

# PROPOSED RULEMAKING

## BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[ 49 PA. CODE CH. 43b ]

### Schedule of Civil Penalties—Audiologists, Speech-Language Pathologists and Teachers of the Hearing Impaired

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend Chapter 43b (relating to Commissioner of Professional and Occupational Affairs) by rescinding § 43b.16 (relating to schedule of civil penalties—audiologists, speech-language pathologists and teachers of the hearing impaired—statement of policy) and replacing it with § 43b.16a (relating to schedule of civil penalties—audiologists, speech-language pathologists and teachers of the hearing impaired), to read as set forth in Annex A.

#### *Effective Date*

The amendments will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition, and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission relating to the conduct or operation of a business or facility licensed by the board or commission.

#### *Background and Purpose*

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the Boards and Commissions being accomplished through the Act 48 citation process.

The Commissioner had previously published a policy statement at 34 Pa.B. 5809 (October 23, 2004) establishing Act 48 civil penalties for practicing as an audiologist, speech-language pathologist or teacher of the hearing impaired on a lapsed license. The Commissioner now proposes to codify and amend the schedule of civil penalties in this proposed rulemaking. Proposed § 43b.16a would add a schedule of civil penalties for failure to complete required continuing education. The civil penalties in proposed § 43b.16a were drafted follow-

ing discussions between the State Board of Examiners in Speech-Language and Hearing (Board) and a representative of the Commissioner and were approved by the Board at its meeting on July 24, 2009.

#### *Description of the Proposed Amendments*

The proposal would codify the schedule of civil penalties that the Commissioner previously published pertaining to practice on a lapsed license and add a schedule of civil penalties for failing to complete mandatory continuing education, as required by the Board's regulations in § 45.501 (relating to credit hour requirements).

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions, and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

#### *Sunset Date*

The Bureau continually monitors the effectiveness of its regulations. As a result, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 2010, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BASIL L. MERENDA,  
*Commissioner*

**Fiscal Note:** 16A-6804. No fiscal impact; (8) recommends adoption.

## Annex

## TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

## PART I. DEPARTMENT OF STATE

## Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

## CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR  
IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.16. [ Schedule of civil penalties—audiologists, speech-language pathologists and teachers of the hearing impaired—statement of policy ] (Reserved).

## [ STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

Violation under	Title/Description	Civil Penalty
63 P. S. Section 1706	Practicing as an audiologist, speech-language pathologist, or teacher of the hearing impaired on a lapsed license	1st offense 0—12 mos.—\$50 per month; Over 12 months—formal action 2nd offense—formal action ]

§ 43b.16a. Schedule of civil penalties—audiologists, speech-language pathologists and teachers of the hearing impaired.

## STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

Violation under	Title/Description	Civil Penalty
63 P. S. Section 1706	Practicing as an audiologist, speech-language pathologist, or teacher of the hearing impaired on a lapsed license.	0-12 months—\$50 per month Over 12 months—formal action 2nd offense—formal action
49 Pa. Code § 45.501	Failure to complete 20 hours of approved continuing education during a biennial renewal period.	1st offense—\$100 per clock hour 2nd offense—formal action

[Pa.B. Doc. No. 10-770. Filed for public inspection April 30, 2010, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 93 ]

### Ambient Water Quality Criterion; Chloride (Ch)

The Environmental Quality Board (Board) proposes to amend Table 3 in 25 Pa. Code § 93.7 (relating to specific water quality criteria), to read as set forth in Annex A.

This proposal was adopted by the Board at its meeting of March 16, 2010.

#### A. Effective Date

This proposed amendment will be effective upon publication in the *Pennsylvania Bulletin* as final-form rule-making.

#### B. Contact Persons

For further information, contact Roberta Radel, Bureau of Water Standards and Facility Regulation, Rachel Carson State Office Building, P. O. Box 8467, Harrisburg, PA 17105-8467, (717) 787-5017; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. Statutory and Regulatory Authority

This proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean

Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and the Federal regulation in 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of this Commonwealth's antidegradation program.

#### D. Background of the Proposed Amendments

Section 303(c)(1) of the Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary their water quality standards. Water quality standards are instream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution. As part of the current review, the chloride criterion is being evaluated.

A Statewide aquatic life criterion for chloride would provide an appropriate level of protection for all of this Commonwealth's waters and would circumvent the difficulties associated with the implementation of the current osmotic pressure (OP) criterion. The existing chloride criterion was developed primarily for the protection of potable water supplies (PWSs). Although this criterion may be protective of instream aquatic life uses when applied, it is not applied in all waters of this Commonwealth, but rather only at the point of water supply

intake, under 25 Pa. Code § 96.3(d) (relating to water quality protection requirements). Elevated levels of chloride are toxic to aquatic life in freshwater environments. Therefore, the Department is recommending additional chloride criteria to be applied in all waters for the protection of aquatic life. The current PWS criterion for chloride is included in Table 3 in 25 Pa. Code § 93.7 and establishes a maximum level of 250 milligrams of chloride per liter of water, applicable only at the point of all existing or planned surface PWS withdrawals, unless otherwise specified by regulation.

Prior to December 14, 2002, the chloride criterion was applicable Statewide, rather than only at the point of withdrawal. The movement of the compliance point for total dissolved solids (TDS), chloride and sulfate criteria to the point of water supply intake was not expected to be detrimental to aquatic life because the Statewide surface water criterion for OP (OP = 50 mOsm/kg) was applied to protect aquatic life from the adverse effects of these other parameters throughout the waterbody. Unfortunately, there have been problems with the implementation of the OP criterion. Most notably, OP is a measure of pressure and, as such, it is not well suited to the mass-balance approach used to calculate Water Quality-Based Effluent Limitation (WQBELs). Additionally, OP can only be evaluated at a single discharge point, which does not account for the cumulative loads of dissolved constituents added to a stream from multiple sources. Finally, limited available laboratory capabilities for analysis of OP adversely affect compliance monitoring.

Chloride occurs naturally in the aquatic environment, especially in waters flowing through geologic formations of marine origin. The major anthropogenic sources of chloride include deicing salt for roads, urban and agricultural runoff, treated industrial waste, discharges from municipal wastewater plants and the drilling of oil and gas wells (EPA, 1988).

Freshwater fish and aquatic communities cannot survive in elevated concentrations of chlorides. Maintaining a proper salt-to-water balance in a fresh water environment challenges most aquatic life and, in particular, aquatic insects. Macroinvertebrates maintain an internal ionic concentration that is higher than the surrounding environment by actively transporting ions in and out of their bodies through osmoregulation according to Buchwalter and Luoma in a 2005 publication titled *Differences in dissolved cadmium and zinc uptake among stream insects: mechanistic explanations* (Environmental Science and Technology, 39:498—504). Osmoregulation can be disrupted by large increases in certain ions (including chloride). This disruption in water balance and ion exchange is capable of causing stress or death to the organism according to Pond, *et al.* in a 2008 publication titled *Downstream effects of mountaintop coal mining: comparing biological conditions using family- and genus-level macroinvertebrate bioassessment tools* (North American Benthological Society, 27:717—737).

The United States Environmental Protection Agency (EPA) published *Ambient Water Quality Criteria for Chloride* in February 1988, which summarized the published toxicity data for chloride on freshwater plant and animal species. The acute and chronic effects of chlorides on aquatic animals were documented, along with the chronic effects of chlorides on aquatic plants. The EPA developed the chloride criteria given below for protection against adverse acute and chronic impacts on freshwater aquatic

life based on the *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, PB85-227049 (Stephan, *et al.*, 1985). The EPA determined the 4-day and 1-hour chronic and acute average concentrations based upon how quickly some aquatic species reacted to higher concentrations of chlorides. The Criteria Continuous Concentration (CCC) and Criteria Maximum Concentration (CMC) values should not be exceeded more than once every 3 years on the average (EPA, 1988).

The 4-day average (CCC) criterion = 230 mg/l

The 1-hour average (CMC) criterion = 860 mg/l

A copy of the Department's rationale document on the development of the Statewide water quality criterion for chloride is available on the Department's web site or from the contacts whose addresses and telephone numbers are listed in Section B. A link to *Ambient Water Quality Criteria for Chloride* (EPA, 1988) can also be found on the Department's web site.

The Department has reviewed the EPA ambient water quality criteria development document for chloride and agrees with the data analysis, interpretation and methods used to develop the criteria. The Department recommends adopting these National chloride criteria for protection of aquatic life due to increasing concerns about the Statewide impact of natural gas extraction from the Marcellus Shale formation.

#### E. Benefits, Costs and Compliance

1. *Benefits*—Overall, this Commonwealth, its citizens and natural resources will benefit from these recommended changes because they provide the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of clean water for drinking, recreational opportunities and aquatic life protection. It is important to realize these benefits to ensure economic opportunity and development continue in a manner that is environmentally and socially sound. Maintenance of water quality ensures its future availability for all uses.

2. *Compliance Costs*—The proposed amendment to Chapter 93 may impose additional compliance costs on the regulated community. This regulatory change is necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

Persons conducting or proposing activities or projects must comply with the regulatory requirements relating to designated and existing uses. Persons expanding a discharge or adding a new discharge to a stream could be adversely affected if they need to provide a higher level of treatment to meet the more stringent criteria for selected parameters or there are changes in designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating cost for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors.

Although not required, as part of the development of the criterion, the Department has reviewed available treatment technologies and found that several processes are available to industry for the remediation of high dissolved chloride levels including evaporation, crystallization and reverse osmosis. Capital costs are dependent on the nature of the waste stream and other site-specific variables, making these costs difficult to estimate. However, operating costs for chloride removal can be generally estimated as follows:

Evaporation or crystallization facilities (for use with brines in excess of 40,000 mg/L TDS) will range from 25—50 cents per gallon. A facility should operate at the low end of the estimated range if it is designed to: 1) use natural gas at the wellhead as the energy source; and 2) produce useable road salt as a byproduct.

Reverse Osmosis facilities (for use with low strength brines < 40,000 mg/L) should produce satisfactory effluents at a cost of less than 1 cent per gallon.

While it is not possible to precisely predict the actual change in costs, it should be noted that the initial costs from technologically-improved treatments may be offset over time by potential savings from and increased value of better water quality through these improved and possibly more effective or efficient treatments.

3. *Compliance Assistance Plan*—The proposed revision has been developed as part of an established program that has been implemented by the Department since the early 1980s. The revision is consistent with and based on existing Department regulations.

The proposed amendment will be implemented, in part, through the National Pollutant Discharge Elimination System (NPDES) permitting program. Staff is available to assist regulated entities in complying with the regulatory requirement if questions arise.

4. *Paperwork Requirements*—The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector.

#### F. *Pollution Prevention*

Water quality standards are a major pollution prevention tool because they protect water quality and designated and existing uses. The proposed amendment will be implemented through the Department's permit and approval actions. For example, the NPDES bases effluent limitations on the applicable criteria and protected uses of the stream.

#### G. *Sunset Review*

The proposed amendment will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfill the goals for which it was intended.

#### H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 21, 2010, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

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

#### I. *Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments must be received by the Board by June 15, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by June 15, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed amendments will be considered. If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

*Electronic Comments.* Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by June 15, 2010.

JOHN HANGER,  
*Chairperson*

**Fiscal Note:** 7-457. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 25. ENVIRONMENTAL PROTECTION

### PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE II. WATER RESOURCES

#### CHAPTER 93. WATER QUALITY STANDARDS

#### § 93.7. Specific water quality criteria.

(a) Table 3 displays specific water quality criteria and associated critical uses. The criteria associated with the Statewide water uses listed in § 93.4, Table 2 apply to all surface waters, unless a specific exception is indicated in §§ 93.9a—93.9z. Other specific water quality criteria apply to surface waters as specified in §§ 93.9a—93.9z. All applicable criteria shall be applied in accordance with this chapter, Chapter 96 (relating to water quality standards implementation) and other applicable State and Federal laws and regulations.

