licensed and unlicensed assistive personnel to assure that staffing levels meet the total nursing needs of the patient.

(4) Nursing personnel assigned to duties consistent with their training, experience and scope of practice, where applicable.

(c) In addition to the requirements for the nursing staff in subsections (a) and (b), there shall be service goals and objectives, standards of patient care, procedure manuals and written job descriptions for each level of other health care personnel which includes the following:

(1) A means for assessing the needs of patients and determining adequate staffing to meet those needs.

(2) Staffing patterns that are adequate to meet patient care goals, standards of practice and needs of patients.

(3) An adequate number of licensed and unlicensed health care personnel to assure that staffing levels meet the total needs of patients.

(4) Catheterization laboratory health care personnel shall be assigned to duties consistent with their training, experience and scope of practice when applicable.

(d) The patient's preoperative and postoperative care in the cardiac catheterization area shall be provided by a registered nurse and other nursing staff as required to meet patient care needs. Either nursing personnel or other health care personnel with appropriate education, training and experience shall assist the physician in the performance of the cardiac catheterization procedures in the cardiac catheterization laboratory.

**§ 138.14. Programs and services.**

(a) To perform cardiac catheterizations a hospital shall be an acute care facility that:

(1) Has inpatient medical and surgical services onsite.

(2) Has a coronary care unit onsite with 24-hour per day monitoring capability.

(3) Has a peripheral vascular surgical program available.

(4) Provides noninvasive cardiac diagnostic modalities including exercise and pharmacologic stress testing, echo cardiography and nuclear cardiology.

(5) Has a setting in which ambulatory cardiac catheterization patients can be observed for 4 to 6 hours after the procedure.

(6) Has adequate physician coverage to manage postprocedure complications.

(b) Outpatient diagnostic cardiac catheterization services shall be performed if care is exercised in selecting only appropriate low risk patients as defined in this chapter.

(c) To allow for continuity of care, mobile cardiac catheterization laboratories may be utilized onsite at a hospital which is already providing cardiac catheteriza-

tion services while the existing, fixed cardiac catheterization laboratory is being renovated or its equipment upgraded.

**§ 138.15. High-risk cardiac catheterizations.**

A hospital may perform high-risk cardiac catheterizations only if it has an open heart surgical program onsite.

**§ 138.16. Transfer agreements for low-risk cardiac catheterization hospitals.**

(a) A hospital that does not have an open heart surgical program onsite may perform low-risk cardiac catheterizations if the hospital has protocols for distinguishing between low and high-risk cardiac catheterization patients and a formal written agreement with at least one hospital that does have an open heart surgical program onsite, which agreement includes the following:

(1) Protocols addressing indications, contraindications and other criteria for the emergency transfer of patients in a timely manner.

(2) Assurance of transfer of patients to an open heart surgery program and initiation of open heart surgery in a timely manner.

(3) Provision for semiannual data exchange on performance between the hospitals party to the agreement.

(4) Specification of mechanisms for continued substantive communication between the hospitals party to the agreement, and between their sending and receiving physicians.

(b) The agreement shall remain continuously in effect and be reviewed at least annually.

**§ 138.17. PTCA.**

(a) In a hospital in which elective PTCA is performed, each physician performing PTCAs shall be either Board certified or shall have attained preboard certification status in cardiovascular diseases with specialized and appropriate training in interventional cardiology procedures.

(b) A rigorous mechanism for valid peer review shall be established and ongoing in a hospital offering PTCA services.

(c) If a hospital that does not have an open heart surgery program onsite performs an emergent PTCA, the hospital shall report the circumstances to the Department in writing within 72 hours.

**§ 138.18. EPS studies.**

(a) In a hospital in which EPS is performed, each physician performing EPS shall be either Board certified or shall have attained preboard certification status in cardiovascular diseases and shall also be either Board certified or have attained preboard certification status in clinical cardiac electrophysiology.

(b) Therapeutic electrophysiology, including ablation and the implantation of automatic implantable cardioverter defibrillators shall be performed in a hospital with an open heart surgery program, and not in another facility. Implantation of routine permanent pacemakers may be performed in hospitals that do not have an open heart surgery program onsite. Pediatric diagnostic electrophysiology procedures also shall only be performed at a hospital with onsite pediatric cardiovascular surgery.

**§ 138.19. Pediatric cardiac catheterizations.**

A hospital may perform pediatric cardiac catheterizations only if:



- (1) It has a pediatric heart surgical program onsite.
- (2) The physicians and other staff who participate in the pediatric cardiac catheterizations are trained and experienced in the care of the pediatric cardiac patient.
- (3) The equipment used for pediatric cardiac catheterizations is appropriate to meet the needs of the pediatric patient. Bi-plane cineangiography shall be readily available 24 hours per day, and laboratories (both catheterization and general chemical) shall be equipped for small volume samples.

#### § 138.20. Quality management and improvement.

- (a) A hospital providing cardiac catheterization services shall maintain patient data on the following:
- (1) Mortality/morbidity.
  - (2) Infections and complications.
  - (3) Patient risk factors.
  - (4) Volume of procedures performed (including separate volumes for diagnostic visualizations, PTCA and electrophysiology procedures).
- (b) The hospital shall provide this information to the Department through the Pennsylvania Cardiac Catheterization Report. This data shall be integrated into the hospital's quality assurance program and used to ensure necessary corrections to improve outcomes.
- (c) The Department will review the information submitted by the hospital and other relevant information which is available to assess the qualitative performance of the hospital's cardiac catheterization program.
- (d) If the Department's review of this information raises concerns with the quality of care in a cardiac catheterization program, the Department will undertake a review of that program to determine if these concerns are valid. The hospital shall cooperate with the Department in this review.

