

# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

[4 PA. CODE CH. 116]

#### Radiation Emergency Response Fund

##### A. *Statutory Authority*

The Pennsylvania Emergency Management Agency (PEMA), under the authority contained in 35 Pa.C.S. § 7313 (relating to powers and duties) amends Chapter 116 (relating to Radiation Emergency Response Fund) to read as set forth in Annex A. These amendments were previously published as proposed rulemaking at 28 Pa.B. 2817 (June 20, 1998).

##### B. *Effective Date*

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

##### C. *Background and Purpose*

The amendments are intended to streamline and improve the ability of PEMA to administer and operate the Radiation Emergency Response Fund (RERF) and to carry out the many goals and objectives of the Radiation Emergency Response Program which was established to protect the health and welfare of all Commonwealth residents living within the vicinity of Pennsylvania's five nuclear power plants. These amendments are needed to change the current funding process by which State agencies, counties, municipalities, school districts and volunteer organizations receive annual funding amounts from the RERF as set forth in Chapter 116. Under the present funding process, these entities receive two equal payments during the funding year to purchase radiological protection equipment, conduct emergency responder training and public information activities, and participate in radiation emergency response exercises and drills. The second payment is contingent upon PEMA's receipt of an interim performance report which the counties submit to PEMA by January 15 of a funding year.

PEMA has determined that the submission of the interim performance report is an unnecessary and burdensome requirement on the counties which should be eliminated. PEMA has also determined that it is more cost effective and practical to make one grant payment to each county on an annual basis rather than the current two payment process. This will allow the counties and their subgrantees to spend their grant moneys in a more timely and effective manner. These amendments will also remove the Pennsylvania Emergency Management Council (Council) from its supervisory role in the grant program and replace it with PEMA which has been the actual program administrator and implementing agency for this grant program since its inception in 1985.

These amendments will also delete the section of the regulations dealing with the reimbursement of certain retroactive expenses of the counties and other eligible parties because PEMA has completed the payment of those retroactive expenses to all eligible counties and other eligible applicants. Therefore, this section of the regulations no longer serves any purpose and will be deleted because it is no longer needed.

##### D. *Comments*

Written comments, suggestions and objections were solicited within a 30-day period after the proposed amendments were published. No public comments were received.

The Independent Regulatory Review Commission (IRRC) recommended that because the term "eligible" was not defined in the regulations that § 116.4 (relating to allocation of funds) include a reference to § 116.5 (relating to program requirements and eligible expenditures) to provide any reader with information concerning eligibility for the grant program. IRRC also recommended that § 116.6 (relating to application and review procedures for funding) include a sentence that PEMA will provide the requisite grant application forms to all eligible grant applicants. PEMA agrees with these two comments and has made the necessary changes to the regulations to incorporate the comments. IRRC had no other comments on these amendments.

##### E. *Fiscal Impact/Affected Persons*

These amendments will have a favorable impact on all State agencies, counties, municipalities, school districts and volunteer organizations that apply for grants from the RERF because it will allow them to receive their grant moneys in one payment instead of two, will eliminate an unnecessary interim performance report, and will allow the grant recipients to receive their grant moneys in a more timely manner.

##### F. *Paperwork Requirements*

The amendments will reduce the amount of paperwork that State agencies, counties, municipalities, school districts and volunteer organizations shall submit during the funding year as part of PEMA's administration of the RERF.

##### G. *Sunset Requirement*

PEMA has not set a sunset date for these amendments because the RERF operates on a continuing basis. PEMA continues to monitor the operation of the RERF and will propose improvements such as these amendments when required.

##### H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 8, 1998, a copy of the notice of proposed rulemaking, published at 28 Pa.B. 2817 was submitted to IRRC and the Chairpersons of the Senate State Government Committee and the House Veterans Affairs and Emergency Preparedness Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the agency also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

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

These final-form regulations were deemed approved by the House and Senate Committees on February 16, 1999. IRRC met on February 18, 1999, and approved the amendments in accordance with section 5(c) of the Regulatory Review Act.