TABLE 3

<i>Parameter</i>	<i>Symbol</i>	<i>Criteria</i>	<i>Critical Use*</i>
		* * * * *	
Chloride	Ch <sub>1</sub>	Maximum 250 mg/l.	PWS
	Ch <sub>2</sub>	Four-day average 230 mg/l; 1-hour average 860 mg/l.	CWF, WWF, TSF, MF
		* * * * *	

[Pa.B. Doc. No. 10-771. Filed for public inspection April 30, 2010, 9:00 a.m.]

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 54 ]

[L-2009-2095604/57-273]

## Default Service Regulations

### *Executive Summary*

#### **Re: Implementation of Act 129 of October 15, 2008; Default Service**

On October 15, 2008, Governor Edward Rendell signed House Bill 2200, Act 129, into law. The Act became effective on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Act 129 also revises the default service requirements contained in Chapter 28 of the Public Utility Code. This Notice of Proposed Rulemaking Order hereby opens a rulemaking proceeding to consider amendments to the Commission's default service regulations as required by the enactment of Act 129 such that the Commission's regulations shall be consistent with the Act. Annex A contains proposed amendments to 52 Pa. Code §§ 54.181—54.188 to be consistent with Act 129.

Under the 1996 Pennsylvania electric restructuring law, the electric distribution companies (or alternative Commission-approved default suppliers) were required to serve non-shopping customers after rate caps ended by acquiring electric energy at prevailing market prices. Act 129 explicitly repealed the prevailing market prices standard, and declared instead that the utilities' generation purchases must be designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa.C.S. § 2807(e)(3.6). The Commission proposes amending 52 Pa. Code § 54.186 (relating to default service procurement and implementation plans), such that the regulation will conform to Act 129.

Another substantive change is that in reviewing a utility's default service plan, the Commission must now consider "the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term, and spot market basis." 66 Pa.C.S. § 2807(e)(3.7). Proposed amendments to 52 Pa. Code §§ 54.186 and 54.188 (relating to Commission review of default service programs and rates) change the current regulations such that they are in conformity with Act 129.

Yet another change is that contracts for supply formerly were defined as being up to 3 years in length. Now, under Act 129, a long-term purchase contract is generally defined as a contract "of more than four and not more than 20 years." 66 Pa.C.S. § 2807(e)(3.2)(iii). Accordingly, the Commission proposes amending 52 Pa. Code § 54.186.

The Commission additionally seeks comment on 14 questions regarding default service.

The contact person is Elizabeth Barnes, Law Bureau (717) 772-5408, ebarnes@state.pa.us.

Public Meeting held  
January 14, 2010

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

*Implementation of Act 129 of October 15, 2008; Default Service; Doc. No. L-2009-2095604*

### Proposed Rulemaking Order

#### *By the Commission:*

On October 15, 2008, Governor Edward Rendell signed House Bill 2200, Act 129, into law. The Act became effective on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Act 129 also revises the default service requirements contained in Chapter 28 of the Public Utility Code. This Notice of Proposed Rulemaking Order hereby opens a rulemaking proceeding to consider amendments to our default service regulations as required by the enactment of Act 129 such that our regulations shall be consistent with the Act.

#### **Procedural History**

Historically, the local electric utility company was responsible for generating or purchasing and delivering electricity to the customers' premises. However, the Electric Generation Customer Choice and Competition Act (Competition Act) of December 3, 1996 (P.L. 802, No. 138), codified at 66 Pa.C.S. §§ 2801, *et seq.*, required electric distribution companies (EDCs) to unbundle transmission, distribution and generation rates for retail customers. The Competition Act deregulated electricity generation and provided all customers in Pennsylvania the opportunity to choose their electricity generation supplier (EGS). 66 Pa.C.S. § 2806(a). The EDC is responsible for delivering the electricity to those customers who choose to buy from an EGS. Additionally, the EDC is responsible for both acquiring and delivering electricity for those customers who do not shop or buy their electricity from an EGS, or whose EGS fails to provide the promised electricity.

When an EDC acquires electricity for customers not served by an EGS, the EDC is functioning as the "default service provider" (DSP). Currently, the rates charged to most Pennsylvania customers are capped. The Competition Act provided that an EDC's generation rates be capped until the EDC had completed its stranded cost recovery. Many of the larger EDCs agreed to extend rate caps as part of their electric restructuring settlements. For most of these companies, generation rate caps do not expire until December 31, 2010. Other EDCs, most notably Duquesne Light Company and several smaller EDCs had shorter stranded cost recovery periods that expired much sooner, as early as 1999 for Citizens Electric Company of Lewisburg, Inc.

Following the expiration of rate caps, the Competition Act provided that default service providers "acquire elec-

tric energy at prevailing market prices” to serve default service customers and that default service providers “recover fully all reasonable costs.” 66 Pa.C.S. § 2807(e)(3). There has been disagreement over what “prevailing market prices” mean as applied to default service rates.

### History of Default Service Regulations and Policy Statement

On May 10, 2007, the Commission issued a Final Rulemaking Order at Docket No. L-00040169 regarding default service. The default service regulations became effective on September 15, 2007. The Commission further issued a separate policy statement order on February 9, 2007, at Docket No. M-00072009 that contained guidelines for DSPs in the areas of procurement, rate design, and cost-recovery. The default service regulations set forth detailed requirements for default service plans. The regulations require default service providers to acquire default supply at prevailing market prices. The regulations further require that electric generation supply be acquired by competitive bid solicitations, spot market purchases or a combination of both. 52 Pa. Code § 54.186(b)(4). Competitive bid processes are subject to monitoring by the Commission. 52 Pa. Code § 54.186(c)(3). The regulations allow DSPs to use automatic adjustment clauses for recovery of non-alternative energy default service costs. 52 Pa. Code § 54.187(f). The default service Policy Statement provides additional guidance to EDCs regarding energy procurement, bid solicitation processes, default service cost elements, rate design, rate change mitigation, rate and bill ready billing, purchase of receivables programs, customer referral program and supplier tariff uniformity.

### Act 129

Even though the retail provision of electric generation service has been subject to competition for nearly a decade, the vast majority of residential customers continue to obtain their generation supplies from their “default” supplier, that is, their regulated electric distribution utility. Under the 1996 Pennsylvania electric restructuring law, the electric distribution companies (or alternative Commission-approved default suppliers) were required to serve non-shopping customers after rate caps ended by acquiring electric energy “at prevailing market prices.” Act 129 explicitly repealed the prevailing market prices standard, and declared instead that the utilities’ generation purchases must be designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa.C.S. § 2807(e)(3.6).

In reviewing a utility’s default service plan, the Commission must consider “the default service provider’s obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis.” 66 Pa.C.S. § 2807(e)(3.7).

Another substantive change is that contracts for supply formerly were defined as being up to 3-years in length. Now, under Act 129, a long-term purchase contract is generally defined as a contract “of more than four and not more than 20 years.” 66 Pa.C.S. § 2807(e)(3.2)(iii).

In summary, under Act 129, electric power shall be procured through competitive procurement processes and shall include one or more of the following: (1) auctions; (2) requests for proposals; or (3) bilateral agreements. 66 Pa.C.S. § 2807(e)(3.1). Additionally, the electric power that is procured shall include a prudent mix of: (1) spot

market purchases; (2) short-term contracts; and (3) long-term purchase contracts of more than 4 and not more than 20 years. 66 Pa.C.S. § 2807(e)(3.2). Long-term contracts may not constitute more than 25% of projected load absent a Commission determination that good cause exists for a higher percentage to achieve least cost procurement. 66 Pa.C.S. § 2807(e)(3.2)(iii).

The “prudent mix” of contracts shall be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; (3) compliance with the procurement methodologies described previously, that is, through auctions, requests for proposals, or bilateral agreements. 66 Pa.C.S. §§ 2807(e)(3.4) and (e)(3.1). “Bilateral contract” is a new term defined under 66 Pa.C.S. § 2803 (relating to definitions).

In terms of process, the DSP must file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering certain factors and standards under 66 Pa.C.S. § 2807(e) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan. If the Commission fails to issue a final order on the plan within 9 months of the date that the plan is filed, the plan is deemed to be approved and the default service provider may implement the plan as filed. 66 Pa.C.S. § 2807(e)(3.6).

When evaluating a default service plan, the Commission must consider the DSP’s obligation to provide adequate and reliable service to the customers and that the DSP has obtained a prudent mix of contracts to obtain the least cost on a long-term, short-term and spot market basis. The Commission is required to make specific findings that include: (1) the DSP’s plan includes prudent steps necessary to negotiate favorable generation supply contracts; (2) the DSP’s plan includes prudent steps necessary to obtain least cost generation contracts on a long-term, short-term and spot market basis; and (3) neither the DSP nor its affiliated interest has withheld generation supply from the market as a matter of Federal law. 66 Pa.C.S. § 2807(e)(3.7).

Further, under Act 129, DSPs have a right to recover default service costs pursuant to a reconcilable automatic adjustment clause and residential and small commercial and industrial customers’ rates cannot change more frequently than quarterly. 66 Pa.C.S. § 2807(e)(3.9). Default service plans approved by the Commission prior to the effective date of Act 129 shall remain in effect through the approved term. However, the DSP may propose amendments to an approved plan. 66 Pa.C.S. § 2807(e)(6).

### Discussion

Consistent with the language of Act 129, the Commission proposes to make the following revisions to our current default service regulations and invites the public to comment within 30 days of publication of this Order in the *Pennsylvania Bulletin*.

#### *Definitions at 66 Pa.C.S. § 2803—Default Service Provider.*

Act 129 adds additional language to the definition of a default service provider. Definitions at 66 Pa.C.S. § 2803—Default Service Provider provides in pertinent part:

An electric distribution company within its certified service territory or an alternative supplier approved by the Pennsylvania Public Utility Commission that provides generation service to retail electric custom-

ers who: (1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service; or (2) do not choose an alternative electric generation supplier.

Whereas, 52 Pa. Code § 54.182 (Definitions) provides:

“Default Service Provider—DSP” The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.

Because the new definition of default service provider includes alternative supplier approved by the Commission, we propose to amend 52 Pa. Code § 54.182 such that it mirrors verbatim the definition in 66 Pa.C.S. § 2803. Comment is sought on this determination.

*Definitions at 66 Pa.C.S. § 2803—Bilateral contract.*

“Bilateral contract” is a new term and is defined in § 2803 as follows.

An agreement, as approved by the Commission, reached by two parties, each acting in its own independent self-interest, as a result of negotiations free of undue influence, duress or favoritism, in which the electric energy supplier agrees to sell and the electric distribution company agrees to buy a quantity of electric energy at a specified price for a specified period of time under terms agreed to by both parties, and which follows a standard industry template widely accepted in the industry or variations thereto accepted by the parties. Standard industry templates may include the EEI Master Agreement for physical energy purchases and sales and the ISDA Master Agreement for financial energy purchases and sales.

66 Pa.C.S. § 2803.

Bilateral agreements are referenced in 66 Pa.C.S. § 2807(e)(3.1)(iii). We propose to amend 52 Pa. Code § 54.182 such that it mirrors verbatim the definition in 66 Pa.C.S. § 2803. Comment is sought on this determination.

