

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Amendments to the Delaware River Basin Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania

At its June 23, 1999, business meeting, the Delaware River Basin Commission (Commission) amended its Ground Water Protected Area Regulations for Southeastern Pennsylvania by the establishment of numerical withdrawal limits for 62 subbasins which are entirely or partially within the Protected Area.

Effective Date

The effective date is June 23, 1999.

Address

Copies of the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania are available from the Delaware River Basin Commission, P. O. Box 7360, West Trenton, New Jersey 08628.

For Further Information Contact

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

Supplementary Information

On March 9, 1999, the Commission held public hearings on proposed amendments to its Ground Water Protected Area Regulations for Southeastern Pennsylvania as noticed in the *Pennsylvania Bulletin* issues of February 6, 1999, and March 6, 1999. The Commission has considered the extensive testimony and comments from interested parties and has prepared a "Response Document on Proposed Amendments to the Ground Water Protected Area Regulations for Southeastern Pennsylvania: May 1999" which is available upon request to Susan Weisman at the number provided above.

The Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania are hereby amended as follows in the following Resolution.

A Resolution to amend the Ground Water Protected Area Regulations for Southeastern Pennsylvania by the establishment of numerical withdrawal limits for 62 subbasins which are entirely or partially within the Protected Area.

Whereas, the Ground Water Protected Area (GWPA) Regulations for Southeastern Pennsylvania were adopted in 1980 to prevent the depletion of ground water, protect the interests and rights of existing water users, and balance and reconcile alternative and conflicting uses of the limited water resources in the area; and

Whereas, while the GWPA Regulations have successfully addressed most ground water problems, certain provisions, particularly those pertaining to the protection of low streamflows, have been difficult to administer on a project-by-project basis; and

Whereas, the United States Geological Survey (U.S.G.S.) conducted a water-use analysis for the Neshaminy Creek Basin and the Commission's Ground

Water Advisory Committee developed proposed amendments to the GWPA Regulations to establish numerical ground water withdrawal limits on a subbasin level based upon baseflow frequency analyses prepared as part of the U.S.G.S. study; and

Whereas, on January 28, 1998, the Commission adopted amendments to its GWPA Regulations which established a two-tiered system of withdrawal limits for the 14 subbasins in the Neshaminy Creek Basin in the Protected Area; and

Whereas, the U.S.G.S. prepared a similar study which investigated the withdrawal limits for the remaining subbasins in the Protected Area and formed the basis of proposed amendments to the GWPA Regulations; and

Whereas, the Commission held public hearings on March 9, 1999, in Conshohocken, Pennsylvania, to receive testimony and comments on the proposed amendments; and

Whereas, a total of 33 comments were received on the proposed amendments; and

Whereas, the Commission has considered the testimony and comments from interested parties; now therefore

Be It Resolved by the Delaware River Basin Commission:

1. The Ground Water Protected Area Regulations for Southeastern Pennsylvania are hereby amended as follows:

Subsection 6.I.3. is hereby revised to read as follows:

3. The potentially stressed levels and withdrawal limits for all delineated basins and subbasins are set forth below:

<i>Subbasin</i>	<i>Potentially Stressed (mg)*</i>	<i>Withdrawal Limit (mg)</i>
<i>Neshaminy Creek Basin</i>		
West Branch Neshaminy Creek Basin	1,054	1,405
Pine Run Basin	596	795
North Branch Neshaminy Creek	853	1,131
Doylestown Subbasin Neshaminy Creek	710	946
Warwick Subbasin Neshaminy Creek	889	1,185
Warrington Subbasin Little Neshaminy Creek	505	673
Park Creek Basin	582	776
Warminster Subbasin Little Neshaminy Creek	1,016	1,355
Mill Creek Basin	1,174	1,565
Northampton Subbasin Neshaminy Creek	596	794
Newtown Creek	298	397
Core Creek Basin	494	658
Ironworks Creek Basin	326	434
Lower Section Subbasin Neshaminy Creek	3,026	4,034

*mg means million gallons per year

Schuylkill River Basin

Delaware River Basin

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
Hay Creek	974	1,299
Lower Reach Manatawny-Ironstone Creek	1,811	2,414
Pigeon Creek	611	815
Schuylkill-Crow Creek	1,157	1,543
Schuylkill-Mingo Creek	671	895
Schuylkill-Plymouth-Mill Creeks	4,446	5,929
Schuylkill-Sixpenny Creek	1,490	1,987
Schuylkill-Sprogels Run	1,091	1,455
Schuylkill-Stony Creek	687	916
Schuylkill-Trout Creek	1,082	1,443
Stony Creek	1,242	1,655
Valley Creek	1,865	2,486

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
Upper Reach Darby Creek	1,625	2,167
Upper Reach East Branch Chester Creek	1,865	2,487
Upper Reach Frankford Creek	1,414	1,886
Upper Reach Poquessing Creek	1,008	1,344
Upper Reach Ridley Creek	1,707	2,275

Tohickon Subbasin

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
Tohickon-Beaver-Morgan Creeks	1,156	1,541
Tohickon-Deep Run	956	1,274
Tohickon-Geddes-Cabin Runs	602	803
Tohickon-Lake Nockamixon	556	741
Tohickon-Three Mile Run	726	968

French and Pickering Creek Subbasins

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
Lower Reach French Creek	634	845
Lower Reach Pickering Creek	1,716	2,288
Middle Reach French Creek	1,608	2,145
South Branch French Creek	1,044	1,393
Upper Reach French Creek	1,295	1,726
Upper Reach Pickering Creek	1,358	1,811

Pennypack and Wissahickon Subbasins

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
Lower Reach Wissahickon Creek	2,750	3,666
Upper Reach Wissahickon Creek	1,302	1,736
Middle Reach Pennypack Creek	1,295	1,727
Upper Reach Pennypack Creek	1,358	1,811

Perkiomen and Skippack Creek Subbasins

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
East Branch Perkiomen-Indian Creeks	633	844
East Branch Perkiomen-Mill Creeks	720	961
East Branch Perkiomen-Morris Run	1,214	1,619
Hosensack-Indian Creeks	1,257	1,676
Lower Reach Skippack Creek	1,069	1,426
Perkiomen-Deep Creeks	1,047	1,396
Perkiomen-Lodal Creeks	1,200	1,600
Perkiomen-Macoby Creek	1,252	1,669
Swamp-Middle Creeks	1,423	1,898
Swamp-Minister Creeks	547	730
Swamp-Scioto Creeks	746	994
Towamencin Creek	466	622
Unami-Licking Creeks	992	1,322
Unami-Ridge Valley Creeks	1,068	1,424
Upper Reach Perkiomen Creek	1,223	1,631
Upper Reach Skippack Creek	813	1,084
West Branch Perkiomen Creek	1,566	2,088

Brandywine Creek Subbasin

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
East Branch Brandywine-Taylor Run	1,054	1,405
Middle Reach Brandywine Creek	823	1,098
Upper Reach Brandywine Creek	1,614	2,153
West Branch Brandywine-Beaver Run	2,110	2,813
West Branch Brandywine-Broad Run	2,380	3,173
West Valley Creek	1,673	2,231

Lehigh Subbasin

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
Upper Reach Saucon Creek	946	1,262

Delaware River Basin

<i>Subbasin</i>	<i>Potentially Stressed (mg)</i>	<i>Withdrawal Limit (mg)</i>
Jericho Creek	421	562
Mill Creek	1,600	2,134
Paunacussing Creek	513	684
Pidcock Creek	563	751
Upper Reach Cobbs Creek	871	1,161
Upper Reach Crum Creek	1,290	1,721

Subject to public notice and hearing, this section may be updated or revised based upon new and evolving information on hydrology and streamflow and ground water monitoring or in accordance with 2.

2. This resolution shall become effective immediately.
 SUSAN M. WEISMAN,
Secretary

Fiscal Note: Fiscal Note 68-39 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.5. Groundwater protection area, Southeastern Pennsylvania.

The Basin Regulations, Groundwater Protection, Southeastern Pennsylvania, as set forth at 18 CFR Part 430 (1999), are hereby incorporated by reference and made part of this title.

[Pa.B. Doc. No. 99-1175. Filed for public inspection July 23, 1999, 9:00 a.m.]

**Title 28—HEALTH
AND SAFETY**

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 8 AND 1101—1113]

Supplemental Nutrition Program for Women, Infants and Children (WIC Program)

A. Introduction

The Department of Health (Department), Bureau of Family Health, Division of WIC (WIC Program), submits as final rulemaking with proposed rulemaking omitted, regulations governing the authorization and management of stores participating in the WIC Program and regulations governing the procedures for administrative appeals of WIC applicants and participants, and local agencies and stores, in compliance with Federal regulations governing the WIC Program in 7 CFR Part 246 (relating to special supplemental nutrition program for women, infants and children). These State regulations add a new Part VIII (relating to supplemental nutrition program for women, infants and children). This rulemaking also deletes §§ 8.41—8.43, 8.51—8.62 and 8.71—8.74, the Department's current regulations pertaining to the WIC Program's administrative appeals. These additions and deletions are set forth in Annex A. The final-form State regulations have been submitted to the United States Department of Agriculture, Food and Nutrition Services (USDA-FNS), for review and approval for compliance with the Federal regulations. The USDA-FNS approved the regulations by letters dated April 5, 1999, April 12, 1999, and April 27, 1999. Copies of the letters are available to the public upon request.

Under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), the Department is dispensing with notice of proposed rulemaking and the procedures for adopting final-form regulations, as specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202). The Department finds that those procedures are contrary to the public interest and impracticable.

As a result of the Commonwealth Court decision in *Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health*, 713 A.2d 177 (1998), the Department was required to promulgate regulations governing the selection and management of grocery stores to participate in the WIC Program.

The Department has mandates imposed by Federal regulations which require that at least once every 2 years

the Department review the qualifications of all authorized food vendors participating in the WIC Program and make appropriate adjustments among participating food vendors. See 7 CFR 246.12(g) (relating to food delivery systems). These reviews must be completed by September 30, 1999, to stay compliant with Federal regulations. If the Department fails to do so, it faces audit exceptions and possible loss of Federal funding for the operation of the WIC Program until it complies with the Federal regulatory requirements. Loss or even suspension for a short period of time of Federal funding for the WIC Program would render the program inoperable, as 100% of the program's funds are Federal, or would place a difficult, if not impossible, financial burden upon the Commonwealth, shall the Commonwealth continue to operate the program in the absence of Federal funding.

The WIC Program provides food benefits to approximately 260,000 women, infants and children who redeem, on an average daily basis, \$500,000 worth of WIC checks at retail grocery stores located within this Commonwealth. An interruption in the funding of the Program would affect the receipt of necessary food benefits for the participants of the WIC Program, and interfere with the retail grocery business and the employment of personnel at the 25 local WIC agencies.

The store reviews referenced previously were the subject of the *Giant* Commonwealth Court case wherein the Court found the criteria used to conduct the reviews shall be promulgated as regulations. Until the criteria are promulgated as regulations, the Department is unable to conduct further reviews. The Department will conduct approximately 1,400 reviews of stores before September 30, 1999. To require the Department to engage in the customary regulatory process, is impracticable and contrary to the public interest in ensuring proper nutrition for women, infants and children during critical periods of growth.

B. Summary

The regulations are presented in seven chapters: Chapter 1101 (relating to general provisions), Chapter 1103 (relating to authorization of stores), Chapter 1105 (relating to requirements of WIC authorized stores), Chapter 1107 (relating to sanctions), Chapter 1109 (relating to administrative appeals), Chapter 1111 (relating to applicant and participant appeals) and Chapter 1113 (relating to local agency and store appeals). Unless otherwise noted, the provisions of these regulations set forth in a regulatory format standards for the administration of the WIC Program, as they relate to design and operation requirements of the food delivery system, which have been in effect since 1986.

Chapter 1101. General Provisions.

This chapter explains the general purpose of the WIC Program, defines terms used in the regulations, and provides information relating to the administration of the WIC Program by the Department and the local agencies with which the Department contracts to help it administer the WIC Program.

Section 1101.1 (relating to background and scope) provides information on the Federal legislation authorizing the WIC Program and the purpose of that legislation. Through an amendment to the Child Nutrition Act of 1966 (42 U.S.C.A. §§ 1171—1791) (Federal act), Congress authorized the Supplemental Nutrition Program for Women, Infants and Children for the purpose of providing supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants and young

children, from families with inadequate income, who are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. This section sets forth the purpose of the WIC Program, identifies the criteria persons need to satisfy to qualify as participants and the services that the WIC Program provides to participants.

Subsection (b) sets forth the scope of the regulations contained in Part VIII. The regulations specify the design and operational requirements for the WIC Program's food delivery system, and prescribe procedures to be used by applicants, participants, local agencies and stores to appeal actions of the Department and local agencies that may adversely impact upon them. These procedures supplement or supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Section 1101.2 (relating to definitions) provides definitions that are consistent with the Federal regulations governing the WIC Program found in 7 CFR Part 246. The section also provides definitions for some terms which are not defined or used in Federal regulations. Federal regulations governing the WIC Program found in 7 CFR 246.3(b) (relating to administration) delegate responsibilities for the effective and efficient administration of the WIC Program at the state level to state agencies. A "state agency," as defined under Federal regulation, is the health department or comparable agency of each state. In this Commonwealth, the USDA-FNS contracts with the Department to carry out the responsibilities of the WIC Program.

Section 1101.3 (relating to administration) sets forth, in general terms, the responsibilities of the Department in administering the WIC Program, as well as the responsibilities of the local agencies with which the Department contracts to carry out the WIC Program at the local level. The Department sets forth the requirements imposed upon local agencies, in greater detail, in its biennial contracts with the local agencies. Responsibilities of both the Department and the local agencies may also change as required by Federal statute or regulations.

Chapter 1103. Authorization of Stores.

In accordance with the duties delegated to it by the Federal regulations, the Department is responsible for the fiscal management of and accountability for the WIC Program food delivery systems under its jurisdiction. See 7 CFR 246.12(a)(1) (relating to food delivery system). The Department has the option, under Federal regulations, to operate up to three different types of food delivery systems in this Commonwealth: a retail purchase system, a home delivery system or a direct distribution system. See 7 CFR 246.12(b). With the exception of special infant formulas for which the Department has chosen to use a direct distribution system, the Department has elected to use a retail purchase system for the delivery of food benefits to WIC participants.

This chapter explains the procedures the Department has established to select and authorize retail grocery stores to participate in the retail food delivery system of the WIC Program.

Section 1103.1 (relating to certification and recertification reviews) establishes objective criteria for the selection of stores to participate in the WIC Program. As required by 7 CFR 246.12(e)(1), there shall be an onsite visit prior to, or at the time of, initial authorization of a new vendor. The procedures in the section are used to determine, through onsite reviews of stores, which stores meet the criteria to be authorized to participate in the

WIC Program. The criteria used are found in § 1103.4 (relating to selection and limitation criteria; authorization process). The criteria ensure that each store is able to minimally meet the needs of participants who may choose to shop at the store for their WIC purchases.

Subsection (a) sets forth an exception to the requirements that stores shall satisfy certain qualifications to be authorized. It permits an exception if the Department finds that there would be participant hardship if the store were not to receive authorization to participate in the WIC Program. This exception allows the Department to balance the needs of the participants against the shortcomings of the stores in meeting the criteria. It furthers the purpose of the Federal act, which is to provide supplemental food benefits to women, infants and children during critical periods of growth. This exception does not relieve the store from meeting its responsibilities. It requires corrective action by the store to ensure the criteria are met. This exception is discussed further in the discussion of § 1103.7 (relating to participant hardship).

The Department's authorization of stores is not perpetual. Subsection (c) sets forth the duration of certification. Consistent with 7 CFR 246.12(f)(2)(xvi), it puts the store on notice that neither the Department nor the store have an obligation to renew the vendor agreement. At least once every 2 years, the Commonwealth is required, under 7 CFR 246.12(g), to review the qualifications of all authorized vendors in its jurisdiction. The Department's agreements with stores which have been selected to participate in the WIC Program are for no longer than 2 years duration. Based upon the results of the reviews, which are labeled in these regulations as certification or recertification reviews, the Department decides which stores are to be selected to participate in WIC Program and provides authorization. This procedure provides an equitable opportunity for all stores to compete for limited store authorizations, at least once every 2 years, and allows the Commonwealth to select and authorize stores which provide the best value to the Commonwealth. This, in turn, provides for the most efficient use of Federal grant funds and allows the Commonwealth to serve more participants.

The Pennsylvania Food Merchants Association (PFMA) provided comment on the contract duration issue. The PFMA wants vendor agreements to be of indefinite length but subject to ongoing monitoring by the Department. The PFMA would have a contract endure until a store violates conditions of participation and does not correct problems following notice of the violations. The Department provided all of the PFMA's comments to the USDA. The USDA's response to the suggestion by PFMA was:

We believe that fixed period agreements enable the State to manage its vendor population on a periodic basis more easily and allows it to be more responsive to changing Program conditions and needs than is the case with open-ended agreements. The majority of geographic State agencies contract with vendors for 3 years or less, making fixed-period contracts and agreements the norm Nationwide.

Subsection (d) establishes the Commonwealth procedures for the certification/recertification reviews and provides that these reviews shall be conducted at least once every 2 years. The establishment of these standards is mandated by 7 CFR 246.12(g).

Section 1103.2 (relating to probationary certification) establishes procedures to authorize stores, on a probationary basis, which have not opened and do not have the frozen or dairy food sections stocked at the time of the

certification review. This benefits both the stores and the WIC participants. It allows stores to be reviewed prior to opening and allows the participants to select these stores to make their WIC purchases as soon as the store is open for business.

This section also establishes procedures for the Department to authorize stores that do not meet the selection and limitation criteria to participate in the WIC Program, on a probationary basis, if the denial or removal of the store's authorization would cause participant hardship. This section furthers the purpose of the Federal act by weighing the need of the participants and the Department in having stores to serve the participants in a particular area, against the problems demonstrated by that store in failing to meet such requirements or failing monitoring or compliance reviews which have been established to ensure the provision of WIC Program benefits to participants.

Section 1103.3 (relating to authorization of store slots) establishes a formula for determining how many stores the Department will authorize to participate in the WIC Program. The number is based upon a participant to store ratio. This furthers the purpose of the Federal act by assuring an appropriate number and distribution of authorized stores for adequate participant access as required by 7 CFR 246.12(e)(1).

Federal regulations permit a state to establish criteria to limit the number of stores it will authorize to participate in the WIC Program so that the state can effectively and efficiently manage review of all stores under its jurisdiction. See 7 CFR 246.12(e)(1). Under this section, the Department authorizes one store slot for every 160 participants in the area, except in Philadelphia. Because of the WIC population density in Philadelphia and the geographic density of grocery stores, one store slot is authorized for every 260 participants in Philadelphia.

Pennsylvania's standard is more liberal than many other states in the Mid-Atlantic region. The regional average is one store slot authorized for every 192 participants, with some states/districts having averages as high as one store for every 548 participants. Only two states have lower ratios than the Commonwealth: West Virginia and Virginia. The demographics of those states differ quite significantly from this Commonwealth. For example, the number of WIC participants served by the states, 52,700 and 137,655 respectively, compare to Commonwealth's 242,551 participants. (Statistics are based upon figures provided for the First Quarter of FFY 1999.)

The PFMA advised the Department that it opposes criteria to limit the number of stores to participate in the WIC Program; it wants the Department to eliminate the vendor to participant ratio and replace it with a "WIC participant freedom to shop" policy. The PFMA would have the Department allow any store interested in participating in the WIC Program to be approved so long as the store maintains proper health standards and adequate product inventory. The USDA's response to this was:

It is important to understand that the establishment of vendor limitation criteria can be a critical element in providing quality services to participants and promoting efficient use of the State agency's food grant. Furthermore, if the State agency reduced its selection criteria to the two suggested by the PFMA, all vendors meeting these criteria would be authorized regardless of the prices they charge. Since WIC is not an entitlement program, such as Food Stamps,

with funding available to serve all eligible applicants, higher food costs result in lower number of participants served. We do not believe this would result in the best value possible for the Program.

Section 1103.4 (relating to selection and limitation criteria; authorization process) sets forth the criteria the Department will use to select stores to participate in the WIC Program. The Department has established criteria which will ensure that the Department authorizes to participate in the WIC Program only those stores which are able to provide participants with the foods that meet Federal nutritional standards in 7 CFR 246.10 (relating to supplemental foods) and which are authorized by the Department. At the same time, the criteria ensures that the stores charge the Commonwealth reasonable prices for the foods which are purchased by the participants with WIC checks.

Subsection (a) sets forth 12 criteria the Department will use to determine which stores to authorize for participation in the WIC Program. Subsection (a)(2) requires that a store serve a minimum of 25 participants. This number permits small stores to participate in the WIC Program, while ensuring that the expenditure of Federal dollars for administration and monitoring is not wasted on stores that conduct so little WIC business that their participation in the WIC Program would yield a poor return for the cost.

Other criteria in this subsection have been developed to ensure that stores which are selected to participate in the WIC Program are:

- (1) Able to properly maintain foods (subsection (a)(3)).
- (2) Have minimum inventory of WIC authorized foods available at all times (subsection (a)(5)).
- (3) Be open and available a reasonable number of hours and days for participants to shop (subsection (a)(7)).
- (4) Not have stale dated foods on the sales floor (subsection (a)(4)).
- (5) Have shelf prices of WIC authorized foods at less than the maximum allowable cost established for the two food packages most prescribed for WIC participants (subsection (a)(6)).

To fulfill its responsibilities to exercise sound fiscal management over the operation of the State WIC Program (7 CFR 246.12(a)(1)), the Department has established pricing criteria as part of the process for selecting retail grocery stores (subsection (a)(6)). Stores shall have prices of WIC authorized food packages which are less than the maximum prices established by the Department. The maximum prices for WIC authorized food packages are no more than three standard deviations above the Statewide averages of food prices. These prices will be revised annually based upon changes in industry prices for the most widely used WIC food packages. Maximum allowable prices are necessary to ensure responsible administration of the WIC Program. By only authorizing stores that satisfy criteria for maximum prices, the Department is ensuring that there is no extreme markup in the prices of WIC authorized foods and that the Department is acting in a fiscally responsible manner. This will provide a savings to the Commonwealth which, in turn, will ensure that the greatest number of qualified women, infants and children will receive food benefits from the WIC Program.

The PFMA has argued that any retail grocery store be authorized as a WIC vendor, irrespective of the prices it

charges, as long as the store meets State health and food safety inspection standards and is willing to stock the full line of WIC allowable foods.

The USDA's response to this comment was:

Although current Federal regulations do not include specific selection criteria State agencies must use in selecting stores for WIC authorization, this will soon change. The WIC Reauthorization Act of 1998 requires the Secretary of Agriculture to promulgate final regulations not later than March 1, 2000, which include the following mandate "... a state agency shall, in selecting a retail store for participation in the Program, take into consideration the prices that the store charges for food under the Program compared to the prices that other stores charge for the foods."

With respect to the subsection (a)(4) requirement that the store not have stale dated allowable foods on its sales floor, this is particularly important as it relates to infant formula products when the infant's sole source of nutrition is infant formula. Out of date formula may present a potentially serious health threat to an infant.

The PFMA believes that the selection and limitation criteria are arbitrary; that they are unrelated to participant need, quality of stores or the ability of stores to serve WIC customers, and that they are anticompetitive.

The USDA's response to the PFMA's comment on this issue was:

Selection criteria are standards established by the State agency to ensure the systematic selection of the most qualified vendors for authorization. Although selection and limitation criteria may restrict the ability of particular stores to secure or retain WIC authorization, they are utilized to secure participant access and are a critical element in providing quality service to participants.

The USDA further stated:

The WIC Program's role is to select vendors to service clients, not to set or ensure profit margins for participating vendors. Although vendors benefit from the considerable volume of food purchases made through WIC, as well as other foods purchased at the time of WIC redemption, it is of the utmost importance to remember that participants, not vendors, are the Program's clients.

Subsection (b) delineates criteria which the Department will use to determine which stores should be authorized in areas when more stores meeting selection criteria are applying for authorization than the Department has determined it needs through the assignment of store slots based upon participant population for the area. This criteria will only be used when more stores are applying than the Department has determined it can effectively and efficiently monitor. The underlying policy for limitation of stores was articulated in the discussion of § 1103.3 (relating to authorization of store slots).

The USDA provided the following general comment:

We fully support the State agency's decision to utilize limitation criteria as a means of ensuring the provision of quality services to participants; reducing the possibility of vendor fraud; and promoting the efficient use of the State agency's food grant.

Section 1103.5 (relating to minimum inventory) establishes minimum standards of WIC approved foods that each authorized store shall maintain. This criteria is

necessary to ensure that WIC authorized foods are available to participants when they shop at the store for WIC purchases. In accordance with 7 CFR 246.12(e)(3), the Department considered the impact of authorization decisions on small businesses. To help small businesses, the Department has established minimum inventory standards that are sufficient to serve the needs of one to three participants. The inventory identified in this section meets the nutritional requirements in 7 CFR 246.10.

Minor changes have been made to the minimum inventory requirements from those that the Department is currently using in its administration of the WIC Program. The change in the minimum inventory requirements corresponds to changes in the quantities of foods prescribed for WIC participants to purchase. Specifically, the changes increase the requirements of milk and soy based powdered formula from five to six cans, and increase the requirements of evaporated milk from ten to twelve cans.