### CHAPTER 139. NEONATAL SERVICES

#### GENERAL PROVISIONS

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### GENERAL PROVISIONS

#### § 139.1. Principle.

When a hospital provides neonatal services, they shall be provided in a manner that meets the medical needs of the neonates.

#### § 139.2. Scope.

This chapter applies to hospitals which provide obstetrical or neonatal infant care, or both. The Department recognizes the following levels of neonatal care:

- (1) Level I: (Normal Neonatal).
- (2) Level II: (Neonatal Intermediate/Intensive Care).
- (3) Level III: (Neonatal Intensive Care).

#### § 139.2a. Definitions.

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

*Board certified*—A physician licensed to practice medicine in this Commonwealth who has successfully passed an examination and has maintained certification in the relevant medical specialty area or subspecialty area, or both, recognized by one of the following groups:

- (i) The American Board of Medical Specialties.
- (ii) The American Osteopathic Association.
- (iii) The foreign equivalent of either group listed in subparagraph (i) or (ii).

*Guidelines*—The term refers to the current *Guidelines for Perinatal Care* issued by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

*NICU—Neonatal intensive care unit*—The term refers to a unit which is specifically equipped and staffed for the care and treatment of high-risk infants and those infants otherwise in need of intensive care.

*Neonate*—Patients treated in neonatal care units. The term is synonymous with baby or infant.

*Preboard certification status*—A physician licensed to practice medicine in this Commonwealth who has completed the requirements necessary to take a certification examination offered by a medical specialty board recognized by the American Board of Medical Specialties, the American Osteopathic Association, or the foreign equivalent of either group, and who has been eligible to take the examination for no longer than 3 years.

#### § 139.3. Director.

(a) A member of the medical staff shall be appointed director of neonatal services. The director shall be certified by the American Board of Pediatrics or an equivalent board.

(b) An interim director may be appointed during the period of time between the departure of the prior director and the selection of a new director. The interim director shall be a physician who is able to demonstrate qualifications acceptable to the medical staff of the hospital and to the Department. The hospital shall apply to the Department for an exception under the procedures in §§ 51.31—51.34 (relating to exceptions). If the exception is granted, the Department will specify the maximum period of time for which the interim director shall be appointed.

**§ 139.4. Nursing services; other health care personnel.**

(a) Neonatal nursing services shall be provided in accordance with Chapter 109 (relating to nursing services) and this section.

(b) A registered professional nurse, especially trained and experienced in the care of normal and high-risk infants, shall be responsible for the neonatal care unit at all times when the unit is occupied. No neonate may be left unattended.

(c) Licensed nursing personnel shall be assigned to duties consistent with their legal scope of practice. Unlicensed assistive personnel shall be assigned duties consistent with standardized training and competency evaluation.

(d) Staffing shall be adequate to meet nursing care goals, standards of nursing practice and nursing care needs of patients. The appropriate number of staff necessary to accomplish these goals, standards and needs shall be established in the written policies of the neonatal service and shall be consistent with the Guidelines.

(e) In addition to the requirements for the nursing staff in subsections (a)—(d), there shall be service goals and objectives, standards of patient care, procedure manuals and written job descriptions for each level of other health care personnel which includes the following:

(1) A means for assessing the needs of patients and determining adequate staffing to meet those needs.

(2) Staffing patterns that are adequate to meet patient care goals, standards of practice and needs of patients.

(3) An adequate number of licensed and unlicensed health care personnel to assure that staffing levels meet the total needs of patients.

(4) Health care personnel in neonatal services shall be assigned to duties consistent with their training, experience and scope of practice when applicable.

**FACILITIES**

**§ 139.11. Facilities and equipment.**

The maternity and neonatal services shall be separate and apart from other hospital services and especially from potential sources of infection. Access to each neonatal care unit shall be controlled to insure security and safety of all infants.

**§ 139.12. Neonatal care units.**

(a) Hospitals with maternity services shall provide neonatal care units with areas for neonate recovery, observation and isolation and provisions or arrangements for the care of high-risk infants in a neonatal intensive care unit either at the facility of birth or at a transfer site. Space allocation and total number of bassinets shall be consistent with the Guidelines.

(b) There should be an isolation area for the reception and care of infants exposed to potential sources of infection and infants suspected of or having a communicable disease. Infants may be housed and nursed in the isolation area pending diagnosis, disposition or completion of treatment. This isolation area should be served by nursing personnel and shall meet the standards established in the Guidelines for this type of care.

(c) A neonatal intensive care unit is one which is specifically equipped and staffed for the care and treatment of high-risk infants and those otherwise in need of intensive care. The neonatal intensive care unit shall

meet the standards established in the Guidelines for this type of care. If such a service is not provided at the facility of birth, arrangements shall be made with an existing neonatal intensive care unit in the area of appropriate referral. The judgment of the attending physician and the policies of the hospital's neonatal services department shall determine the need for consultation with and referral to the hospital with an existing neonatal intensive care unit. The term "high risk infant" means any infant who, on the basis of socioeconomic, genetic or patho-physiologic history prior to delivery or on the basis of findings in the neonate period, manifests or is likely to manifest persistent and significant signs of distress. This may include:

(1) An infant with a birth weight below 2,000 grams or of less than 34 weeks gestation and any other low birth weight or premature infant who shows any abnormal signs.