*52 Pa. Code § 54.184. (Default Service Provider Obligations)*

66 Pa.C.S. § 2807(e) states the duties of an EDC’s obligation to serve. Specifically, it adds a qualifier that while an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC’s customers have electric choice, whichever is longer, an EDC as a default service provider is responsible for reliable provision of default service to retail customers. Accordingly, we propose the following language be added to 52 Pa. Code § 54.184(a).

**(a) While an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC’s customers have electric choice, whichever is longer, an EDC as a default service provider shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS within the certificated territory of the EDC that it serves or whose alternative EGS has failed to deliver electric energy.**

66 Pa.C.S. § 2807(e)(1) provides that the obligation to serve includes: (1) the connection of customers; (2) the delivery of electricity; and (3) the production or acquisition of electricity for customers. We propose adding the same language to our regulations.

Furthermore, Act 129 states that following the expiration of an EDC’s obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a Commission-approved competitive procurement process including one or more of the following: (1) auctions; (2) requests for proposals; or (3) bilateral agreements entered into at the sole discretion of the DSP which shall be at prices that are no greater than the cost of obtaining generation under comparable terms in the wholesale market or consistent with a Commission-approved competition procurement process. 66 Pa.C.S. § 2807(e)(3.1). Affiliated interest agreements are subject to Commission review and approval. This underlined language adds new requirements to our existing regulations, and we propose to modify 52 Pa. Code § 54.184 to reflect the additional requirements.

Furthermore, we propose to amend the following language in 52 Pa. Code § 54.184 to reflect the recent passage of Act 129 as follows.

A DSP shall continue the universal service and energy conservation program in effect in the EDC’s certificated service territory or implement, subject to Commission approval, similar programs consistent with 66 Pa.C.S. §§ 2801—[ 2812 ] 2815 (relating to Electricity Generation Customer Choice and Competition Act and Act 129 providing for energy efficiency and conservation programs). The Commission will determine the allocation of these responsibilities between an EDC and an alternative DSP when an EDC is relieved of its DSP obligation.

*52 Pa. Code § 54.185.*

We propose adding language to subsection (b) to reflect the new 9 month deadline for Commission review in Act 129. 66 Pa.C.S. § 2807(e)(3.6). If the Commission fails to issue a final order on the plan within nine months of the date that the plan is filed, then the plan shall be deemed approved and the DSP may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as per Act 129. 66 Pa.C.S. § 2807(e)(3.6). This language will replace existing subsection (b)’s language. The old language will be moved to subsection (c). Subsequent sections will move down one letter as well.

*52 Pa. Code § 54.186. (Default Service Procurement and Implementation Plans)*

Act 129 sets forth different standards from our current regulations that a DSP’s procurement plan must adhere to. We propose deleting the old standard and replacing it with the “prudent mix” standard as outlined in Act 129. For example instead of a plan being “designed to acquire electric generation supply at prevailing market prices to meet the DSP’s anticipated default service obligation at reasonable costs,” as specified in § 54.186, Act 129 now requires the plan “include a prudent mix of: (a) spot market purchases; (b) short-term contracts; and (c) long-term (5-20 year) contracts. 66 Pa.C.S. § 2807(e)(3.2)(i), (ii) and (iii).

A prudent mix of contracts must be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; and (3) compliance with the requirements of subsection (e)(3.1) regarding competitive pro-

curement. 66 Pa.C.S. § 2807(e)(3.4). We will add this language to our regulation. There are two exceptions to the long-term purchase contracts under Act 129 which will be added to our regulations at subsection (b)(1)(iii)(A) and (B).

Act 129 provides that the DSP may petition for modifications to the approved procurement and implementation plans when material changes in wholesale energy markets occur to ensure the acquisition of sufficient supply at prevailing market prices. 66 Pa.C.S. § 2807(e)(6). Also, the DSP is obligated to monitor changes in wholesale energy markets to ensure that its procurement plan continues to reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3.4) (relating to the prudent mix).

Accordingly, we will add the following language to this section in conformance with Act 129:

**(e) At the time the Commission evaluates the plan and prior to its approval, in determining if the DSP's Plan obtains generation supply at the least cost, the Commission shall consider the DSP's obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission shall make specific findings which shall include the following:**

- 1. The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts.**
- 2. The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term, and spot market basis.**
- 3. Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.**

We invite comment on this addition.

*52 Pa. Code § 54.187. (Default Service Rate Design and the Recovery of Reasonable Costs)*

Act 129 states that costs incurred for providing default service shall be recovered through a reconcilable automatic adjustment clause under Section 1307, all reasonable costs incurred under 66 Pa.C.S. § 2807 and a Commission-approved competitive procurement plan. 66 Pa.C.S. § 2807(e)(3.9). This language will be added to § 54.187 and the phrase "default service rate schedule . . . designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average-cost to acquire supply for each customer class" shall be stricken as the methodology has changed.

Additionally, consistent with 66 Pa.C.S. § 2807(e)(3.8), we propose to add language under § 54.187(a) regarding when the Commission may modify contracts or disallow costs when after a hearing the party seeking recovery of the costs of a procurement plan is found to be at fault for either: (1) not complying with the Commission-approved procurement plan; or (2) the commission of fraud, collusion, or market manipulation with regard to these contracts. We invite comment on the proposed changes to this section.

We further propose, consistent with 66 Pa.C.S. § 2807(e)(3.8), changing language in subsection (b) allowing for recovery through reconcilable automatic adjust-

ment under 66 Pa.C.S. § 1307. We are combining the first two sentences of subsection (g) into (b) as they are redundant. We propose removing the phrase "or more frequently" from subsection (i) to comply with Act 129. We invite comment on these proposed changes.

*52 Pa. Code § 54.188. (Commission Review of Default Service Program and Rates)*

Act 129 provides that a DSP shall file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering the standards in paragraphs (3.1), (3.2), (3.3) and (3.4) before the competitive process is implemented. 66 Pa.C.S. § 2807(e)(3.6). The Commission is required to hold hearings as necessary on the proposed plan and if the Commission fails to issue a final order on the plan within nine months of the date the plan is filed, the plan is deemed to be approved and a DSP may implement the plan. 66 Pa.C.S. § 2807(e)(3.6).

Additionally, section 2813 (relating to Procurement of power) provides that the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only. This is except as provided under the act of November 30, 2004, (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act.

We are also taking this opportunity to codify the provisions of House Bill 1530 of 2007, which was signed into law on July 17, 2007. This law added section 2807(e)(5) to the Public Utility Code, and authorized electric distribution companies to offer negotiated rates to some very large industrial customers, subject to Commission review. It also permitted some electric distribution companies to construct or acquire an interest in an electric generation facilities for the purposes of serving very large industrial customers, subject to certain conditions. We are addressing this change under § 54.188(h).

Accordingly, we propose adding the following language under this section to reflect changes in Act 129.

**(a) The DSP shall file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering the standards in 66 Pa.C.S. § 2807(e)(3.1), (3.2), (3.3), and (3.4) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan. A default service program will initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.**

**(b) If the Commission fails to issue a final order on the plan within 9 months of the date the plan is filed, the plan shall be deemed approved and the DSP may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as required under 66 Pa.C.S. § 2807(e)(3.4)(ii). [The Commission will issue an order within 7 months of a program's filing with the Commission on whether the default service program demonstrates compliance with this subchapter and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).]**

**(d) [Upon receiving written notice, the Commission will have 1 business day, to approve or disapprove the results of a competitive bid solicitation process used by a DSP as part of its procurement plan. When the Commission does not act within 1**



business day the results of the process will be deemed approved. The Commission will not certify or otherwise approve or disapprove a DSP's spot market energy purchases made pursuant to a Commission-approved procurement plan. The Commission will monitor the DSP's adherence to the terms of the approved default service program and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).] The Commission may initiate an investigation regarding implementation of the DSP's default service program and, at the conclusion of the investigation, order remedies as may be lawful and appropriate. The Commission will not deny the DSP the recovery of its reasonable costs for purchases made pursuant to an approved competitive procurement process unless the DSP concealed or misled the Commission regarding its adherence to the program, or otherwise violated the provisions of this subchapter or the code. **Except as provided under the act of November 30, 2004, (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only. At the time the Commission evaluates the plan and prior to approval, the Commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission shall make specific findings which include:**

(1) The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

(2) The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(3) Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

(f) A DSP shall submit tariff supplements on a quarterly or more frequent basis, consistent with § 54.187(h) and (i) (pertaining to default service rate design and recovery of reasonable costs), to revise default service rates to ensure the recovery of costs reasonably incurred in acquiring electricity [ at prevailing market prices ]. The DSP shall provide written notice to the named parties identified in § 54.185(b) of the proposed rates at the time of the tariff filings. The tariff supplements shall be posted to the DSP's public internet domain at the time they are filed with the Commission. A customer or the parties identified in § 54.185(b) may file exceptions to the default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP has properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The DSP shall post the revised PTC for each customer class within 1 business day of its effective date to its public internet domain to enable customers to make an informed decision about electric generation supply options.

(g) If a customer that chooses an alternative supplier and subsequently desires to return to the

local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

(h) The DSP may, in its sole discretion, offer large customers with a peak demand of 15 megawatts or greater at one meter location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the DSP and the customer.

(1) Contract rates shall be subject to Commission review to ensure all costs are borne by the parties to the contract and no one else.

(2) If no costs related to the rates are borne by other customers, the Commission shall approve the contract within 90 days of its filing at the Commission, or it shall be deemed approved.

(i) The DSP shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the Commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

We invite comment regarding this proposal.

*52 Pa. Code § 54.189. (Default Service Customers)*

We propose that this section remain unchanged as it describes the default service customers and directs how they are to be treated by a DSP. These procedures need not be amended to be consistent with Act 129.

#### Additional Issues

This Commission is proposing regulations that generally adopt Act 129 procurement requirements verbatim. As there remains some ambiguity in the statutory interpretation of Act 129 procurement requirements, we seek comment on how Act 129 should be interpreted to ensure adequate and reliable service at the least cost to customers over time, and on how the proposed regulations should be revised to reflect the interpretation recommended by the person filing the comments.

Therefore, additional comments are sought on the following questions:

1. What is meant by "least cost to customers over time?"<sup>1</sup>

2. What time frame should the Commission use when evaluating whether a DSP's procurement plan produces least cost to customers over time?

3. To comply with the requirement that the Commission ensure that default service is adequate and reliable, should the Commission's default service regulations incorporate provisions to ensure the construction of needed generation capacity in Pennsylvania?

4. If the Commission should adopt a provision to ensure the construction of needed generation capacity, how should the default service regulations be revised?

5. Which approach to supply procurement—a managed portfolio approach or a full requirements approach—is more likely to produce the least cost to customers over time?

6. What is a "prudent mix" of spot, long-term, and short-term contracts?

<sup>1</sup> See 66 Pa.C.S. § 2807(e)(3.2), (3.4) and (3.7).

7. Does a “prudent mix” mean that the contracts are diversified and accumulated over time?

8. Should there be qualified parameters on the prudent mix? For instance, should the regulations preclude a DSP from entering into all of its long-term contracts in one year?

9. Should the DSP be restricted to entering into a certain percentage of contracts per year?

10. Should there be a requirement that on a total-DSP basis, the “prudent mix” means that some quantity of the total-DSP default service load must be served through spot market purchases, some quantity must be served through short-term contracts, and some quantity must be served through long-term contracts?

11. Should there be a requirement that some quantity of each rate class procurement group’s load be served by spot market purchases, some quantity through short-term contracts, and some quantity through long-term contracts? In contrast, should a DSP be permitted to rely on only one or two of those product categories with the choice depending on what would be the prudent mix and would yield the least cost to customers over time for that specific DSP?