Subsection (c) provides that the WIC Program will publish annually in the *Pennsylvania Bulletin* the list of authorized foods and acceptable brand name products. This complies with the mandates of 7 CFR 246.12(h)(2) which requires that the State provide grocery stores with pertinent WIC Program information, including a list of acceptable brand name products. Revision of the list annually permits the Department to review new products, including store brands, and add them to the list if found to meet acceptable nutritional standards established by Federal regulation. This differs from how the program currently operates.

Subsection (c) also provides that the Department will publish in the *Pennsylvania Bulletin* notice of the authorized foods and brand names by September 15 of each year. Currently, notice is provided annually by sending a copy of the WIC food list to each authorized store. It is the intent of the Department to continue the practice of sending the information to the stores. It will do this in addition to publishing the information in a notice in the *Pennsylvania Bulletin*.

Subsections (d)—(f) identify the conditions under which the Department will grant to a store a waiver of the minimum inventory requirements (subsection (d)), the foods for which waivers may be granted (subsection (e)) and when the waivers will no longer be valid (subsection (f)). Waivers will be granted only for certain foods for which the Department has no documented WIC purchases at the store. A waiver granted to the store by the Department will no longer be valid when the store is presented a WIC check by a participant for the purchase of a WIC food for which a waiver was granted. In that event, the WIC authorized store will be required to provide the food item within 72 hours after presentation of a WIC check. This policy excuses a store from stocking foods that have not been purchased at the store, while safeguarding participants by requiring the store to make the prescribed food item available to the participant promptly after it is sought. The granting of waivers benefits a store by relieving the store from the unnecessary burden of maintaining inventory of certain WIC authorized foods when the Department has no documented purchases of the foods.

Section 1103.6 (relating to waiting list) establishes a procedure which allows for the effective administration and management of stores seeking authorization to participate in the WIC Program. This procedure requires that the Department maintain a waiting list of stores seeking authorization when no store slots are available. When a store slot becomes available, the Department will

be cognizant of the stores interested in being authorized and will be able to send authorization information to all on the list, thus ensuring that the Department provides a fair and equitable opportunity for all stores interested in seeking authorization.

Section 1103.7 (relating to participant hardship) establishes criteria the Department will consider to justify authorizing a store in lieu of denying certification or recertification when the store fails to meet selection and limitation criteria. This criteria requires that there be a demonstration of hardship to participants if the store is denied certification or recertification by the Department. By authorizing a noncompliant store to participate in the WIC Program when there is a determination of participant hardship, the Department is furthering the purpose of the Federal act by ensuring that participants have reasonable access to stores. Additionally, this section allows the Department to provide for continuity of services to participants when the store changes ownership, if there is a finding of participant hardship as defined in subsection (b).

Subsection (b)(1) permits the Department to make exceptions for stores that fail to meet selection and limitation criteria if they serve participants whose nationality, ethnicity or religious dietary needs cannot be properly served by another WIC authorized store within a certain and defined distance. For example, if a kosher grocery did not have the minimum inventory of whole milk available at the time a recertification review was conducted, and the next closest kosher grocery was more than 3 miles (for Philadelphia, the distance is 1 mile), the store would be placed on probation if ten or more participants who shop at the store require kosher products. The exception allows the Department to consider one type of the special need of WIC participants.

Subsection (b)(5)—(7) identifies reasonable travel distances to an authorized store and declares that participant hardship exists when a specified number of participants would need to exceed that distance to travel to another WIC authorized store should the store they have selected be removed from the WIC Program. The distances vary according to the number of WIC participants who may be affected if the store were not authorized. As the number of participants affected increase, the distance to the next authorized store decreases for the purpose of determining participant hardship.

This regulation reflects two changes from the current administration of the WIC Program. The first is the addition of 3/10 of 1 mile distance for determining participant hardship for stores serving 300 or more participants. Previously there was no delineated travel distance for stores serving 300 or more participants. The second change is the provision for the temporary authorization of a store which had changed ownership. Temporary authorization would be permitted when the Department has not received sufficient notice to arrange for alternate shopping accommodations for WIC participants. As stated earlier, Federal regulations specifically provide that authorizations of stores are null and void when operation of the store ceases or ownership changes. See 7 CFR 246.12(f)(2)(xix). Administratively, the provision for temporary authorization permits the Department to be responsive to the immediate needs of the participants for supplemental foods. It also enables the Department to remain compliant with Federal regulations, by providing for a temporary authorization of stores which have changed ownership rather than permitting continued WIC purchases to a store no longer certified. This tempo-

rary authorization is valid only until the WIC Program is able to conduct a complete certification review of that store, and any other store which may be seeking certification in that area.

Chapter 1105. Requirements of WIC authorized stores.

Section 1105.1 (relating to training) establishes the type and frequency of training that the Department needs to provide to authorized vendors to satisfy the Federal regulations for training of authorized grocery stores. The training is intended to prevent WIC Program errors and abuse, and to improve WIC Program service as required by 7 CFR 246.12(h). Federal regulations require as a part of the vendor agreement, that the manager of a store or an authorized representative of a store accept training on program procedures and be responsible for training cashiers and other staff. The Federal regulations do not specifically mandate how this is to be accomplished. See 7 CFR 246.12(f)(2)(vii)—(ix).

The Federal regulations do require, however, that food vendors be provided with pertinent program information and guidance. See 7 CFR 246.12(h). Subsection (a) pertains to initial training. It mandates that newly authorized stores receive training on WIC Program policies and procedures prior to actually accepting WIC checks. This ensures that management and cashiers understand their responsibilities related to the store's participation in the WIC Program before they participate in WIC transactions. This subsection requires that the local agency responsible for the area in which the store is located conduct the initial training within 30 days of the date of authorization to ensure that, once a store is authorized, it will be able to participate in the program as soon as administratively feasible. Requiring store personnel to be trained prior to the store accepting checks prevents WIC Program errors.

Subsection (b) pertains to annual training. It provides for continued education, in recognition that retail food sales occur in an employment environment that experiences high turnover rates. The Department requires annual training of at least one person from each store who is responsible for training store personnel on WIC Program procedures. For the convenience of store personnel, the Department provides each store with two opportunities for it to have a satisfactory person attend the annual training. This subsection further provides for training within the county where the store is located or in an adjoining county so that the store representative will not be burdened by traveling long distances to attend the annual training. Annual training is designed to prevent WIC Program errors and improve WIC Program service by ensuring that authorized stores are provided continued education on the WIC Program and kept abreast of pertinent changes in the WIC Program operation. Annual training programs facilitate communication between authorized stores and WIC Program staff and allow the WIC Program staff to be responsive to issues affecting stores.

Subsection (c) pertains to corrective training. It provides a means for the Department to aid stores in correcting violations identified during onsite reviews. Corrective training allows WIC Program staff to be responsive to problems documented during onsite visits to authorized stores. Corrective training ensures that the WIC Program has provided all possible assistance to stores in correcting problems prior to imposing sanctions against them as provided in § 1107.1 (relating to sanctions).

Section 1105.2 (relating to overcharge recovery system) establishes procedures for the Department to detect overcharges on WIC participant purchases by stores redeeming WIC checks and provides for reimbursement to the WIC Program of overcharges, if found.

Federal regulations require that the Department establish procedures to ensure the propriety of food instruments, which includes designing a system to review food instruments to detect suspected overcharges. See 7 CFR 246.12(r)(5). This section complies with that requirement. Subsection (a) requires authorized stores to submit to the Department, on a quarterly basis, prices for WIC authorized foods the Department designates. The store is required to provide the information on a "Quarterly Price Report" form provided by the Department. The regulation also permits vendors to file these forms by fax.

Subsection (b) provides that the Department will compare the prices submitted by the store, against the actual prices charged by the store on redeemed food instruments, to determine if there have been overcharges. This system detects only the most egregious overcharges, because it uses the highest prices charged by the store during the reporting period. Therefore, notwithstanding that the store's prices may have fluctuated during the review period, the Department will be able to detect only those charges which exceed the maximum price that a store could have charged for a food package based upon the prices provided by the store.

Federal regulations require the Department to seek reimbursement from the store for overcharges and require notice of the Department's intent to do so as part of the agreement between the Department and authorized store. See 7 CFR 246.12(f)(2)(iv). Subsection (f) requires the store to submit reimbursement to the Department within 20 days if the store if the store does not dispute the claim. This time period allows the store a reasonable opportunity to investigate the propriety of the overcharges claimed by the Department and arrange for payment.

Subsection (g) provides a mechanism for vendors to dispute claims for overcharges if the store questions the propriety of the overcharges, if the store notifies the Department within 15 days of the date of the billing notice. Requiring that stores provide notice of a dispute within a defined time, provides for administrative efficiency by the Department and ensures prompt action by the store to identify and correct problems which may have caused the overcharges. Failure to reimburse the Department for overcharges when due will result in the imposition of a sanction under § 1107.1.

Recovery of overcharges is not only required by Federal regulations, it also benefits the WIC Program by recapturing funds which the Department may recycle to provide food benefits to additional WIC participants.

Section 1105.3 (relating to terms and conditions of participation) sets forth the terms and conditions under which stores will be authorized to participate in the WIC Program. Subsection (a) sets forth the responsibilities of stores generally, subsection (b) sets forth the responsibilities of stores with regard to participants and subsection (c) sets forth the terms and conditions of participation with regard to processing and redemption of WIC checks. Many of the requirements found in this section are specifically set forth in the Federal regulations. Other provisions have been added by the Department to ensure that the Department is able to carry out its responsibilities mandated by the Federal regulations and to carry out the purpose of the WIC Program.

For instance, subsection (a)(4) require stores to maintain minimum inventory of allowable foods and subsection (a)(5) requires them to ensure that foods are properly stored and refrigerated. This ensures that authorized stores are maintaining minimum levels of WIC authorized foods so that the foods are available for participants to make their WIC purchases when shopping at the store, and that foods are fresh and their nutritional content is not compromised. These provisions permit the Department to carry out its responsibility of providing nutritious, supplemental foods to participants of the WIC Program.

Subsection (c), which pertains to the processing and redemption of WIC checks, establishes procedures for the stores to follow which protect the integrity of the WIC data and the integrity of the fiscal operation of the program.

The only change to the terms and conditions of participation set forth in this section from the way the program has previously operated is to require stores to display current shelf prices of WIC authorized foods. This change will ensure that accurate food prices are collected during compliance and monitoring reviews and will help participants to shop wisely and utilize their benefits in a cost effective manner. The change takes into consideration the effect on small stores, by allowing stores the option of displaying the prices on a food list, easily located and clearly visible to participants.

Section 1105.4(d) (relating to change of ownership of a WIC authorized store) puts stores on notice that the Department will not accept an application from a new owner if it appears that the change of ownership is a sham transaction used as a method of avoiding a sanction or disqualification.

Section 1105.5 (relating to changes in availability or location of WIC authorized stores) sets forth Department notification requirements for stores which temporarily or permanently close or relocate. It further provides Department procedures for dealing with each circumstance. The purpose of the section is to ensure that the WIC Program will have sufficient time to notify participants when stores at which the participants are making WIC purchases will not be open or are relocating. Requiring the stores which are going to close or relocate to provide the Department with prior notification enables the Department to make alternate arrangements for participant shopping so that there will be as little inconvenience as possible for participants.

Subsection (b) identifies relevant factors under which the Department may permit a store to temporarily close without imposing sanctions as required by § 1107.1.

The regulations identify three situations in which the store will not lose its authorization or be sanctioned for temporary closings or minimal relocations. These exceptions were not previously granted.

The first exception allows for a continued authorization of a store that temporarily closes due to natural disaster or death in the immediate family. This exception particularly benefits small business owners since many times those businesses are family owned and operated, and the loss of an immediate family member impacts upon the operation of the business.

The second exception allows for temporary closing for remodeling up to 3 days without the loss of the store's authorization, if the owner notifies the Department 15 days in advance of the date the store is scheduled to close for remodeling. This temporary closing may inconvenience

participants who shop at the store. However, if the Department is apprised of the temporary closure at least 15 days in advance, the Department will have sufficient opportunity to notify the participants so that temporary, alternate arrangements can be made for WIC participant shopping. The change also allows the Department to provide continuity in WIC services. Participants will be able to resume making WIC purchases at the store that temporarily closes when the store reopens, in lieu of having to permanently change stores, had the store lost its authorization to participate in the WIC Program and not be reauthorized when it reopens.

The third exception allows for the continued authorization for stores which relocate less than 1 mile and are open for business at their new location less than 3-calendar days from the date the store closes at the prior location. The 3-day time limitation ensures that the closing is for a reasonable period of time and causes minimal inconvenience for participants. The limitation of 1 mile distance for relocation was selected because the store is anticipated to attract the same participants if it relocates this distance or less from its prior location. A relocation of greater distance may cause participants to choose other stores located closer to the store's prior location because of travel distance and inconvenience.

Section 1105.6 (relating to monitoring of WIC authorized stores) sets forth the procedures the Department has developed to meet the mandates of Federal regulations for monitoring authorized stores. The purpose of monitoring authorized stores is to ensure compliance with applicable Federal and State regulations, to provide a mechanism to identify problems and assist stores in correcting these problems, and to provide the Department with the ability to take action against stores which fail to correct problems or which may be engaging in fraudulent or abusive activity. Monitoring of stores protects the financial integrity of the program and ensures effective and efficient program service to WIC participants.

The Department is mandated by 7 CFR 246.12(i) to monitor food vendors within its jurisdiction. The Federal regulations require that the Department develop a system which identifies high-risk vendors and ensures onsite monitoring of WIC authorized stores. See 7 CFR 246.12(i)(1). The Department is responsible for designing a system to conduct onsite monitoring of at least 10% of authorized stores per year, to survey the types and levels of abuse and errors among authorized stores and to take corrective action as appropriate. See 7 CFR 246.12(i)(2). Furthermore, the Federal regulations provide the Department with the authority to conduct compliance purchases to collect evidence of improper vendor practices. See 7 CFR 246.12(i)(5).

The Department has established three methods for conducting onsite monitoring reviews of WIC authorized stores: high-risk reviews, routine reviews and training buys. Each of the three types of review have distinct purposes. The types of problems suspected at the stores determine which type of monitoring the Department will conduct.

Subsection (b) establishes procedures for monitoring high-risk stores. By definition, a "high-risk store" is one which is identified as a possible perpetrator of fraud or abuse. The Department will make the preliminary determination that a store is a high risk store based upon an analysis of redemption patterns of WIC checks or sales, through compliance buy violations or by participant or WIC Program staff complaint. Once a store has been identified as a high-risk store, the Department will use

one of two methods for monitoring it to determine whether or not the store is, in fact, a perpetrator of fraud or abuse. The Department will either conduct a compliance investigation or an inventory audit of the store.

A compliance investigation involves a series of at least two investigations of the store by an undercover investigator posing as a WIC participant or person authorized by the WIC Program to act on behalf of a WIC participant. The purpose of the investigation is to ensure compliance with WIC Program requirements. By authorizing a person to pose as a WIC participant, the Department is able to ascertain if store personnel are following WIC Program requirements in conducting WIC transactions. A report is completed following each review and the store will be notified by letter of any deficiencies noted during the review. This notice provides the store the opportunity to take corrective action. If compliance investigations indicate on two consecutive occasions problems in conducting WIC transactions, the Department will conduct mandatory corrective training for store personnel to assist the store in correcting problems identified during the compliance investigation and to provide every possible means to ensure the store's continued participation in the WIC Program. This section further provides that the Department will disqualify a store from further participation in the WIC Program if deficiencies are found during a third investigation following the mandatory corrective training.

The Department will also use inventory audits to monitor high-risk stores. This procedure allows the Department to compare, over a specific period of time, the inventory levels of WIC authorized foods against the actual WIC sales of those same products during the same specific period of time. The Department will use inventory records to determine whether a store had adequate product inventory sufficient to satisfy claims made for WIC reimbursement. This method is a particularly useful tool for determining whether a store is trafficking in WIC checks.

Under 7 CFR 246.12(i)(2), the Department has developed a procedure for monitoring at least 10% of authorized food vendors per year. This procedure is in subsection (c). The purpose of these types of reviews are to determine whether or not authorized stores remain in compliance with the selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process). This type of review is also used to determine whether stores continue to comply with the terms and conditions for participation in § 1105.3 (relating to terms and conditions of participation). The Department will provide corrective training for a store which fails two consecutive routine reviews. This is done in an effort to assist stores in correcting problems. If problems are identified during the third routine review of the store, the Department will proceed to impose sanctions against the store under § 1107.1.

Subsection (d) establishes a procedure to monitor a store's check redemption practices. These reviews are conducted by Federal, State or local agency personnel. The same standards for routine monitoring reviews apply regarding mandatory corrective training following two consecutive reviews identifying problems in the check redemption procedure. Also provision is made for the imposition of sanctions against the store following problems noted during a third training buy.

Subsection (e) puts stores on notice that the Department may utilize law enforcement agencies in the investigation of stores suspected of trafficking in WIC checks or suspected of other fraud or abuse of the WIC Program.

Subsection (f) provides for the Department to seek reimbursement from a WIC authorized store that received funds improperly due to any violation of regulations governing the store's participation in the program which were discovered during monitoring reviews.

After reviewing the Department's draft regulations, the PFMA requested that all references to high-risk reviews be eliminated. The PFMA also suggested that the regulations be amended so that retailers always have an opportunity to review and correct identified problems before any sanction is implemented.

The USDA's comment to PFMA's request was:

High-risk review as described in Pennsylvania's regulation include compliance investigations and inventory audits. Such activities are required by Federal regulation 246.12(i) and therefore may not be eliminated.

An interpretation of Federal regulations 246.12(i) which we received from Supplemental Food Programs Division indicated that the opportunity to correct deficiencies was referring to deficiencies detected during onsite monitoring visits and not for more serious violations detected during covert compliance investigations or inventory audits.

The PFMA suggested that regulators develop a distinction between willful violators and human error committed by well meaning employees.

The USDA's response to this comment was:

It is our position that vendors should be held accountable for noncompliance and Program violations, whether they be deliberate attempts to abuse the Program or a chronic repetition of inadvertent errors, since both ultimately result in increased food costs and fewer participants being served. Not only is it extremely difficult for State agencies to ascertain the intent behind an action, whether inadvertent or deliberate such action has the same negative effect on the Program. Furthermore, we believe that the fact that errors were performed by nonmanagement employees does not relieve the vendor of the responsibility for that employee's actions. Removing an abusive employee does not mitigate the effects of chronic vendor error and mismanagement on Program costs and does not lessen the vendor's responsibility to provide effective oversight and appropriate employee training.

Chapter 1107. Sanctions.

Section 1107.1 (relating to sanctions) establishes the types of sanction, duration of sanctions and the standards the Department will use in imposing a sanction against a WIC authorized store.

Federal regulations mandate that the Department establish policies and procedures which determine the type and level of sanctions to be applied against food vendors, based upon the nature and severity of the WIC Program violations observed, and other factors such as the Department determines are appropriate. See 7 CFR 246.12(k)(1). The regulations mandate that the period of disqualification from the WIC Program be reasonable and not exceed 3 years. The maximum period of disqualification shall only be imposed for the most serious of offenses. See 7 CFR 246.12(k)(1)(ii).

There are three categories of sanctions. Conduct warranting each type of sanction have been grouped together based upon the nature and severity of the violation.

Subsection (h)(1), pertaining to Class A abuses, identifies the type of conduct that carries the sanction of 1 year disqualification from the program. The prohibited conduct generally relates to violations in the provision of food benefits to WIC participants.

Subsection (h)(2), pertaining to Class B abuses, provides for the disqualification for the store from participation in the WIC Program for 2 years. The WIC Program violations specified in this paragraph generally relate to abuse of program funds by authorized stores.

Subsection (h)(3), pertaining to Class C abuses, provides for the imposition of a 3-year disqualification upon stores for the most egregious program violations. These are WIC Program violations committed with the intent to defraud the WIC Program. These violations are considered the most severe, and therefore carry the stiffest penalty permitted by the Federal regulations.

For any program violations not specifically in subsections (h)(1)–(3), the regulations provide that the Department will determine the sanction based upon the nature and severity of the violation.

This regulation presents five minor differences from how the WIC Program is currently administered. The five changes are reflected in the length of sanctions imposed upon a store for violations of statutes and regulations governing the store's participation in the WIC Program. The majority of the changes have decreased the time for the specific violations.

Previously, if an authorized store had the participant sign the check before completing the "Pay Exactly" box on the check, the Department imposed a 2-year sanction. The regulation changes the sanction to 1 year. Previously, if an authorized store overcharged the WIC Program by charging Sales Tax or providing more food than the quantity specified on the check, the Department imposed a 2-year sanction. The regulation changes the sanction to 1 year. Previously, if an authorized store provided rainchecks to a participant because WIC authorized food was unavailable, the Department imposed a 2-year disqualification. The regulation now provides that the Department shall determine the length of the sanction. Previously, if an authorized store demanded that a participant pay for authorized foods with the participant's own money or with another WIC check, the Department imposed a 3-year sanction. The regulation changes the sanction to 1 year.

Section 1107.2 (relating to civil money penalties) establishes when the Department will offer a store the option of paying a civil money penalty in lieu of denial of recertification or in lieu of disqualification. This option is only available when the Department finds that disqualification or the denial of recertification for the store would cause hardship, as defined in § 1103.7 (relating to participant hardship), for the WIC participants currently making their WIC purchases at the store.

The calculation of the civil money penalty is based upon the formula in subsection (b). This formula is similar to that used by the Food Stamp Program for calculation of civil money penalties with one exception: the Department multiplies 5% of the average monthly total value of WIC checks the store negotiated by the number of months the store would have been disqualified, while the Food Stamp Program multiplies 10% of the average monthly sales by the number of months the store would have been disqualified. Current Federal regulations do not have a provision for offering civil money penalties in lieu of disqualification, but new Federal regulations are antici-

pated to require that this option be available under limited circumstances. Those circumstances are similar to those in this regulation.

Chapter 1109. Administrative Appeals.

Section 1109.1 (relating to applicability of general rules) establishes that 1 Pa. Code Part II is applied to proceedings conducted under the WIC regulations except as otherwise provided in these regulations.

Section 1109.2 (relating to scope and purpose) clarifies that Chapters 1111 and 1113 prescribe the administrative procedures to be followed for hearings relating to the WIC Program and required by the Federal statute and regulations in 7 CFR 246.9 and 246.18 (relating to fair hearing procedures for participants; and administrative appeal of state agency decisions). Because certain procedures are required by Federal law, this section further indicates that specific procedures contained in Chapters 1111 and 1113 supplement or supersede the general rules.

Section 1109.3 (relating to time limits for action) relates that time limits for issuance of decisions by the hearing examiner under § 1111.10(d) (relating to hearing examiner decisions) for applicant and participants appeals, and adjudication and orders issued by hearing examiners § 1113.3(b) (relating to adjudication and order) for local agency and store appeals, are directory. The Department may provide time frames for the issuance of the decision, but has no ability to ensure that the hearing examiner's decision will be issued within the time frames provided for by these regulations. Furthermore, other factors may impact upon the timely issuance of a hearing decision, such as whether the matter was continued and whether posthearing briefs were requested by the hearing examiner or the parties.

Chapter 1111. Applicant and Participant Appeals.

This chapter establishes procedures for applicants and participants of the WIC Program to appeal certain decisions which adversely impact upon their participation in the WIC Program. The Federal regulations regarding the appeals may be found in 7 CFR Part 246. The purpose for establishing special procedures for participants and applicants is to encourage participants and applicants to appeal decisions with which they do not agree. The regulations achieve this by presenting them with a forum to pursue appeals which is not unduly complex or legalistic.

Section 1111.1 (relating to applicant and participant appeal rights) provides that the scope of this chapter is to address appeal rights of applicants and participants. Federal regulations have established hearing procedures which are intended to provide an opportunity for applicants and participants to challenge certain WIC Program decisions which may adversely impact upon the person. See 7 CFR 246.9(a).

Section 1111.2 (relating to notification of appeal rights) sets forth the WIC Program decisions which may be appealed. It further provides for the provision of notice to applicants and participants of their right to appeal decisions covered under the scope of this chapter.

Subsection (a) requires that the local agency advise an adult applicant or the parent or guardian of an infant applicant of the right to appeal decisions which deny benefits. This subsection further requires the local agency to provide notice to an adult participant or the parent or guardian of an infant participant, of the right to appeal a decision which results in a claim against the individual for improperly issued benefits or that person's disqualifi-

cation from the WIC Program. This section explicitly provides that the expiration of benefits is not appealable. This subsection complies with the requirements in 7 CFR 246.9(c).

Subsection (b) requires the local agency to provide the notice required under subsection (a) in writing, on forms provided by the Department. The purpose of this requirement is to ensure that the WIC Program has documentation that it has complied with the notice requirements in subsection (a) and to ensure that the participant understands that the participant has the right to appeal the decisions. The Department has developed standard forms, readable at an eighth grade level, to ensure that the adult applicants and participants, or the parent or guardian of infant applicants or participants, understand their rights.

Section 1111.3 (relating to appeal of a local agency decision) defines how an adult applicant or participant, or the parent or guardian of an infant applicant or participant, may appeal a local agency decision.

Subsection (a) defines an appeal as a clear expression that the person wishes to present the case to a higher authority. The appeal need not be in writing. This is consistent with the Federal requirements in 7 CFR 246.9(d). If the clear expression of the desire to appeal has not been put in writing by the participant, this subsection places the burden upon the Department or local agency to reduce the appeal to writing. This is required to document that the appeal was made and the date on which the appeal was made.