### I. Contact Person

Questions regarding these amendments may be directed to Mark Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, P. O. Box 3321, Harrisburg, PA 17108.

### J. Findings

PEMA finds that:

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

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

(3) These amendments are necessary and appropriate for the administration and enforcement of the Radiation Protection Act (35 P. S. §§ 7110.101—7110.703) and 35 Pa.C.S. §§ 7101—7707 (relating to Emergency Management Services Code).

### K. Order

PEMA, acting under the Radiation Protection Act and the Emergency Management Services Code, orders that:

(a) The regulations of PEMA, 4 Pa. Code Chapter 116, are amended by amending §§ 116.1, 116.4—116.7, 116.9, 116.10 and by deleting § 116.8 to read as set forth in Annex A.

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

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

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

*(Editor's Note: The proposed amendments to § 116.2, included at 28 Pa.B. 2817 (June 20, 1998) has been withdrawn by PEMA.)*

ROBERT E. CHURCHMAN,  
*Acting Director*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 1278 (March 6, 1999).)*

**Fiscal Note:** Fiscal Note 30-49 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 4. ADMINISTRATION

#### PART V. EMERGENCY MANAGEMENT AGENCY

#### CHAPTER 116. RADIATION EMERGENCY RESPONSE FUND

##### § 116.1. Definitions.

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

*Act*—The Radiation Protection Act (35 P. S. §§ 7110.101—7110.703).

*Agency*—The Pennsylvania Emergency Management Agency.

*County*—An all inclusive term in that it also refers to all risk and support counties located in this Common-

wealth together with all risk municipalities, school districts and volunteer organizations located within those risk and support counties. All of the functions, duties, responsibilities and requirements of this chapter—except for the reporting requirements of § 116.7 (relating to reporting requirements and disbursement funds)—that apply to a risk or support county also apply in like manner to that county's risk municipalities, school districts and volunteer organizations.

*EPZ—Emergency Planning Zone*—A designated area surrounding a nuclear facility to facilitate offsite emergency planning and develop a significant response base.

*FEMA*—Federal Emergency Management Agency.

*NRC*—Nuclear Regulatory Commission.

*Person*—An individual, corporation, firm, association, public utility, trust, estate, public or private institution, group, agency, political subdivision of this Commonwealth, another state or political subdivision or agency thereof and a legal successor, representative, agent or agency of the foregoing, other than the NRC or a successor thereto.

*RERF—Radiation Emergency Response Fund*—A restricted account created in the General Fund of the Commonwealth for the deposit of fees received from the nuclear industry under sections 402(c)(1)—(3) of the act (35 P. S. § 7110.402(c)(1)—(3)).

*Radiation Emergency Response Program*—The development of a detailed fixed nuclear emergency response plan for areas surrounding each nuclear electrical generation facility, nuclear fabrication and away-from-reactor storage facility located in this Commonwealth, the training and equipping of State and local emergency response personnel, the periodic exercise of the accident scenarios designated in the NRC emergency response plan applicable to each fixed nuclear facility, the procurement of specialized supplies and equipment, and the provisions for providing financial assistance to counties, risk municipalities, school districts, volunteer organizations and State agencies to carry out the purposes of this program.

*Risk county*—A county partially or wholly within the plume exposure pathway EPZ of a fixed nuclear facility.

*Risk municipality*—A municipality partially or wholly within the plume exposure pathway EPZ of a fixed nuclear facility.

*School district*—A school district located within either a risk county or a support county.

*State agency*—A department or agency of the Commonwealth government other than the Agency that has a health, safety or emergency response function assigned to it by statute or by the Commonwealth's Radiation Emergency Response Program.

*Support county*—The county outside the plume exposure pathway EPZ of a fixed nuclear facility that, through prior agreement, will provide support to a risk county in the event of an incident. Depending on size and location, the same county may be both a risk and support county.