(2) An infant showing persistent and significant signs of illness. This includes those with respiratory distress, congenital anomalies, tumors, jaundice, seizures, infections, metabolic distress or other conditions which pose an immediate threat to neonatal survival.

(3) An infant with serious feeding difficulties, excessive lethargy or instability of body temperature.

(4) An infant whose mother is drug addicted or habituated, diabetic, toxemic, isoimmunized, or having any other illness or condition which may affect the fetus.

(5) An infant requiring major surgical procedures.

**§ 139.13. Equipment and supplies.**

(a) Required equipment and supplies shall be in accordance with this section, the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects and with written policies of the neonatal service which shall be consistent with the Guidelines.

(b) An individual bassinet and equipment for the exclusive use of the infant to whom it is assigned shall be provided for each infant. All necessary supplies shall be stored in covered containers to permit individualized infant care and minimize risk of infection.

(c) Each neonatal care unit shall have its own sink with hot and cold running water equipped with foot, knee or elbow control so that hand contact with the sink is avoided. A sufficient supply of an antiseptic cleansing agent and disposable towels shall be readily available. Where paper towels are used, a dispenser shall be provided.

(d) Neonatal intensive care units shall be equipped with all equipment and supplies required for other neonatal care units.

**§ 139.14. Oxygen control.**

Oxygen shall be administered only with proper apparatus for its safe administration and control of concentration. Concentration of oxygen should not exceed a safe level commensurate with current concepts of oxygen therapy as recommended by the Guidelines.

**§ 139.15. Temperature control.**

A stable year-round temperature and humidity shall be maintained in all neonatal care units in accordance with written neonatal service policies consistent with the Guidelines.

**§ 139.16. Housekeeping and maintenance.**

The neonatal care unit shall be maintained in a clean and sanitary manner at all times. An environmental services room shall be provided for the exclusive use of the neonatal unit and shall be directly accessible from the unit.

**§ 139.17. Neonatal intensive care units (Levels II and III).**

In addition to the general requirements for the equipment of neonatal care units, the following provisions shall be required for all new construction, renovation or expansion of neonatal intensive care units and shall be available to all present neonatal intensive care units:

(1) The construction and arrangement of the neonatal intensive care unit shall permit personnel to observe the infants and have immediate access to them. Total neonatal care unit space, exclusive of anteroom, shall provide adequate floor space consistent with the Guidelines.

(2) Each infant requiring heat or air control, or both, shall have a separate incubator or other warming device and an individual environment with individualized heat, oxygen, suction and air turnover controls, as appropriate. Any infant whose condition permits may be placed in a bassinet.

(3) At least one oxygen outlet shall be provided for each patient station. Suction apparatus shall be easily available for each infant. A source of medically pure compressed air shall be available.

(4) A double-grounded electrical outlet shall be provided for each incubator or radiant warmer. Sufficient extra outlets should be provided for other electronic patient care equipment. Some electrical outlets in the unit shall be on the emergency electrical circuit of the hospital and shall be so marked.

(5) Resuscitation equipment shall be available within the neonatal intensive care unit. An effective method for preventing heat loss by the infant shall be available while the infant is undergoing any treatment.

(6) Air within neonatal intensive care units may not be recirculated and shall be frequently turned over each hour.

**POLICIES****§ 139.21. Policies and procedures.**

The director of neonatal services shall be responsible for developing written policies and procedures for the provision of medical services within the neonatal care unit which shall be available to the medical and nursing staff. The policies and procedures shall be reviewed by the director once a year and revised as necessary, and dated to indicate the time of last review. They shall provide specifications to conform to §§ 139.22—139.29.

**§ 139.22. Physicians' services.**

(a) There shall be a physician available at all times. This physician shall be either certified by the American Board of Pediatrics or an equivalent board, have attained preboard certification status, or have successfully completed an approved residency in pediatrics.

(b) All infants shall have a complete physical examination at or near the time of delivery consistent with the recommendations contained in the Guidelines and the results of the examinations shall be recorded in the infant's medical record.

(c) An infant who displays abnormal signs and symptoms at any time shall be examined by a physician as soon as possible.

(d) Every infant shall be examined by the attending physician or his authorized delegate within 1 day prior to discharge, and the findings recorded shall be in the infant's medical record.

(e) There shall be a method for the proper identification of each infant and mother or other responsible person at the time of discharge from the hospital. Infants discharged or transferred to another neonatal care unit or hospital shall be carefully identified.

**§ 139.23. Delivery suite services.**

(a) Delivery suite facilities shall include a neonatal recovery area specifically equipped for evaluation and treatment of the infant immediately after birth. An area of the delivery room set aside for infant care is acceptable.

(b) The director of obstetrics and the director of neonatal services shall formulate policies and procedures for delivery room care of infants. These policies and procedures shall be written and shall include provisions for:

(1) Notification of the physician in charge of the infant and the nurse responsible for the provision of nursing services in the neonatal care unit when the delivery of a potentially high-risk infant is expected.

(2) Continuity of care for all infants and especially for high-risk infants to be initiated in the delivery area, with constant observation of neonates for distress.

(3) The umbilical cord to be clamped or tied in accordance with standard medical practice.