Subsection (b) establishes the standard for determining a docketing date for an oral appeal. The appeal shall be docketed as being filed when the local agency receives the communication. This date is important to ensure that the appeal was made within the required time for appeal in § 1111.4 (relating to time for appeal of a local agency decision).

Section 1111.4 requires the applicant, participant or authorized representative of the applicant or participant to appeal a WIC Program decision within 90 days after the date the local agency mails or delivers the decision. This standard is more liberal than the minimum standard in 7 CFR 246.9(e). Federal regulations require that the individual be provided a reasonable period of time to request a hearing to appeal the adverse decision, if the time limit is at least 60 days.

Section 1111.5 (relating to scheduling the hearing) requires that the local agency appoint as a hearing examiner an individual who has not participated in the decision being appealed and who does not have a personal stake or involvement in the decision. This requirement ensures that the hearings are conducted by a fair and impartial hearing examiner, as mandated by 7 CFR 246.9(i).

Subsection (b) provides that the local agency advise the hearing examiner of the date on which the appeal is docketed. This is to ensure that the hearing examiner has the information available to the examiner to comply with the requirements for scheduling the hearing in subsection (c).

Subsection (c) sets forth the time frame for scheduling the hearing. In compliance with 7 CFR 246.9(j), the hearing shall be held within 3 weeks of the docketed date of the appeal. Further, the hearing examiner is required to provide the applicant or participant or authorized representative of the applicant or participant a minimum of 10 days advance written notice of the time and place

for the hearing. The purpose of these requirements is to ensure that hearings are held promptly. If the decision of the local agency is overturned, an applicant may receive, as soon as possible, supplemental nutrition benefits that have been denied. If the decision of the local agency is overturned, the participant may resume receiving benefits from the WIC Program as soon as possible. The 10-day advance notice is sufficient to allow the applicant or participant or authorized representative to arrange that person's schedule to ensure attendance at the hearing requested.

Subsection (d) establishes standards for scheduling hearings in compliance with the mandate of 7 CFR 246.9(h) for the development of uniform rules of procedure. These standards require:

- (1) That the forum for the hearing be convenient for the applicant or participant.
- (2) Provide the method for requesting continuances.
- (3) set forth the circumstances under which an appeal may be withdrawn.
- (4) Provide the circumstances under which an appeal shall be discontinued.

Subsection (e) provides the hearing examiner, under 7 CFR 246.9(i)(5), the authority to order, when relevant and necessary, an independent medical assessment. When a medical condition is contested, this subsection provides the means for an impartial opinion.

Section 1111.6 (relating to denial or dismissal of appeal) prescribes the three instances when the hearing examiner may deny or dismiss the appeal of an applicant, participant or authorized representative of an applicant or participant. The appeal may be denied or dismissed when it is not timely received, when the appeal has been withdrawn or when the person's authorized representative fails without good cause to attend. These standards provide administrative management for the resolution of appeals.

Section 1111.7 (relating to continuation of benefits) provides for a continuation of benefits if the participant timely files an appeal of a local agency decision that renders the participant ineligible to continue receiving benefits. This complies with 7 CFR 246.9(g). The purpose of this section is to ensure that an individual receiving benefits who timely appeals the local agency decision continues to receive the WIC Program foods until the local agency decision to terminate benefits is addressed by the hearing examiner. The costs of WIC Program benefits in the interim between the appeal and the decision is minimal when weighed against the possible loss of nutritional benefits to the participant if the local agency decision to terminate benefits is found to have been inappropriate.

Section 1111.8 (relating to rights of the appellant) prescribes the rights of the appellant during the appeals process. The rights in this section are under the Federal regulatory mandate that the State establish rules of procedure. These rules of procedure include the rules of conduct at the hearing and the rights of the appellant during the appeals process. See 7 CFR 246.9(h). In particular, subsection (b) sets forth 12 rights of the appellant. Three of the rights supplement or supersede sections of 1 Pa. Code Part II. The appellant has the right to appear in person at the hearing. This provision supplements 1 Pa. Code § 31.21 (relating to appearance in person). The appellant has the right to be represented by an authorized representative at the hearing who need

not necessarily be an attorney. This provision supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings). This right complies with 7 CFR 246.9(j)(2), which provides that the appellant be permitted to be assisted or represented by an attorney or other person at the hearing. The purpose of this subsection is to ensure that procedures are not unduly legalistic or complex. The intent is to encourage applicants and participants to appeal a decision, if they believe the decision was inappropriate, without requiring them to engage the service of an attorney. The applicant, participant or authorized representative may request from the hearing examiner a subpoena for the production of evidence. This provision supplements 1 Pa. Code § 35.142 (relating to subpoenas) by providing authority to the hearing examiner to issue a subpoena upon request.

Section 1111.9(a) (relating to hearing record) prescribes the contents of the hearing record. Subsection (b) requires that hearing records be retained for 3 years. This is required under the Federal record retention requirements in 7 CFR 246.25(a)(1)—(2) (relating to records and repeats).

Subsection (c) provides that hearing records shall be available for public inspection and copying provided that names and addresses are kept confidential.

Section 1111.10 (relating to hearing examiner decisions) prescribes the standards for the hearing examiner to follow in issuing a decision.

Section 1111.11 (relating appeal to the Secretary) establishes procedures for appeals of hearing examiner decisions to the Secretary and prescribes the form of the appeal.

Section 1111.12 (relating to adjudication and order procedures) prescribes how the Secretary may reach a decision on an appeal from the local agency decision. The Secretary may reconsider the decision on the basis of the evidence in the record, admit additional evidence or order a new hearing. Subsection (b) further provides that, upon the filing of an appeal to the Secretary, there is no automatic stay of the enforcement of the local agency decision to terminate benefits which was upheld by the hearing examiner.

Section 1111.13 (relating to judicial review) provides that the applicant or participant has the right to appeal the Secretary's adjudication and order to the Commonwealth Court if the adjudication and order is adverse to the interest of the applicant or participant. This section further provides that the appeal be filed within 30 days after the mailing date of the adjudication and order.

Chapter 1113. Local Agency and Store Appeals.

This chapter establishes procedures for a store or local agency to appeal decisions which adversely impact upon their participation in the WIC Program. The Federal regulations regarding the appeals may be found in 7 CFR 246.18 (relating to administrative appeals of State agency decisions). There is no requirement for local agency and store appeals, as there is for participant and applicant appeals, that the procedures the Department established not be unduly complex or legalistic. The Department has chosen to continue with that practice, to encourage local agencies and stores to participate in the appeals process if they believe that the decisions are incorrect.

Section 1113.1 (relating to right to appeal) establishes which decisions may be appealed by a store or local agency. Not all decisions are appealable. For example, the

expiration of a WIC authorization is not subject to appeal, but the denial of a new authorization is appealable.

Section 1113.2 (relating to appeal procedures) establishes standards for notification by the Division of WIC of its adverse action against a store or local agency, provides for the form of the appeal and provides that any appeal made under this chapter shall be filed with the Director of the Division of WIC within 30 days after any final decision by the Division of WIC. This section further provides for scheduling the hearing and the appointment of the hearing examiner by the Secretary. Subsection (f) sets forth the standards for conducting a hearing.

Section 1113.3 (relating to adjudication and order) establishes the contents of the adjudication and order, the time frames (which are directory) for issuing the order, and the contents of the record the hearing examiner is required to maintain.

Section 1113.4 (relating to continuing responsibilities) mandates that a store or local agency continue to comply with any written agreement between the Department and the store or local agency during an appeal.

Section 1113.5 (relating to judicial review) provides that the store or local agency has the right to appeal the Secretary's adjudication and order to the Commonwealth Court if the adjudication and order is adverse to the interest of the store or local agency. This section further provides that the appeal shall be filed within 30 days after the mailing date of the adjudication and order.

C. Fiscal Impact

The WIC Program is 100% funded by the Federal government. No State dollars are involved in the operation of the WIC Program, including compensation of State employees. There will be no fiscal impact on the State government or other political subdivision as a result of these regulations.

With few minor exceptions, as noted in the Section B "Summary," the provisions of these regulations set forth, in a regulatory format, how the Department has administered the WIC Program since approximately 1986. Therefore, these regulations will have no significant fiscal impact on the general public or on the stores that voluntarily choose to participate in the WIC Program.

D. Paperwork Requirements

The only change relating to paperwork these regulations will require is the maintenance by authorized stores of price and inventory records for 6 months. See § 1105.3(a)(21).

Although there was not previously a regulatory requirement that WIC authorized stores maintain price and inventory records for a stated period of time, authorized stores have been required to provide the Department with the highest prices of authorized foods on a quarterly basis since the calendar quarter ending December 1991. Therefore, authorized stores have had to maintain price and inventory records for at least a 3-month period to comply with this obligation. The new regulation, requiring authorized stores to maintain the price and inventory records for 6 months, will not represent a significant impact on authorized stores. New Federal regulations governing the food delivery systems of state agencies are anticipated in the near future. The new Federal regulations are expected to mandate that states require authorized stores to maintain price and inventory records for the same period of time as the businesses are required to maintain the records for Federal tax purposes. The Commonwealth's requirement is significantly less burdensome.

E. Effective Date

The regulations are effective upon publication in the *Pennsylvania Bulletin*. These regulations will be monitored continually and will be updated as required by changes in Federal statute or Federal regulations governing the WIC Program.

F. Statutory Authority

The WIC Program is a Federal program authorized by an amendment to the Federal Act (42 U.S.C.A. § 1786). Congress has authorized the USDA-FNS to contract with state agencies for the establishment of the WIC Program. The act and regulations governing the WIC Program require that the state agency responsible for the administration of the WIC Program submit on an annual basis a state agency plan of operations (42 U.S.C.A. § 1786(f)(1)(A); 7 CFR 246.4). The Federal statute and regulations require that the state agency establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan, which the Department does by annually publishing notices in the *Pennsylvania Bulletin* and newspapers of general circulation, as well as sending notices to interested parties. All state agency plans of operations, as well as any changes thereto, must be approved by the Secretary of the USDA. The state agency may not deviate from the plan without USDA approval. There is, however, no Federal requirement for the establishment of state regulations.

G. Regulatory Review

These regulations are being promulgated under the decision of the *Commonwealth Court in Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health*, 713 A.2d 177 (Pa. Cmwlth. 1998), wherein the Court found the criteria that the Department used to authorize grocery stores to participate in the food delivery system of the WIC Program were invalid because they were not promulgated as a regulation. The court did not address the propriety of the criteria; it found only that the criteria needed to be published as a regulation under sections 1102—1602 of the CDL (45 P. S. §§ 1102—1602), and submitted to the Office of Attorney General under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). The Court further found the Regulatory Review Act (71 P. S. §§ 745.1—745.17) was inapplicable to the criteria the Department uses to authorize grocery stores, because the criteria were developed by the Department as a result of a delegation of authority based solely upon Federal statute and regulation, and thus, are outside the scope of the Regulatory Review Act.

The Department, nevertheless, has elected to submit these regulations to the Independent Regulatory Review Commission (IRRC) and the standing committees of the Pennsylvania House and Senate for review and to follow the Regulatory Review Act procedures for service upon and cooperation with IRRC and the standing committees.

Because the regulations relate to the administration of the WIC Program by the Department, the Department was required to submit them to the USDA-FNS for approval as part of the state agency annual plan of operations. Following revisions required by the USDA-FNS, by letter dated April 12, 1999, the regulations were approved. These regulations may not be changed without the review and approval of the USDA-FNS.

H. Regulatory Review

Consistent with section 5.1(a) of the Regulatory Department Review Act (71 P. S. § 745.5a(a)), on April 24, 1999, the Department submitted a copy of the final-form regulations with proposed rulemaking omitted to IRRC and the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. On the same date, the final-form regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act. In addition to submitting the final-form regulations, the Department has provided IRRC and the Committees with 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.

In accordance with section 5.1(d) of the Regulatory Review Act, the final-form regulations were deemed approved by the House Health and Human Services Committee on May 19, 1999, and deemed approved by the Senate Public Health and Welfare Committee on May 19, 1999. IRRC met on May 20, 1999, and approved the final-form regulations. The Office of Attorney General approved the final-form regulations for form and legality on July 14, 1999.

I. Contact Person

Persons with questions regarding the final-form regulations may contact Greg Landis, Chief of the Grants and Retail Store Section, Division of WIC, Department of Health, P. O. Box 90, Room 604, Health and Welfare Building, Harrisburg, PA 17108, (717) 783-1289. Persons with a disability, who have questions regarding the final-form regulations may also be submitted to Mr. Landis in alternative formats, such as by audio tape, braille or by using V/TT 783-6514 for speech or hearing impaired persons or the Pennsylvania AT&T Relay services at (800) 654-5984 [TT]. Persons with a disability who require an alternative format of this document (such as, large print, audio tape, braille) please contact Mr. Landis so that he may make the necessary arrangements.

J. Findings

The Department for good cause finds that:

(1) The promulgation of these final-form regulations is necessary under the Commonwealth Court decision in *Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health*, 713 A.2d 177 (Pa. Cmwlth. 1998).

(2) The WIC Program must carry out the purposes of the Federal act for which Federal funds have been provided to the Department.

(3) To carry out the purposes of the Federal act, the Department must authorize and review stores to participate in the WIC Program as part of the delivery of supplemental food benefits to WIC participants through the retail system which the Department has elected to use.

(4) The Department will comply with the requirements of the Federal regulations governing the WIC Program found in 7 CFR 246, and particularly with respect to these regulations, the Federal regulations governing the food delivery system of the WIC Program, 7 CFR 246.12(g), which requires that the Department conduct reviews of stores at least once every 2 years.

(5) Reviews of at least 1,400 retail grocery stores and numerous other stores seeking authorization must be

completed by September 30, 1999, to stay compliant with the Federal regulations governing the WIC Program. See 7 CFR 246.12(g).

(6) Failure to have State regulations promulgated in the most expeditious manner possible will render the Department unable to conduct the reviews of the 1,400 retail grocery stores, and will place the Department out of compliance with Federal regulations.

(7) If the Department is not compliant with Federal regulations, the Commonwealth will face audit exceptions and a loss of Federal funding to operate the WIC Program.

(8) Because the WIC Program is 100% Federally funded, loss of \$170 million in Federal funding would place a difficult, if not impossible, burden upon the Commonwealth to provide funds to continue to operate the WIC Program, which provides benefits to approximately 243,000 women, infants and children.

(9) The regulations contained in Annex A set forth in a regulatory format standards for the administration of the WIC Program, as they relate to design and operational requirements of the food delivery system which have been in effect since 1986.

(10) Dispensing with proposed rulemaking is necessary to meet Federal regulatory requirements and the procedures specified in 45 P. S. §§ 1201 and 1202 are in the circumstances impracticable to comply with if the Department is to comply with Federal regulations.

(11) Dispensing with proposed rulemaking advances the public interest by ensuring that provision of supplemental food benefits to the participants of the WIC Program.

(12) Dispensing with proposed rulemaking advances the public interest in protecting Commonwealth funds by ensuring that there will be no loss of Federal funding which would require that the Commonwealth provide state funding to operate the WIC Program in the absence of Federal funding.

K. Order

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

(a) The regulations of the Department, 28 Pa. Code §§ 8.41—8.43, 8.51—8.62 and 8.71—8.74 are hereby deleted.

(b) The regulations of the Department are hereby amended by adding Chapters 1101, 1103, 1105, 1107, 1109, 1111 and 1113: by adding §§ 1101.1—1101.3, 1103.1—1103.7, 1105.1—1105.6, 1107.1, 1107.2, 1109.1—1109.3, 1111.1—1111.13 and 1113.1—1113.5, to read as set forth in Annex A.

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

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

(5) The regulations shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBERT S. ZIMMERMAN, Jr.,
Secretary

(Editor's Note: For the text of a notice relating to this final rulemaking, see 29 Pa.B. 3964 (July 24, 1999). For

the text of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 2933 (June 5, 1999).)

Fiscal Note: 10-158. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART I. GENERAL HEALTH

CHAPTER 8. PRACTICE AND PROCEDURE

§§ 8.41—8.43. (Reserved).

§§ 8.51—8.62. (Reserved).

§§ 8.71—8.74. (Reserved).

PART VIII. SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC PROGRAM)

CHAPTER 1101. GENERAL PROVISIONS

Sec.

1101.1. Background and scope.

1101.2. Definitions.

1101.3. Administration.

§ 1101.1. Background and scope.

(a) *Background.* Through an amendment to the Child Nutrition Act of 1966 (42 U.S.C.A. § 1786), Congress has authorized the USDA-FNS to contract with state agencies for the establishment of the WIC Program. The USDA-FNS contracts with and makes funds available to the Department to administer the WIC Program in this Commonwealth.

(1) The purpose of the WIC Program is to provide allowable foods to income eligible pregnant, breast-feeding or postpartum women, infants, and children up to 5 years of age, who are at nutritional risk because of medical problems or poor diets. The WIC Program provides these individuals with nutritious foods to supplement their diets during critical stages of growth and development. These foods are chosen to correct, prevent or minimize health and nutritional problems. The foods are not intended to be a complete diet, but, rather, to supplement other foods available to the participants.

(2) In addition to providing supplemental foods, the WIC Program refers applicants and participants to health services and offers nutrition education so that the food will be properly used and will improve the dietary and health habits of the entire family. The Department uses a retail purchase system to provide the majority of food benefits to participants.

(b) *Scope.* This part establishes design and operational requirements for the food delivery system for the WIC Program, and prescribes procedures to be used by applicants, participants, local agencies and stores to appeal actions of the Department and local agencies that may adversely impact upon them.

§ 1101.2. Definitions.

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

Allowable foods—Foods and infant formula on the WIC food list. These products meet nutritional standards established by the USDA-FNS and are authorized by the Department for purchase with WIC checks.

Applicant—An individual applying to become a participant.

Authorized representative—For an applicant or participant, an adult applicant or participant, a parent or guardian of an applicant or participant who is an infant or child or an individual designated by that person to represent the applicant or participant in administrative proceedings involving the WIC Program. For a local agency or store, an individual designated by the local agency or store to represent it in administrative proceedings involving the WIC Program.

Breast-feeding woman—A woman, during 1 year postpartum, who is breast-feeding her infant.

Certification—For purposes of Chapters 1101—1109 and 1113, the term means the Department's acceptance of a store, not currently authorized to participate in the WIC Program, as a WIC authorized store. For purposes of Chapter 1111 (relating to applicant and participant appeal), the term means the Department's acceptance of an applicant to participate in the WIC Program as a participant.

Child—A person 1 year of age or older but under 5 years of age.

Clinic—A facility where applicants apply for and participants receive WIC Program services other than food benefits.

Compliance buy—A covert purchase at a WIC authorized store, with a WIC check, conducted to enable the Department to evaluate adherence by a WIC authorized store with this part governing the store's participation in the WIC Program.

Compliance investigation—A series of at least two compliance buys conducted at the same WIC authorized store.

Competent professional authority—An individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the Department will authorize to serve as a competent professional authority: physicians, nutritionists (Bachelor's or Master's Degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition, Dietetics, Public Health Nutrition or Home Economics with emphasis on nutrition), dieticians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials. The term also applies to an individual who is not on staff at the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on staff of the local agency.

Department—The Department of Health of the Commonwealth.

Disqualification—For the purposes of Chapters 1101—1109 and 1113 of this part, the term means the action by the Department to end participation of a WIC authorized store in the WIC Program for reasons of fraud, abuse or other violations of this part governing the store's participation in the WIC Program. For purposes of Chapter 1111 (relating to applicant and participant appeals), the term means action by the Department or local agency to end participation of a participant who no longer meets the qualifications necessary to participate in the WIC Program or for reasons of fraud, abuse or violation of standards governing the participant's enrollment in the WIC Program.

Division of WIC—Division of WIC in the Department.

Endorser—The parent or guardian of an infant or child participant who is authorized to use and sign the WIC checks of the infant or child for purchase of allowable foods.

Filing date—The date on which the local agency or the Department receives an appeal.

Food prescription—A designation by a competent professional authority of allowable foods in specified quantities to meet a participant's nutritional needs based upon a determination of nutritional risk.

Health services—Routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

High risk store—A store identified as a possible perpetrator of fraud or abuse through analysis of redemption patterns of WIC checks or WIC sales, through compliance violations, or by complaints of participants or WIC Program staff.

Infant—A person under 1 year of age.

Inventory audits—A comparison of a WIC authorized store's inventory levels and purchases of a particular WIC product over a specific period of time, to actual WIC purchases of the same product during the same period of time, to determine if the store had adequate product quantities available to satisfy claims made for WIC reimbursement of the product during the same period of time.

Limitation criteria—Criteria in § 1103.4(b) (relating to selection and limitation criteria; authorization process) which the Department has established to limit the number of WIC authorized stores in a particular area to assure that State and local officials can effectively manage, review and monitor WIC authorized stores.

Local agency—A public or private nonprofit health or human service agency with which the Department contracts to provide WIC Program services for a specific geographic area.

Nutritional risk—A determination that one of the following exists:

- (i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements.
- (ii) Other documented nutritionally related medical conditions.
- (iii) Dietary deficiencies that impair or endanger health.
- (iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

Onsite review—An overt visit to a store by Federal, Department or local agency personnel to determine if the store meets the selection criteria necessary to be certified or recertified as a WIC authorized store, or a visit to a WIC authorized store after certification or recertification, to determine whether the store is complying with this part governing the store's participation in the WIC Program.

Participant—A pregnant woman, breast-feeding woman, postpartum woman, infant or child enrolled in the WIC Program.

Participant certification period—The period of time during which an individual is authorized to participate in the WIC Program.

Postpartum woman—A woman, during 6 months after termination of pregnancy.

Pregnant woman—A woman determined to have one or more embryos or fetuses in utero.

Proxy—A person authorized by the local agency and the participant, or by the participant's parent or guardian if the participant is an infant or child, to pick up or use WIC checks to make purchases for that participant.

Recertification—The Department's authorization of a WIC authorized store, following a review process, to continue as a WIC authorized store.

Redeem—A WIC authorized store submitting a WIC check to its bank for the purpose of securing a money payment for the amount appearing in the "Pay Exactly" box on the WIC check.

Sales floor—The display shelving, the floor in the area normally used for retail trade and the area behind the customer service desk, excluding other areas not accessible to the general public.

Sanction—A penalty imposed by the Department upon a WIC authorized store for violation of this part governing the store's participation in the WIC Program. The term does not include a decision to deny certification or recertification following a certification or recertification onsite review process.

Secretary—The Secretary of Health of the Commonwealth.

Selection criteria—Criteria in § 1103.4(a) which the Department has established which a store seeking to be certified or recertified is required to satisfy.

Standard formula—Infant formula products that do the following:

- (i) Meet the Federal WIC regulatory definition of an iron-fortified formula (7 CFR 246.10 (c)(1)(I) (relating to supplemental foods)).
- (ii) Comply with the Infant Formula Act of 1980, the act of September 26, 1980 (Pub.L. No. 96-359, 94 Stat. 1190), which amended the Food and Drug Act.
- (iii) Meet the requirements of an "infant formula" as opposed to an "exempt infant formula" or "medical food" as determined by the Food and Drug Administration (FDA), United States Department of Health and Human Services.

Stale-dated—After the date imprinted on the product as the recommended last date for sale or use.

Store slot—A slot established by the Department for a WIC authorized store in a particular geographic area. The number of store slots the Department authorizes for a geographic area assigned to a local agency is based on the expected participant population of that area.

Trade area—A designated geographic area within the geographical area assigned to a local agency, which is organized to serve the participant populations in that designated area through an assigned number of store slots.

Training buy—The presentation of a WIC check by a Federal, Department or local agency representative to purchase foods at a WIC authorized store, which does not result in the actual tender of the WIC check or the purchase of the foods, to evaluate adherence by a WIC authorized store with this part governing the store's participation in the WIC Program.

USDA-FNS—The United States Department of Agriculture, Food and Nutrition Service.

WIC authorized store—A retail food store which is authorized through certification or recertification to provide allowable foods to participants by accepting WIC checks.

WIC check—A negotiable instrument issued to participants to purchase allowable foods at WIC authorized stores.

WIC food list—A list published by the Department in the *Pennsylvania Bulletin* of foods and infant formula which may be purchased with WIC checks.

WIC identification card—A document issued by the Department to a participant, which is used for identification purposes, signature verification and authorization to purchase allowable foods with WIC checks at a WIC authorized store.

WIC Program—The Special Supplemental Nutrition Program for Women, Infants and Children.

WIC Program benefits—Supplemental foods, nutrition education and referral to health services.

§ 1101.3. Administration.

(a) *Department responsibilities.* The Department will develop policies and procedures for the operation of the WIC Program, distribute funds to local agencies to assist the Department in operating the WIC Program, authorize stores to participate in the WIC Program, monitor and evaluate WIC Program services provided by WIC authorized stores, maintain fiscal records, submit reports and carry out all other responsibilities delegated to it by the USDA-FNS for the operation of the WIC Program.

(b) *Local agency responsibilities.* Local agencies shall determine whether participants meet eligibility criteria developed by the Department, develop food prescriptions for participants, provide nutrition education to participants, provide referral information regarding ongoing health services, issue WIC checks to participants to purchase allowable foods and ensure that all participants are served without discrimination. Local agencies shall function as representatives of the Department in conducting certification and recertification reviews, and in monitoring the activities of WIC authorized stores.