12. Should the DSP be required to hedge its positions with futures including natural gas futures because of the link between prices of natural gas and the prices of electricity?

13. Is the “prudent mix” standard a different standard for each different customer class?

14. What will be the effects of bankruptcies of wholesale supplier to default service suppliers on the short- and long-term contracts?

15. Does Act 129 allow for an after-the-fact review of the “cost reasonableness standard” in those cases where the approved default service plan gives the EDC substantial discretion regarding when to make purchases and how much electricity to buy in each purchase?<sup>2</sup>

16. How should the requirement that “this section shall apply” to the purchase of AECs be implemented. Section 2807(e)(3.5) states that “. . . the provisions of this section shall apply to any type of energy purchased by a default service provider to provide electric generation supply service, including energy or alternative energy portfolio standards credits required to be purchased, etc.”

Interested parties will be given 30 days from the date of publication of the Notice of Proposed Rulemaking in the *Pennsylvania Bulletin* for the submission of an original and 15 copies of comments and 45 days from the date of publication to submit an original and 15 copies of reply comments. A copy of all comments should be electronically mailed to Elizabeth Barnes at ebarnes@state.pa.us. The contact person is Elizabeth Barnes, Law Bureau, (717) 772-5408 (legal).

Accordingly, under 66 Pa.C.S. §§ 501, 1501 and 2801, *et seq.*, and the regulations promulgated thereunder at 52 Pa. Code §§ 57.191—57.197; and sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 5 of The Administrative Code of 1929 (71 P.S. § 232) and the regulations promulgated

<sup>2</sup> See Section 2807(e)(3.9), which provides the EDC with the right to recover “all reasonable costs” incurred under Section 2807 and under an approved competitive procurement plan.

thereunder at 4 Pa. Code §§ 7.231— 7.234, we are considering adopting the proposed regulations set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. This Proposed Rulemaking docket be opened to consider the regulations as set forth in Annex A.

2. The Secretary submit this proposed rulemaking order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comment by the designated standing committees of both Houses of the General Assembly, and for review and comment by the Independent Regulatory Review Commission.

4. The Secretary certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. Interested parties shall have 30 days from the date of publication in the *Pennsylvania Bulletin* of the proposed rulemaking order and Annex A to file an original and 15 written comments to the Pennsylvania Public Utility Commission, Attention: Secretary Rosemary Chiavetta, P. O. Box 3265, Harrisburg, PA 17105-3265. Reply comments shall be due in 45 days after publication.

6. A copy of the comments should be electronically mailed to Elizabeth Barnes, Assistant Counsel at ebarnes@state.pa.us, and these comments in turn will be placed on the Commission’s web site for public viewing at www.puc.state.pa.us.

7. Comments should, where appropriate, address the issues identified in this order and should include, where applicable, a numerical reference to the attached Annex A which the comments address, proposed language for revision, and a clear explanation for the recommendation.

8. A copy of this order and Annex A be served upon all electric distribution companies and electric generation suppliers operating in Pennsylvania, the Office of Consumer Advocate, the Office of Small Business Advocate, the AFL-CIO Utility Caucus, the Pennsylvania Utility Contractors Association, and the Energy Association of Pennsylvania.

9. The contact person for this rulemaking is Elizabeth Barnes, Law Bureau, (717) 772-5408, ebarnes@state.pa.us.

*By the Commission*

ROSEMARY CHIAVETTA,  
*Secretary*

**Fiscal Note:** 57-273. No fiscal impact; (8) recommends adoption.

*(Editor’s Note:* For a statement of policy relating to this proposal, see 40 Pa.B.

#### **Annex A**

### **TITLE 52. PUBLIC UTILITIES**

#### **PART I. PUBLIC UTILITY COMMISSION**

#### **Subpart C. FIXED SERVICE UTILITIES**

#### **CHAPTER 54. ELECTRICITY GENERATION**

#### **CUSTOMER CHOICE**

#### **Subchapter G. DEFAULT SERVICE**

#### **§ 54.182. Definitions.**

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

\* \* \* \* \*

**Bilateral contract**—The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).

\* \* \* \* \*

**DSP—Default service provider**—[ The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service ] The term as defined in 66 Pa.C.S. § 2803.

\* \* \* \* \*

**§ 54.184. Default service provider obligations.**

(a) [ A DSP ] While an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC's customers have electric choice, whichever is longer, an EDC as a default service provider shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS within the certificated territory of the EDC that it serves or whose alternative EGS has failed to deliver electric energy.

(b) [ A DSP shall comply with the code and Chapter 1 (relating to rules of administrative practice and procedure) to the extent that the obligations are not modified by this subchapter or waived under § 5.43 (relating to petitions for issuance, amendment, repeal or waiver of regulations). ] The obligation to serve includes:

- (1) The connection of customers.
- (2) The delivery of electricity.
- (3) The production or acquisition of electricity for customers.

(c) Following the expiration of an EDC's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen EGS does not provide the service, or if a customer does not choose an alternative EGS, the default service provider shall provide electric generation supply service to that customer pursuant to a Commission-approved competitive procurement process that includes one or more of the following:

- (1) Auctions.
- (2) Requests for proposals.
- (3) Bilateral agreements entered into at the sole discretion of the default service provider which shall be at prices that are:
  - (i) No greater than the cost of obtaining generation under comparable terms in the wholesale market, as determined by the Commission at the time of execution of the contract.
  - (ii) Consistent with a Commission-approved competition procurement process. Agreements between affiliated parties shall be subject to review and approval of the Commission under 66 Pa.C.S. §§ 2101—2107 (relating to relations with affiliated interests). The cost of obtaining generation from any affiliated interest may not be greater than the cost of obtaining generation under comparable terms in the wholesale market at the time of execution of the contract.

(d) A DSP shall continue the universal service and energy conservation program in effect in the EDC's

certificated service territory or implement, subject to Commission approval, similar programs consistent with [ the ] 66 Pa.C.S. §§ 2801—[ 2812 ] 2815 (relating to Electricity Generation Customer Choice and Competition Act and the amendments provided under the act of October 15, 2008 (P.L. 1592, No. 129) (Act 129) providing for energy efficiency and conservation programs). The Commission will determine the allocation of these responsibilities between an EDC and an alternative DSP when an EDC is relieved of its DSP obligation.

**§ 54.185. Default service programs and periods of service.**

\* \* \* \* \*

(b) The Commission will hold hearings as necessary on the proposed plan. If the Commission fails to issue a final order on the plan within 9 months of the date that the plan is filed, the plan will be deemed to be approved and the default service provider may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time.

(c) Default service programs must comply with Commission regulations pertaining to documentary filings in Chapter 1 (relating to rules of administrative practice and procedure), except when modified by this subchapter. The DSP shall serve copies of the default service program on the Pennsylvania Office of Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission's Office of Trial Staff, EGSs registered in the service territory and the RTO or other entity in whose control area the DSP is operating. Copies shall be provided upon request to other EGSs and shall be available at the DSP's public internet domain.

[ (c) ] (d) The first default service program shall be for a period of 2 to 3 years, or for a period necessary to comply with subsection [ (d) ](e)(4), unless another period is authorized by the Commission. Subsequent program terms will be determined by the Commission.

[ (d) ] (e) A default service program must include the following elements:

\* \* \* \* \*

[ (e) ] (f) The Commission may, following notice and opportunity to be heard, direct that some or all DSPs file joint default service programs to acquire electric generation supply for all of their default service customers. In the absence of such a directive, some or all DSPs may jointly file default service programs or coordinate the scheduling of competitive bid solicitations to acquire electric generation for all of their default service customers. A multiservice territory procurement and implementation plan must comply with § 54.186.

[ (f) ] (g) DSPs shall include requests for waivers from the provisions of this subchapter in their default service program filings. For DSPs with less than 50,000 retail customers, the Commission will grant waivers to the extent necessary to reduce the regulatory, financial or technical burden on the DSP or to the extent otherwise in the public interest.

**§ 54.186. Default service procurement and implementation plans.**

\* \* \* \* \*

(b) A DSP's procurement plan must adhere to the following standards:

(1) The procurement plan shall be designed [ to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at reasonable costs. ] so that the electric power procured under § 54.184(c) (relating to default service provider obligations) includes a prudent mix of the following:

- (i) Spot market purchases.
- (ii) Short-term contracts.

(iii) Long-term purchase contracts, entered into as a result of auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism of more than 4 and not more than 20 years. The default service provider shall have sole discretion to determine the source and fuel type. Long-term purchase contracts must be 25% or less of the DSP's projected default service load unless the Commission determines for good cause that a greater portion of load is necessary to achieve least cost procurement.

(A) EDCs or Commission-approved alternative suppliers may offer large customers with a peak demand of 15 megawatts or greater at one meter at a location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the EDC or alternative supplier and the large customer.

(B) The Commission may determine that a contract is required to be extended for a period longer than 20 years if the extension is necessary to ensure adequate and reliable service at least cost to customers over time.

(2) A prudent mix of contracts shall be designed to ensure:

- (i) Adequate and reliable service.
- (ii) The least cost to customers over time.

(iii) Compliance with the requirements of paragraph (1)(iii).

[ (2) ] (3) DSPs with loads of 50 mW or less shall evaluate the cost and benefits of joining with other DSPs or affiliates in contracting for electric supply.

[ (3) ] (4) Procurement plans may include solicitations and contracts whose duration extends beyond the program period.

[ (4) ] (5) Electric generation supply shall be acquired by competitive bid solicitation processes, spot market energy purchases, **short and long-term contracts, auctions, bilateral contracts** or a combination of [ **both** ] them.

[ (5) ] (6) The DSP's supplier affiliate may participate in a competitive bid solicitation process used as part of the procurement plan subject to the following conditions:

\* \* \* \* \*

(e) At the time the Commission evaluates the plan and prior to its approval, in determining if the DSP's plan obtains generation supply at the least cost, the Commission will consider the DSP's obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent

mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission will make specific findings which include the following:

(1) The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

(2) The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(3) Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

§ 54.187. Default service rate design and the recovery of reasonable costs.

(a) The Commission may modify contracts or disallow costs when after a hearing the party seeking recovery of the costs of a procurement plan is found to be at fault for the following:

(1) Not complying with the Commission-approved procurement plan.

(2) The commission of fraud, collusion, or market manipulation with regard to these contracts.

(b) The costs incurred for providing default service [ shall ] may be recovered through a [ default service rate schedule. The rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average cost to acquire supply for each customer class ] reconcilable automatic adjustment clause under 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under 66 Pa.C.S. § 2807(e)(3.9) (relating to obligation to serve) and a Commission-approved competitive procurement plan. The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e).

[ (b) ] (c) Except for rates available consistent with subsection [ (f) ] (g), a default service customer shall be offered a single rate option, which shall be identified as the PTC and displayed as a separate line item on a customer's monthly bill.

[ (c) ] (d) The rates charged for default service may not decline with the increase in kilowatt hours of electricity used by a default service customer in a billing period.

[ (d) ] (e) The PTC shall be designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class. An EDC's default service costs may not be recovered through the distribution rate. Costs currently recovered through the distribution rate, which are reallocated to the default service rate, may not be recovered through the distribution rate. The distribution rate shall be reduced to reflect costs reallocated to the default service rate.

[ (e) ] (f) A DSP shall use an automatic energy adjustment clause, consistent with 66 Pa.C.S. § 1307 [ (relating to sliding scale of rates; adjustments) ] and Chapter 75 (relating to alternate energy portfolio standards), to recover all reasonable costs incurred through compliance with the Alternative Energy Portfolio Stan-

dards Act (73 P.S. §§ 1648.1—1648.8). The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e), regarding fuel cost adjustment audits and automatic adjustment reports and proceedings.