(4) The collection of sample of cord blood and performance of laboratory studies for blood type, Rh and Coombs Test on every infant born to an Rh negative mother or having a family history of blood incompatibility.

(5) Infant identification, by an accepted duplicate system, for both mother and infant to be carried out in the delivery room and checked by the nurse or physician and, if possible, by the mother.

(6) Prophylaxis with medication under § 27.98 (relating to prophylactic treatment of neonates), to be carried out as soon as the condition of the infant permits.

(7) Every neonate to be examined at the time of delivery and the following noted on his medical record:

(i) Condition at birth including Apgar score or its equivalent.

(ii) Time of sustained respirations.

(iii) Physical abnormalities or pathological states.

(iv) Evidence of distress.

(8) A carefully planned procedure to be instituted for the transportation of infants to the neonatal care unit from the delivery room to insure maximum protection of the infant. Transfer of distressed infants to the unit shall be done in a manner that minimizes heat loss and to insure adequate oxygenation.

(9) The record of the infant to accompany the infant from the place of delivery to the neonatal care unit and be immediately available to unit personnel. This record shall include information concerning prenatal history, course of labor, delivery, drug administration to mother and infant, Apgar score, relevant conditions of the

mother, procedures performed on the infant in the delivery room, complications of any type, and other facts and observations.

**§ 139.24. Neonatal intensive care units (Levels II and III).**

(a) In hospitals with neonatal intensive care units, the director of the neonatal services shall develop written policies and procedures regarding admission of infants to neonatal intensive care units.

(b) Policies for neonatal intensive care units shall include:

(1) Requirements, in accordance with the Guidelines, for staffing of neonatal intensive care units. In addition, these units shall be staffed on every shift by at least one registered professional nurse who has special training, experience and interest in infants requiring special care and who is assigned no other responsibilities.

(2) A requirement that a pediatrician designated by the director of the neonatal services shall be on call 24 hours a day.

(3) A provision that private physicians or specialists may care for their patients in neonatal intensive care units. However, the final authority for policy in neonatal intensive care units shall reside with the director of neonatal services.

(4) A requirement that ancillary personnel employed to meet the needs of infants shall have appropriate, specified skills and training.

(5) Provisions for physicians, nurses and social service staff to assist parents of special care infants to become acquainted with their infant and any problems during the infant's hospitalization.

(6) A definite written policy, developed by the director of neonatal services, which provides for the unique problems involved in the total care of infants in neonatal intensive care units to be met, by making arrangements with the hospital nursing and social service departments and community health and social agencies, and by specifying what provisions will be made for continuing care, follow-up and home assistance.

**§ 139.25. Control of infection.**

(a) The director of neonatal services through the hospital's infection control program shall establish procedures for the control of infection, governing matters such as appropriate attire, isolation and cleaning of equipment in the neonatal care unit. Infection control procedures for neonatal services may be included among the responsibilities of the committee established under other licensure regulations. These procedures shall be written, reviewed at least annually and dated to indicate the date of last review.

(b) Infection control procedures shall do the following:

(1) Prohibit common or group carriers from transporting infants to their mothers.

(2) Require and specify procedures for scrupulous hand cleansing by all neonatal care unit personnel and visitors before and after each infant contact.

(c) The infection control standards shall be consistent with the current Guidelines.

**§ 139.26. Care given by parents.**

(a) The obstetrical and neonatal care departments of any hospital which provides rooming-in services shall

have written policies governing the services. These procedures shall be designed to prevent cross contamination.

(b) When rooming in is provided, it shall be under professional nurse supervision.

(c) "Rooming-in services," as used in this section, shall include any of a variety of arrangements which allows the mother and her infant to be cared for together in a setting that gives the mother access to her infant during all or a substantial part of the day and which allows the father to have extensive contact with the mother and the infant during their hospital stay.

(d) Whether or not a hospital provides rooming-in services, it shall provide new parents with orientation, instructions, and demonstration in neonatal care and hygiene.

**§ 139.27. Laboratory services and radiological services.**

(a) Laboratory services shall be available on a 24-hour-a-day, 7-day-a-week basis for, at a minimum, hemoglobin; hematocrit; Coombs test; blood type; Rh type; urinalysis; bacteriologic cultures; spinal fluid analysis; and microchemical determinations for bilirubin, blood glucose, sodium, potassium, chloride and total protein.

(b) Radiological equipment and services shall be available on a 24-hour-a-day, seven-day-a-week basis.

(c) Each hospital with a neonatal service shall provide immediately available blood transfusion services.

(d) A hospital in which a neonatal intensive care unit is located shall have a licensed blood bank, available or on call to the unit on a 24-hour-a-day, 7-day-a-week basis.

**§ 139.28. Patient medical records.**

Patient medical records shall be maintained in accordance with Chapter 115 (relating to medical records services). The following information shall also be included in the neonatal record if the entire maternal records are not maintained as the neonatal records in § 115.23(b) (relating to preservation of medical records):

(1) Obstetrical history of mother's previous pregnancies.

(2) Description of complications of pregnancy or delivery.

(3) List of complicating maternal disease.

(4) Drugs taken by the mother during pregnancy, labor and delivery.

(5) Duration of ruptured membranes.

(6) Maternal antenatal blood serology, rubella titer, blood typing, Rh factors, and, when indicated, a Coombs test for maternal antibodies.