*Volunteer organization*—An emergency services organization that has an emergency response mission assigned to it by either its articles of incorporation or by the county Radiation Emergency Response Plan in the county where the volunteer organization is located.

*Work plan*—A written narrative explaining how the recipient will use funds received under the Radiation Emergency Response Program. It shall comply with the

guidelines in the Agency's program requirements and will become part of a grant agreement.

**§ 116.4. Allocation of funds.**

*Allocation of funds from annual fees.*

(1) On or before August 1 of each funding year, the Agency will obtain a fiscal year-end balance report concerning the total amount of the RERF. The total amount of the RERF as stated in that report shall represent the disbursement ceiling for the amount of funds that may be available for distribution to all eligible applicants, excluding the Agency, during the current funding year of July 1 to June 30. The eligibility of an applicant, whether a county or State agency, is determined by the requirements in § 116.5 (relating to program requirements and eligible expenditures).

(2) Each year, the total amount of RERF as established in paragraph (1) will be disbursed and expended in accordance with the following schedule:

(i) Ten percent to the Agency for the purposes of administering the RERF and for training and other needs related to carrying out the goals and objectives of the Radiation Emergency Response Program.

(ii) Five percent to eligible State agencies that directly participate in the development or implementation of the Agency's Radiation Emergency Response Program.

(iii) The total remaining amount of the RERF will be disbursed to the eligible risk and support counties.

(3) An eligible risk and support county will receive its approved funding allocation in one advance payment during the funding year.

(4) An eligible State agency will receive its approved funding allocation in one advance payment during a funding year.

(5) Funds not disbursed or obligated by an eligible applicant in the fiscal year in which they were allocated shall revert to the RERF. These revertible funds will then be applied to those allocations approved for eligible applicants for the subsequent funding year.

**§ 116.5. Program requirements and eligible expenditures.**

(a) *Program requirements.*

(1) To maintain eligibility for funding, each county, risk municipality, school district, volunteer organization and State agency shall meet the requirements of the Agency's Radiation Emergency Response Program.

(2) The requirements of the Radiation Emergency Response Program include the following:

(i) The participation of each county and State agency in required radiation emergency response exercises and drills, including remedial exercises and drills.

(ii) The development and maintenance of a county or State agency radiological emergency response plan for each appropriate emergency planning zone.

(iii) The development of a primary and secondary communications system between each county and its municipalities, school districts and volunteer organizations.

(iv) The development of a communications system between each county's emergency operations center and its reception and mass care centers.

(v) The development and maintenance of a current list of handicapped persons requiring special assistance. This

special assistance is to include life-saving or life support equipment and special transportation.

(vi) The development of a program to recruit and train volunteers such as bus drivers, emergency operations center staffs and decontamination teams needed to maintain the response capability of each county's radiation emergency response plan.

(3) Detailed requirements for compliance with paragraph (2) may be provided through directives or instructions on the application forms used to administer the Radiation Emergency Response Program.

(b) *Eligible expenditures.*

(1) County and State agency expenditures shall contribute to the development of a radiation emergency response capability in conformity with the standards and criteria established by the NRC, FEMA and Annex E to the Commonwealth of Pennsylvania's Emergency Operations Plan (EOP).

(2) The following list of activities are appropriate uses of grant funds by risk counties. If a grant applicant wishes to use grant funds for a purpose other than those listed in subparagraphs (i)—(ix), the applicant shall secure the Agency's prior written approval for the use or activity.

(i) Develop, revise, upgrade and test the radiological emergency response plans of the county, its municipalities, hospitals, nursing homes, prisons and schools located within the EPZ.

(ii) Participate in drills and exercises, including remedial drills and exercises, scheduled by the Agency or by the Federal government.

(iii) Conduct a countywide public information and education program concerning the health aspects, hazards and effect of radioactive releases that may be associated with a fixed nuclear facility incident, proper response action for an individual's protection and preparations that have been made for the protection of the public.