**[(f) (g) [A DSP may use an automatic energy adjustment clause to recover reasonable nonalternative energy default service costs. The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e).] A DSP may collect interest from retail customers on the recoveries of under collection of default service costs at the legal rate of interest. Refunds to customers for over recoveries shall be made with interest, at the legal rate of interest plus 2%.]**

**[(g) (h) The default service rate schedule must include rates that correspond to demand side response and demand side management programs, as defined in section 2 of the Alternative Energy Portfolio Standards Act (73 P.S. § 1648.2), when the Commission mandates these rates pursuant to its authority under 66 Pa.C.S. Chapter 1 (relating to general provisions).]**

**[(h) (i) Default service rates shall be adjusted on a quarterly basis [ , or more frequently, ] for all customer classes with a maximum registered peak load up to 25 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.]**

**[(i) (j) Default service rates shall be adjusted on a quarterly basis, or more frequently, for all customer classes with a maximum registered peak load of 25 kW to 500 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.]**

**[(j) (k) Default service rates shall be adjusted on a monthly basis, or more frequently, for all customer classes with a registered peak load of equal to or greater than 500 kW to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.]**

**[(k) (l) When a supplier fails to deliver electric generation supply to a DSP, the DSP shall be responsible for acquiring replacement electric generation supply consistent with its Commission-approved contingency plan. When necessary to procure electric generation supply before the implementation of a contingency plan, a DSP shall acquire supply at prevailing market prices and fully recover all reasonable costs associated with this activity that are not otherwise recovered through its contract terms with the default supplier. The DSP shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies), when selecting from the various options available in these energy markets.]**

**§ 54.188. Commission review of default service programs and rates.**

**(a) A DSP shall file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering the standards in 66 Pa.C.S. § 2807(e)(3.1), (3.2), (3.3), and (3.4) (relating to duties of electric distribution companies) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan. A default service program will initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.**

**(b) [The Commission will issue an order within 7 months of a program’s filing with the Commission on whether the default service program demonstrates compliance with this subchapter and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act) ] If the Commission fails to issue a final order on the plan within 9 months of the date the plan is filed, the plan will be deemed approved and the DSP may implement the plan as filed. Costs incurred through an approved competitive procurement plan will be deemed to be the least cost over time as required under 66 Pa. C.S. § 2807(e)(3.4)(ii).**

\* \* \* \* \*

**(d) [Upon receiving written notice, the Commission will have 1 business day, to approve or disapprove the results of a competitive bid solicitation process used by a DSP as part of its procurement plan. When the Commission does not act within 1 business day the results of the process will be deemed approved. The Commission will not certify or otherwise approve or disapprove a DSP’s spot market energy purchases made pursuant to a Commission-approved procurement plan. The Commission will monitor the DSP’s adherence to the terms of the approved default service program and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).] The Commission may initiate an investigation regarding implementation of the DSP’s default service program and, at the conclusion of the investigation, order remedies as may be lawful and appropriate. The Commission will not deny the DSP the recovery of its reasonable costs for purchases made pursuant to an approved competitive procurement process unless the DSP concealed or misled the Commission regarding its adherence to the program, or otherwise violated the provisions of this subchapter or the code. Except as provided under the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1—1648.8), the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only. At the time the Commission evaluates the plan and prior to approval, the Commission will consider the default service provider’s obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission will make specific findings which include:**

**(1) The DSP’s plan includes prudent steps necessary to negotiate favorable generation supply contracts.**

**(2) The DSP’s plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.**

(3) Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

\* \* \* \* \*

(g) If a customer chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

(h) A DSP may, in its sole discretion, offer large customers with a peak demand of 15 megawatts or greater at one meter location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the DSP and the customer.

(1) Contract rates shall be subject to Commission review to ensure all costs are borne by the parties to the contract and no one else.

(2) If no costs related to the rates are borne by other customers, the Commission will approve the contract within 90 days of its filing at the Commission. If the Commission does not approve the contract within the 90-day period, it shall be deemed approved.

(i) The DSP shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. Default service rates shall be reviewed by the Commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

[Pa.B. Doc. No. 10-772. Filed for public inspection April 30, 2010, 9:00 a.m.]

## STATE BOARD OF NURSING

[ 49 PA. CODE CH. 21 ]

### IV Therapy Functions for Licensed Practical Nurses

The State Board of Nursing (Board) proposes to amend §§ 21.141 and 21.145 (relating to definitions; and functions of the LPN) and to add §§ 21.145a and 21.145b (relating to prohibited acts; and IV therapy curriculum requirements), to read as set forth in Annex A. This proposal is intended to establish the requirements for licensed practical nurses to perform nursing functions involving intravenous access devices.

#### *Effective Date*

The proposed amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

The proposed amendments are authorized under section 17.6 of the Practical Nurse Law (63 P. S. § 667.6) (act), which authorizes the Board to establish rules and regulations for the practice of practical nursing.

#### *Background and Need for the Amendments*

The proposed amendments are necessary due to the increased utilization of peripherally inserted central cath-

eters and other centrally inserted intravenous access devices in the patient population cared for in this Commonwealth's hospitals and health systems. In addition, patients are being transferred to long-term care facilities with increasing frequency with complex IV access devices in place. Licensed practical nurses (LPNs) in this Commonwealth are being asked to provide services to these patients. This proposal will standardize LPN practice across this Commonwealth related to IV access devices and will provide mandates for the educational program that must be provided for LPNs working with IV access devices to ensure patient safety.

#### *Description of Proposed Amendments*

##### *§ 21.141. Definitions.*

The Board proposes to add definitions of key terms used in its rulemaking regarding IV therapy. Specifically, the Board found it necessary to define the following terms: "bolus," "central venous catheter," "focused assessment," "IV access device," "peripheral short catheter," "peripheral midline catheter," "peripherally inserted central catheter (PICC)," and "titration of IV medications." The definitions used are consistent with those that are generally accepted by the health care community.

##### *§ 21.145. Functions of the LPN.*

The Board proposes to amend § 21.145. The Board proposes to update the language in § 21.145(a). In addition, the Board proposes to provide specific mandates which will require an LPN to consult with an RN and members of the patient's health care team authorized to issue orders for medical therapeutic or corrective measures (a CRNP, physician, physician assistant, podiatrist or dentist) and seek guidance if the patient's care needs exceed the LPN's scope of practice, surpass the LPN's knowledge, skill or ability, or if the patient's condition becomes unstable or immediate assistance is needed. These provisions should help to ensure that LPNs do not exceed their authorized scope of practice and an LPN attempting to provide care beyond the LPN's ability does not compromise patient care.

The Board proposes to require that an LPN obtain instruction and supervision if the LPN is implementing nursing practices or procedures that are new or unfamiliar to the LPN. This provision is intended to ensure that the LPN can competently perform all practices and procedures the LPN is expected to perform.

The Board proposes to require an LPN to follow the written, established policies and procedures of the employing facility that are consistent with the act. The prior absence of such a provision has hampered the Board's ability to protect the public when an LPN has failed to conform his conduct to facility policy, creating a risk that negligence and patient harm will occur, but where no other statutory or regulatory provision has been violated.

Finally, the Board proposes to strike the current language in § 21.145(f) and (g) regarding venipuncture and IV fluids which is greatly out of date, is not consistent with the current education and on-the-job training of LPNs, and is not consistent with the current utilization of LPNs in this Commonwealth's health care facilities. The Board proposes to replace this language with new § 21.145(f) and (g).

The proposed new § 21.145(f) would provide that an LPN may only perform IV therapy acts for which the LPN possesses the knowledge, skill and ability to safely perform and shall perform these acts under direction and

supervision as set forth therein. Paragraph (1) generally provides that an RN, CRNP, physician, physician assistant, podiatrist or dentist shall supervise an LPN performing IV therapy acts. Paragraph (2) allows an LPN to be under either physical presence supervision or electronic communication when the patient's condition is stable and predictable. Paragraph (3) provides for the level of supervision required if the patient's condition is not stable and predictable; in these cases, physical presence of the supervisor is required.

Section 21.145(g) provides that only LPNs who have met the education and training requirements in § 21.145b may perform IV therapy acts. The paragraphs that follow set forth the specific IV therapy acts that LPNs may perform. Notably, the proposed rulemaking does not expand LPNs scope of practice related to the insertion or removal of IV access devices, as under current regulations, § 21.145(g)(8) authorizes an LPN to insert or remove only a peripheral short catheter. The remaining enumerated functions in subsection (g) apply to all IV access devices; however, an LPN may not insert or remove any other type of IV access device.

§ 21.145a. Prohibited acts.

The Board proposes to add a new § 21.145a, which will set forth the IV therapy acts that an LPN is prohibited from performing.

§ 21.145b. IV therapy curriculum requirements.

The Board proposes to add a new § 21.145b, which will set forth the curriculum requirements that an LPN will have to complete to perform IV therapy acts as set forth in § 21.145(g). The educational component may be included in the LPN curriculum in the approved schools of practical nursing in this Commonwealth or may be stand-alone courses offered through the approved schools of practical nursing or through health care facilities.

Compliance with Executive Order 1996-1

The Board provided an exposure draft of its proposal to stakeholders in early 2007. The Hospital and Healthsystem Association of Pennsylvania, the Pennsylvania Homecare Association and several individual nurses provided comments and suggestions to the Board that were incorporated into the proposed rulemaking. In addition, comments and suggestions were provided by the Independent Regulatory Review Commission (IRRC).

Fiscal Impact and Paperwork Requirements

The proposed amendments will not have an adverse fiscal impact on the Commonwealth or its political subdivisions as the Board is self-supporting. The proposed amendments will not impose any additional paperwork requirements upon the Commonwealth or its political subdivisions. To the extent that private sector providers of practical nursing education will be required to amend their curricula, there may be costs associated with the proposal. However, it is the Board's understanding, after meeting with educational program officials that the programs are willing to amend their curricula to meet the current demands of practice on LPNs. In addition, based on its meetings with representatives of HAP, the majority of hospitals and health care systems in this Commonwealth currently have IV therapy training programs for LPNs.

Sunset Date

The Board continuously monitors the cost-effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ANN O'SULLIVAN,  
Chair

**Fiscal Note:** 16A-5122. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**  
**PART I. DEPARTMENT OF STATE**  
**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**  
**CHAPTER 21. STATE BOARD OF NURSING**  
**Subchapter B. PRACTICAL NURSES**  
**GENERAL PROVISIONS**

§ 21.141. Definitions.

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

\* \* \* \* \*

**Bolus**—A concentrated medication or solution given rapidly over a short period of time.

**Central venous catheter**—An intravenous (IV) catheter, the tip of which terminates in the superior vena cava and may be either tunneled, implanted, or percutaneously inserted.

\* \* \* \* \*

**Focused assessment**—Appraisal of an individual's current status and situation, which contributes to comprehensive assessment by the registered nurse and supports ongoing data collection.

\* \* \* \* \*

**IV access device**—A centrally or peripherally inserted catheter used for the purpose of intravenous infusion therapy, including peripheral short catheters, peripheral midline catheters, peripherally inserted central catheters and central catheters.

\* \* \* \* \*

**PICC—Peripherally inserted central catheter**—An IV catheter, the tip of which terminates in the superior vena cava and is confirmed by chest x-ray.

\* \* \* \* \*

**Peripheral midline catheter**—A peripherally inserted catheter, the tip of which terminates no further than the axilla and is between 3 inches and 8 inches (7.5 cm and 20 cm) in length.