(7) Complete description of progress of labor including reasons for induction and operative procedures, if any, signed by the attending physician or an authorized delegate.

(8) Anesthesia, analgesia and medications given to mother and infant.

(9) Condition of infant at birth, including the 1-and 5-minute Apgar Score or its equivalent, resuscitation, time of sustained respirations, details of physical abnormalities, pathological states observed and treatments given before transfer to the neonatal care unit.

- (10) Abnormalities of the placenta and cord vessels.
- (11) Date and hour of birth, birth weight and length, and period of gestation.
- (12) A written verification of eye prophylaxis.
- (13) Report of initial physical examination, including abnormalities, signed by the attending physician or an authorized delegate.
- (14) Discharge physical examination, including head circumference and body length, unless previously done; recommendations; and signature of attending physician or a delegate.
- (15) A listing of all diagnoses since birth, including discharge diagnosis.
- (16) Specific follow-up plans for care of infant.

**§ 139.29. Infant nursing records.**

Upon admission to a neonatal care unit, nurses shall initiate and maintain records on all infants as to weight, type and volume of feedings; time of first voiding; time of passage of first stool; number, color and consistency of stools; and temperature. If abnormalities are suspected or recognized, nurses shall also make notations on respiratory rate, dyspnea, color, cyanosis, jaundice, pallor, lethargy, twitching, motor activity, skin and buttocks, vomiting, condition of the eyes and umbilical cord, and other relevant factors as indicated and warranted by the condition of the infant. Treatments, medication and special procedures ordered by a physician should also be recorded with time, date and the name and title of the individual who administers them.

**NUTRITIONAL SERVICES**

**§ 139.31. Policies and procedures.**

Written policies and procedures for infant feeding shall be established and shall be available to the medical and nursing staffs.

**§ 139.32. Commercial formula.**

Precautions shall be taken to prevent the contamination and expiration of commercial formulas.

**§ 139.33. Formula preparation.**

- (a) A registered professional nurse or dietitian shall be in charge of formula preparation.
- (b) Formula shall be individually bottled and sterilized by pressure method 230\DF. for 25 minutes, with the following exceptions:
- (1) If hermetically sealed commercial formula products are used and the hospital's method of dispensing the formula has been approved by the Department.
- (2) Special mixtures which cannot be subjected to terminal heating shall be prepared by aseptic technique.
- (c) Each formula bottle shall be labeled with the identity of its contents.
- (d) Bacteriologic examinations of the equipment used, and analysis of techniques shall be done at least once each month. Plate counts on random sample of 24-hour milk mixtures shall not exceed 25 organisms per milliliter. Results of the bacteriologic tests shall be recorded and maintained on file.

**§ 139.34. Breastfeeding.**

Management of breastfeeding mothers and infants shall be consistent with the Guidelines.

**CHAPTER 158. VITAL ORGAN TRANSPLANTATION SERVICES**

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**GENERAL PROVISIONS**

**§ 158.1. Principle.**

Transplantation services shall be performed only in hospitals and shall be performed in accordance with accepted and prevailing standards of medical practice.

**§ 158.2. Definitions.**

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

*Board certified*—A physician licensed to practice medicine in this Commonwealth who has successfully passed an examination and has maintained certification in the relevant medical specialty area or subspecialty area, or both, recognized by one of the following groups:

- (i) The American Board of Medical Specialties.
- (ii) The American Osteopathic Association.

(iii) The foreign equivalent of either group listed in subparagraph (i) or (ii).

*Onsite*—In the physical structure at which vital organ transplantation services are being offered or in an adjoining structure.

*Organ Procurement and Transplantation Network*—A private nonprofit entity created under 42 U.S.C.A. § 274 to coordinate organ procurement and allocation for transplants in the United States and whose duties include the establishment of membership and medical criteria for institutions that perform vital organ transplants.

*Pediatric transplantation program*—Describes that program where vital organ transplantation services are provided to all patients under 18 years of age, except for those whose physical development precludes them from being handled as a pediatric patient when receiving transplantations.

*Preboard certification status*—A physician licensed to practice medicine in this Commonwealth who has completed the requirements necessary to take a certification examination offered by a medical specialty board recognized by the American Board of Medical Specialties, the American Osteopathic Association, or the foreign equivalent of either group and who has been eligible to take the examination for no longer than 3 years.

*Transplantation center*—The entire unit of a hospital which is devoted to the provision of vital organ transplantation services. Within a transplantation center, separate programs shall be established for each type of vital organ transplanted.

*Transplantation program*—The offering of a surgical service which involves the transfer of a vital organ from one individual to another. Each type of organ transplantation constitutes a separate transplantation program.

**§ 158.3. Scope.**

(a) When a hospital provides transplantation services, it shall make a sufficient commitment of resources and planning to all transplantation services which it provides. This commitment shall be demonstrated as follows:

(1) Commitment of the hospital to the transplantation service shall be present at all levels and broadly evident throughout the facility. This requires a major commitment of resources. These shall include many other departments, as well as the principal sponsoring departments.

(2) The hospital shall have both the expertise and the commitment for participation in medical, surgical and other relevant areas. The hospital shall identify individuals in these areas to achieve an identifiable and stable transplant team.

(3) The component teams shall be integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(4) The hospital shall have active medical and surgical programs in the specific areas in which transplantation services are offered.

(5) The commitment to medical staff shall include the elements in § 158.13 (relating to medical staff).