CHAPTER 1103. AUTHORIZATION OF STORES

- Sec. 1103.1. Certification and recertification reviews.
- 1103.2. Probationary certification.
- 1103.3. Authorization of store slots.
- 1103.4. Selection and limitation criteria; authorization process.
- 1103.5. Minimum inventory.
- 1103.6. Waiting list.
- 1103.7. Participant hardship.

§ 1103.1. Certification and recertification reviews.

(a) *Qualifying for certification or recertification.* To be certified or recertified as a WIC authorized store, a store shall meet the selection criteria in § 1103.4(a) (relating to selection and limitation criteria; authorization process) at the time of the onsite review. If the number of applicants satisfying the selection criteria exceeds the number of stores the Department permits to participate in the WIC Program in a trade area under the limitation criteria in § 1103.4(b), the Department will determine which store to certify or recertify under the process in § 1103.4(c). The Department will exempt a store from satisfying the selection and limitation criteria only if there is a finding of participant hardship, as set forth in § 1103.7 (relating to participant hardship).

(b) *Certification or recertification review process.* The certification or recertification review process is as follows:

(1) A person authorized on behalf of a store to make an application for certification or recertification shall contact the local agency responsible for the county in which the store is located to request an application.

(2) The local agency shall determine if a store slot is available in the trade area in which the store seeking certification or recertification is located.

(3) If a store slot is available, the local agency shall send the WIC Program information and an application to the store.

(4) A store that is not certified shall complete the application in accordance with the instructions therein and return it to the local agency. If the local agency is apprised by a certified store that it wants to be recertified, the local agency shall collect the application from the store at the time of the onsite review. The Department will not accept an application for certification or recertification from a store that has been provided notice of disqualification or is disqualified from the WIC Program. The WIC Program disqualification period shall be completed before an application will be accepted by the Department. The Department may deny an application for certification from a new owner of a recently purchased store if the Department determines that the purpose of the sale of the business was a sham transaction to avoid a WIC disqualification.

(5) A person authorized on behalf of a chain of stores to make an application for certification or recertification shall complete a separate application for each store in the chain that seeks certification or recertification.

(6) The local agency shall schedule an onsite review of the store for the purpose of determining if the store meets the selection and limitation criteria in § 1103.4(a) and (b). The local agency will notify the store of the approximate date of the review.

(7) The local agency shall conduct the onsite review and forward the results to the Department for a decision on the store's application for certification or recertification.

(8) The Department will notify the store of its decision on the store's application for certification or recertification.

(c) *Duration of certification or recertification.* The certification or recertification of a store shall remain in effect until the store is disqualified, changes ownership, withdraws from the WIC Program, its application for recertification is denied or its certification expires if it fails to apply for recertification. The Department will provide 15 days written notice to the store prior to expiration of WIC authorization for any store failing to apply for recertification. Either the Department or the WIC authorized store may terminate the authorization for cause after providing at least 15 days advance written notice.

(d) *Periodic reviews.* At least once every 2 years, the Department will conduct contemporaneous certification and recertification reviews in a trade area for the purpose of filling store slots in that trade area with WIC authorized stores. Both stores that are certified, and stores that are not certified but want to become WIC authorized stores, shall make an application for certification or recertification. The Department will send a notification of the contemporaneous certification/recertification review process to each WIC authorized store and each store on the waiting list. The notice shall include information

advising the store of the procedure for being reviewed for the purpose of receiving certification or recertification. The Department will notify a store which fails to seek recertification or is denied recertification under this subsection of the date the store's current certification expires. Expiration of the certification will not be less than 30 days after the mailing date of the notice.

(e) *Moratorium on applications.* The Department will not accept applications, or schedule or conduct certification reviews in a trade area 90 days or less prior to the scheduled start date of the contemporaneous certification/recertification reviews in that trade area. The Department will grant an exception to this moratorium only if the Department finds that there would be participant hardship, as set forth in § 1103.7, if it does not consider the application. A store granted certification under this exception shall be exempt from the contemporaneous certification/recertification review if it has been certified for less than 60 days prior to the date the contemporaneous reviews begin in the trade area.

(f) *No opportunity to correct problems.* When the Department is making a decision on an application for certification or recertification, it will deny the application if the criteria for certification or recertification set forth in § 1103.4(a) and (b) are not satisfied. The Department will make its decision on the application without providing a warning or an opportunity to correct problems identified during the certification or recertification review.

(g) *Eligibility for stores denied certification or recertification.* A store which has been denied certification or recertification shall wait 6 months from the date of the Department's decision to reapply, except a store denied certification or recertification under § 1103.4(c)(2) will be placed on a waiting list and will be considered immediately for certification if a store slot becomes open.

§ 1103.2. Probationary certification.

(a) *Criteria for probationary certification.* If during the certification or recertification review, the store fails to meet one or more of the qualifications in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process), the Department may grant probationary certification to the store for a period not to exceed 6 months when either of the following applies:

(1) Participant hardship would occur if the store is not certified or recertified.

(2) A store is reviewed prior to opening to the public and the store has not stocked its dairy section or its frozen juice section at the time of the review.

(b) *Probationary certification reviews.*

(1) If a store receives probationary certification, except in situations of participant hardship identified in § 1103.7(b)(8) (relating to participant hardship), the Department will conduct an unannounced onsite review during the probationary certification period to determine if regular status should be granted to the store. The Department may rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(2) If a store receives probationary certification due to participant hardship as identified in § 1103.7(b)(8), the Department will conduct a certification review of the store and any other stores on the waiting list within the store's trade area. The Department may rescind probationary certification and deny the store's application to

serve as a WIC authorized store if the store fails to meet one or more of the selection or limitation criteria during this review.

(c) *Extension of probationary certification.* If the store fails the review conducted during the probationary certification period, and participant hardship exists as determined by the Department, the Department may extend probationary certification for an additional 3 months during which time at least one representative of the store who is responsible for training store personnel on the WIC Program shall attend corrective training.

(d) *Extended probationary certification reviews.* The Department will conduct an unannounced onsite review during the extended probationary certification period after the store representative has attended corrective training, to determine if certification should be granted to the store. The Department will rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(e) *Rescission of probationary certification.* If the Department rescinds the probationary or extended probationary certification of a store, the store is not eligible to reapply for certification for 6 months from the date of the Department's rescission of the certification.

§ 1103.3. Authorization of store slots.

The Department will assign one store slot for every 160 participants anticipated by the Department to participate in the WIC Program, except in Philadelphia, where the Department will assign one store slot for every 260 participants anticipated by the Department to participate in the WIC Program.

§ 1103.4. Selection and limitation criteria; authorization process.

(a) *Selection criteria.* The Department will use the following selection criteria to identify stores that meet the operational criteria to serve as a WIC authorized store:

(1) The store shall be located within this Commonwealth.

(2) A store shall serve or reasonably expect to serve at least 25 participants per month.

(i) The Department will provide a store seeking certification which has not been certified previously, an 8-month period to determine if the store is serving 25 participants. The Department may disqualify a store for a period of no less than 6 months in accordance with § 1107.1(i) (relating to sanctions) if it is not serving 25 participants at the end of the 8-month period.

(ii) The Department may deny recertification if the store is not serving 25 participants per month in the most recent month for which the Department has participant data at the time the recertification review is conducted.

(3) The store shall have allowable foods properly stored and refrigerated.

(4) The store may not have stale-dated allowable foods on its sales floor.

(5) The store shall have available on the sales floor at all times the minimum inventory requirements in § 1103.5 (relating to minimum inventory) of allowable foods.

(6) The store shall have shelf prices less than the maximum allowable cost established by the Department for Food Prescription One and Food Prescription Two. The highest price of each allowable food available at the store,

regardless of brand, shall be recorded to determine if the store's prices are within the maximum allowable prices established by the Department. The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the maximum allowable prices for Food Prescription One and Food Prescription Two. Revisions to the maximum allowable prices will be published in the same manner. Food Prescription One and Food Prescription Two are as follows:

- (i) Food Prescription One consists of the following:
 - (A) Eighteen quarts or 9 1/2 gallons of milk.
 - (B) One pound of cheese.
 - (C) One dozen eggs.
 - (D) One 15 to 18 ounce container of peanut butter.
 - (E) One pound of dried beans or peas.
 - (F) Four 11.5 to 12 ounce containers of frozen concentrated juice or four 46 ounce cans of single strength juice.
 - (G) Thirty ounces of cereal.
- (ii) Food Prescription Two consists of: 24 13 ounce cans of concentrated contract brand milk or soy based infant formula.
- (7) The store shall be open for business at least 8 hours per day, 6 days per week.
- (8) The store shall be sanitary. There may not be evidence of unremoved rubbish, vermin or general lack of cleanliness.
- (9) The store shall operate in a permanent fixed location where participants may purchase allowable foods with their WIC checks.
- (10) The store may not be currently disqualified from participation in the Food Stamp Program or have had a sanction imposed by the USDA-FNS for Food Stamp Program violations within 2 years prior to the application to participate in the WIC Program.
- (11) The store may not be currently disqualified from the WIC Program or have been denied certification or recertification by the WIC Program within the past 6 months unless the conditions of § 1103.6(a)(2) (relating to waiting list) are met.
- (12) The store shall have implemented all required corrective actions resulting from monitoring by the Department, including repayment of any overcharges to the WIC Program, and shall be in compliance with all applicable Federal and State regulations.

(b) *Limitation criteria.* The Department will use the following criteria to limit the number of WIC authorized stores in a trade area:

- (1) A store slot shall be available in the trade area in which the store is located.
- (2) The store may not be located within 1 mile of another WIC authorized store unless the Department determines that there is sufficient WIC participant shopping within the 1 mile area to support an additional WIC authorized store. For the purpose of this section, in order to support the authorization of each additional WIC authorized store within the 1-mile radius, sufficient WIC participant shopping shall mean that the Department has documentation that at least 160 WIC participants per store slot authorized are currently making WIC purchases within the 1-mile radius, except in Philadelphia where sufficient WIC participant shopping shall mean that the Department has documentation that at least 260

participants per store slot authorized are currently making WIC purchases within the 1-mile radius.

(c) *Authorization process.*

(1) If the total number of stores meeting all selection criteria are less than or equal to the total number of store slots assigned to the trade area, all stores meeting the selection criteria shall be authorized to participate in the WIC Program.

(2) If the total number of stores meeting all selection criteria are greater than the total number of store slots assigned to the trade area, the Department will certify or recertify the stores having the lowest weighted prices for the two food prescriptions, until the store slots in the trade area have been filled. For determining the weighted food prices for the two food prescriptions, the Department will add 80% of the total of the store's highest price for Food Prescription One to 20% of the store's highest price for Food Prescription Two.

(3) The criteria in paragraph (2) also apply when more than one store applies for certification or recertification within 1 mile and there is not a sufficient number of participants in the area to support an additional WIC authorized store or stores.

§ 1103.5. Minimum inventory.

(a) A store shall have available on the sales floor at the time of the certification or recertification onsite review, and maintain at all times thereafter while participating as a WIC authorized store, minimum inventory requirements of allowable foods.

(b) Minimum inventory requirements of allowable foods are as follows:

(1) *Formula.*

(i) Contract milk-based formula with iron:

- (A) Sixty-two 13 ounce cans of liquid concentrate.
- (B) Twenty-five 32 ounce cans of ready-to-feed.
- (C) Six 14.1 ounce cans of powdered.

(ii) Contract soy-based formula:

- (A) Thirty-one 13 ounce cans of liquid concentrate.
- (B) Twenty-five 32 ounce cans of ready-to-feed.
- (C) Six 14 ounce cans of powdered.

(iii) Other standard formulas specified on the WIC check are not minimum inventory requirements. The store shall be able to provide these within 72 hours after a participant makes a request for the formula.

(2) *Milk.*

(i) Fluid whole, vitamin D fortified, fourteen 1/2 gallons or quart equivalent.

(ii) Fluid skim or low fat, vitamin A and D fortified, four 1/2 gallons or quart equivalent.

(iii) Nonfat dry, 2 pounds, in 1 or 2 pound containers.

(iv) Evaporated, twelve 12 ounce cans.

(3) *Natural domestic cheese.* One pound each of three varieties prepacked in 8 or 16 ounce packages.

(4) *Grade "A" eggs.* Five, 1 dozen containers.

(5) *Juices.*

(i) Canned, three varieties with a total of nine 46 ounce cans.

(ii) Frozen concentrated, two varieties with a total of nine 11.5 to 12 ounce containers.

(iii) Infant, three varieties with a total of fifteen 4 ounce individual containers.

(6) *Cereal.*

(i) Adult, five varieties in eight ounce or larger packages totaling at least 72 ounces.

(ii) Infant, two varieties, totaling at least 32 ounces.

(7) *Peanut butter.* Five 15 to 18 ounce containers.

(8) *Dried peas and beans.* Two varieties, 1 pound each.

(9) *Tuna.* Four 6 to 6.5 ounce cans, chunk, light, packed in water.

(10) *Carrots.* Two pounds of whole, unpeeled fresh carrots in 1 or 2 pound cello pack, or two cans of sliced carrots in 14 to 20 ounce cans.

(c) *Annual publication of WIC food list.* The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the name of the contract brand of formula and, if applicable, the names of allowable brands of foods, and the maximum price permitted for those allowable foods for which the Department establishes a maximum price.

(d) *Waivers.* The Department may grant minimum inventory waivers for allowable foods listed in subsection (e) under the following circumstances:

(1) For a WIC authorized store, the Department has no current reported purchases of the allowable foods based upon WIC checks redeemed by the store.

(2) For a store seeking certification, the Department has no current reported purchases of the allowable foods based upon WIC checks redeemed by the WIC authorized store closest to the store applying for certification.

(3) The store occupies the same physical location as a prior WIC authorized store, the waiver was granted to the prior WIC authorized store, and the application for certification from the new owner is received by the Department within 3 months after the date the prior WIC authorized store's certification to participate in the WIC Program terminated.

(e) *Waiverable allowable foods.* These foods are:

(1) Contract milk based with iron ready-to-feed infant formula.

(2) Contract milk based with iron powdered infant formula.

(3) Contract soy based ready-to-feed infant formula.

(4) Contract soy based powdered infant formula.

(5) Nonfat dry milk.

(6) Evaporated milk.

(7) Carrots.

(8) Tuna.

(f) *Expiration of waivers.* A minimum inventory waiver of an allowable food granted by the Department shall expire upon the presentation to the store, on behalf of a participant, of a WIC check for the purchase of that allowable food. The WIC authorized store shall provide the food item within 72 hours after presentation of the WIC check.

§ 1103.6. Waiting list.

(a) *Placement of stores on the waiting list.* The Department will place on a waiting list eligible stores as follows:

(1) A store that seeks to become a WIC authorized store if no store slots are open in the trade area where the store is located.

(2) When the total number of stores seeking certification or recertification is greater than the total number of store slots available for the trade area, and the store meets all selection criteria and has prices within the maximum allowable costs of Food Prescription One and Food Prescription Two, but is denied authorization because its weighted price is higher than other stores meeting all selection and limitation criteria.

(3) A store that seeks to apply during a moratorium as set forth in § 1103.1(c) (relating to certification and recertification reviews).

(b) *Certification review of stores on waiting list.* The Department will ensure that all stores on the waiting list in a trade area will be reviewed when a store slot becomes available in the trade area, or when stores in the trade area are reviewed during the next contemporaneous certification/recertification review process. The only exception to reviewing all stores on the waiting list is when a store slot opens as a result of a change of ownership of a store and the store, under new ownership, applies for certification under § 1105.4(c) (relating to change of ownership of a WIC authorized store). The Department will review the store under its new ownership to determine if the store should receive certification.

§ 1103.7. Participant hardship.

(a) The Department will consider whether there is participant hardship when considering whether to place a store on probation, rather than deny certification or recertification, for failure to meet selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) during certification and recertification reviews or change of ownership reviews.

(b) Participant hardship is any of the following:

(1) Ten or more participants whose specific nationality, ethnicity or religious dietary needs can not be served properly by another WIC authorized store located within 3 miles of the store, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination.

(2) Ten or more participants will be required to travel 3 or more miles to the next closest WIC authorized store, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination.

(3) Ten or more people are affected by physical barriers or conditions which make normal travel to another WIC authorized store impractical.

(4) A participant has a physical disability that cannot be accommodated by another WIC authorized store within 3 miles, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination.

(5) One hundred or more participants but less than 200 participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 2 miles.

(6) Two hundred or more participants but less than 300 participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 1 mile.

(7) Three hundred or more participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 3/10 of a mile.

(8) A WIC authorized store changes ownership without the Department receiving prior notice sufficient to arrange other accommodations for participants.

CHAPTER 1105. REQUIREMENTS OF WIC AUTHORIZED STORES

- Sec.
- 1105.1. Training.
- 1105.2. Overcharge recovery system.
- 1105.3. Terms and conditions of participation.
- 1105.4. Change of ownership of a WIC authorized store.
- 1105.5. Changes in availability or location of WIC authorized stores.
- 1105.6. Monitoring of WIC authorized stores.

§ 1105.1. Training.

(a) *Initial training.* Following certification, the local agency shall provide initial training for the personnel a certified store designates. The training shall be mandatory and shall occur within 30 days after the date of certification. A store receiving certification may not accept WIC checks prior to having its designated personnel attend the initial mandatory training.

(b) *Annual training.* The Department will provide for WIC authorized stores annual training which is designed to prevent WIC Program errors and abuses and to improve WIC Program services. The following apply to annual training:

(1) A WIC authorized store shall ensure that at least one representative from the store who is responsible for training store personnel on the WIC Program shall attend.

(2) Attendance is mandatory.

(3) The Department will offer each WIC authorized store two opportunities to attend.

(4) The Department will ensure that annual training is offered to a WIC authorized store either within the county in which it is located or in an adjoining county within the appropriate local agency's jurisdiction.

(5) Failure to have at least one representative attend training shall result in the Department imposing sanctions against the WIC authorized store as in § 1107.1 (relating to sanctions).

(c) *Corrective training.* The Department will provide corrective training as set forth in §§ 1103.2 and 1105.6 (relating to probationary certification; and monitoring of WIC authorized stores). Attendance is mandatory.

§ 1105.2. Overcharge recovery system.

(a) *Quarterly price reports.* A WIC authorized store shall provide to the Department, in a format prescribed by the Department, the highest prices the store charged for allowable foods during the previous quarter for which the Department collects prices. The report shall be known as the Quarterly Price Report. A store may submit its Quarterly Price Report by mail or fax. If submitted by mail, the Quarterly Price Report shall be postmarked no later than the 15th of the month following the end of the calendar quarter. If submitted by fax, the Quarterly Price Report must be received by the Department by the 15th of the month following the end of the calendar quarter.

(b) *Department review.* The Department will review WIC check amounts redeemed by a WIC authorized store against the prices reported on the store's Quarterly Price Report to determine and collect overcharges owed to the Department.

(c) *Determination of maximum redemption amount of each WIC check.* For each WIC check redeemed for which the store was reimbursed for the sale of foods for which the Department collects prices, the Department will determine the maximum amount for which the WIC authorized store could have redeemed the check based upon prices provided in the Quarterly Price Reports supplied by the store.

(d) *Determination of overcharges.* The Department will compare the maximum amount for which a WIC authorized store could have redeemed a WIC check based upon the prices in the store's Quarterly Price Report, against the actual amount for which each WIC check accepted by the store during a reporting quarter was redeemed, to determine any overcharge owed to the Department.

(e) *Pursuit of reimbursement.* The Department will seek reimbursements from a WIC authorized store for the store's overcharges totaling \$10 or more for a calendar quarter.

(f) *Reimbursement of overcharges.* A WIC authorized store shall submit reimbursement of overcharges to the Department within 20-calendar days of the date on the Department's billing notice for the overcharge, unless the WIC authorized store disputes the overcharge determination.

(g) *Overcharge disputes.* A WIC authorized store that disputes an overcharge billing shall submit the basis for its dispute in writing to the Department, postmarked within 15-calendar days of the date on the Department's billing notice. Upon resolution of an overcharge dispute, any overcharge the Department determines to be owing shall be due within 15-calendar days of the mailing date on the Department's notification of its resolution of the dispute.

(h) *Sanctions.* The Department will impose a sanction against a WIC authorized store under § 1107.1 (relating to sanctions) if the store fails to pay overcharges due within the time required under subsections (f) and (g).

(i) *Disqualification.* The Department may disqualify a WIC authorized store if the store's reported prices on the Quarterly Price Report exceed the current maximum allowable cost as published by the Department for Food Prescription One or Food Prescription Two, set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

§ 1105.3. Terms and conditions of participation.

(a) *General terms and conditions.* A WIC authorized store shall adhere to this subsection. Failure to do so shall result in the imposition of sanctions as set forth in § 1107.1 (relating to sanctions). A WIC authorized store shall:

(1) Adhere to all applicable statutes and State and Federal regulations regulating the WIC Program, including the nondiscrimination provisions of 7 CFR Parts 15, 15a, 15b and 246, and this part.

(2) Inform the public of its participation in the WIC Program by displaying at least one WIC decal supplied by the Department in a place conspicuously visible to the general public.

(3) Monitor, supervise and be accountable for the actions of employes in the handling of WIC checks, the selling of allowable foods, and the performance of other conduct related to the WIC Program.

(4) Maintain the minimum inventory of allowable foods.

(5) Ensure that allowable foods are properly stored and refrigerated.

(6) Ensure that there are no stale dated allowable foods on the sales floor.

(7) Provide the Department, on the Quarterly Price Report form provided by the Department, the highest prices of allowable foods specified on the report form.

(8) Maintain a clean and sanitary store.

(9) Provide orientation and training to employes regarding applicable regulations governing the WIC Program.

(10) Maintain a copy of the current WIC food list at each check-out aisle.

(11) Send at least one representative who is responsible for training store personnel on the WIC Program to WIC Program training annually, or more often if required by the Department under § 1105.1(c) (relating to training).

(12) Immediately notify the Department when store ownership changes, when store operations cease on a permanent or temporary basis, or when any other circumstance impacting service to participants occurs.

(13) Allow Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, to visit the store to observe its procedures for accepting and handling WIC checks and to conduct announced or unannounced onsite reviews to determine compliance with applicable Federal and State regulations.

(14) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to a WIC checks accepted by the store and on its premises at the time of an onsite review.

(15) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to price and inventory records during an onsite review.

(16) Agree that neither the Department nor the WIC authorized store has an obligation to renew the store's authorization to participate in the WIC Program.

(17) Agree that the store's authorization to participate in the WIC Program shall become null and void when ownership of the store changes.

(18) Display the current shelf price of each allowable food either on the allowable food on the shelf immediately above or below the allowable food or prominently on an allowable food price list easily located by participants and clearly visible to them.

(19) Not transfer or assign its WIC certification or recertification to another person or entity.

(20) Reimburse the Department for funds received through transactions involving WIC checks which were not conducted in accordance with this part.

(21) Maintain price and inventory records for allowable foods for a minimum period of 6 months from the date of receipt of the inventory.

(b) *Terms and conditions of participation with regard to participants.* A WIC authorized store shall serve participants as set forth in this subsection. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in § 1107.1. A WIC authorized store shall:

(1) Provide allowable foods to participants only as authorized on the WIC food list and as specified on the WIC check.

(2) Not encourage or discourage a participant from purchasing allowable food specified on the WIC check.

(3) Provide allowable foods to participants at or below the current price the store charges other customers.

(4) Not seek restitution or payment from participants for WIC checks not reimbursed by the Department, or contact participants concerning WIC transactions that occur in the store.

(5) Not seek restitution or payment from participants for allowable foods when the price the store charges for the allowable foods exceeds the "Not to Exceed" amount on the WIC check.

(6) Not request personal addresses, telephone numbers or other personal identification of participants.

(7) Offer participants the same courtesies offered other customers, and not distinguish or identify participants from other customers.

(8) Provide services to participants without regard to race, color, age, sex, religion, national origin or disability.

(9) Give trading stamps to participants for purchases made with WIC checks if trading stamps are given for cash purchases.

(10) Accept cents-off coupons, a store discount card or other discounts from participants for allowable foods, and deduct the savings in calculating the total purchase price entered into the "Pay Exactly" amount on WIC checks.

(11) Accept "buy one get one free" coupons and manufacturers' promotional free product offers from participants.

(c) *Terms and conditions of participation with regard to WIC check processing and redemption.* A WIC authorized store shall adhere to the requirements of this subsection with regard to WIC check processing and redemption. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in § 1107.1. A WIC authorized store shall:

(1) Treat the acceptance of a WIC check as a financial transaction between only the Department and the WIC authorized store, not the participant

(2) Accept a WIC check only if the WIC check is made payable to that specific WIC authorized store, unless the Department has provided written authorization otherwise to the store.

(3) Accept a WIC check only if the participant, endorser or proxy presents the WIC check on or between the "First Day to Use" and the "Last Day to Use" designations on the WIC check.

(4) Accept a WIC check only if a valid WIC identification card is presented at the time of redemption.

(5) Accept a WIC check only if the signature of the participant, endorser or proxy is obtained, at the time of purchase, on the WIC check, and the signature on the WIC check matches the signature on the WIC identification card.

(6) Accept a WIC check only if there is no visible alteration on the WIC check.

(7) Charge the WIC Program only for the types and quantities of allowable foods specified on the WIC check and selected for purchase by the participant, endorser or the participant's proxy.

(8) Record in ink, on each WIC check immediately after completion of the WIC transaction and prior to the participant, endorser or proxy signing the WIC check, the actual purchase amount of the transaction net of any cents-off coupons or other discounts.