(iv) Procure essential equipment, such as communications equipment for two-way communications between each county and its municipalities for traffic control, miscellaneous supplies such as bullhorns, batons, traffic barriers, generators, citizens band radios for route alerting, and other appropriate supplies needed for the direction and control of operations.

(v) Conduct a countywide program to identify and maintain a list of nonambulatory, deaf or otherwise handicapped persons who may need some form of special assistance, including lifesaving or life support equipment or special transportation in the event of a radiation emergency.

(vi) Conduct a program that recruits and trains volunteers for emergency functions such as the replacement of bus drivers. Normally bus drivers will be provided with the buses, however, volunteer drivers should also be included in contingency plans—county and municipal emergency operations center staff and decontamination monitoring teams.

(vii) Pay the personnel costs directly involved in the development or implementation of the Radiation Emergency Response Program. Detailed justification of personnel costs shall be included in the application work plan.

(viii) Procure construction or remodeling supplies for an emergency operations center or purchase equipment for an emergency operations center.

(ix) Provide maintenance services for equipment purchased for radiation emergency response functions.

(3) The following list of activities are appropriate uses of grant funds by support counties. If a grant applicant wishes to use grant funds for a purpose other than those listed in this paragraph, the applicant shall secure the Agency's prior written approval for the use or activity.

(i) Develop, revise, upgrade and test the radiological emergency response plans of the county.

(ii) Participate in drills and exercises, including remedial drills and exercises, scheduled by the Agency or by the Federal government.

(iii) Conduct a countywide public information and education program concerning the county's support role in a radiological emergency and the public safety measures to be implemented as part of its support mission.

(iv) Procure essential equipment such as two-way radios for communications between the county, its reception centers and its mass care centers, equipment needed for traffic control such as bullhorns, batons, traffic barriers, generators, citizens band radios and other equipment or supplies needed for the direction and control of support operations.

(v) Conduct a program that recruits and trains volunteers for the county emergency operations center staff and for decontamination monitoring teams.

(vi) Pay the personnel costs directly involved in the development or implementation of the Radiation Emergency Response Program. Detailed justification of personnel costs shall be included in the application work plan.

(vii) Procure construction or remodeling supplies for an emergency operations center or purchase equipment for an emergency operations center.

(viii) Provide maintenance services for all equipment purchased for radiation emergency response functions.

(4) The following list of activities are appropriate uses of grant funds by State agencies. If a grant applicant wishes to use grant funds for a purpose other than those listed in this paragraph, the applicant shall secure the Agency's prior written approval for the use or activity.

(i) Develop, revise, upgrade and test the radiological emergency response plan of the State agency.

(ii) Participate in drills and exercises, including remedial drills and exercises, scheduled by the Agency or by the Federal government.

(iii) Conduct training programs related to the State agency's assigned functions and missions under the Radiation Emergency Response Program.

(iv) Procure essential protective supplies and equipment and communications equipment. The State agency will dedicate this equipment to the use of the Radiation Emergency Response Program.

(v) Pay the personnel costs directly involved in the development or implementation of the Radiation Emergency Response Program. Detailed justification of personnel costs shall be included in the application work plan.

(vi) Provide maintenance services for equipment purchased for radiation emergency response functions.

**§ 116.6. Application and review procedures for funding.**

(a) The application procedures in this section apply to risk and support counties, risk municipalities, school

districts, volunteer organizations and State agencies that seek funding from the RERF. The Agency will provide each applicant with the requisite application form.

(b) Applicants, except State agencies, shall submit their funding requests to the appropriate county emergency management agency. The county emergency management agency shall review the request in terms of its compliance with and advancement of the county's emergency preparedness plan. Upon approval by the county emergency management agency, the individual funding requests of a risk municipality, school district or volunteer organization shall be incorporated into the county's application for funding from the RERF. State agencies shall submit their funding requests directly to the Agency. The request shall be submitted under the signature of the State agency's secretary/director or designee.