**Peripheral short catheter**—A venous access device less than 3 inches (7.5 cm) in length.

\* \* \* \* \*

**Titration of IV medications**—A process by which medication is administered and dosages are adjusted through a continuous medication-containing intravenous infusion (such as vasoactive drugs, anticoagulants, psychotropic drugs, neuromuscular drugs, hormones, and the like) in order to effect a desired state based upon patient assessment data and prescribed parameters.

#### § 21.145. Functions of the LPN.

(a) The LPN is prepared to function as a member of the health-care team by exercising sound nursing judgment based on preparation, knowledge, [ **skills, understandings and past experiences in nursing situations** ] **experience in nursing and competency**. The LPN participates in the planning, implementation and evaluation of nursing care **using focused assessment** in settings where nursing takes place.

(1) An LPN shall communicate with an RN and the patient's health care team members to seek guidance when:

(i) The patient's care needs exceed the licensed practical nursing scope of practice.

(ii) The patient's care needs surpass the LPN's knowledge, skill or ability.

(iii) The patient's condition deteriorates or there is a significant change in condition, the patient is not responding to therapy, the patient becomes unstable or the patient needs immediate assistance.

(2) An LPN shall obtain instruction and supervision if implementing new or unfamiliar nursing practices or procedures.

(3) An LPN shall follow the written, established policies and procedures of the facility that are consistent with the act.

\* \* \* \* \*

(f) [ The LPN may perform venipuncture and administer and withdraw intravenous fluids only if the following conditions are met:

(1) The LPN has received and satisfactorily completed a Board approved educational program which requires study and supervised clinical practice intended to provide training necessary for the performance of venipuncture and the administration and withdrawal of intravenous fluids as authorized by this section.

(2) A specific written order has been issued by a licensed physician for an individual patient under the care of a licensed physician.

(3) The LPN complies with written policies and procedures which are established by a committee of nurses, physicians, pharmacists and the adminis-

tration of the agency or institution employing or having jurisdiction over the LPN and which set forth standards, requirements and guidelines for the performance of venipuncture by the LPN and for the administration and withdrawal of intravenous fluids by the LPN. A current copy of the policies and procedures shall be provided to the LPN at least once every 12 months. The policies and procedures shall include standards, requirements and guidelines which:

(i) List, identify and describe the intravenous fluids which may be administered by the LPN. The LPN is not authorized to administer the following intravenous fluids:

(A) Antineoplastic agents.

(B) Blood and blood products.

(C) Total parenteral nutrition.

(D) Titrated medications and intravenous push medications other than heparin flush.

(ii) List, identify and describe the circumstances under which venipuncture may be performed, including technical and clinical indications.

(iii) List, identify, describe and explain principles, including technical and clinical indications, necessary for the identification and treatment of possible adverse reactions.

(iv) Provide for and require inservice instruction and supervised practice to insure competent performance of venipuncture and competent administration and withdrawal of intravenous fluids.

(4) An accurate record is made concerning:

(i) The time of puncture or injection or withdrawal of the intravenous fluid.

(ii) The type of intravenous fluid injected.

(iii) The amount of intravenous fluid injected.

(iv) The site of the puncture of injection.

(v) Reactions to the puncture or the intravenous fluid injected. ]

An LPN may perform only the IV therapy functions for which the LPN possesses the knowledge, skill and ability to perform in a safe manner, except as limited under § 21.145a (relating to prohibited acts), and only under supervision as required under paragraph (l).

(1) An LPN may initiate and maintain IV therapy only under the direction and supervision of a licensed professional nurse or health care provider authorized to issue orders for medical therapeutic or corrective measures (such as a CRNP, physician, physician assistant, podiatrist or dentist).

(2) Prior to the initiation of IV therapy, an LPN shall:

(i) Verify the order and identity of the patient.

(ii) Assess the patient for allergies, fluid and medication compatibilities.

(iii) Assess the patient's circulatory system and infusion site.

(iv) Assess all equipment.

(v) Instruct the patient regarding the risk and complication of therapy.



(3) Maintenance of IV therapy by an LPN must include ongoing observation and focused assessment of the patient, monitoring the IV site and maintaining the equipment.

(4) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not anticipated, the supervisor may supervise the LPN's provision of IV therapy by physical presence or electronic communication. If supervision is provided by electronic communication, the LPN shall have access to assistance readily available.

(5) In the following cases, an LPN may provide IV therapy only when the LPN's supervisor is physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

(i) When a patient's condition is critical, fluctuating, unstable or unpredictable.

(ii) When a patient has developed signs and symptoms of an IV catheter-related infection, venous thrombosis or central line catheter occlusion.

(iii) When a patient is receiving hemodialysis.

(g) [ The Board will issue annually to the LPN definitive information describing the nature, scope and extent of authorized functions and practice concerning immunization, skin testing, venipuncture and the administration and withdrawal of intravenous fluids. ]

An LPN who has met the education and training requirements of § 21.145b (relating to IV therapy curriculum requirements) may perform the following IV therapy functions, except as limited under § 21.145a and only under supervision as required under subsection (f):

(1) Adjustment of the flow rate on IV infusions.

(2) Observation and reporting of subjective and objective signs of adverse reactions to any IV administration and initiation of appropriate interventions.

(3) Administration of IV fluids and medications.

(4) Performance of site care.

(5) Performance of maintenance.

(6) Discontinuance of a medication or fluid infusion, including infusion devices.

(7) Conversion of a continuous infusion to an intermittent infusion.

(8) Insertion or removal of a peripheral short catheter.

(9) Maintenance, monitoring and discontinuance of blood, blood components and plasma volume expanders.

(10) Administration of solutions to maintain potency of an IV access device via direct push or bolus route.

(11) Maintenance and discontinuance of IV medications and fluids given via a patient-controlled administration system.

(12) Administration, maintenance and discontinuance of parenteral nutrition and fat emulsion solutions.

(13) Collection of blood specimens from an IV access device.

*(Editor's Note: The following sections are new and the text has been printed in regular print to enhance readability.)*

#### § 21.145a. Prohibited acts.

An LPN may not perform the following IV therapy functions:

(1) Initiate administration of blood, blood components and plasma volume expanders.

(2) Administer tissue plasminogen activators, immunoglobulins, antineoplastic agents or investigational drugs.

(3) Access a central venous route access device used for hemodynamic monitoring.

(4) Administer medications or fluids via arterial lines.

(5) Administer medications via push or bolus route.

(6) Administer fibrinolytic or thrombolytic agents to de clot any IV access device.

(7) Administer medications requiring titration.

(8) Insert or remove any IV access device, except a peripheral short catheter.

(9) Access or program an implanted IV infusion pump.

(10) Administer IV medications for the purpose of procedural sedation or anesthesia.

(11) Administer fluids or medications via an epidural, intrathecal, intraosseous or umbilical route, or via a ventricular reservoir.

(12) Administer medications or fluids via an arteriovenous fistula or graft, except for dialysis.

(13) Perform repair of a central venous route access device or PICC.

(14) Perform therapeutic phlebotomy.

(15) Direct access of implantable devices.

#### § 21.145b. IV therapy curriculum requirements.

An IV therapy course provided as part of the LPN education curriculum as set forth in § 21.203 (relating to specific curriculum requirements for practical nursing programs) or as a stand-alone course offered by a licensed health care facility shall include instruction in the following topics:

(1) IV Infusion Therapy, as follows:

(i) Definition of IV therapy.

(ii) Indications:

(A) Fluid volume maintenance.

(B) Fluid volume replacement.

(C) Medication administration.

(D) Blood and blood product maintenance, monitoring and discontinuation.

(E) Nutritional support.

(iii) Types of vascular access delivery devices:

(A) Venous access devices.

(B) Central venous access devices.

(C) Peripherally inserted central venous access devices.

- (iv) Age-related considerations and IV therapy (generally and within each major area as appropriate):
  - (A) Pediatric patients.
  - (B) Adult patients.
  - (C) Elderly patients.
- (2) Legal implications for IV nursing practice:
  - (i) *Pennsylvania Code*—Title 49, Chapter 21, Subchapter B. Practical Nurses.
  - (ii) Institutional policy and procedure.
  - (iii) Standards of practice.
  - (iv) Accountability in infusion therapy.
  - (v) Malpractice liability.
  - (vi) Documentation.
  - (vii) Quality assurance.
  - (viii) Continuing education.
  - (ix) Patient rights.
- (3) Related anatomy and physiology (including age-related differences).
- (4) Fundamentals of fluid balance and electrolyte balance (including age-related differences).
- (5) Equipment and supplies used in the preparation and administration of IV therapy:
  - (i) Administration sets:
    - (A) Primary.
    - (B) Secondary or piggyback, saline lock, Y type administration with controlled volume, filters.
  - (ii) Needleless systems.
  - (iii) Venous access devices.
  - (iv) Infusion site preparation and site dressing materials.
  - (v) Infusion regulation systems (pumps and controllers).
  - (vi) Labels.
  - (vii) Hanging devices.
- (6) Parenteral solutions and indications for use (isotonic, hypotonic, hypertonic).
- (7) Infection control and safety issues:
  - (i) Transmission.
  - (ii) Types of infections:
    - (A) Local.
    - (B) Systemic.
  - (iii) Prevention measures.
  - (iv) Standard precautions.
- (8) Insertion of peripheral short catheters (theory and lab):
  - (i) Equipment.
  - (ii) Site selection.
  - (iii) Site preparation.
  - (iv) Inserting the IV access device.
  - (v) Dressing the site.
  - (vi) Documentation.
- (9) Administration, maintenance and monitoring of peripheral IV therapy (theory and lab):
  - (i) Focused assessment pertaining to IV therapy.
  - (ii) Calculating IV rate.
  - (iii) Terminology.
  - (iv) Drug compatibility.
  - (v) Drug information.
  - (vi) Methods/technique of administering IV medications/fluids.
  - (vii) Continuous and intermittent monitoring of IV medications/fluids.
  - (viii) Local complications and nursing interventions:
    - (A) Phlebitis/thrombosis.
    - (B) Infiltration/extravasation.
    - (C) Catheter displacement.
    - (D) Occlusion.
    - (E) Hematoma.
    - (F) Cellulitis.
    - (G) Local infection.
  - (ix) Systemic complications:
    - (A) Sepsis.
    - (B) Medication and fluid interactions.
    - (C) Allergic reactions.
    - (D) Embolism.
  - (x) Documentation.
  - (xi) Discontinuing a peripheral IV.
- (10) Centrally and peripherally placed vascular access devices:
  - (i) Indications for centrally placed devices.
  - (ii) Disadvantages and advantages.
  - (iii) Placement of devices:
    - (A) Review anatomy.
    - (B) Usual sites.
    - (C) Types of devices:
      - (I) Tunneled.
      - (II) Nontunneled.
      - (III) Implanted ports.
      - (IV) PICC.
    - (iv) Insertion-related complications:
      - (A) Pneumothorax.
      - (B) Air embolism.
      - (C) Catheter malposition.
      - (D) Mediastinal injury.
      - (E) Hemothorax.
      - (F) Chylothorax.
      - (G) Hydrothorax.
      - (H) Brachial plexus injury.
      - (I) Arterial laceration.
      - (J) Extravascular malposition.
      - (K) Intravascular malposition.
      - (L) Pericardial tamponade.
    - (v) Long-term complications:

- (A) Dislodgement.
- (B) Air embolism.
- (C) Local infection.
- (D) Sepsis.
- (E) Catheter migration.
- (F) Catheter occlusion.
- (G) Vessel thrombosis.
- (H) Damaged catheter.
- (I) Superior Vena Cava Syndrome.
- (J) Skin erosion.
- (vi) Maintaining central venous infusions (differentiate for types of access devices):
  - (A) Checking placement.
  - (B) Changing dressings.
  - (C) Changing IV tubing and solution.
  - (D) Changing catheter cap.
  - (E) Flushing.
  - (F) Administering primary or secondary infusion.
  - (G) Obtaining a blood sample.
  - (H) Determining intake and output.
  - (I) Documenting.
- (11) Special considerations:
  - (i) Setting:
    - (A) Acute care.
    - (B) Home care.
    - (C) Long-term care.
    - (D) Ambulatory care.
    - (E) Hospice care.
  - (ii) Patient education.
  - (iii) Ethical/cultural issues.
  - (iv) Other—geographical practice setting differences.