(9) Properly correct an error made in recording the "Pay Exactly" amount of a WIC check by drawing a single line through the incorrect amount and writing the correct amount above or below the error and having the participant, endorser or proxy initial next to the corrected amount. No other corrections are permissible.

(10) Not alter any information on the WIC check as presented by the participant, endorser or proxy.

(11) Not provide substitute items, rainchecks or cash reimbursement for allowable foods that are unavailable.

(12) Not provide cash or credit for a WIC check.

(13) Not provide change for the difference between the "Not to Exceed" and the "Pay Exactly" amounts on the WIC check nor for any coupons tendered during the WIC transaction.

(14) Not refund money or provide exchanges to replace allowable foods returned by participants, endorsees or proxies.

(15) Not accept a WIC check as payment for items other than allowable foods specified on the WIC check.

(16) Not charge the WIC Program for allowable foods not received by the WIC participant or for allowable foods provided in excess of those listed on the WIC check.

(17) Not charge the WIC Program for the sale of an amount of an allowable food which exceeds the store's documented inventory of that food item covering the period of time under review and in which the sale was made.

(18) Deposit WIC checks accepted by it directly to its bank account no later than 45 days after the "First Day to Use" date on the WIC check.

(19) Not receive, transact, redeem or otherwise dispose of a WIC check outside of check redemption procedures set forth in this section.

(20) Not use a WIC check for the purchase of any commodity or the payment of any debt.

(21) Not collect sales tax on allowable food purchases.

(22) Reimburse the Department for payments the store has received for improperly executed WIC checks.

(d) The Department will deny payment to a WIC authorized store for WIC checks which the store did not process under subsection (c).

§ 1105.4. Change of ownership of a WIC authorized store.

(a) A certification or recertification is null and void when a change of ownership of a WIC authorized store occurs.

(b) To allow uninterrupted service to participants subsequent to a change of ownership, the Department may accept an application for certification from the prospective new owner of a WIC authorized store prior to a change of ownership.

(c) When a change of ownership occurs and participant hardship as defined in § 1103.7 (relating to participant hardship) would result, the store under the new ownership may receive probationary certification for a period not to exceed 6 months if the State conducts an immediate onsite visit followed by a complete certification visit at the store. Until the immediate onsite visit is conducted, the new owner may not accept WIC checks. As soon as possible within the 6 month probationary period or during the next recertification process, whichever occurs first, the store under the new ownership shall compete with stores on the waiting list in the trade area for the store slot.

(d) The Department will not accept an application for certification from a store that has been provided notice of disqualification or is serving a disqualification if an individual who had at least a 10% ownership interest in the store has at least a 10% ownership interest in the applicant or the ownership interest has been transferred or sold to immediate family members of the individual.

§ 1105.5. Changes in availability or location of WIC authorized stores.

(a) *Notification of store closing.* A WIC authorized store shall notify the Department at least 15 days prior to a temporary or permanent closing of the store, and of the reason for closing and the expected duration of a temporary closing, if it has at least 15 days prior knowledge. Otherwise, it shall provide this information to the Department immediately after it acquires the information.

(b) *Temporary store closing.* The Department may permit a WIC authorized store to temporarily close for reasons such as a natural disaster, death in immediate family or personal illness, without imposing a sanction against the store. In making a determination to permit a temporary closure, as well as the length of time of the closure, the Department will consider circumstances such as the nature of the disaster, number of WIC authorized stores affected by the disaster, nature and expected duration of illness, length of closing anticipated by the WIC authorized store, number of and distance to other WIC authorized stores, number of participants served by the store, number of stores on the waiting list or any other information that the Department may determine to be relevant.

(c) *Store closing for remodeling.*

(1) A WIC authorized store that closes for more than 24 hours but less than 3 days for remodeling will not lose its certification, provided it notifies the Department at least 15-calendar days prior to the day the store closes for remodeling.

(2) A WIC authorized store that closes in excess of 3 store operation days for remodeling, shall lose its WIC authorization and shall reapply for and secure certification before it may again serve as a WIC authorized store.

(d) *Store relocations.*

(1) A WIC authorized store that relocates 1 mile or less from its current location, and reopens within 3-calendar days at its new location, shall provide the Department with written notification of its new address. The store will not lose its certification, provided it notifies the Department at least 15-calendar days prior to the day the store closes for relocating.

(2) A WIC authorized store relocating in excess of 1 mile of its current location shall lose its WIC authorization and shall reapply for certification at its new location.

(3) A WIC authorized store that closes in excess of 3 store operation days for relocating, without applying for and securing permission from the Department to do so, shall lose its WIC authorization and shall reapply for certification.

(e) *Temporary authorization to accept WIC checks redeemable at other stores.* The Department will temporarily authorize alternate WIC authorized stores to accept WIC checks designated on the face of the check to be used at another WIC authorized store, to provide participants with access to allowable foods when a WIC authorized store has permanently or temporarily closed, the store's authorization has been terminated, or the store has been disqualified as a WIC authorized store.

§ 1105.6. Monitoring of WIC authorized stores.

(a) *Purpose and types of monitoring of WIC authorized stores.* Federal, State or local representatives will conduct announced and unannounced onsite reviews of WIC authorized stores to determine compliance with applicable Federal and State regulations, and to investigate complaints regarding a store. The types of onsite reviews that may be conducted for monitoring purposes are high risk reviews, routine reviews and training buys.

(b) *High risk reviews.* The Department will monitor all high risk stores. The Department will use either compliance investigations or inventory audits as methods to monitor high risk stores. The Department also may conduct compliance buys and inventory audits on stores that have not been identified as high risk stores.

(1) *Compliance investigations.* The following standards shall apply:

(i) The Department will conduct at least two compliance buys during a compliance investigation.

(ii) The Department will not notify the WIC authorized store that a compliance buy is scheduled.

(iii) The Department will provide written notification to the WIC authorized store of the results of each compliance buy, including the store's violation of a statute or regulation governing its participation in the WIC Program, unless subparagraph (viii) applies.

(iv) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program.

(v) The Department will conduct a third compliance buy at the WIC authorized store after store personnel have attended mandatory corrective training.

(vi) The Department will disqualify the store if three compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the compliance investigation, in accordance with § 1107.1 (relating to sanctions). If multiple violations are found during the compliance investigation, the Department will disqualify the store for the term corresponding to the most serious violation.

(vii) The Department will close the compliance investigation on a WIC authorized store if no violations of a

statute or regulation governing the store's participation in the WIC Program are discovered after two consecutive compliance buys.

(viii) The Department may withhold notification of compliance buy results, and may withhold providing training or conducting further compliance investigations, when fraudulent activities by the WIC authorized store are indicated during a compliance investigation or by local agency or participant complaint.

(2) *Inventory audits.* The Department will disqualify the WIC authorized store when an inventory audit establishes the claim of reimbursement for authorized food in excess of documented inventory. No warning letters will be issued.

(c) *Routine reviews.* The Department will use reviews as follows to determine whether a WIC authorized store is in compliance with the selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) and terms and conditions of participation in § 1105.3 (relating to terms and conditions of participation):

(1) The Department will not notify the WIC authorized store that a routine review is scheduled.

(2) The Department will provide written notification to the WIC authorized store of the results of each routine review, including violation of a statute or regulation governing the store's participation in the WIC Program.

(3) The Department will conduct a second routine review of the WIC authorized store if the first routine review detects violations of a statute or regulation governing the store's participation in the WIC Program.

(4) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two routine reviews detect violations of a statute or regulation governing the store's participation in the WIC Program.

(5) The Department will conduct a third routine review of a WIC authorized store after store personnel have attended mandatory corrective training.

(6) The Department may disqualify a store if a third routine review detects violations of a statute or regulation governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the routine reviews, in accordance with § 1107.1. If multiple violations are found during the routine reviews, the Department will disqualify the store for the term corresponding to the most serious violation.

(d) *Training buys.* The Department will use training buys to monitor WIC check transaction procedures and compliance with statutes and regulations governing the store's participation in the WIC Program. The following standards apply:

(1) The Department will not notify the WIC authorized store that a training buy is scheduled.

(2) The Department will provide written notification to the WIC authorized store of the results of each training buy, including violations of a statute or regulation governing the store's participation in the WIC Program.

(3) The Department will conduct a second training buy at the WIC authorized store if the first training buy detects violations of a statute or regulation governing the store's participation in the WIC Program.

(4) The Department will provide the personnel of the WIC authorized store mandatory corrective training after two training buys detect violations of a statute or regulation governing the store's participation in the WIC Program.

(5) The Department will conduct a third training buy at the WIC authorized store after store personnel have attended the mandatory corrective training.

(6) The Department may disqualify a store if a third training buy detects violations of a statute or regulation governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the training buys, in accordance with § 1107.1. If multiple violations are found during the training buys, the Department will disqualify the store for the terms corresponding with the most serious violation.

(e) *Use of law enforcement agency.* The Department may utilize a law enforcement agency in the investigation of a WIC authorized store or other store suspected of trafficking WIC checks or other fraud or abuse of the WIC Program.

(f) *Reimbursement.* The Department will seek reimbursement from a WIC authorized store that received funds improperly due to a violation of regulations governing the store's participation in the WIC Program discovered during monitoring reviews. The Department will send notice to the store of the amount of money to be reimbursed to the WIC Program. The store shall make payment within 20 days from the date of the notice.

CHAPTER 1107. SANCTIONS

- Sec. 1107.1. Sanctions.
- 1107.2. Civil money penalties.

§ 1107.1. Sanctions.

(a) The Department will impose a sanction against a store based upon the severity and nature of the violation of the statute or regulation governing the store's participation in the WIC Program.

(b) In addition to imposing a sanction against a WIC authorized store that commits fraud or abuse of the WIC Program, the Department may prosecute or make a referral for prosecution of the WIC authorized store to a criminal prosecution agency for prosecution under applicable Federal, State or local laws.

(c) A WIC authorized store that has a sanction imposed against it by the Department for accepting a WIC check for items other than those specified on the WIC check shall also reimburse the Department for moneys received for the purchase of the items with the WIC check.

(d) The Department may impose a sanction against a WIC authorized store for failing to remit any amount demanded due to violations of statutes or regulations governing its participation in the WIC Program within the time frame in § 1105.2(f) and (g) (relating to over-charge recovery system) or the notice given by the Department under § 1105.6(f) (relating to monitoring of WIC authorized stores).

(e) Upon receiving notification that a WIC authorized store has been disqualified from another USDA-FNS program, such as the USDA Food Stamp Program, the Department will disqualify the WIC authorized store for an equivalent period of up to 3 years.

(f) The Department may disqualify from participation in the WIC Program a WIC authorized store if the store

incurs a civil money penalty in lieu of disqualification from another USDA-FNS program, such as the USDA Food Stamp Program. If the Department finds that participant hardship would result from the disqualification of the store from the WIC Program, the Department may, at its option, offer the store the option of paying a civil money penalty in lieu of disqualification.

(g) The Department will notify the USDA-FNS of a store's disqualification from the WIC Program. Disqualification from the WIC Program may result in the store's disqualification from the USDA Food Stamp Program.

(h) *Specific sanctions.* The Department will determine the type and level of sanction to be imposed against a WIC authorized store for a violation of a statute or regulation governing the store's participation in the WIC Program.

(1) *Class A abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 1 year for the following violations:

(i) Redeeming a WIC check for an item that is in a food category authorized by the WIC Program but is not an allowable food or is not specified on the WIC check.

(ii) Having stale-dated allowable food on the sales floor.

(iii) Failing to maintain minimum inventory requirements of an allowable food.

(iv) Failing to request the participant's WIC identification card prior to accepting a WIC check.

(v) Accepting a WIC check made payable to another store without prior written approval from the Department.

(vi) Failing to maintain a clean and sanitary store.

(vii) Failing to properly store and refrigerate allowable foods.

(viii) Closure of the store by a city, local or county health department.

(ix) Charging or demanding that a participant pay for an allowable food with the participant's own money or with another WIC check for purchases made with a WIC check.

(x) Securing the signature of the participant, endorser or proxy prior to completing the "Pay Exactly" box on the WIC check.

(xi) Overcharging the WIC Program by charging sales tax or allowing the purchase with a WIC check of more of an allowable food than authorized on the WIC check.

(xii) Having or charging prices which exceed the current maximum allowable costs established by the Department and published in the *Pennsylvania Bulletin* for either Food Prescription One or Food Prescription Two set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

(2) *Class B abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 2 years for the following violations:

(i) Redeeming a WIC check for food that is not in a food category authorized to be purchased with a WIC check.

(ii) Charging the WIC Program more for an allowable food than a customer who is not a participant is charged for the same item.

(iii) Charging the WIC Program more than the current price for an allowable food.

(iv) Giving monetary change to an authorized individual who tenders a WIC check.

(v) Failing to remit payment for an overcharge within the specified time frame.

(vi) Charging the WIC Program for an allowable food which was not purchased with a WIC check.

(vii) A repeated Class A violation.

(3) *Class C abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 3 years for the following violations:

(i) Accepting a WIC check for cash, credit or a nonfood item.

(ii) Physically altering or changing on the face of a WIC check the store name, food type or quantity, participant information, date or printed dollar amount.

(iii) Redeeming WIC checks for the sale of an amount of an allowable food over a period of time which exceeds the WIC authorized store's documented inventory for the same allowable food for the same period of time.

(iv) A repeated Class B violation.

(i) For a violation of a statute or regulation governing the store's participation in the WIC Program which is not specifically classified as a Class A, Class B or Class C sanction as provided for in subsection (h), the Department will determine the appropriate type and level of sanction to be imposed upon the store based upon the nature and severity of the violation.

(j) The Department will provide a WIC authorized store at least a 15 day advance notice of the effective date of any disqualifications and an opportunity to appeal the disqualification in accordance with § 1113.1 (relating to right to appeal).

(k) A store which has been disqualified from the WIC Program may apply for certification following expiration of the disqualification period. If the store chooses to apply for certification after expiration of the disqualification, the Department will not consider the prior disqualification from the WIC Program when determining eligibility, and the store will be considered in accordance with § 1103.4 if a store slot is available, or placed on a waiting list in accordance with § 1103.6 (relating to waiting list) if no store slot is available.

§ 1107.2. Civil money penalties.

(a) *Option available in lieu of a disqualification.* The Department may offer to a store the option of paying a civil money penalty in lieu of a denial of recertification or a disqualification required under § 1107.1 (relating to sanctions), only if the Department finds participant hardship as set forth in § 1103.7 (relating to participant hardship).

(b) *Calculation of civil money penalty.* The Department will calculate the civil money penalty the store shall pay by multiplying 5% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107.1. For stores which are denied recertification for which this option is available, the Department will multiply 5% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department

will calculate the monthly average based upon the number of months for which information is available.

(c) *Written agreement.* If the Department offers and the store agrees to pay a civil money penalty in lieu of disqualification, the Department and store shall set forth the terms of the agreement in writing. The terms may include a probationary period during which the Department may conduct monitoring to ensure action has been taken by the store to correct problems. The agreement shall be effective upon the signature of the Director of the Division of WIC or the Director's designee.

(d) *Payment of the civil money penalty.* The store shall pay the civil money no later than 30 days from the effective date of the penalty agreement, as set forth in subsection (c). Failure of the store to pay the civil money penalty when due shall be grounds for the Department to rescind the agreement and shall result in reinstatement of the disqualification.

(e) *Continued compliance with regulations.* A store which pays a civil money penalty is required to continue to comply with regulations governing the store's participation in the WIC Program. If the store commits additional violations of the regulations governing the store's participation in the WIC Program, the Department will consider the violations for which the store paid the civil money penalty in determining the type and magnitude of sanction to be imposed against the store.

(f) *Outstanding financial liabilities.* Payment of the civil money penalty, unless specifically provided for in a written agreement between the Department and the store, does not relieve the store of any other past or future financial liability incurred by the store by reason of its participation in the WIC Program. This includes, by way of example, payment of outstanding overcharges or payments owed the Department for the unauthorized sale of foods.

CHAPTER 1109. ADMINISTRATIVE APPEALS

Sec.

1109.1. Applicability of general rules.

1109.2. Scope and purpose.

1109.3. Time limits for action.

§ 1109.1. Applicability of general rules.

1 Pa. Code Part II (relating to general rules of administrative practice and procedure) applies to proceedings under this part, except as otherwise provided in this part.

§ 1109.2. Scope and purpose.

Chapters 1111 and 1113 (relating to applicant and participant appeals; and local agency and store appeals) apply to hearings held under 42 U.S.C.A. § 1786(f)(9), relating to the WIC Program. Those chapters supplement the Federal regulations, 7 CFR Part 246 (relating to special supplemental nutrition program for women, infants, and children) governing hearings afforded under this part to applicants, participants, stores denied certification or recertification and local agencies, and supplement or supersede regulations in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) when their application would be inappropriate or inadequate.

§ 1109.3. Time limits for action.

Time limits in §§ 1111.10(d) and 1113.3(b) (relating to hearing examiner decisions; and adjudication and order) are directory.

CHAPTER 1111. APPLICANT AND PARTICIPANT APPEALS

- Sec.
- 1111.1. Applicant and participant appeal rights.
- 1111.2. Notification of appeal rights.
- 1111.3. Appeal of a local agency decision.
- 1111.4. Time for appeal of a local agency decision.
- 1111.5. Scheduling the hearing.
- 1111.6. Denial or dismissal of appeal.
- 1111.7. Continuation of benefits.
- 1111.8. Rights of the appellant.
- 1111.9. Hearing record.
- 1111.10. Hearing examiner decisions.
- 1111.11. Appeal to the Secretary.
- 1111.12. Adjudication and order procedures.
- 1111.13. Judicial review.

§ 1111.1. Applicant and participant appeal rights.

This chapter applies to applicants, participants and their authorized representatives, in pursuing appeals from decisions that adversely impact upon the participation of applicants and participants in the WIC Program.

§ 1111.2. Notification of appeal rights.

(a) At the time of the denial of an application to become a participant, removal from the WIC Program as a participant, or placement on a waiting list to become a participant, the local agency shall inform in writing the adult applicant or participant, or the parent or guardian of a child or infant applicant or participant, of the right to appeal the decision, of the method by which an appeal may be filed, and that any positions or arguments on behalf of the applicant or participant may be presented personally or by an authorized representative, such as a relative, friend, legal counsel or other spokesperson. The expiration of the participant's certification period occurs automatically and is not appealable.

(b) The local agency shall use forms provided by the Department to provide notice of appeal rights to the adult applicant or participant, or the parent or guardian of an infant or child applicant or participant.

§ 1111.3. Appeal of a local agency decision.

(a) An appeal is any clear expression by the applicant, participant or authorized representative, that the decision of the local agency is contested and that an opportunity to challenge the decision and to present the case of the applicant or participant to a higher authority is desired. The Department or local agency will not limit or interfere with the freedom of the applicant, participant or authorized representative to appeal the decision and will provide whatever assistance is necessary to reduce an oral appeal to writing.

(b) When an appeal is made orally, the local agency shall docket it as being filed when the local agency receives the oral communication.

§ 1111.4. Time for appeal of a local agency decision.

The applicant, participant or authorized representative shall appeal within 90 days after the date the local agency mails or delivers to the adult applicant or participant, or parent or guardian of an infant or child applicant or participant, written notice of the action to deny or terminate benefits under the WIC Program. An appeal is timely filed if it is received by the local agency within the 90-day period.

§ 1111.5. Scheduling the hearing.

(a) *Appointment of a hearing examiner.* The local agency shall appoint a hearing examiner to preside over the appeal. The hearing examiner shall be an impartial official who does not have a personal stake or involve-

ment in the decision, and who was not directly involved in the action being contested.

(b) *Notification of the appeal.* The local agency shall notify the hearing examiner of the appeal and the date on which it was docketed.

(c) *Time frame for scheduling a hearing.* The hearing examiner shall schedule the hearing within 3 weeks from the docketed date of the appeal. The hearing examiner shall provide the appellant participant or authorized representative with a minimum of 10 days advance written notice of the time and place of the hearing.

(d) *Standards for scheduling the hearing.* The hearing examiner shall use the following standards in scheduling a hearing:

(1) The place of the hearing may not be further from the residence of the applicant or participant than the county seat of the county in which the applicant or participant resides. If the county seat is unsuitable due to the health of the applicant or participant, transportation problems, convenience of witnesses or for other legitimate reasons, an alternative place of hearing shall be a location convenient to the home of the applicant or participant.

(2) If the applicant, participant or authorized representative wants to postpone the hearing, that individual shall contact the hearing examiner, and the local agency and provide them with a reason for postponement. If the hearing is postponed by the hearing examiner, the hearing examiner shall reschedule it as soon as possible.

(3) An applicant, participant or authorized representative may withdraw the appeal at any time before a decision is issued by the hearing examiner. This withdrawal shall be in writing and directed to the hearing examiner.

(4) If the applicant or participant fails to appear at the scheduled hearing in person or by authorized representative, without good cause as determined by the hearing examiner, the appeal shall be considered abandoned and shall be discontinued.

(e) *Independent assessment.* The hearing examiner shall order, when relevant and necessary, an independent medical assessment or professional evaluation of the applicant or participant from a source mutually satisfactory to the applicant or participant or its authorized representative, and the local agency.

(f) *Supersession.* Subsection (d)(3) supersedes 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

§ 1111.6. Denial or dismissal of appeal.

The hearing examiner may not deny or dismiss an appeal unless one of the following occurs:

(1) The appeal is not received by the local agency within the time limit in § 1111.4 (relating to time for appeal of a local agency decision).

(2) The appeal is withdrawn in writing by the applicant, participant or authorized representative.

(3) The applicant, participant or authorized representative fails, without good cause, to appear at the scheduled hearing.

§ 1111.7. Continuation of benefits.

(a) If at any time during a participant's certification period, the local agency finds the participant to be ineligible to continue enrollment in the WIC Program, the local agency shall advise the participant in writing not

less than 15 days before termination of the reason for ineligibility and of the right to appeal. If an appeal is received within 15 days after service of the notice of ineligibility, benefits shall continue until the hearing examiner reaches a decision or the certification period expires, whichever occurs first.

(b) An applicant denied initial enrollment, or an authorized representative of the applicant, may appeal the denial, but the applicant may not receive benefits while awaiting disposition of the appeal.

§ 1111.8. Rights of the appellant.

(a) When an appeal is filed, the local agency shall inform the applicant or participant denied benefits, or an authorized representative, of the rights set forth in subsection (b).

(b) An applicant or participant who files an appeal, or on whose behalf the appeal is filed, has the following rights:

- (1) To appear in person at the hearing.
- (2) To represent himself, or to be represented by an authorized representative such as an attorney, friend or other person at the hearing.
- (3) To receive an explanation that he may contact the local bar association for assistance in locating legal services.
- (4) To present oral or documentary evidence, witnesses and arguments to support the position of the applicant or participant in accordance with procedures established by the hearing examiner.
- (5) To request a subpoena from the hearing examiner for the production of evidence or witnesses that the applicant, participant or authorized representative, determines are important to establish necessary facts
- (6) To request that the local agency provide an interpreter at the hearing if an adult applicant or participant, or the parent or guardian of an infant or child applicant or participant, does not understand English or is hearing impaired.
- (7) To examine upon request, both before and during the hearing, the materials which the Department or local agency has on file relative to the case which are not confidential.
- (8) To be provided with the names of the local agency staff members and witnesses who will be present at the hearing.
- (9) To question or refute any testimony or other evidence presented against the applicant or participant and to confront and cross-examine adverse witnesses.
- (10) To examine, prior to and during the hearing, documents and records that will be presented to support the decision under appeal.
- (11) To further appeal the final decision of the hearing examiner to the Secretary within 15 days of the mailing date of the hearing examiner's decision.
- (12) To appeal the adjudication and order of the Secretary or agency head designated by the Secretary to the Commonwealth Court within 30 days of the mailing date of the adjudication and order.

(c) *Supersession.* Subsection (b)(1) supplements 1 Pa. Code § 31.21 (relating to appearance in person). Subsection (b)(2) supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other

representation prohibited at hearings). Subsection (b)(5) supplements 1 Pa. Code § 35.142 (relating to subpoenas).

§ 1111.9. Hearing record.

(a) *Contents of the record.* The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the hearing record. This record shall be available to the applicant, participant or authorized representative, for copying and inspection at any reasonable time

(b) *Retention of the record.* This record shall be retained for 3 years.

(c) *Public inspection of the record.* Department and local agency hearing records and decisions shall be available for public inspection and copying, provided the names and addresses of participants and other members of the public are kept confidential.

(d) *Supersession.* Subsection (a) supersedes 1 Pa. Code § 35.131 (relating to recording of proceedings).

§ 1111.10. Hearing examiner decisions.

(a) The hearing examiner shall render a decision based exclusively on the evidence contained in the hearing record.

(b) The decision of the hearing examiner shall comply with applicable Federal law, and Federal and State regulations.

(c) A decision by the hearing examiner shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record. A decision adverse to the position of the local agency shall be binding on the local agency.

(d) Within 45 days after the filing date of the appeal, the hearing examiner shall provide the applicant, participant, or authorized representative, and the local agency, a copy of the hearing examiner's decision.

(e) If the decision of the hearing examiner is in favor of the applicant or participant and benefits had been denied or discontinued, the local agency shall begin or resume providing benefits immediately upon the mailing date of the decision.

(f) If the decision is in favor of the local agency, the notice accompanying the decision of the hearing examiner to the applicant, participant or authorized representative shall include notice of the right to appeal to the Secretary. Immediately upon the date of the hearing examiner's decision, the local agency shall discontinue providing any benefits which had been continued pending issuance of the hearing examiner's decision.