(c) To be eligible for funding, a county or State agency shall submit its funding application to the Agency by June 1 preceding each applicable funding year—July 1 to June 30.

(d) A county funding application shall also include the individual funding requests of a risk municipality, school district or volunteer organization submitted to the county for review, whether or not those requests were incorporated into the county's funding budget.

(e) Upon receipt of a funding application, the Agency will review the application for accuracy and completeness. The Agency will apply the following standards to its application review process:

(1) The work plan will be evaluated on its feasibility and adequacy to support both the county's comprehensive radiation emergency response plan and the Agency's Radiation Emergency Response Program.

(2) The work plan will be evaluated on its ability to advance radiation emergency coordination efforts within the county and with other counties, volunteer organizations and State agencies.

(3) The work plan will be reviewed to determine its compliance with the eligible expenditures and priorities established in § 116.5 (relating to program requirements and eligible expenditures).

(4) The budget will be reviewed to determine the cost-effectiveness of the planned expenditures, taking into account the applicants' specific needs.

(f) During the review of the work plan and budget, the Agency may involve the county, its risk municipalities, school districts, volunteer organizations or a State agency in negotiations and revisions of part of the work plan or budget, or both, so that the goals and objectives established for the applicant's participation in the Radiation Emergency Response Program can be met. It shall be the obligation of the county to participate in negotiations and revisions concerning its work plan and budget. The county shall attempt to resolve disputes that arise between the county and its risk municipalities, school districts or volunteer organizations concerning the inclusion of their individual funding requests in the county's application. Disputes that cannot be resolved at the county level through negotiations will be resolved by the Agency during its review of the county's funding application.

(g) Upon completion of the Agency's application review process, the Agency will approve those work plans and budgets that are determined to be eligible for funding. The Agency will then approve a recommended funding allocation for an eligible applicant.

(h) After the Agency's approval of a funding allocation, the Agency will forward the payment of the allocation to an eligible applicant. This payment will be dependent upon the availability of funds being present in the RERF at the time of their intended disbursement.

**§ 116.7. Reporting requirements and disbursement of funds.**

(a) *Required report.* During a funding year, a final performance report shall be submitted by a county and a State agency. The requirements for this final performance report are listed as follows:

(1) A county and State agency that has received a funding allocation shall submit a final performance report to the Agency by July 30 following the funding year. The report shall cover the period from July 1 through June 30.

(2) The final performance report shall contain the following information:

(i) A complete description of the work plan goals and objectives accomplished during the reporting period.

(ii) A description of those goals and objectives not accomplished during the reporting period, together with a statement of the reasons that led to this result.

(iii) A list of recommendations or suggestions for improving or expanding the effectiveness of the county or State agency Radiation Emergency Response Program, as based upon the lessons learned during the reporting period.

(iv) A list of expenditures made during the reporting period, together with a brief explanation of those expenditures.

(v) A copy of receipts or other financial documentation that verifies the payment of expenditures made during the reporting period.

(3) The Agency will review the final performance report for accuracy and completeness. The Agency will then make a determination, based upon the report, that the county or State agency has or has not satisfactorily performed the goals and objectives of its work plan. A county or State agency will be notified of this determination in writing. The notification will state reasons for disapproving the report and will provide suggested corrective actions to be taken by counties or State agencies determined to be in unsatisfactory performance of their goals and objectives.

(4) A county or State agency that has not satisfactorily performed its work plan will be required to return the funds provided under its grant agreement.

(b) *Eligibility for future funding allocations.*

(1) The Agency will review the final performance report of each county and State agency to verify satisfactory participation in the further development, improvement and implementation of the Agency's Radiation Emergency Response Program.

(2) A county or State agency that satisfactorily met this performance standard will be eligible to submit a funding application for the subsequent funding year.

(3) A county or State agency that has not satisfactorily met this performance standard may have its eligibility to submit a funding application for the subsequent funding year withheld by the Agency.