[Pa.B. Doc. No. 10-773. Filed for public inspection April 30, 2010, 9:00 a.m.]

## STATE REAL ESTATE COMMISSION

### [ 49 PA. CODE CH. 35 ] Seller Property Disclosure Statement

The State Real Estate Commission (Commission) proposes to add §§ 35.284a and 35.335a (relating to disclosures required by the Real Estate Seller Disclosure Law; and seller's property disclosure statement) to read as set forth in Annex A.

#### A. *Effective Date*

The regulations will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

#### B. *Statutory Authority*

The regulations are proposed under the authority of section 7304(a) of the Real Estate Seller Disclosure Law

(SDL) (68 Pa.C.S. § 7304(a)), and sections 404 and 604(a)(15.1) of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. §§ 455.404 and 455.604(a)(15.1)).

#### C. *Background and Purpose*

Section 604(a)(15.1) of the RELRA (63 P. S. § 455.604(a)(15.1)) makes failing to provide a disclosure required by another law in connection with a real estate transaction a disciplinary offense. The SDL, which replaced the repealed Real Estate Seller Disclosure Act (SDA) (68 P. S. §§ 1021—1036), establishes disclosure duties on real estate licensees and sellers for certain types of residential real estate transfers and delineates specific aspects of the property that must be disclosed by the seller to a prospective buyer.

Specifically, section 7313(c) of the SDL (68 Pa.C.S. § 7313(a)) requires seller's agents to advise sellers of their responsibilities under section 7303 of the SDL (68 Pa.C.S. § 7303) and provide sellers with a property disclosure statement. Under the SDL, sellers are required to: disclose any known material defects to the buyer before signing an agreement of transfer by completing a property disclosure statement that meets or exceeds the requirements of section 7304 of the SDL (68 Pa.C.S. § 7304), deliver the completed property disclosure statement to buyers or buyers agent under section 7305 of the SDL (68 Pa.C.S. § 7305), and notify buyers of any inaccuracies in accordance with section 7307 of the SDL (68 Pa.C.S. § 7307).

Under section 7304(a) of the SDL, the Commission is required to promulgate a property disclosure statement that satisfies the requirements of subsection (b). Until that time, under subsection (c), the statement contained in the SDA satisfies the requirements of the SDL.

Having reviewed the SDA property disclosure statement for 5 years and determining that it satisfactorily reflected the requirements of the SDL, the Commission attempted to promulgate a final-form regulation, with proposed rulemaking omitted under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202), that included the SDA property disclosure statement and specific duties on licensees as set forth in the SDL. On May 26, 2006, the Commission submitted the proposed-omitted final form regulations to the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC).

After extensive discussions with the HPLC, on June 7, 2006, the Commission tolled the review of the regulations under section 5.1(g)(1) of the Regulatory Review Act (71 P. S. § 745.5a(g)(1)), to allow it to make revisions to the text of the Annex recommended by the HPLC. Ultimately, after being requested by the HPLC to resubmit the regulations in proposed form, the Commission withdrew the regulations on June 13, 2006.

After that withdrawal, the Commission considered whether to further amend the previously submitted regulations and solicited comment from stakeholders. Following extended discussions at regularly scheduled meetings, the Commission voted to resubmit the regulations in proposed form. The proposed regulations are essentially the same disclosure form proposed in 2006. Two sections are rearranged to enhance clarity.

#### D. Description of Proposed Regulations

##### § 35.284a—Disclosures required by the Real Estate Seller Disclosure Law.

Proposed subsection (a) tracks the duties on seller's agents under the SDL. Seller's agents must advise sellers of their duty to disclose known material defects with the property, provide sellers with a property disclosure statement that meets or exceeds the disclosures in proposed § 35.335a, and deliver either the completed property disclosure statement or one marked "refused" to buyers or buyers agent prior to the execution of an agreement of sale.

Proposed subsection (b) tracks the duties on buyer's agents under the SDL. Buyer's agents must advise buyers that sellers have the duty to disclose known material defects with the property, and deliver either the completed property disclosure statement or one marked "refused" to the buyer prior to the execution of an agreement of sale.

Proposed subsection (c) conforms to section 7310 of the SDL (68 Pa.C.S. § 7310) by requiring seller's agents and buyer's agents to disclose, to the buyer in writing, material defects that the seller did not disclose and of which the licensee has actual knowledge. New subsection (d) provides that neither seller's agents nor buyer's agents are required to conduct an independent investigation to confirm seller's disclosures on the property disclosure statement.

While the SDL does not specifically state that seller may refuse to complete a property disclosure statement, section 7311 of the SDL (68 Pa.C.S. § 7311) addresses the penalty on a seller for failing to comply with the SDL. Because, in the Commission's experience it is aware that some sellers refuse to complete the property disclosure statement, and because section 7311 specifically states that a residential real estate transaction will not be invalidated solely because of a failure to comply with the SDL, the Commission added refusal language to both subsections (a) and (b) to provide guidance to licensees.

##### § 35.335—Seller's property disclosure statement.

Proposed § 35.335a sets forth the Commission's property disclosure statement. Its language is identical to the property disclosure statement previously set forth in the SDA. The Commission believes that this property disclosure statement meets the requirements of section 7304(b) of the SDL. Further, because section 7304(a) permits sellers to provide a disclosure statement that exceeds the requirements of section 7304(b), and in the Commission's experience, licensees generally provided a more comprehensive disclosure, the language previously set forth in the SDA suffices as a minimum requirement.

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

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following boards, associations, real estate education providers and licensees to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors, Realtors Educational Institute, Institute of Real Estate Studies, Polley Associates, Pennsylvania Cemetery & Funeral Association, Pennsylvania Bar Association, Allegheny Highland Association, Greater Allegheny-Kiski Area Board, Allegheny Valley Board, Beaver County Association, Bradford-Sullivan County Association, Bucks

County Board, Butler County Association, Cambria-Somerset Association, Carbon County Association, Carlisle Association, Central Montgomery County Association, Central Susquehanna Valley Board, Central Westmoreland Board, Centre County Association, Chester County Association, Clearfield-Jefferson Association, Delaware Valley Realtors Association, East Montgomery County Association, Elk-Cameron County Board, Greater Erie Board, Fayette County Board, Franklin County Association, Greenville Area Board, Hanover-Adams County Association, Greater Harrisburg Association, Greater Hazleton Association, Huntingdon County Board, Indiana County Board, Lancaster County Association, Lawrence County Board, Lebanon County Association, Lehigh Valley Association, McKean County Association, Greater Meadville Board, Greater Mercer County Board, Mifflin-Juniata County Board, Mon Yough Association, Monongahela Valley Board, Greater Philadelphia Association, North Central Penn Board, Pike/Wayne Association, Pocono Mountains Association, Reading-Berks Association, Realtors Association of Metropolitan Pittsburgh, Schuylkill County Board, Greater Scranton Association, Tri-State Commercial and Industrial Association, Warren County Board, Washington-Greene Association, West Branch Valley Association, Westmoreland West Association, Greater Wilkes-Barre Association, York County Association, the Pennsylvania Federation of Housing Counselors and Agencies, and the Real Estate Consumer Council. The Commission considered comments submitted to it in drafting the proposal.

#### F. Fiscal Impact and Paperwork Requirements

The regulations should have no fiscal impact on, or create additional paperwork for, the regulated community or the political subdivisions of this Commonwealth. Real estate licensees have been providing property disclosure statements to sellers and buyers of applicable residential real estate since the enactment of the SDA. This proposal does not alter that requirement.

#### G. Sunset Date

The Commission reviews the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 21, 2010, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the HPLC and the SCP/PLC. A copy of this material is available to the public upon request.

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

#### I. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed regulations to Judith Pachter Schulder, Counsel,

State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649 or jschulder@state.pa.us within 30 days of publication of this proposed rulemaking. Reference No. 16A-5618 (Seller Property Disclosure Statement), when submitting comments.

JOSEPH TARANTINO, Jr.,  
Chairperson

**Fiscal Note:** 16A-5618. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 35. STATE REAL ESTATE COMMISSION**

**Subchapter E. STANDARDS OF CONDUCT AND PRACTICE**

**GENERAL ETHICAL RESPONSIBILITIES**

**§ 35.284a. Disclosures required by the Real Estate Seller Disclosure Law.**

(a) Seller’s agents shall:

(1) Advise sellers of their duty to disclose any known material defects with the property by completing a property disclosure statement that satisfies the requirements in 68 Pa.C.S.A. § 7304 (relating to disclosure form).

(2) Provide sellers with a property disclosure statement that meets or exceeds the disclosures set forth in § 35.335a (relating to seller property disclosure statement).

(3) Deliver the completed property disclosure statement or the property disclosure statement marked “refused” to the buyer or buyer’s agent prior to the execution of an agreement of sale.

(b) Buyer’s agents shall:

(1) Advise buyers that sellers have a duty to provide a completed property disclosure statement.

(2) Deliver the completed property disclosure statement or the property disclosure statement marked “refused” to the buyer prior to the execution of an agreement of sale.

(c) Both seller’s agents and buyer’s agents (licensees) are required to disclose, to the buyer in writing, all material defects that are not otherwise disclosed and of which the licensee has actual knowledge.

(d) Neither seller’s agents nor buyer’s agents are required to conduct an independent investigation to confirm seller’s disclosures on the property disclosure statement.

**REAL ESTATE DOCUMENTS**

**§ 35.335a. Seller property disclosure statement.**

The seller’s property disclosure statement must, at a minimum, contain the following disclosures:

**Seller’s Property Disclosure Statement**

Property address: \_\_\_\_\_

Seller: \_\_\_\_\_

A seller must disclose to a buyer all known material defects about property being sold that are not readily observable. This disclosure statement is de-

signed to assist the seller in complying with disclosure requirements and to assist the buyer in evaluating the property being considered.

This statement discloses the seller’s knowledge of the condition of the property as of the date signed by the seller and is not a substitute for any inspections or warranties that the buyer may wish to obtain. This statement is not a warranty of any kind by the seller or a warranty or representation by any listing real estate broker, any selling real estate broker or their agents. The buyer is encouraged to address concerns about the condition of the property that may not be included in this statement. This statement does not relieve the seller of the obligation to disclose a material defect that may not be addressed on this form.

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land. The fact that a structural element, system or subsystem is near, at or beyond the end of its normal useful life is not by itself a material defect.