(g) Subsection (a) supersedes 1 Pa. Code § 35.201 (relating to certification of record without proposed report).

§ 1111.11. Appeal to the Secretary.

If the applicant, participant or authorized representative, chooses to appeal the decision of the hearing examiner, that individual shall file a written appeal with the Secretary within 15 days of the mailing date of the decision of the hearing examiner. The appeal shall contain a statement of reasons for reversing the decision of the hearing examiner. If the appeal asks for permission to present additional evidence, it shall:

- (1) Identify the additional evidence.
- (2) Explain why it was not previously introduced.

(3) Explain its materiality unless it is obvious.

§ 1111.12. Adjudication and order procedures.

(a) In reaching a decision on the appeal, the Secretary or an agency head designated by the Secretary may:

- (1) Reconsider the decision on the basis of the evidence in the record.
- (2) Admit additional evidence.
- (3) Order a new hearing.

(b) In cases in which the hearing examiner's decision has resulted in a termination of benefits to the participant, there shall be no reinstatement of benefits upon filing of an appeal to the Secretary. The reinstatement of benefits, if granted, shall be solely as a result of the adjudication and order of the Secretary or designated agency head.

§ 1111.13. Judicial review.

The Secretary or designated agency head will issue an adjudication and order after considering the appeal. If the adjudication and order is adverse to the interest of the applicant or participant, the adjudication and order shall state, or be accompanied by a notice stating, that the applicant or participant has the right to appeal the adjudication and order to Commonwealth Court within 30 days after the mailing of the adjudication and order.

CHAPTER 1113. LOCAL AGENCY AND STORE APPEALS.

Sec.	
1113.1.	Right to appeal.
1113.2.	Appeal procedures.
1113.3.	Adjudication and order.
1113.4.	Continuing responsibilities.
1113.5.	Judicial review.

§ 1113.1. Right to appeal.

A store or local agency adversely affected by a Division of WIC action has the right to appeal. The right of appeal shall be granted when a local agency's or store's application to participate in the WIC Program is denied; or during the course of an agreement or period of authorization, when a local agency or store is disqualified; or when any other adverse action which affects participation is taken against the store or local agency by the Division of WIC. The expiration of a WIC authorization is not subject to appeal. The appeal process is designed to secure and protect the interest of both the store or local agency and the Division of WIC and to ensure equitable treatment for all involved. The adverse action shall be postponed until the hearing examiner issues an adjudication and order.

§ 1113.2. Appeal procedures.

(a) *Notification.* At the time the Division of WIC takes an adverse action against a local agency or store, the Division of WIC will notify the local agency or store of its right to an administrative appeal.

(b) *Form of appeal.* The appeal shall be made by the local agency or store or its authorized representative, in writing, stating the reasons for the appeal.

(c) *Time for filing an appeal.* The appeal shall be filed with the Director of the Division of WIC within 30 days after any final decision by the Division of WIC.

(d) *Scheduling the hearing.*

(1) The Director of the Division of WIC shall forward the appeal to the office of the hearing examiner.

(2) The hearing examiner shall set a time, date and place for the hearing.

(3) The hearing examiner shall send notice to the local agency or store, or its authorized representative, at least 10 days in advance of the date of the hearing.

(4) The hearing examiner shall schedule the hearing to be held within 21 days after the date of receipt by the Division of WIC of the local agency or store appeal.

(5) The Department or the appellant may request in writing that the hearing be rescheduled for another time or date and the hearing examiner shall consider the request.

(e) *Hearing examiner.* The Secretary will appoint a hearing examiner to preside over the appeal. The person shall be an impartial decision-maker, whose decision as to the validity of the Department's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the program, and who may not have participated in the decision made by the Division of WIC or have a personal stake in the outcome.

(f) *Hearing procedures.*

(1) The local agency or store may be assisted or represented by an attorney or other authorized representative.

(2) The local agency or store, or its authorized representative, may examine, prior to and during the hearing, the documents and records considered by the Division of WIC in reaching its decision under appeal.

(3) The hearing shall be open to the public.

(4) Each party shall have the opportunity to present and cross-examine witnesses.

(5) Each party may present oral or documentary evidence and arguments to support its position in narrative form.

(6) Each party may object to or attempt to refute any testimony or other evidence presented by the other party.

(g) *Supersession.* Subsection (d) supersedes 1 Pa. Code § 35.105 (relating to notice of nonrulemaking procedures). Subsection (e) supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers). Subsection (f)(1) supplements 1 Pa. Code § 31.21 (relating to appearance in person) and supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings).

§ 1113.3. Adjudication and order.

(a) The adjudication and order shall include findings of fact and conclusions of law. The findings of fact shall be based only on the oral and documentary evidence in the hearing record.

(b) The hearing examiner shall provide the Director of the Division of WIC and the local agency or store, or its authorized representative, with the adjudication and order within 60 days after the date of the receipt by the Division of WIC of the appeal, adjusted for any continuance of the hearing that causes it to be held more than 21 days after the date the appeal was filed.

(c) The hearing examiner shall maintain a written record of the hearing. The record shall include a docket number and caption for the appeal, any documentary evidence submitted, the transcript of the testimony presented at the hearing, the adjudication and order of the hearing examiner, and a copy of the document transmitting the adjudication and order to the local agency or store, or its authorized representative.

(d) Paragraphs (a)—(c) supersede 1 Pa. Code §§ 35.131, 35.201, 35.202 and 35.205.

§ 1113.4. Continuing responsibilities.

Appealing an action does not relieve the local agency or store from the responsibility of continued compliance with the terms of any written agreement or contract with the Department or certification or recertification by the Department.

§ 1113.5. Judicial review.

If the adjudication and order of the hearing examiner is rendered against the local agency or store, the hearing examiner will inform the local agency or store within the adjudication and order, or by notice accompanying the adjudication and order, of the right to pursue judicial review of the adjudication and order.

[Pa.B. Doc. No. 99-1176. Filed for public inspection July 23, 1999, 9:00 a.m.]

Title 51—PUBLIC OFFICERS

LOBBYING DISCLOSURE COMMITTEE

[51 PA. CODE CHS. 31, 33, 35, 37, 39, 41,
43 AND 45]

Lobbying Disclosure

The Lobbying Disclosure Committee (Committee) statutorily created to promulgate regulations necessary to carry out 65 Pa.C.S. Chapter 13 (act) (relating to Lobbying Disclosure Act), comprised of the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Chairperson of the State Ethics Commission, the Attorney General, the Secretary of the Commonwealth, the Auditor General and the General Counsel, or their designees, adds Chapters 31, 33, 35, 37, 39, 41, 43 and 45 under the authority of 65 Pa.C.S. §§ 1305(b)(3)(iii) and 1310(c) (relating to reporting; and filing fees; fund established; regulations).

Purpose

The regulations implement the act and also impact upon section 1105(b)(6) and (7) of the Public Official and Employee Ethics Act (Ethics Act), 65 Pa.C.S. § 1105(b)(6) and (7) (relating to statements of financial interests).

The regulations are generally procedural in nature and implement the requirements of the act concerning: definitions; registration and reporting by principals and lobbyists; the maintenance of records of lobbying activity; the issuance of opinions and advices of counsel; compliance audits; investigations and hearings; referrals; the imposition of civil penalties; and the imposition of prohibitions against lobbying as a sanction.

The regulations have been drafted to be thorough and comprehensive, and to be easily understood by the regulated community and the general public.

Fiscal Impact and Paperwork Requirements

Since the regulations are under a new act, the fiscal impact cannot be discerned. Paperwork will be as dictated by the act.

Summary of Public Comments and Changes

The regulations were published as proposed at 29 Pa.B. 548 (January 30, 1999), with an invitation to submit written comments within 30 days.

Comments were received from the public; the House Judiciary Committee; the Senate Rules and Executive Nominations Committee; and the Independent Regulatory Review Commission (IRRC). A summary of the comments, the Committee's responses to those comments, and related changes to the proposed regulations are set forth in "The Lobbying Disclosure Committee's Comment and Response Document for Final Form Regulation (63-06)" which is incorporated herein by reference.

All comments were considered by the Committee, and at a public meeting on May 19, 1999, there was review and a vote by the Committee to then adopt the final-form regulations and to submit them to IRRC, the aforesaid Standing Committees and the Office of Attorney General for approval. The final-form regulations were disapproved by the House Judiciary Committee and IRRC, and were subsequently submitted with revisions or modifications, or both, under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)).

The final-form regulations as revised/modified reflect numerous and substantial changes to the proposed regulations. The following are some of the more noteworthy changes:

- (1) The use of calendar year quarters for reporting.
- (2) The clarification that the contents of communications and the identity of those with whom the communications take place need not be reported, recorded or maintained.
- (3) The inclusion of a provision allowing a parent corporation and its subsidiaries to register and report on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.
- (4) Clarifications as to the burden of proof and the number of Commission members required for the Commission to find a violation, impose a civil penalty or impose a prohibition against lobbying.
- (5) Clarifications as to certain definitions.
- (6) Clarifications as to access to computerized/electronic records.
- (7) The maintenance of books and records on the same basis used by the registrant for Federal tax purposes, or, for those who do not file tax returns, on a cash basis.
- (8) The clarification of what a principal must do when unable to secure a lobbyist's signature for a report.
- (9) The inclusion of an additional valuation method that may be used where more than one individual is benefited incident to an occasion or transaction.

With regard to the latter point, the regulations recognize several different valuation methods as acceptable. Depending upon the method chosen, the valuation will likely vary. Moreover, the fact that a registrant chooses a given method for valuing an item under the act does not compel the recipient to use the same method for valuing it when reporting it under the Ethics Act, 65 Pa.C.S. §§ 1101—1113. Thus, variations between the respective reports are to be expected and do not necessarily indicate that either report is erroneous.

Effective Date

The regulations will take effect on August 1, 1999.

Sunset Date

The effectiveness of these regulations will be reviewed by the Committee periodically. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 1999, the Committee submitted a copy of the proposed regulations to IRRC and to the Chairpersons of the House Judiciary Committee and Senate Committee on Rules and Executive Nominations. In addition to submitting the proposed regulations, the Committee provided IRRC and the Standing Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

In compliance with section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), the Committee submitted a copy of the final-form regulations to IRRC and the aforesaid Standing Committees on May 26, 1999. In addition, the Committee provided IRRC and the Standing Committees with information pertaining to commentators and a copy of a detailed Regulatory Analysis Form prepared by the Committee. A copy of this material is available to the public upon request.

In preparing the final-form regulations, the Committee considered all comments received from IRRC, the Standing Committees and the public.

The final-form regulations were deemed approved by the Senate Committee on Rules and Executive Nominations on June 15, 1999. The final-form regulations were disapproved by the House Judiciary Committee on June 15, 1999, and were disapproved by IRRC on June 17, 1999. Under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)), the regulations were submitted with revisions or modifications to the Standing Committees and IRRC on June 24, 1999. The revised/modified regulations were deemed approved by the Senate Committee on Rules and Executive Nominations and the House Judiciary Committee on July 6, 1999, and approved by IRRC on July 8, 1999.

Contact Person

Questions regarding these regulations may be submitted to: John J. Contino, Executive Director, or Vincent J. Dopko, Chief Counsel, State Ethics Commission, P. O. Box 11470, Room 309, Finance Building, Harrisburg, PA 17108-1470 (717) 783-1610.

Findings

The Committee 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 regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Committee, acting under the act, orders that:

(a) The regulations of the Commission, 51 Pa. Code, are amended by adding §§ 31.1—31.14, 33.1—33.5, 35.1, 35.2, 37.1, 37.2, 39.1—39.3, 41.1—41.5, 43.1—43.7, 45.1 and 45.2 to read as set forth in Annex A.

(b) The Chief Counsel of the State Ethics Commission shall submit this order and Annex A to the Office of Attorney General for approval as required by law.

(c) The Chief Counsel of the State Ethics Commission shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the Senate Committee on Rules and Executive Nominations and the House Judiciary Committee for their review and action as required by law.

(d) The Chairperson of the Committee 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 on August 1, 1999.

AUSTIN M. LEE,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 3978 (July 24, 1999).)

Fiscal Note: 63-6. (1) General Fund; (2) Implementing Year 1998-99 is \$165,000; (3) 1st Succeeding Year 1999-00 is \$280,275; 2nd Succeeding Year 2000-01 is \$294,849; 3rd Succeeding Year 2001-02 is \$310,181; 4th Succeeding Year 2002-03 is \$326,310; 5th Succeeding Year 2003-04 is \$343,279; (4) 1997-98 New Program—Not Applicable; 1996-97 New Program—Not Applicable; 1995-96 New Program—Not Applicable; (7) State Ethics Commission; (8) recommends adoption. Fees and revenues deposited in the Lobbying Disclosure Fund should offset, to some extent, the cost of running this program.

Annex A

TITLE 51. PUBLIC OFFICERS

PART II. LOBBYING DISCLOSURE COMMITTEE

CHAPTER 31. GENERAL PROVISIONS

- Sec. 31.1. Definitions.
- 31.2. Application to Ethics Act regulations.
- 31.3. Filing deadlines to fall on Commonwealth working days.
- 31.4. Registration periods and reporting periods.
- 31.5. Delinquency.
- 31.6. Deficiency.
- 31.7. Biennial review of exemption threshold and reporting threshold.
- 31.8. Forms, records and Commission publications.
- 31.9. Amended filings.
- 31.10. Filings to be originals signed under oath or affirmation.
- 31.11. Electronic filing.
- 31.12. Faxed filings.
- 31.13. Enforcement of Commission orders.
- 31.14. Parent corporations and subsidiaries.

§ 31.1. Definitions.

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

Act—The Lobbying Disclosure Act, 65 Pa.C.S. Chapter 13.

Administrative action—The term includes one or more of the following:

(i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy as defined in 1 Pa. Code § 1.4 (relating to definitions); or approval or rejection of a regulation.

(ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act.

- (iii) The Governor's approval or veto of legislation.
- (iv) The nomination or appointment of an individual as an officer or employe of the Commonwealth.
- (v) The proposal, consideration, promulgation or rescission of an executive order.

Affiliated political action committee—A "political action committee" as defined in section 1621(l) of the Election Code (25 P.S. § 3241(l)), which has a chairperson, a treasurer or another officer who is a principal, an employe of a principal, a lobbyist or an employe of a lobbyist. If an employe of a registrant serves as the officer of a political action committee in what is clearly a personal capacity, and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant, the political action committee will not be considered an affiliated political action committee.

Agency—A State agency, board, commission, authority or department.

Anything of value—

(i) For the limited purpose of reporting gifts, transportation, lodging or hospitality under section 1304 or 1305 of the act (relating to registration; and reporting), or under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests), these terms mean anything of any nature whatsoever which is not or would not ordinarily be obtainable in the marketplace without consideration, including, but not limited to:

(A) A pecuniary or negotiable item such as money; a bank bill or note; a stock, bond, note or other investment interest in an entity; a promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money.

(B) A discount or rebate not extended to the public generally.

(C) A conveyance, or a contract, agreement, promise, or other obligation for a conveyance.

(D) A deposit, distribution, payment, pledge, or transfer of money, or a contract, agreement, promise or other obligation for these.

(E) An advance or loan, or a contract, agreement, promise, or other obligation for an advance or loan.

(F) A forgiveness of indebtedness, or a contract, agreement, promise or other obligation for a forgiveness of indebtedness.

(G) Personalty or an interest in personalty, such as works of art, antiques or collectibles.

(H) Real property or an interest in real property.

(I) A service not extended free of charge to the general public.

(J) The use of real property, personal property or services belonging to other persons or entities.

(K) Entertainment and recreation not extended free of charge to the general public, or the payment of fees or charges incident thereto.

(L) A complimentary ticket/pass, or the purchase of a ticket/pass, to an event such as a reception, rally, fundraiser, sporting event, theater, opera, concert, exhibition, or the like.

(M) Food, beverage or lodging.

(N) Rewards or prizes from any contest, event or drawing not open to the general public.

(O) An automobile or other means of transportation not extended free of charge to the general public.

(ii) The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employe made within the scope of such office or employment.

(iii) For the purpose of reporting the amount of gifts, transportation, lodging and hospitality, see § 35.1(k) (relating to quarterly expense reports).

Association—An "association" as defined in the Association Code in 15 Pa.C.S. § 102 (relating to definitions). The term includes a corporation, a partnership, a limited liability company, a business trust or two or more persons associated in a common enterprise or undertaking. The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans' court division in general).

Audit—A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping and reporting.

Candidate's political committee—A "candidate's political committee" as defined in the Election Code. The words "candidate's political committee" mean any political committee formed on behalf of a specified candidate and authorized by the candidate.

Child—The term includes adopted and biological children.

Commission—The State Ethics Commission of the Commonwealth.

Compensation—Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.

Complaint—A complaint on a form prescribed by the Commission, or the equivalent of the form, which is signed and sworn under penalty of perjury and which otherwise meets, to the extent applicable, the criteria for complaints under §§ 11.1 (relating to definition of "sworn complaint") and 21.1 (relating to complaints).

De minimis—Insignificant.

Docket (noun)—The official listing of entries to the record of a matter before the Commission.

Docket (verb)—The initial, official assignment of a file number to a matter before the Commission; or the entry of an item on the docket of a matter before the Commission.

Direct communication—An effort, whether written, oral or by another medium, made by a lobbyist or principal, directed to a State official or employe, the purpose or foreseeable effect of which is to influence legislative action or administrative action.

Economic consideration—Anything of value offered or received.

Effort to influence legislative action or administrative action—An effort to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action. The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employe made within the scope of such office or employment.

Election Code—25 P. S. §§ 2600—3591.

Employee—For the limited purpose of determining exemption under section 1306(6) of the act, the term “employee” means an individual from whose wages an employer is required under the Internal Revenue Code (26 U.S.C.A.) to withhold Federal income tax.

Engaging a lobbyist—Engaging means making an arrangement, and “engagement” means an arrangement, whereby a lobbyist is employed or otherwise hired or retained to lobby on behalf of a principal for economic consideration.

Ethics Act—The Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1101—1113.

Fax—Facsimile transmission.

Filed—Registration statements, reports, and other official statements or papers are filed on the date they are physically received at the Commission office whether filed electronically or delivered by United States mail, express carrier, hand delivery or by fax. See § 31.12 (relating to faxed filings) for additional requirements when filing by fax.

Fund—The Lobbying Disclosure Fund established in section 1310(b) of the act (relating to filing fees; fund established; regulations).

Gift—Anything which is received without consideration of equal or greater value.

(i) The term does not include a political contribution which is otherwise reported as required by law or a commercially reasonable loan made in the ordinary course of business.

(ii) For the purpose of categorizing a reportable item under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act, the term does not include “transportation and lodging or hospitality received in connection with public office or employment” as defined in this section, which is otherwise reported as required by law.

(iii) The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employe made within the scope of such office or employment.

(iv) The term does not include information received by a legislator or other State official or employe within the scope of such office or employment, except to the extent that such has a fair market value beyond the actual information contained therein.

Hospitality—Includes the following:

- (i) Meals.
- (ii) Beverages.
- (iii) Recreation and entertainment.

Immediate family—An individual’s spouse, child, parent, brother, sister, mother-in-law, father-in-law, brother-in-law or sister-in-law.

Indirect communication—An effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action. The term includes, but is not limited to, letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues. The term does not include regularly pub-

lished periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

Investigative Division—The Investigative Division of the Commission.

Intentional—The term has the meaning set forth in 18 Pa.C.S. § 302(b) (relating to general requirements of culpability).

Legislation—Bills, resolutions, amendments and nominations pending or proposed in either the Senate or the House of Representatives. The term includes any other matter which may become the subject of action by either chamber of the General Assembly.

Legislative action—An action taken by a State official or employe involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of legislation; legislative motions; overriding or sustaining a veto by the Governor; or confirmation of appointments by the Governor or of appointments to public boards or commissions by a member of the General Assembly.

Lobbying—An effort to influence legislative action or administrative action. The term includes the following:

(i) Providing any gift, entertainment, meal, transportation or lodging to a State official or employe for the purpose of advancing the interest of the lobbyist or principal.

(ii) Direct or indirect communication.

Lobbyist—An individual, firm, association, corporation, partnership, business trust or business entity that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney who engages in lobbying. The term does not include an individual who receives economic consideration which is de minimis. Membership in an association alone is not sufficient to make an association member a lobbyist.

Negligence—Conduct, whether of action or omission, which violates or fails to comply with the act, and which is occasioned by a failure to exercise such care as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of the act, and is characterized by inadvertence, thoughtlessness, inattention, or the like.

Political subdivision—A “political subdivision” as defined in section 1102 of the Ethics Act (relating to definitions).

Principal—

(i) An individual, firm, association, corporation, partnership, business trust or business entity on whose behalf a lobbyist influences or attempts to influence an administrative action or a legislative action; or that engages in lobbying on the principal’s own behalf.

(ii) Membership in an association alone is not sufficient to make an association member a principal.

Registrant—A registered lobbyist or a registered principal.

Regulatory Review Act—71 P. S. §§ 745.1—745.14.

Regulation—Any rule, regulation or order in the nature of a rule or regulation, including formal and informal opinions of the Attorney General, of general application and future effect, promulgated by an agency under statutory authority in the administration of a statute adminis-

tered by or relating to the agency, or prescribing the practice or procedure before the agency.

Respondent—The subject of an audit, complaint, notice of noncompliance, investigation or formal proceeding before the Commission.

Service (of official papers)—Official papers are deemed served by the Commission, or by a Division thereof, on the date of mailing if delivered by United States mail; the pickup date if delivered by express carrier; or the date received from the Commission if hand delivered or transmitted by fax.

Staff—The Executive Director, the Chief Counsel, investigators and other personnel as may be employed by or assigned to assist the Commission.

State official or employe—An individual elected or appointed to a position in State government or employed by State government, whether compensated or uncompensated, who is involved in legislative action or administrative action.

Transportation and lodging or hospitality received in connection with public office or employment—Transportation, lodging or hospitality received in the course of, or incident to, the performance of official duties or responsibilities, or received on the basis of the status of the recipient as a public official or employe or State official or employe as those terms are defined under the Ethics Act or the act, respectively.

§ 31.2. Application to Ethics Act regulations.

(a) The definitions of “gift” and “transportation and lodging or hospitality received in connection with public office or employment” in § 31.1 (relating to definitions) apply to administration of the act and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(b) Section 35.1(k) (relating to quarterly expense reports) applies to reporting the amount of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act (relating to registration; and reporting) or under section 1105(b)(6) or (7) of the Ethics Act.

§ 31.3. Filing deadlines to fall on Commonwealth working days.

When the deadline for filing a registration statement, report, answer, brief or other official paper with the Commission falls on a weekend or holiday, or on another day that Commission offices are closed or close early, the deadline for the filing shall be extended to the following Commonwealth working day.

§ 31.4. Registration periods and reporting periods.

(a) Registration under section 1304 of the act (relating to registration) shall be within biennial registration periods that coincide with the terms of the members of the House of Representatives (December 1 of each even-numbered year to November 30 of the following even-numbered year), except that the first registration period shall commence August 1, 1999, and continue through November 30, 2000.

(b) Reporting under section 1305 of the act (relating to reporting) shall be quarterly within each calendar year, specifically, for January through March; April through June; July through September; and October through December, except that the first quarterly reporting period shall commence August 1, 1999, and shall continue through September 30, 1999.

§ 31.5. Delinquency.

(a) A registration statement or report required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is delinquent if not received by the Commission on the date due as follows:

(1) Hard copy filings must be received by 5 p.m.

(2) Faxed or electronic filings may be filed until 11:59 p.m.

(b) A failure to timely file a registration statement constitutes a failure to register as required by the act.

(c) A failure to timely file a report constitutes a failure to report as required by the act.

(d) A delinquent registration statement or report continues to be delinquent until received in proper form as required by the act and this part.

§ 31.6. Deficiency.

(a) A registration statement, report or notice of termination required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is deficient if one or more of the following exist:

(1) It does not fully and accurately include and disclose all that is required by the act and this part.

(2) It includes a false statement.

(3) It is illegible.

(4) The filer fails to use the appropriate form prescribed by the Commission.

(5) The filer fails to date the registration statement, report or notice of termination.

(6) The filer fails to sign the registration statement, report or notice of termination under oath or affirmation as set forth in § 31.10 (relating to filings to be originals signed under oath or affirmation).

(b) The filing of a deficient registration statement constitutes a failure to register as required by the act.

(c) The filing of a deficient report constitutes a failure to report as required by the act.

(d) The filing of a deficient notice of termination shall be ineffective.

(e) A deficient registration statement, report or notice of termination continues to be deficient until it is amended to fully and accurately disclose all of the information that is required to be disclosed by the act and this part.

§ 31.7. Biennial review of exemption threshold and reporting threshold.

(a) On a biennial basis commencing in January 2002, the Commission will review the threshold for reporting under section 1305(d) of the act (relating to reporting) and the threshold for exemption under section 1306(3)(ii)—(iv) of the act (relating to exemption from registration and reporting), using, to the extent applicable, the procedures within § 19.5 (relating to reporting threshold adjustments) for reviewing the threshold dollar amounts in section 1105(b) of the Ethics Act (relating to statement of financial interests).

(b) The Commission may increase the exemption threshold and reporting threshold amounts to rates deemed reasonable for assuring appropriate disclosure. Changes to the thresholds made under this section will become effective as determined by the Commission.

(c) The Commission will publish adjusted threshold amounts in the *Pennsylvania Bulletin* by June 1, 2002, and every 2 years thereafter, as necessary.