(6) The nursing service shall identify a team trained not only in the support of the patient, but also in the special problems of managing immunosuppressed patients.

(7) Adequate social services resources shall be available.

(8) Mechanisms shall be in place for managing the transplantation program which assures that:

(i) Patient selection criteria are consistent with those set forth in the hospital's written patient selection criteria.

(ii) The hospital is responsible for the ethical and medical considerations involved in the patient selection process and application of patient selection criteria.

(9) Adequate plans exist for organ procurement which meet legal and ethical criteria.

(b) Each transplantation program shall be a participating member of the Organ Procurement and Transplantation Network and shall comply with its standards, guidelines and bylaws.

**PROGRAM, SERVICE AND PERSONNEL REQUIREMENTS**

**§ 158.11. Medical director.**

(a) The medical director of the transplantation center shall be an active member of the medical staff who is a qualified transplantation surgeon or transplantation physician and who is either certified by the American Board of Surgery or the American Board of Internal Medicine or an equivalent Board.

(b) An interim director may be appointed during the period of time between the departure of the prior director and the selection of a new director. The interim director shall be a physician who is able to demonstrate qualifications acceptable to the medical staff of the hospital and to the Department. The hospital shall apply to the Department for an exception under the procedures in §§ 51.31—51.34 (relating to exceptions). If the exception is granted, the Department will specify the maximum period of time for which the interim director shall be appointed.

**§ 158.12. Transplantation coordinator.**

Each transplantation center shall have onsite on a full time basis at least one transplantation coordinator. Transplantation coordinators shall be certified by the American Board of Transplant Coordinators within 2 years of obtaining this position.

**§ 158.13. Medical staff.**

(a) Each transplantation program shall have at least one transplantation surgeon and one transplantation physician who are either Board certified or who have attained preboard certification status, members of the hospital's active medical staff and who meet the requirements established by the Organ Procurement and Transplantation Network to serve in that capacity.

(b) Each transplantation center shall have supporting medical staff to provide necessary services to transplant patients. Required medical staff shall be available at all times and shall include the following:

(1) Nephrology services comprised of at least one nephrologist who is either Board certified or who has attained preboard certification status in nephrology with the American Board of Internal Medicine or an equivalent Board. The nephrologist may also serve as the transplant physician.

(2) Pathology services with a pathologist who is either certified or who has attained preboard certification status with the American Board of Clinical Pathology or an equivalent Board. The pathology service shall be available for studying and reporting promptly the pathological responses to transplantation.

(3) Anesthesiology services with an anesthesiologist who is either certified or who has attained preboard certification status with the American Board of Anesthesiology or an equivalent Board. Anesthesiology shall identify a team for transplantation that is trained in transplant surgery and is available at all times.

(4) Radiology services with a radiologist who is certified by the American Board of Radiology or an equivalent Board. A radiologist shall have 1 year of training or 2 years experience in imaging techniques used in transplantation of the applicable organ and shall be available at all times.

(5) An internist who is certified in infectious diseases by the American Board of Internal Medicine or an equivalent Board and who shall be readily available to transplant patients. The internist shall have both the professional skills and the laboratory resources needed to discover, identify and manage the complications from organisms encountered in transplant patients.

(6) Psychiatric services with a psychiatrist who is either currently certified or who has attained preboard certification status in psychiatry with the American Board of Psychiatry and Neurology or an equivalent Board. The psychiatrist shall be available to meet the psychiatric needs of transplant patients.

**§ 158.14. Nursing staff; other health care personnel.**

(a) Nursing personnel shall include nurses with specialized education which includes theory, advanced technical skills and supervised experience in a surgical intensive care unit or in a postoperative transplantation unit before assuming primary responsibility for the nursing care of transplantation patients.

(b) There shall be nursing service goals and objectives, standards of nursing practice, procedure manuals and written job descriptions for each level of personnel which shall include the following:

(1) A means for assessing the nursing care needs of the patients and determining adequate staffing to meet those needs.

(2) Staffing patterns that are adequate to meet the nursing goals, standards of practice and the needs of the patients.

(3) An adequate number of licensed and unlicensed assistive personnel to assure that staffing levels meet the total nursing needs of the patient.

(4) Nursing personnel assigned to duties consistent with their training, experience and scope of practice, when applicable.

(c) Surgical suite nursing services shall be under the direction and supervision of a registered professional nurse with specific education and experience in dealing with transplantation patients.

(d) In addition to the requirements for the nursing staff in subsections (a)—(c), there shall be service goals and objectives, standards of patient care, procedure manuals and written job descriptions for each level of other health care personnel which includes the following:

(1) A means for assessing the needs of patients and determining adequate staffing to meet those needs.

(2) Staffing patterns that are adequate to meet patient care goals, standards of practice and needs of patients.

(3) An adequate number of licensed and unlicensed health care personnel to assure that staffing levels meet the total needs of patients.

(4) Health care personnel in the transplantation program shall be assigned to duties consistent with their training, experience and scope of practice when applicable.

**§ 158.15. Laboratories.**

(a) The transplantation center shall maintain, or by agreement have access to, a tissue typing laboratory with appropriate space and resources to perform required histocompatibility testing and cross matches.

(b) The transplantation center shall maintain, or by agreement have access to, laboratory facilities capable of performing virology, cytology, clinical chemistry, microbiology and monitoring of immunosuppressive drugs.