(1) **Seller’s expertise.** The seller does not possess expertise in contracting, engineering, architecture or other areas related to the construction and condition of the property and its improvements, except as follows: \_\_\_\_\_

(2) **Occupancy.** Do you, the seller, currently occupy this property? \_\_\_\_ yes \_\_\_\_ no

If “no,” when did you last occupy the property? \_\_\_\_\_

(3) **Roof.**

(i) Date roof was installed: \_\_\_\_\_  
Documented? \_\_\_\_ yes \_\_\_\_ no \_\_\_\_ unknown

(ii) Has the roof been replaced or repaired during your ownership? \_\_\_\_ yes \_\_\_\_ no

If “yes,” were the existing shingles removed? \_\_\_\_ yes \_\_\_\_ no \_\_\_\_ unknown

(iii) Has the roof ever leaked during your ownership? \_\_\_\_ yes \_\_\_\_ no

(iv) Do you know of any problems with the roof, gutters or downspouts? \_\_\_\_ yes \_\_\_\_ no

Explain any “yes” answers that you give in this section: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) **Basements and crawl spaces (Complete only if applicable).**

(i) Does the property have a sump pump? \_\_\_\_ yes \_\_\_\_ no \_\_\_\_ unknown

(ii) Are you aware of any water leakage, accumulation or dampness within the basement or crawl space? \_\_\_\_ yes \_\_\_\_ no

If “yes,” describe in detail: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(iii) Do you know of any repairs or other attempts to control any water or dampness problem in the basement or crawl space? \_\_\_\_ yes \_\_\_\_ no

If "yes," describe the location, extent, date and name of the person who did the repair or control effort: \_\_\_\_\_

**(5) Termites/wood destroying insects, dry rot, pests.**

(i) Are you aware of any termites/wood destroying insects, dry rot or pests affecting the property? \_\_\_\_\_ yes \_\_\_\_\_ no

(ii) Are you aware of any damage to the property caused by termites/wood destroying insects, dry rot or pests? \_\_\_\_\_ yes \_\_\_\_\_ no

(iii) Is your property currently under contract by a licensed pest control company? \_\_\_\_\_ yes \_\_\_\_\_ no

(iv) Are you aware of any termite/pest control reports or treatments for the property in the last 5 years? \_\_\_\_\_ yes \_\_\_\_\_ no

Explain any "yes" answers that you give in this section: \_\_\_\_\_

**(6) Structural items.**

(i) Are you aware of any past or present water leakage in the house or other structures? \_\_\_\_\_ yes \_\_\_\_\_ no

(ii) Are you aware of any past or present movement, shifting, deterioration or other problems with walls, foundations or other structural components? \_\_\_\_\_ yes \_\_\_\_\_ no

(iii) Are you aware of any past or present problems with driveways, walkways, patios or retaining walls on the property? \_\_\_\_\_ yes \_\_\_\_\_ no

Explain any "yes" answers that you give in this section: \_\_\_\_\_

When explaining efforts to control or repair, please describe the location and extent of the problem and the date and person by whom the work was done, if known: \_\_\_\_\_

**(7) Additions/remodeling.** Have you made any additions, structural changes or other alterations to the property? \_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," please describe: \_\_\_\_\_

**(8) Water and sewage.**

(i) What is the source of your drinking water?

\_\_\_\_\_ public \_\_\_\_\_ community system  
\_\_\_\_\_ well on property \_\_\_\_\_ other

If "other," please explain: \_\_\_\_\_

(ii) If your drinking water source is not public:

When was your water last tested? \_\_\_\_\_

What was the result of the test? \_\_\_\_\_

Is the pumping system in working order?

\_\_\_\_\_ yes \_\_\_\_\_ no

If "no," please explain: \_\_\_\_\_

(iii) Do you have a softener, filter or other purification system?

\_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," is the system: \_\_\_\_\_ leased \_\_\_\_\_ owned

(iv) What is the type of sewage system?  
\_\_\_\_\_ public sewer \_\_\_\_\_ private sewer \_\_\_\_\_ septic tank \_\_\_\_\_ cesspool \_\_\_\_\_ other

If "other," please explain: \_\_\_\_\_

(v) Is there a sewage pump? \_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," is it in working order? \_\_\_\_\_ yes \_\_\_\_\_ no

(vi) If applicable, when was the septic system or cesspool last serviced? \_\_\_\_\_

(vii) Is either the water or sewage system shared? \_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," please explain: \_\_\_\_\_

(viii) Are you aware of any leaks, backups or other problems relating to any of the plumbing, water and sewage-related items? \_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," please explain: \_\_\_\_\_

**(9) Plumbing system.**

(i) Type of plumbing: \_\_\_\_\_ copper \_\_\_\_\_ galvanized \_\_\_\_\_ lead \_\_\_\_\_ PVC \_\_\_\_\_ unknown \_\_\_\_\_ other

If "other," please explain: \_\_\_\_\_

(ii) Are you aware of any problems with any of your plumbing fixtures (including, but not limited to: kitchen, laundry or bathroom fixtures, wet bars, hot water heater, etc.)? \_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," please explain: \_\_\_\_\_

**(10) Heating and air conditioning.**

(i) Type of air conditioning: \_\_\_\_\_ central electric \_\_\_\_\_ central gas \_\_\_\_\_ wall \_\_\_\_\_ none

(ii) List any areas of the house that are not air conditioned: \_\_\_\_\_

(iii) Type of heating: \_\_\_\_\_ electric \_\_\_\_\_ fuel oil \_\_\_\_\_ natural gas \_\_\_\_\_ other

If "other," please explain: \_\_\_\_\_

(iv) List any areas of the house that are not heated: \_\_\_\_\_

(v) Type of water heating: \_\_\_\_\_ electric \_\_\_\_\_ gas  
\_\_\_\_\_ solar \_\_\_\_\_ other

If "other," please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(vi) Are you aware of any underground fuel tanks on the property? \_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you aware of any problems with any item in this section? \_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(11) **Electrical system.** Are you aware of any problems or repairs needed in the electrical system? \_\_\_\_\_ yes \_\_\_\_\_ no

If "yes," please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(12) Equipment and appliances.**

The following items included in the sale are in need of repair or replacement: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(13) Land (soils, drainage and boundaries).**

(i) Are you aware of any fill or expansive soil on the property? \_\_\_\_\_ yes \_\_\_\_\_ no

(ii) Are you aware of any sliding, settling, earth movement, upheaval, subsidence or earth stability problems that have occurred on or that affect the property? \_\_\_\_\_ yes \_\_\_\_\_ no

NOTE TO BUYER: Some properties may be subject to mine subsidence damage. Maps of the counties and mines where mine subsidence damage may occur and mine subsidence insurance are available through:

Department of Environmental Protection  
Mine Subsidence Insurance Fund  
25 Technology Drive, California Technology Park  
Coal Center, PA 15413  
(in PA) (800) 922-1678  
(outside PA) (724) 769-1100

(iii) Are you aware of any existing or proposed mining, strip mining or any other excavations that might affect this property? \_\_\_\_\_ yes \_\_\_\_\_ no

(iv) To your knowledge, is this property or part of it located in a flood zone or wetlands area? \_\_\_\_\_ yes \_\_\_\_\_ no

(v) Do you know of any past or present drainage or flooding problems affecting the property? \_\_\_\_\_ yes \_\_\_\_\_ no

(vi) Do you know of any encroachments, boundary line disputes or easements? \_\_\_\_\_ yes \_\_\_\_\_ no

NOTE TO BUYER: Most properties have easements running across them for utility services and

other reasons. In many cases, the easements do not restrict the ordinary use of the property, and the seller may not be readily aware of them. Buyers may wish to determine the existence of easements and restrictions by examining the property and ordering an abstract of title or searching the records in the Office of the Recorder of Deeds for the county before entering into an agreement of sale.

(vii) Are you aware of any shared or common areas (for example, driveways, bridges, docks, walls, etc.) or maintenance agreements? \_\_\_\_\_ yes \_\_\_\_\_ no

Explain any "yes" answers that you give in this section: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(14) Hazardous substances.**

(i) Are you aware of any underground tanks or hazardous substances present on the property (structure or soil), including, but not limited to, asbestos, polychlorinated byphenyls (PCBs), radon, lead paint, urea-formaldehyde foam insulation (UFFI), etc.? \_\_\_\_\_ yes \_\_\_\_\_ no

(ii) To your knowledge, has the property been tested for any hazardous substances? \_\_\_\_\_ yes \_\_\_\_\_ no

(iii) Do you know of any other environmental concerns that might impact upon the property? \_\_\_\_\_ yes \_\_\_\_\_ no

Explain any "yes" answers that you give in this section: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(15) Condominiums and other homeowners associations (complete only if applicable).**

Type: \_\_\_\_\_ condominium\* \_\_\_\_\_ cooperative  
\_\_\_\_\_ homeowners association \_\_\_\_\_ other

If "other," please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE REGARDING  
CONDOMINIUMS AND COOPERATIVES:

According to section 3407 of the Uniform Condominium Act (68 Pa.C.S. § 3407) (relating to resales of units) and 68 Pa.C.S. § 4409 (relating to resales of cooperative interests), a buyer of a resale unit in a condominium or cooperative must receive a certificate of resale issued by the association in the condominium or cooperative. The buyer will have the option of canceling the agreement with return of all deposit moneys until the certificate has been provided to the buyer and for 5 days thereafter or until conveyance, whichever occurs first.

**(16) Miscellaneous.**

(i) Are you aware of any existing or threatened legal action affecting the property? \_\_\_\_\_ yes \_\_\_\_\_ no

(ii) Do you know of any violations of Federal, State or local laws or regulations relating to this property? \_\_\_\_\_ yes \_\_\_\_\_ no

(iii) Are you aware of any public improvement, condominium or homeowner association assessments against the property that remain unpaid or of any violations of zoning, housing, building safety or fire ordinances that remain uncorrected? \_\_\_ yes \_\_\_ no

(iv) Are you aware of any judgment, encumbrance, lien (for example, comaker or equity loan) or other debt against this property that cannot be satisfied by the proceeds of this sale? \_\_\_ yes \_\_\_ no

(v) Are you aware of any reason, including a defect in title, that would prevent you from giving a warranty deed or conveying title to the property? \_\_\_ yes \_\_\_ no

(vi) Are you aware of any material defects to the property, dwelling or fixtures which are not disclosed elsewhere on this form? \_\_\_ yes \_\_\_ no

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land.

Explain any "yes" answers that you give in this section: \_\_\_\_\_

\_\_\_\_\_

The undersigned seller represents that the information set forth in this disclosure statement is accurate and complete to the best of the seller's knowledge. The seller hereby authorizes any agent for the seller to provide this information to prospective buyers of the property and to other real estate agents. The

seller alone is responsible for the accuracy of the information contained in this statement. The seller shall cause the buyer to be notified in writing of any information supplied on this form that is rendered inaccurate by a change in the condition of the property following the completion of this form.

SELLER \_\_\_\_\_ DATE \_\_\_\_\_  
SELLER \_\_\_\_\_ DATE \_\_\_\_\_  
SELLER \_\_\_\_\_ DATE \_\_\_\_\_

EXECUTOR, ADMINISTRATOR, TRUSTEE

The undersigned has never occupied the property and lacks the personal knowledge necessary to complete this disclosure statement.

DATE \_\_\_\_\_

RECEIPT AND ACKNOWLEDGMENT BY BUYER

The undersigned buyer acknowledges receipt of this disclosure statement. The buyer acknowledges that this statement is not a warranty and that, unless stated otherwise in the sales contract, the buyer is purchasing this property in its present condition. It is the buyer's responsibility to satisfy himself or herself as to the condition of the property. The buyer may request that the property be inspected, at the buyer's expense and by qualified professionals, to determine the condition of the structure or its components.

BUYER \_\_\_\_\_ DATE \_\_\_\_\_  
BUYER \_\_\_\_\_ DATE \_\_\_\_\_  
BUYER \_\_\_\_\_ DATE \_\_\_\_\_

[Pa.B. Doc. No. 10-774. Filed for public inspection April 30, 2010, 9:00 a.m.]

\_\_\_\_\_