§ 31.8. Forms, records and Commission publications.

(a) Blank forms for filing or amending registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports or separate termination reports under the act may be obtained by contacting the Commission at: State Ethics Commission, Post Office Box 11470, Harrisburg, Pennsylvania 17108-1470, (717) 783-1610 or (800) 932-0936, or by visiting any Commission office during business hours on Commonwealth working days. Forms are also available at the Commission's web address: <http://www.ethics.state.pa.us>

(b) Additional sheets of equal size may be attached to any hard copy form filed under the act, if more space is required.

(c) Completed registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports and separate termination reports filed with the Commission shall remain on file for 4 years and shall be available for public inspection at the office of the Commission in Harrisburg, Pennsylvania during business hours on Commonwealth working days. The Commission will provide copies of these documents for the cost of the copying. Documents that are maintained and reproducible in an electronic format are available in that format upon request, at cost.

(d) Payments to the Commission for charges under subsection (c) shall be deposited into the Fund established by section 1310(b) of the act (relating to filing fees; fund established; regulations).

(e) Under section 1308 of the act (relating to administration and enforcement), the Commission will prepare and publish the following:

(1) An annual report of lobbying activities in this Commonwealth.

(2) An annual listing of principals, which shall identify affiliated political action committees and lobbyists.

(3) An annual listing of lobbyists, which shall identify affiliated political action committees and principals.

(4) A biennial directory of all registered lobbyists, which shall include photographs.

(i) The directory will be produced and distributed on or before May 1 of each odd-numbered year.

(ii) Copies of the directory will be made available to the public at a price not to exceed the actual cost of production.

(iii) Revenue received by the Commission from sales of this directory will be deposited into the Fund established by section 1310(b) of the act.

(5) One or all of the items in paragraphs (1)—(3) may, at the discretion of the Commission, be supplemented or be combined in a single publication or combined with the annual report prepared and published by the Commission under the Ethics Act.

§ 31.9. Amended filings.

(a) Filings under the act may be amended.

(b) Amended registration statements shall conform to the additional requirements detailed in § 33.4 (relating to amended registration statements).

(c) Amended filings will not affect the Commission's authority to conduct investigations, hearings or other proceedings under the act.

§ 31.10. Filings to be originals signed under oath or affirmation.

(a) Registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports, separate termination reports and amendments to these forms filed with the Commission shall be signed originals bearing the signature of the filer. See §§ 31.11 and 31.12 (relating to electronic filing; and faxed filings) for requirements when filing electronically or by fax.

(1) A document shall be deemed to be a signed original if it is filed electronically under § 31.11 or if it bears an original manual signature in ink.

(2) A principal who is an individual shall sign his own filings.

(3) Filings by a principal that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(4) A lobbyist who is an individual shall sign his own filings.

(5) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(6) The signature shall appear on the line indicated on the form as prescribed by the Commission.

(b) Registration statements, notices of termination and amendments to these filed under the act shall include an affirmation subject to 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities) that the information provided therein is true and correct to the best of the filer's knowledge, information and belief.

(c) Quarterly expense reports, separate quarterly expense reports, termination reports, separate termination reports and amendments to these, filed under the act, shall be filed under oath or affirmation.

(d) A lobbyist who signs a principal's quarterly expense report, termination report or amendment to these, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

(e) A lobbyist attaching a statement to a principal's quarterly expense report, termination report or amendment to these, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided in the statement is true and correct to the best of the lobbyist's knowledge, information and belief.

§ 31.11. Electronic filing.

(a) Electronic filing shall be available when notice of its availability is announced in the *Pennsylvania Bulletin* by the Commission.

(b) Upon the availability of electronic filing, forms that are required to be filed under the act may be filed electronically. The use of a digital signature assigned by the Commission shall have the same force and effect as a manual signature upon acceptance by the filer. The digital signature assigned shall be: unique to the person to whom it is assigned; capable of verification; under the sole control and authority of the person to whom it is assigned; and linked to the data in a manner so that if the data are changed, the digital signature is invalidated.

(1) A digital signature shall be assigned to a lobbyist or principal that submits to the Commission, in proper form as required by this section, an application to file electronically.

(2) The application to file electronically shall be on a form prescribed by the Commission.

(3) In submitting an application to file electronically, the applicant shall agree to all of the following:

(i) For any registration statement, notice of termination or amendment to these that the applicant files with the Commission electronically, the digital signature assigned to the applicant shall constitute the applicant's signature under affirmation as set forth in § 31.10(b) (relating to filings to be originals signed under oath or affirmation).

(ii) For any quarterly expense report, separate quarterly expense report, termination report, separate termination report or amendment to these that the applicant files with the Commission electronically, the digital signature assigned to the applicant shall constitute the applicant's signature under oath or affirmation as set forth in § 31.10(c).

(iii) The use of the digital signature assigned to the applicant to "sign" a quarterly expense report, termination report or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 31.10(d).

(iv) The use of the digital signature assigned to the applicant to attach a statement to a quarterly expense report, termination report or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 31.10(e).

(4) An application to file electronically may be rejected if the application is illegible, incomplete or unsigned.

(c) A registration statement or amendment that is submitted to the Commission electronically is filed on the date the Commission receives the document electronically if the Commission receives the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days thereafter.

(1) If the Commission does not receive the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days from the date of receiving the document electronically, the registration statement or amendment is filed on the date the Commission receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

§ 31.12. Faxed filings.

(a) A registration statement or amendment sent by fax is filed on the date the Commission receives the faxed copy if the Commission receives the signed original, together with the required photograph (in the case of a

lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days thereafter. A registration statement or amendment shall be deemed to be a signed original if it is filed electronically under § 31.11 (relating to electronic filing) or if it bears an original manual signature in ink.

(1) If the Commission does not receive the signed original, together with the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days from the date of receiving the faxed copy, the registration statement or amendment is filed on the date the Commission receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

(b) A quarterly expense report, separate quarterly expense report, lobbyist's statement of limitations of knowledge, notice of termination, termination report, separate termination report or amendment to these sent by fax transmission is filed on the date the Commission receives the faxed copy if the Commission receives the signed original within 5 business days thereafter. The document shall be deemed to be a signed original if it is filed electronically under § 31.11 or if it bears an original manual signature in ink. If the Commission does not receive the signed original within 5 business days from the date of receiving the faxed copy, the document is filed on the date the Commission receives the signed original.

§ 31.13. Enforcement of Commission orders.

The Commission through its staff may take appropriate action to enforce its orders.

§ 31.14. Parent corporations and subsidiaries.

(a) Subject to the requirements of subsection (b), a parent corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.

(b) When registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly expense reports, notices of termination, termination reports and separate termination reports shall disclose with particularity all of the required information as to the parent corporation and the subsidiaries.

CHAPTER 33. REGISTRATION AND TERMINATION

Sec.	
33.1.	Biennial filing fee.
33.2.	Principal registration.
33.3.	Lobbyist registration.
33.4.	Amended registration statements.
33.5.	Termination.

§ 33.1. Biennial filing fee.

(a) Under section 1310(a) of the act (relating to filing fees; fund established; regulations), a principal or lobbyist required to be registered under the act shall pay a biennial filing fee of \$100 to the Commission.

(1) The biennial filing fee shall be tendered to the Commission with the filing of the principal's or lobbyist's first registration statement in each registration period.

(2) The biennial filing fee shall be a flat fee for the registration period in which paid. A registrant shall not be required to pay more than one biennial filing fee in any given biennial registration period.

(3) A separate biennial filing fee shall be paid for each principal or lobbyist required to be registered, even if employed by a firm, association, corporation, partnership, business trust or business entity that is also required to register and that has paid or will pay the fee. A principal also acting as a lobbyist shall pay no more than one fee in a registration period.

(4) The biennial filing fee is nonrefundable and nontransferrable.

(5) Filing fees shall expire at the end of each registration period, regardless of when paid.

(b) The failure to pay a biennial filing fee as required by the act and this section shall constitute a failure to register as required by the act.

(c) Money received from biennial filing fees shall be deposited in the Fund.

§ 33.2. Principal registration.

(a) Unless exempt under section 1306 of the act (relating to exemption from registration and reporting), a principal shall register with the Commission within 10 days of acting in any capacity as a principal.

(1) Engaging a lobbyist for lobbying purposes constitutes acting in the capacity of a principal.

(2) Lobbying by a principal on the principal's own behalf constitutes acting in the capacity of a principal.

(i) A principal that is required to register and that engages in lobbying on its own behalf need only register with the Commission as a principal.

(ii) Unless exempt under section 1306 of the act, members or employes of a principal who engage in lobbying on behalf of the principal shall register as lobbyists with the Commission under § 33.3 (relating to lobbyist registration).

(b) A principal shall register by filing a registration statement with the Commission, on a form prescribed by the Commission, which shall disclose the following information:

(1) The name, permanent address, daytime telephone number, and name and nature of business of the principal.

(2) The name, registration number and acronyms of "affiliated political action committees" as defined in section 1303 of the act (relating to definitions), as to the principal or the principal's employes, or both.

(3) The name and permanent business address of each individual, registered or unregistered, who will for economic consideration engage in lobbying on the principal's behalf, whether as an individual or as a member, employe, or agent of a firm, association, corporation, partnership, business trust or business entity.

(4) If the principal is an organization or association, the number of its dues-paying members in the past calendar year.

(c) For each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer's option, include the street address, if different. If no street address is supplied, the registrant shall be deemed to have waived personal service where such service is required by law. The filer may, at the filer's option, also include a fax number or electronic mail address.

(d) The registration statement shall include the principal's consent to receive service of notices, other official

mailings or process at addresses listed in the registration statement on file with the Commission.

(e) The registration statement shall include a statement that the principal has received, read and understands the requirements and prohibitions of sections 1304, 1305 and 1307 of the act (relating to registration; reporting; and prohibited activities) and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(f) A principal will not be considered registered until the completed registration statement, in proper form as required by the act and this section, is received by the Commission.

(g) Unless terminated, each registration statement filed under the act shall be effective from the date of filing through the final day of the registration period then in effect. The principal shall file new registration statements after that date, to the extent the principal is required to be registered under the act and this section.

§ 33.3. Lobbyist registration.

(a) Unless exempt under section 1306 of the act (relating to exemption from registration and reporting), a lobbyist shall register with the Commission within 10 days of acting in any capacity as a lobbyist.

(1) Accepting an engagement to lobby constitutes acting in the capacity of a lobbyist.

(2) Engaging in lobbying constitutes acting in the capacity of a lobbyist.

(3) When a firm, association, corporation, partnership, business trust or business entity is engaged as a lobbyist, it and each of its members or employes that engage in lobbying on behalf of the principal shall register with the Commission, unless exempt under section 1306 of the act.

(b) A lobbyist shall register by filing a "registration statement" with the Commission on a form prescribed by the Commission which shall include and disclose the following information:

(1) The name, permanent business address and daytime telephone number of the lobbyist.

(2) A passport-sized (approximately 2 inches × 2 inches) photograph of the lobbyist which photograph shall be of reasonable clarity and shall have been taken within 2 years of the date of registration, except that if the lobbyist is not an individual, a photograph is not required.

(3) The name, permanent business address and daytime telephone number of the principal the lobbyist represents.

(4) The name, registration number and acronyms of "affiliated political action committees," as defined in section 1303 of the act (relating to definitions) as to the lobbyist or the lobbyist's employes, or both.

(c) For each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer's option, include the street address, if different. If no street address is supplied, the registrant shall be deemed to have waived personal service where such service is required by law. The filer may, at the filer's option, also include a fax number or electronic mail address.

(d) The registration statement shall include the lobbyist's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Commission.

(e) The registration statement shall include a statement that the lobbyist has received, read and understands the requirements and prohibitions of sections 1304, 1305 and 1307 of the act (relating to registration; reporting; and prohibited activities) and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(f) A lobbyist required to be registered under the act shall file a separate registration statement for each principal represented. A lobbyist registering on behalf of an association shall not be required to register on behalf of each individual member of that association, except as to such members of the association whom the lobbyist represents in an individual capacity.

(g) A lobbyist will not be considered registered until the completed registration statement, in proper form as required by the act and this section, is received by the Commission.

(h) Unless terminated, each registration statement filed under the act shall be effective from the date of filing through the final day of the registration period then in effect. The lobbyist shall file new registration statements after that date, to the extent the lobbyist is required to be registered under the act and this section.

§ 33.4. Amended registration statements.

(a) A principal required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the principal's registration statement. The amended registration statement shall be filed with the Commission within 14 days after the change occurs, except that if the change is solely as to the number of dues-paying members in the past calendar year, the amended registration statement shall be filed with the Commission within 14 days of the end of the year in which the change occurs.

(b) A lobbyist required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the lobbyist's registration statement.

(1) The amended registration statement shall be filed with the Commission within 14 days after the change occurs.

(2) A change to the identity or name of the principal represented shall require a new registration statement.

(c) The filing of amended registration statements shall be subject to the additional requirements detailed in § 31.9 (relating to amended filings).

§ 33.5. Termination.

(a) A lobbyist or a principal may terminate registration by filing a completed notice of termination with the Commission.

(1) The notice of termination shall be on a form prescribed by the Commission.

(2) A lobbyist may file notices of termination solely as to registration statements which the lobbyist has filed.

(3) A principal may file notices of termination solely as to registration statements which the principal has filed.

(b) A separate notice of termination shall be required for each registration statement.

(c) A notice of termination shall identify the applicable registration statement by the date filed, the name and

address of the principal, and the names and addresses of the lobbyists.

(d) A notice of termination may be amended, but cannot be withdrawn.

(e) A registration statement cannot be revived or otherwise made effective after a notice of termination as to the registration statement has been filed.

(f) No lobbying may occur after the filing of a notice of termination unless the lobbying is under a separate registration statement which has already been filed with the Commission and which, at the time of the lobbying, has not been terminated.

(g) A lobbyist or principal filing a notice of termination shall, within 30 days thereafter, file a termination report with the Commission.

(1) Termination reports shall be filed on the quarterly expense report form prescribed by the Commission. The filer shall check the appropriate block on the form to indicate that it is a termination report.

(2) A termination report shall identify the applicable notice of termination by the date filed, the name and address of the principal, and the names and addresses of the lobbyists.

(3) For purposes of determining whether the reporting threshold has been met, expenses shall be accounted for as set forth in § 35.1(c) (relating to quarterly expense reports).

(4) If the total lobbying expenses of the registered principal or registered lobbyist, lobbying on the principal's behalf, or both, from the end of the previous quarterly reporting period through the final day of lobbying are \$500 or less, the termination report may substantively be limited to a statement to that effect, by checking the appropriate block on the form.

(5) If the total lobbying expenses of the registered principal or registered lobbyist, lobbying on the principal's behalf, or both, from the end of the previous quarterly reporting period through the final day of lobbying are in excess of \$500, a termination report by the principal shall include all information required by section 1305(b)(1)—(3), (5) and (7) of the act (relating to reporting), and a termination report by a lobbyist shall include all information required by section 1305(b)(2) and (3) of the act, through the final day of lobbying activity.

(6) The filer of the termination report shall give written notice to each public official or employe of the public official's or employe's inclusion in the termination report within 7 days of the submission of the termination report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(h) A lobbyist required to be registered under the act shall sign the termination reports and amended termination reports submitted by the principal represented to attest to the validity and accuracy of the reports to the best of the lobbyist's knowledge.

(1) A lobbyist may attach a statement to the report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.

(2) Lobbyists' statements as to limitations of knowledge shall describe the limitations and the reasons for the limitations with specificity.

CHAPTER 35. REPORTING

- Sec.
- 35.1. Quarterly expense reports.
- 35.2. Records maintenance, retention and availability.

§ 35.1. Quarterly expense reports.

(a) A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses of a registered principal or registered lobbyist lobbying on the principal's behalf, or both, exceed \$500 in a quarterly reporting period.

(b) For a quarterly reporting period in which the total lobbying expenses of a registered principal or registered lobbyist lobbying on the principal's behalf, or both, are \$500 or less, a statement to that effect shall be filed with the Commission by checking the appropriate block on the quarterly expense report form.

(c) For purposes of determining whether the reporting threshold has been met, and for filing reports required under sections 1304 and 1305 of the act (relating to registration; and reporting), books and records shall be kept on the same basis the registrant uses for Federal tax purposes. For those registrants who do not file tax returns, books and records shall be kept on a cash basis.

(d) The principal shall file a quarterly expense report or statement of failure to meet the reporting threshold on or before the 30th day after the quarterly reporting period ends.

(e) Pursuant to subsection (n), a lobbyist required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if the principal fails to file in accordance with subsection (d) or if, during the reporting period, the lobbyist engaged in lobbying which was not contained in the report filed by the principal represented by the lobbyist. The deadline for filing a separate report shall be the 30th day after the date the principal's related report was filed or due.

(f) Quarterly expense reports, statements of failure to meet the reporting threshold, separate quarterly expense reports by lobbyists and amendments to these shall be filed on forms prescribed by the Commission.

(g) A quarterly expense report of a principal required to be registered under the act shall include the following information:

(1) The name, permanent business address and daytime telephone number of any individual, firm, association, corporation, partnership, business trust or business entity which contributed more than 10% of the total resources received by the principal during the reporting period. "Total resources" do not include the purchase, transfer, or ownership of stock in a publicly held corporation.

(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted. If a lobbyist is a firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal shall be included.

(3) The general subject matter or issue being lobbied, which shall be indicated by checking the appropriate block on the form or completing the category designated "other." The following need not be reported:

(i) A listing indicating which lobbyists are lobbying on which matters.

(i) If the principal fails to file a termination report, or if, during the period covered by the principal's termination report or amended termination report, the lobbyist engaged in lobbying on behalf of the principal which was not contained in the report, a lobbyist required to be registered under the act shall file a separate termination report or a separate amended termination report.

(1) When more than one lobbyist would be required to file a separate report, they shall have the option of filing the reports jointly.

(i) The joint filing of a separate report does not excuse the various lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

(ii) The lobbyists joining in a joint report shall sign the report as provided in § 31.10 (relating to filings to be originals signed under oath or affirmation).

(2) The deadline for filing a separate report shall be the 30th day after the date the principal's related report was filed.

(3) Separate reports shall be filed on a form prescribed by the Commission.

(4) A separate termination report or separate amended termination report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate termination report or separate amended termination report shall include all information required by section 1305(b)(2), (3) and (7) of the act.

(6) A separate termination report or separate amended termination report may include a statement which sets forth, with specificity, the limitations of the lobbyist's knowledge and the reasons for the limitations.

(7) A lobbyist filing a separate termination report or separate amended termination report shall promptly serve it upon the principal.

(8) A lobbyist filing a separate termination report or separate amended termination report shall give written notice to each public official or employe of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act.

(j) If the principal is unable to secure the signature of the lobbyist as to a termination report or amended termination report, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature. Such affidavit shall be on a form prescribed by the Commission.

(k) After a reasonable review of the termination report, the Commission will issue to the lobbyist or principal who filed the notice of termination a letter stating that the registrant has terminated registration. The letter shall be issued within 90 days after the Commission's receipt of the notice of termination except that the filing of a defective or delinquent termination report shall automatically and correspondingly extend the Commission's deadline for issuing the letter.

(l) The filing of a notice of termination or a termination report, or the issuance of a Commission letter stating that the registrant has terminated registration, does not affect the Commission's authority to conduct audits, investigations, hearings or other proceedings under the act and this part.

(ii) The specific bill numbers for which the lobbying is being done.

(iii) The specific contents of any communication or the identity of those with whom the communications take place.

(iv) The contents of privileged communications, such as those between attorney and client or doctor and patient.

(4) A single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, to be calculated as prescribed by subsection (i).

(5) A single aggregate good faith estimate of the total amount spent for direct communication. In calculating this good faith estimate, any reasonable accounting method may be used.

(6) The total costs for gifts, entertainment, meals, transportation, lodging and receptions, given to or provided to State officials or employes or their immediate families, except that any cost under this paragraph which is of a value not exceeding \$10 need not be reported under section 1305(b)(3) of the act. If the same or similar gift, hospitality or transportation or lodging is provided to more than one State official or employe, the aggregate economic value of which is \$10 or more, such value shall be included in the appropriate totals reported under section 1305(b)(2) of the act.

(7) A single aggregate good faith estimate of the total amount spent for indirect communication. In calculating this good faith estimate, any reasonable accounting method may be used.

(8) The information required to be disclosed by section 1305(b)(3) of the act, as detailed by subsections (g)(6), (j) and (k).

(h) A registered principal or registered lobbyist that attempts to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(4)—(7).

(i) The single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying shall include salaries and other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses for those involved in lobbying, and costs for offices, equipment and supplies utilized for lobbying.

(1) In calculating the single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, any reasonable accounting method may be used.

(2) Reportable personnel costs include costs for lobbying staff, research and monitoring staff, consultants, lawyers, lobbyists, publications and public relations staff, and technical staff, as well as clerical and administrative support staff who engage in lobbying but who are exempt from reporting under section 1306(6) of the act (relating to exemption from registration and reporting).

(3) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying.

(4) If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a good faith prorated estimate based on the value of the time devoted to lobbying. The time devoted to lobbying shall include:

(i) Research time spent in preparation for lobbying.

(ii) Time spent in direct communication or indirect communication.

(iii) Other time consumed in furtherance of lobbying for which the individual or entity is compensated or reimbursed.

(5) Office expenses shall include, but not be limited to: the rental value of the physical facilities of an office during the period of time used for lobbying, together with additional charges for utilities, telephone usage, fax, insurance, services, furnishings, computers, printers, systems, copiers, fax machines, office supplies, postage and other costs related to the physical facilities and operation of an office during the period of time used for lobbying.

(j) A quarterly expense report shall also identify, by name, position and each occurrence, the State officials or employes, or both, who received from a principal or lobbyist anything of value which must be included in the statement of financial interests under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests) as implemented by section 1105(d) of the Ethics Act.

(1) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per calendar year.

(2) The reporting of the provision of a gift to a State official or employe shall identify:

(i) The name and position of the State official or employe.

(ii) The name and address of the source of the gift.

(iii) The value of the gift.

(iv) The circumstances of the gift, including the nature of the gift.

(3) The reporting of the provision of transportation/lodging/hospitality to a State official or employe in connection with public office or employment shall identify the following:

(i) The name and position of the State official or employe.

(ii) The name and address of the source of the payment.

(iii) The value of the transportation, lodging or hospitality.

(k) For purposes of reporting the value of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act:

(1) Gifts and hospitality items that are returned unused to the donor within 30 days of the date of receipt need not be reported.

(2) The valuation of a complimentary ticket to a fundraiser shall be based upon the reasonable amount of the goods or services received by the donee. Such valuation shall not include a political contribution which is otherwise reported as required by law.

(3) The value of gifts, transportation, lodging or hospitality shall equal the costs to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.

(4) When paragraph (3) is not applicable, the value of the gifts, transportation, lodging or hospitality shall equal the fair market values as determined by the replacement

costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.

(5) When paragraphs (3) and (4) are not applicable, the registrant may use any reasonable method to determine the value of gifts, transportation, lodging or hospitality, but shall include a detailed explanation of the specific method used.

(6) When more than one individual is benefited incident to an occasion or transaction, the registrant may calculate the value of the gifts, transportation, lodging or hospitality provided to a particular individual by one of the following:

(i) Calculating the actual benefit provided to that individual.

(ii) Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients, and adding the resulting figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that particular individual.

(iii) Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.

(l) The filer of the quarterly expense report or amended quarterly expense report shall give written notice to each public official or employe of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act.

(m) A lobbyist required to be registered under the act shall sign the quarterly expense reports or amended quarterly expense reports submitted by the principals represented to attest to the validity and accuracy of the reports to the best of the lobbyist's knowledge. If the principal is unable to secure the signature of the lobbyist, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature. Such affidavit shall be on a form prescribed by the Commission.

(1) A lobbyist may attach a statement to the quarterly expense report or amended quarterly expense report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.

(2) Lobbyists' statements as to limitations of knowledge shall be on a form prescribed by the Commission and shall describe the limitations and the reasons for the limitations with specificity.

(n) When a lobbyist is required to file a separate report under subsection (e), the following shall apply:

(1) When more than one lobbyist would be required to file a separate report, they shall have the option of filing the reports jointly.

(i) The joint filing of a separate report does not excuse the various lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

(ii) All lobbyists joining in a joint report shall sign the report as provided in § 31.10 (relating to filings to be under oath or affirmation).

(2) The deadline for filing any separate quarterly expense report or separate amended quarterly expense report shall be the 30th day after the date the principal's related report was filed.

(3) Separate quarterly expense reports and separate amended quarterly expense reports shall be filed on a form prescribed by the Commission.

(4) A separate quarterly expense report or separate amended quarterly expense report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate quarterly expense report or separate amended quarterly expense report shall include all information required by section 1305(b)(2), (3) and (7) of the act.

(6) A separate quarterly expense report or separate amended quarterly expense report may include a statement which sets forth, with specificity, the limitations of the lobbyist's knowledge and the reasons for the limitations.

(7) A lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall promptly provide it to the principal.

(8) A lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall give written notice to each public official or employe of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act.

§ 35.2. Records maintenance, retention and availability.

(a) A registrant shall maintain records of all lobbying activity.

(1) The Commission may prescribe standardized forms for the records, in which case the forms prescribed by the Commission may be used by all principals and lobbyists required to be registered under the act.

(2) Records of lobbying activity shall be maintained in sufficient detail to enable the registrant to fully comply with the act and this part.