(c) The transplantation center shall have blood bank support with the capacity to supply blood components for the number of transplants that are projected, the ability to irradiate blood components and the availability of a blood separator and central blood repository.

**§ 158.16. Support services.**

(a) The transplantation center shall maintain, or by agreement have access to, a rehabilitation center which can provide physical rehabilitation, psychological services and vocational and occupational therapy.

(b) The transplantation center shall maintain, or by agreement have access to, the social support services necessary for the care of transplant recipients and for the assistance to families coping with the transplant experience.

(c) The transplantation center shall maintain a service for counseling recipients which is directed to their particular needs and problems. Additionally, as appropriate, the transplantation service shall provide counseling to donors and to their relatives.

(d) The transplantation center shall maintain the following facilities:

(1) Adequately equipped operating rooms.

(2) Adequate equipment and supplies.

(3) Intensive care facilities capable of maintaining transplant patients.

(4) Facilities for acute hemodialysis.

**§ 158.17. Selection criteria.**

(a) The transplantation program shall have written procedures for selecting transplantation candidates and distributing organs in a fair and equitable manner. Selection criteria shall comply with the National Organ Procurement and Transplantation Network organ allocation priorities and shall be based on objective medical criteria and time on a waiting list.

(b) The transplantation program shall have written policies in place to assure that:

(1) Patient selection decisions are consistent with criteria set forth in the written patient selection criteria.

(2) The transplantation program is responsible for ethical and medical considerations in the patient selection process.

**§ 158.18. Referrals, hours of operation.**

(a) The transplantation center shall accept referrals from all physicians.

(b) Transplantation services shall be accessible 24-hours-a-day, 7-days-a-week.

**§ 158.19. Volume of procedures.**

(a) Each transplantation program shall perform an adequate number of procedures to maximize quality.

(b) Each transplantation program shall meet the expected survival rate as set forth by the Organ Procurement and Transplantation Network in its bylaws. Those programs whose actual survival rates fall below their expected survival rates will be reviewed by the Department to determine if this deviation can be accounted for by patient mix or some other unique clinical aspect of the transplantation program.

(c) If the transplantation program is unable to provide an explanation for its failure to meet the expected survival rate, the Department will undertake a review of that program to determine if it is in compliance with the criteria in this chapter. The hospital shall cooperate with the Department in this review.

**§ 158.20. Post-transplantation care.**

(a) The transplantation center shall maintain a program for continuing patient follow-up care throughout the recipient's life.

(b) This program shall include the following:

(1) A system for referring physicians that integrates patient referral and continued patient supervision.

(2) The interchange of medical and other information necessary in the care and treatment of patients transferred between physicians responsible for patient care and the transplantation surgery.

(3) The provisions of a discharge plan to the referring physician.

(4) An obligation to follow the patient at appropriate intervals to assess the outcome of the transplant and to provide consultative care as necessary.

**SUPPLEMENTARY CRITERIA**

**§ 158.31. Kidney transplantation program.**

(a) The general standards in §§ 158.1—158.19 apply to kidney transplantation programs. Additionally, the criteria contained in this section apply only to kidney transplantation programs.

(b) A kidney transplantation program shall have overall plans and resources to assure a reasonable concentration of experience.

(c) A kidney transplantation program shall participate in and be certified by the Federal ESRD (End Stage Renal Disease) (Medicare) program and as an ESRD center.

(d) A hospital which has a kidney transplantation program shall have a Division of Urology comprised of at least one urologist who is either certified by or who has attained preboard certification status with the American Board of Urology or an equivalent Board. The urologist shall be available to act as a consultant when appropriate for the preoperative, operative and postoperative surgical evaluation and management of transplant patients and living donors.

(e) In addition to dialysis facilities for acute hemodialysis, a kidney transplantation program shall be capable of providing peritoneal dialysis.

**§ 158.32. Heart transplantation program.**

(a) The general standards in §§ 158.1—158.19 apply to heart transplantation programs. Additionally, the criteria contained in this section apply only to heart transplantation programs.

(b) A heart transplantation program shall have overall plans and resources to assure a reasonable concentration of experience.

(c) A heart transplantation program shall have on staff and available at all times a cardiologist and a pulmonologist both of whom are either certified by or have attained preboard certification status with the respective appropriate American Board or an equivalent Board. Either of these specialists may also serve as the transplant physician.

(d) The hospital shall have a cardiac catheterization service which meets all of the regulatory requirements for this service. The cardiac catheterization laboratory shall be available to perform these procedures on an emergency basis.

(e) The hospital shall have an open heart surgery program and shall meet all of the regulatory requirements for this service.

(f) The hospital shall meet the following conditions:

(1) Possess expertise in other relevant areas including cardiology, cardiovascular surgery and pulmonary diseases.

(2) Identify individuals in these areas to achieve a stable transplant team.

**§ 158.33. Liver transplantation program.**

(a) The general standards in §§ 158.1—158.19 apply to liver transplantation programs. Additionally, the criteria contained in this section apply only to liver transplantation programs.

(b) A liver transplantation program shall have overall plans and resources to assure a reasonable concentration of experience.

(c) A hospital shall have on staff and available a gastroenterologist who is either certified by or who has attained preboard certification status with the American Board of Gastroenterology or an equivalent Board. The gastroenterologist shall have at least 2 years experience in hepatology. The gastroenterologist may also serve as the transplant physician.

(d) The pathologist shall be specifically trained in liver pathology.