(3) The records shall identify the general subject matter or issue being lobbied. The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded or maintained.

(b) A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity. A registrant may keep records related to registering and reporting under the act separate from other records relating to lobbying.

(1) Records which integrate both lobbying and non-lobbying activities shall be retained and made available for inspection or audit under this section and Chapter 41 (relating to compliance audits).

(2) An expenditure incurred partially in connection with lobbying may be prorated by any reasonable accounting method, but the method used shall be described in detail in the records maintained as to the expenditure.

(c) A registrant shall retain all documents reasonably necessary to substantiate the reports to be made under

section 1304 or 1305 of the act (relating to registration; and reporting) for 4 years from the date of filing of the subject report.

(1) The documents shall include, but not be limited to: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, cancelled checks, payroll check stubs, time sheets, tax returns and related forms, contracts, subcontracts, business diaries and calendars, and other related written or computerized records.

(2) Original source records received by the registrant shall be retained in their original form.

(3) Records prepared by the registrant under this section may be in written or computerized/electronic formats.

(4) Computerized/electronic records shall be maintained to enable the Commission or Office of Attorney General to access in readable form all of the information reasonably necessary to substantiate the registration statements or reports.

(5) Affidavits may be used if actual records are lost, stolen or destroyed through no fault of the registrant, or are otherwise unavailable, and cannot be recreated from other sources. An affidavit shall be as complete and detailed as is reasonably possible, and shall include the specific reasons for the unavailability of the actual records.

(d) Reportable expenditures shall be supported by original source documents to the extent they are available. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expenditure promptly prepare a written voucher, journal entry, or other written or electronic form of record to document the expenditure, which record shall include a notation of the reason an original source document was not available.

(e) The documents and records maintained and retained to substantiate expenditures shall reflect for each reportable item, the following information:

(1) The full names of the payor and payee.

(2) The date of the transaction.

(3) The dates and forms of payments.

(4) The full name and official position of each State official or employe who was a beneficiary, and the amount of the expenditure reasonably attributable to each of them.

(5) The number of immediate family members of a State official or employe, who were beneficiaries, and the amount of the expenditures reasonably attributable to them.

(6) A description of the goods or services or other consideration for which the expenditure was made or incurred.

(f) Contributions of resources which are reportable under section 1305(b)(5) of the act shall upon receipt be promptly documented by the registered principal through the preparation of a written receipt, an entry in a journal maintained by the principal, or other written or electronic form of record.

(g) Documents and records maintained and retained to substantiate contributions of resources reportable under section 1305(b)(5) of the act shall reflect for each reportable item, the following information:

(1) The full names of the donor and donee.

(2) The amount or value and date of the contribution.

(3) In the case of a nonmonetary contribution, a description of the goods, services or other forms of resources provided.

(4) Instructions, directions, conditions, restrictions, limitations or controls provided or imposed by the donor as to the use or disposition of the contribution.

(h) Upon written request by the Office of Attorney General or the Commission, all documents reasonably necessary to substantiate reports made under section 1305 of the act shall be made available for inspection and copying within 30 days.

(1) Either the Office of Attorney General or the Commission may extend this 30-day deadline in connection with its own requests, when circumstances compelling an extended deadline are established.

(2) Computerized/electronic records shall be provided in readable form.

CHAPTER 37. EXEMPTION FROM REGISTRATION AND REPORTING

Sec.

37.1. Qualifications for exemption.

37.2. Exempt status.

§ 37.1. Qualifications for exemption.

The following individuals and activities shall be exempt from registration under section 1304 of the act (relating to registration) and reporting under section 1305 of the act (relating to reporting):

(1) An individual whose lobbying activities are limited to preparing testimony and testifying before a committee of the General Assembly or participating in an agency administrative proceeding.

(2) An individual who is an employe of an entity engaged in the business of publishing, broadcasting or televising while engaged in the gathering and dissemination of news and comment thereon to the general public in the ordinary course of business.

(3) An individual who does not receive any compensation for lobbying, other than travel expenses. For the limited purpose of determining exemption under section 1306(3)(i) of the act (relating to exemption from registration and reporting), the term "travel expenses" means reasonable and necessary expenses for transportation, meals, beverages and lodging.

(4) An individual whose compensation for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.

(5) An individual who engages in lobbying on behalf of the individual's employer when the lobbying activity represents less than the equivalent of \$2,500 of the employe's time during any reporting period, based on an hourly proration of the employe's compensation.

(6) A principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

(7) An elected State officer acting in an official capacity.

(8) A State executive officer appointed by the Governor acting in an official capacity.

(9) An elected or appointed official or employe of a political subdivision acting in an official capacity.

(10) An employe of the Commonwealth or an employe or official of an independent agency of the Commonwealth acting in an official capacity.

(11) An individual representing a bona fide church of which the individual is a member and the purpose of the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion.

(12) An employe, who is not a registered lobbyist, of a corporation which is registered as a principal under section 1304 of the act; has one or more registered lobbyists; and includes in its reports under section 1305 of the act all of the employe's expenses related to lobbying.

§ 37.2. Exempt status.

(a) As long as a principal or lobbyist qualifies for exemption under section 1306 of the act (relating to exemption from registration and reporting), the principal or lobbyist is not required to register or report under the act, even if total lobbying expenses for a quarterly reporting period exceed \$500.

(b) Upon losing exempt status, a principal or lobbyist is immediately subject to the registration and reporting requirements of the act.

(c) A principal is not required to retroactively file reports for quarterly reporting periods prior to the loss of exempt status.

(d) A lobbyist is not required to retroactively sign or file reports for quarterly reporting periods prior to the loss of exempt status.

CHAPTER 39. OPINIONS AND ADVICES OF COUNSEL

Sec.	
39.1.	Ethics Act regulations in Part I as to opinions and advices of counsel.
39.2.	Standing requirements.
39.3.	Prospective conduct to be reviewed.

§ 39.1. Ethics Act regulations in Part I as to opinions and advices of counsel.

The Commission shall provide advices of counsel and opinions in accordance with the procedures in section 1107 of the Ethics Act (relating to powers and duties of commission) and Chapter 13 (relating to opinions and advices of counsel). A principal, lobbyist or State official or employe who acts in good faith based upon a written advice or opinion of the Commission issued to him shall not be held liable for a related violation of the act.

§ 39.2. Standing requirements.

(a) An advice or opinion may be requested by a lobbyist, principal, State official or employe, or by his authorized representative, as to his own conduct, or by a lobbyist, principal, State official or employe regarding the conduct of employes responsible to him.

(b) An unauthorized request for an advice or opinion as to the conduct of another shall be considered a "third-party request" and will not be entertained.

§ 39.3. Prospective conduct to be reviewed.

An advice or opinion will only be issued as to prospective-future-conduct.

CHAPTER 41. COMPLIANCE AUDITS

Sec.	
41.1.	Lotteries.
41.2.	Number and scope of compliance audits.
41.3.	Audit procedures.
41.4.	Audit report.
41.5.	Confidentiality.

§ 41.1. Lotteries.

(a) Each year, the Commission will initiate, by lottery, random audits of registration statements and disclosure reports required to be filed under the act.

(b) The Commission may hold up to four lotteries per year. The number of lotteries held in a given year will be a matter within the Commission's discretion.

(c) No lobbyist or principal will be subject to a random audit more than once in any 12-month period.

§ 41.2. Number and scope of compliance audits.

(a) The purpose of conducting the audits shall be to ensure compliance with the act.

(b) Each year, the number of audits to be conducted will be determined by the Commission through resolutions adopted at public meetings. The number of audits conducted in a given year will depend upon various factors, including the complexity, results and time required to complete the audits.

(c) An audit shall include registration statements and disclosure reports, as well as other relevant information to verify, explain, clarify, support or contravene the registration statements and disclosure reports.

(d) An audit shall be limited in time to the previous 4 calendar years, except that lobbying activities performed prior to August 1, 1999, will not be audited under the act.

§ 41.3. Audit procedures.

The following general procedures will be employed by the Commission for audits conducted under section 1308(g) of the act (relating to administration and enforcement):

(1) At least 30 days prior to the initiation of the audit, each audit subject will be advised by letter that it was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.

(2) Prior to the initiation of the audit, a review of the subject's reports on file with the Commission for a period not to exceed 4 years will be conducted.

(3) The audit will be initiated by way of conference with the audit subject or in the case of a firm, the designated representative thereof.

(i) The audit will include a detailed field examination of the financial records of the audit subject relating to lobbying activities.

(ii) The audit may include independent verification of some or all of the information reported.

(A) The audit may include related records from other sources, in which case the subject of the audit shall cooperate fully and shall execute all waivers, releases or authorizations to allow the Commission to obtain the records.

(B) Registrants shall have an affirmative duty to cooperate fully in any audit of themselves.

(3) The audit may include interviews of lobbyists, principals, representatives and employes thereof and other individuals necessary to the completion of the audit.

(4) A post audit conference will be conducted with the subject of the audit, or in the case of an entity, with the designated representative thereof.

(5) Post audit preparation of a report describes the result of the audit.

§ 41.4. Audit report.

(a) The Division of the Commission that is responsible for performing compliance audits will, at the conclusion of each audit, prepare an audit report which will include findings.

(b) An audit report may include recommendations as to recordkeeping, reporting and other related practices arising from the audit.

(c) Upon completion, an audit report will be served upon the principal or lobbyist that is the subject of the audit.

(1) Service of the audit report shall be complete upon mailing.

(2) Within 30 days of service of the audit report, the subject of the audit may file with the Commission a statement setting forth the subject's position as to the audit report.

(d) Audit reports and any related responses shall be submitted to the Executive Director of the Commission for review, and may form the basis for further proceedings under the act or the Ethics Act.

§ 41.5. Confidentiality.

An audit report and findings will be confidential, except that the Commission will include the relevant portion of an audit as part of its findings of fact in a Commission order which results from an investigation arising out of an audit.

CHAPTER 43. INVESTIGATIONS, HEARINGS AND REFERRALS

Sec.	
43.1.	Intentional violations.
43.2.	Commission proceedings under section 1307 of the act.
43.3.	Late or deficient filings—Commission proceedings under section 1304 or 1305 of the act.
43.4.	Noninvestigative process for late or deficient filings.
43.5.	Investigative process for late or deficient filings.
43.6.	Civil penalties for late or deficient filings.
43.7.	Commission decisions as to late or deficient filings.

§ 43.1. Intentional violations.

(a) If the Commission after investigation believes an intentional violation of the act has been committed, it will refer all relevant documents and other information to the Office of Attorney General.

(b) Under section 1309(b) of the act (relating to penalties) and § 43.4(16) (relating to noninvestigative process for late or deficient filings), if the Commission finds that a failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution.

(c) Nothing contained in the act or regulations promulgated thereunder shall prohibit the Office of Attorney General from initiating an investigation or prosecution under the act pursuant to its authority by law, and the Office of Attorney General need not await a referral from the Commission before initiating such an investigation or prosecution.

§ 43.2. Commission proceedings under section 1307 of the act.

(a) Upon receipt of a complaint as defined in § 31.1 (relating to definitions), the Commission, through its Executive Director, will conduct a preliminary inquiry into an alleged negligent violation of section 1307 of the act (relating to prohibited activities).

(b) Upon the motion of the Executive Director of the Commission, the Commission, through its Executive Director, may conduct a preliminary inquiry into an alleged negligent violation of section 1307 of the act.

(c) Preliminary inquiries will be conducted in accordance with the procedures for preliminary inquiries set forth within § 21.3 (relating to preliminary inquiries), to the extent applicable.

(d) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 1307 of the act by a lobbyist or principal, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions in §§ 21.1—21.3, 21.5 and 21.21—21.27.

(1) If the respondent does not submit a timely request for a hearing, the Investigative Division shall have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(2) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(e) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 1307 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§ 21.28—21.30 (relating to decision; finality; reconsideration; and effect of order).

(f) At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

§ 43.3. Late or deficient filings—Commission proceedings under section 1304 or 1305 of the act.

(a) Commission proceedings under section 1304 or 1305 of the act (relating to registration; and reporting) may be initiated based upon one or more of the following:

(1) Receipt of a complaint.

(2) An audit or related audit conducted by the Commission under Chapter 41 (relating to compliance audits).

(3) Reviews of filings conducted by Commission staff.

(4) The motion of the Executive Director of the Commission, which is based upon a reasonable belief that a violation of the act may have occurred.

(b) The Commission, through its Executive Director, will initiate proceedings involving section 1304 or 1305 of the act (relating to registration; and reporting) under either the noninvestigative procedures set forth in § 43.4 (relating to noninvestigative process for late or deficient filings) or under the investigative procedures in § 43.5 (relating to investigative process for late or deficient filings).

(1) In each case, the Executive Director of the Commission will elect which process will be followed, which election may be based upon factors, including but not limited to, the following:

(i) The complexity of the matter.

(ii) Whether an investigation is needed to fully review the matter.

(iii) Whether the filer has had prior notice of the requirements of the act.

(iv) Whether the filer has in the past complied with the act.

(2) The election of the process to be followed will not be controlled by the manner in which the alleged negligent violation or noncompliance comes to the attention of the Commission.

(3) If a formal complaint is received alleging a failure to register or report as required by the act, or the filing of a report containing a false statement, the Commission through its Executive Director may elect to proceed in the matter under the noninvestigative procedures of § 43.4 rather than through the investigative procedures of § 43.5.

(i) A complainant will be notified of the Executive Director's election of the process to be followed.

(ii) A complainant will also be notified of the final resolution of the matter.

(4) Information received under subsection (a) may form the basis for proceedings under either the noninvestigative procedures of § 43.4, or, upon the motion of the Executive Director, the investigative procedures of § 43.5.

§ 43.4. Noninvestigative process for late or deficient filings.

The noninvestigative process for matters under section 1304 or 1305 of the act (relating to registration; and reporting) will include the following procedures:

(1) The Executive Director of the Commission will issue a notice of noncompliance to the lobbyist, principal or individual that has failed to register or report as required by the act. A notice of noncompliance may encompass multiple failures to comply with the act.

(2) The notice of noncompliance will state the nature of the alleged noncompliance and the civil and criminal penalties for failing to register, failing to file a report or filing a report containing a false statement. A notice of noncompliance will also advise of the right to a hearing before the Commission and the time and manner in which to request a hearing.

(3) The notice recipient shall have 20 days from the mailing date of the notice of noncompliance in which to cure the noncompliance. If the noncompliance is not cured within that time, the Investigative Division may file with the Commission a petition for civil penalties, which petition shall be served upon the respondent by the Investigative Division.

(4) The petition for civil penalties shall set forth the pertinent factual averments in numbered paragraph form, and shall notify the respondent of the opportunity to file a written answer and to request a hearing in the matter.

(5) An answer to the petition for civil penalties shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(6) An answer to the petition for civil penalties shall specifically admit or deny each of the allegations made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

(7) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition for civil penalties.

(8) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition for civil penalties upon the respondent.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing shall be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(9) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(10) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(11) The respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(12) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged, or information not within paragraph (11).

(13) A hearing under section 1309 of the act (relating to penalties) will be public and will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of commission; and investigations by commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(14) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs) to the extent applicable.

(15) After the opportunity for a hearing has been provided, and following the submission of any briefs, the Commission will determine, based upon the record before it, whether the respondent was required to register or report under the act; whether the failure to register or report was negligent; and if the failure was negligent, the amount of the civil penalty to be imposed. At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

(16) If the Commission finds that the failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution.

(17) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(18) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures set forth in § 21.29(b) and (d)—(f) (relating to finality; reconsideration) to the extent applicable.

(19) The official record of the case before the Commission will be publicly available.

(20) The files of the Investigative Division will not be publicly available.

§ 43.5. Investigative process for late or deficient filings.

The investigative process for matters under section 1304 or 1305 of the act (relating to registration; and reporting) shall include the following procedures:

(1) The Commission, through its Executive Director, may conduct a preliminary inquiry into any alleged negligent violation of section 1304 or 1305 of the act. Preliminary inquiries will be conducted under the procedures for preliminary inquiries in § 21.3 (relating to preliminary inquiries), to the extent applicable.

(2) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 1304 or 1305 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions of §§ 21.1—21.3, 21.5 and 21.21—21.27.

(i) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(ii) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(3) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 1304 or 1305 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§ 21.28—21.30 (relating to decision; finality; reconsideration; and effect of order). At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

§ 43.6. Civil penalties for late or deficient filings.

Following a noninvestigative process under § 43.4 (relating to noninvestigative process for late or deficient filings), or an investigative process under § 43.5 (relating to investigative process for late or deficient filings), if the Commission finds negligent failures to register or report as required by the act, the Commission may, upon the vote of at least four of its members present, levy one or more civil penalties as provided for in this section.

(1) Each negligent failure to register or report as required by the act is punishable by a civil penalty of up to \$50-per-day for each day the registration statement or report is delinquent or deficient.

(2) A civil penalty shall be calculated from the first day the registration statement or report is delinquent or deficient, through the date a complete and accurate registration statement or report is filed or the Commission decides the matter, whichever first occurs.

(3) In determining whether to impose a civil penalty that is less than \$50-per-day, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the delinquency, deficiency or falsehood.

(ii) Whether the respondent has raised any justifiable excuse such as, for example, the following:

(A) The unavailability of records due to loss, theft or destruction through no fault of the respondent.

(B) Incapacitating physical or mental illness, hospitalization, accident involvement, or death of a person required to register or report, a person whose participation is essential to the filing, or a member of the immediate family of the persons.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the registration/reporting requirements of the act.

(iv) Whether Commission records indicate that the Commission has previously notified the respondent, in writing, of other delinquent, deficient, or false registration statements or reports.

(v) Whether proceedings have previously been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(vi) Whether there are any other factors which should be considered as aggravating or mitigating factors in the case.

(4) The imposition of a civil penalty by the Commission shall not preclude a criminal prosecution for intentional violation of the act.

§ 43.7. Commission decisions as to late or deficient filings.

The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

CHAPTER 45. PROHIBITION AGAINST LOBBYING AS A SANCTION

Sec.

45.1. Basis for prohibition against lobbying.

45.2. Procedures for imposing prohibition against lobbying.

§ 45.1. Basis for prohibition against lobbying.

(a) Under section 1309 of the act (relating to penalties), the Commission may prohibit a lobbyist or principal from lobbying for up to 5 years when the lobbyist or principal has done one or more of the following:

(1) Intentionally failed to register or report as required by the act.

(2) Filed a report under the act with knowledge that the report contained a false statement.

(3) Otherwise intentionally violated the act.

(4) Failed to comply with section 1304, 1305 or 1307 of the act (relating to registration; reporting; and prohibited activities) after notice of noncompliance and after a hearing, if requested.

(b) For the limited purpose of the imposition of a prohibition against lobbying, the respondent shall be deemed to have been notified of noncompliance when served with both of the following:

(1) A findings report, notice of noncompliance or other form of process which meets the requirements of section 1309(a) of the act.

(2) A Commission order or court order finding the respondent in noncompliance with, or in violation of, the act.

(c) For the limited purpose of the imposition of a prohibition against lobbying, the respondent shall be deemed to have failed to comply after notice of noncompliance if the respondent has not satisfied the requirements of the act within 30 days of the issuance of a Commission order or court order finding the respondent in

noncompliance/violation, or within another time for compliance as specified by the order.

(d) The prohibition against lobbying will not be imposed unless the defendant/respondent has been afforded the opportunity for a hearing as to whether the prohibition should be imposed.

(1) A hearing, if requested, will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, Chapter 21 (relating to investigations).

(2) The record of the underlying proceeding on violation/noncompliance, as well as relevant evidence of mitigating or aggravating factors, shall be admissible.

§ 45.2. Procedures for imposing prohibition against lobbying.

(a) Giving consideration to the factors set forth in subsection (b)(14), the Commission, through its Executive Director, may institute proceedings to seek the imposition of a prohibition against lobbying.

(b) The procedures for the imposition of a prohibition against lobbying shall be as follows:

(1) The proceedings shall be initiated with the Commission through the filing of a petition by the Investigative Division, which petition shall be served upon the respondent by the Investigative Division.

(2) The petition shall set forth the pertinent factual averments in numbered paragraph form, and shall notify the respondent of the opportunity to file a written answer and to request a hearing in the matter. If the basis for the petition is the failure to comply with a Commission order, the petition shall be docketed to the same number as the base case before the Commission. If the basis for the petition is the failure to comply with a court order, the petition shall be docketed to the same number as the base case before the Commission if there was one, and if not, to a new number.

(3) An answer to the petition shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(4) An answer to the Investigative Division's petition shall specifically admit or deny each of the allegations made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

(5) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition seeking the prohibition.

(6) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition upon the respondent.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing will be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(7) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(8) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(9) The respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(10) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged or information not within paragraph (9).

(11) A hearing under this chapter will be public and be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(12) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs), to the extent applicable.

(13) After the opportunity for a hearing has been provided, and following the submission of briefs, the Commission will determine, based upon the record before it, whether and for how long a prohibition against lobbying is to be imposed against the respondent.

(i) If a lobbyist or principal has been found to be in noncompliance or in violation of the act in a proceeding before the Commission, for which noncompliance or violation the penalty of prohibition of lobbying may be imposed, such finding of noncompliance or violation shall be res judicata, and the Commission's further determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying.

(ii) To the extent any factual matters remain to be proven, such shall be proven by clear and convincing evidence.

(iii) A prohibition against lobbying may only be imposed by a vote of at least four members of the Commission present at a meeting.

(14) In determining whether and for how long a prohibition against lobbying is to be imposed against a respondent, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the violation or failure to comply.

(ii) Whether the respondent has raised a justifiable excuse.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the requirements of the act.

(iv) Whether other proceedings have been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(v) Whether there are other factors which should be considered as aggravating or mitigating factors in the case.

(15) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(16) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures set forth in § 21.29(b) and (d)—(f) (relating to finality; reconsideration), to the extent applicable.

(17) The official record of the case before the Commission will be publicly available.

(18) The files of the Investigative Division will not be publicly available.

(c) If a lobbyist or principal is convicted in a criminal proceeding for a violation of the act for which the penalty of prohibition of lobbying may be imposed, such conviction shall be *res judicata*, and the Commission's determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying.

[Pa.B. Doc. No. 99-1177. Filed for public inspection July 23, 1999, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting Hours

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 8, 1999, meeting, adopted the following changes:

Amend § 141.4 (relating to hunting hours) to allow the hunting of mourning doves the entire day during the 1999-2000 hunting season; and § 141.26 (relating to early Canada goose hunting season on Middle Creek Wildlife Management Area) to allow the controlled area at Middle Creek to be open during both an early and regular season.

These amendments are adopted under the authority of 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Amendment to § 141.4

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on April 9, 1999, proposed and at its June 8, 1999, meeting finally adopted a change to § 141.4 to expand the hunting hours for mourning doves. This change was adopted under the provisions of sections 322(c)(1) and 2102(a) of the code (relating to powers and duties of the Commission; and regulations).

2. *Purpose and Authority*

The current provision of § 141.4(1) provides that mourning doves may be hunted from noon to sunset during the first season. It appears that mourning dove populations are sufficient to permit full hunting days during the first season. The adopted change will allow this.

Section 322(c)(1) of the code empowers the Commission to fix daily shooting or taking hours. Section 2102(a) of the code authorizes the Commission to promulgate regulations relating to the hunting of game or wildlife in this Commonwealth. The change was adopted under this authority.

3. *Regulatory Requirements*

The adopted change does not result in any additional regulatory requirements but rather relaxes current requirements.

4. *Persons Affected*

Individuals wishing to hunt mourning doves will be affected by the adopted change.

Amendment to § 141.26

1. *Introduction*

To effectively manage the wildlife resources of this Commonwealth, the Commission at its April 9, 1999, meeting proposed and at its June 8, 1999, meeting finally adopted changing § 141.26 to provide for goose hunting in both the early and regular seasons in the controlled area of Middle Creek Wildlife Management Area (MCWMA). This change was adopted under sections 322(c)(1) and 2102(b)(1) of the code.

2. *Purpose and Authority*

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Section 322 of the code specifically empowers the Commission to fix seasons for any species of game or wildlife. Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits.

Because of concerns about the migratory populations of Canada geese, the United States Fish and Wildlife Service will probably approve a very short regular Canada goose season in this Commonwealth. At the same time, the population of resident Canada geese has dramatically increased, resulting in numerous nuisance geese complaints. Authorizing goose hunting during both the regular and early seasons in the controlled goose hunting area of MCWMA should help to resolve this dilemma.

3. *Regulatory Requirements*

The change relaxes current regulatory requirements.

4. *Comment and Paperwork Requirements*

Persons wishing to hunt geese at MCWMA will be affected by the change.

5. *Comment and Response Summary*

No official comments were received with regard to the adopted change.

6. *Cost and Paperwork Requirements*

The adopted change should not result in any additional cost or paperwork.

7. *Effective Date*

This change will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information on the adopted change contact James R. Fagan, Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

Findings

The Commission finds that:

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

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Game Commission, 58 Pa. Code Chapter 141, are amended by amending §§ 141.4 and 141.26 to read as set forth at 29 Pa.B. 2580 (May 15, 1999).

(b) The Executive Director of the Game Commission shall submit this order and 29 Pa.B. 2580 and deposit

them with the Legislative Reference Bureau as required by law.

(c) This order amending §§ 141.4 and 141.26 shall become effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-111 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 99-1178. Filed for public inspection July 23, 1999, 9:00 a.m.]