**§ 158.34. Lung and heart/lung transplantation programs.**

(a) The general standards in §§ 158.11—158.19 apply to lung and heart/lung transplantation programs. Additionally, the criteria contained in this section apply only to lung and heart/lung transplantation programs.

(b) A lung or heart/lung transplantation program shall have overall plans and resources to assure a reasonable concentration of experience.

(c) A lung or heart/lung transplantation program shall have on staff and available a cardiologist and a pulmonologist who are either certified by or who have attained preboard certification status with the respective appropriate American Board or equivalent Board. Either of these specialists may also serve as the transplant physician.

(d) The hospital shall have a cardiac catheterization service which meets all of the regulatory requirements for this service. The cardiac catheterization laboratory shall be available to perform these procedures on an emergency basis.

(e) The hospital shall have an open heart surgery program and shall meet all of the regulatory requirements for this service.

**§ 158.35. Pancreas transplantation programs.**

(a) The general standards in §§ 158.1—158.19 apply to pancreas transplantation programs. Additionally, the criteria contained in this section applies only to pancreas transplantation programs.

(b) A pancreas transplantation program shall have overall plans and resources to assure a reasonable concentration of experience.

(c) A hospital in which a pancreas transplantation program performs combined kidney/pancreas transplants or sequential kidney and pancreas or sequential pancreas and kidney transplants shall have an active kidney transplantation program.

(d) A hospital which has a pancreas transplantation program shall have a division of endocrinology comprised of at least one endocrinologist currently certified by the American Board of Endocrinology or an equivalent Board. If the endocrinologist serves as the transplant physician,



then the endocrinologist shall have at least 1 year of training or 2 years experience in the care of transplant patients.

**§ 158.36. Other organs.**

A facility proposing to establish a program for transplant of an organ other than kidney, heart, liver, lung, heart/lung or pancreas shall:

(1) Comply with the general criteria contained in this chapter.

(2) Comply with Organ Procurement Transplant Network criteria applicable to the specific organ.

**§ 158.37. Pediatric transplantation programs.**

(a) A transplantation center that provides a transplantation program to pediatric patients shall do the following:

(1) Follow the general criteria for transplantation centers and programs in §§ 158.1—158.19.

(2) Follow the supplementary criteria for the applicable organ transplantation program in §§ 158.31—158.36.

(3) Follow the criteria in this section in the treatment of pediatric patients.

(b) In those instances where criteria for pediatric transplantation programs differs from supplementary criteria for organ specific transplants, transplantation centers providing services to both adult and to pediatric patients are required to fulfill both the supplementary criteria for the specific organ and the following pediatric transplant criteria. Transplantation centers providing programs exclusively to pediatric patients need only meet the criteria for pediatric transplantation programs.

(c) Those transplantation centers which are exclusively pediatric shall have overall plans and resources to assure a reasonable concentration of experience.

(d) Transplantation centers providing services to pediatric patients shall have on staff and available the following specialists who shall be either certified by or have attained preboard certification status with the appropriate subspecialty board of the American Board of Pediatrics or an equivalent Board:

(1) Pediatric transplantation programs shall have on staff: a pediatric nephrologist, a pediatric infectious disease specialist and a pediatric internist.

(2) Pediatric liver transplantation programs shall have on staff: a pediatric gastroenterologist and a pediatric pulmonologist.

(3) Pediatric heart, lung and combined heart/lung transplantation programs shall have on staff: a pediatric pulmonologist, a pediatric cardiologist and a pediatric cardiac surgeon.

(4) Pediatric pancreas transplantation programs shall have on staff a pediatric endocrinologist.

(e) Transplantation centers providing services to pediatric patients shall have on staff and available the

following personnel who are certified or qualified, or both, as follows:

(1) An anesthesiologist who is either certified by or who has attained preboard certification status with the American Board of Anesthesiology or an equivalent Board and has 2 years of experience providing anesthesiology services to pediatric patients.

(2) A dietitian who is registered by the American Dietetic Association or who is a feeding specialist and who has 2 years of experience providing dietetic services to pediatric patients.

(3) A radiologist who is either certified by or who has attained preboard certification status with the American Board of Radiology or an equivalent Board and who has 2 years of experience providing radiology services to pediatric patients.

(4) A physical therapist who has 2 years experience providing services to pediatric patients.

(5) A psychiatrist who is either certified by or who has attained preboard certification status with the American Board of Child Psychiatry or an equivalent Board.

(6) A social worker who has 1 year of experience providing social services to pediatric patients.

(7) A nursing staff that is experienced in providing nursing services to pediatric patients and is of a sufficient complement to meet nursing care goals, standards of nursing practice and nursing care needs of pediatric patients.

(8) An occupational therapist who is registered with the American Occupational Therapy Association and who has 1 year of experience in treating pediatric patients.

(f) A pediatric heart transplantation center shall have cardiac catheterization and open heart surgical services which meet all of the regulatory requirements for pediatric patients.

(g) A pediatric program which provides kidney transplantation services to pediatric patients shall have on staff and available a urologist who is either certified by or who has attained preboard certification status with the American Board of Urology or an equivalent Board and who has 2 years experience providing urology services to pediatric patients.

(h) Transplantation centers that provide transplantation programs to pediatric patients shall have appropriate equipment available to provide the following services to pediatric patients:

(1) Dialysis.

(2) Anesthesia.

(3) Intensive care.

(4) Operating room.

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