**§ 116.8. (Reserved)**

**§ 116.9. Retention of records for audit.**

(a) Records and supporting documents—that is, receipts, invoices, vouchers, and the like—related to grant funds shall be retained for 3 years. The retention period starts at the end of the funding year—June 30—in which the funding allocation was made.

(b) A county and State agency shall make the records described in subsection (a) available for audit by Commonwealth and Agency officials within 10 days after receiving a written request that those records be made available for audit. The audit request may be made at any time during the 3 year record retention period.

**§ 116.10. Agency report.**

On September 1 of each year, the Agency will submit a report on its operation of the RERF for the preceding funding year to the Governor, the General Assembly and the Pennsylvania Emergency Management Council. The report will include a summary of the activities of the Radiation Emergency Response Program as provided for in Chapter 5 of the act (35 P. S. §§ 7110.501—7110.503). The report will also include a proposed operating budget, a financial statement, a list of applications received and the disbursements or reimbursements made to the eligible counties, risk municipalities, school districts, volunteer organizations and State agencies. An analysis of the adequacy of the fees established under section 402(c) of the act (35 P. S. § 7110.402(c)) will also be included in the report. The proposed funding formula for each subsequent funding year will be included in either an annual or a special report to the Governor, the General Assembly and the Pennsylvania Emergency Management Council.

[Pa.B. Doc. No. 99-1004. Filed for public inspection June 25, 1999, 9:00 a.m.]

**PENNSYLVANIA EMERGENCY  
MANAGEMENT AGENCY**

**[4 PA. CODE CH. 117]**

**Radiation Transportation Emergency Response Fund**

*A. Statutory Authority*

The Pennsylvania Emergency Management Agency (PEMA), under the authority contained in 35 Pa.C.S. § 7313 (relating to powers and duties) amends Chapter 117 (relating to Radiation Transportation Emergency Response Fund) to read as set forth in Annex A. These amendments were previously published as proposed rulemaking at 28 Pa.B. 2822 (June 20, 1998).

*B. Effective Date*

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

*C. Background and Purpose*

The amendments are intended to streamline and improve the ability of PEMA to administer and operate the Radiation Transportation Emergency Response Fund (RTERF) and to carry out the many goals and objectives of the Radiation Transportation Emergency Response Program which was established to protect the health and welfare of all Commonwealth residents living within the vicinity of a Pennsylvania highway used for the shipment of spent nuclear fuel. PEMA has found that the role of the

Pennsylvania Emergency Management Council (Council) in approving the RTERF grant applications has become an increasingly proforma or perfunctory administrative exercise over the past several years. During that time, the Council has always, without debate, accepted and approved PEMA's recommendations concerning the amounts of the RTERF grants and the intended purposes for those grants. Due to scheduling problems, however, it has been difficult for the Council to meet in a timely manner to approve PEMA's grant recommendations. As a result, delays have occurred in the distribution of grant payments to the counties. This has hindered the counties' ability to perform certain functions under their Radiation Transportation Emergency Response Programs. For these reasons, the amendments remove the Council from its supervisory role in the grant program and replaces it with PEMA which has been the actual program administrator and implementing agency for this grant program since its inception in 1985.

#### D. Comments

Written comments, suggestions and objections were solicited within a 30-day period after the proposed amendments were published. No public comments were received.

The Independent Regulatory Review Commission (IRRC) recommended that because the term "eligible" was not defined in the regulations that § 117.4 (relating to allocation of funds) include a reference to § 117.5 (relating to eligible expenditures) to provide any reader with information concerning eligibility for the grant program. IRRC also recommended that § 117.6 (relating to application and review procedures for funding) include a sentence that PEMA will provide the requisite grant application forms to all eligible grant applicants. PEMA agrees with these two comments and has made the necessary changes to the regulations to incorporate these comments. IRRC had no other comments on these amendments.

#### E. Affected Persons

These amendments will have a favorable impact on all State agencies, counties, municipalities and volunteer organizations that apply for grants from the RTERF because it will allow them to receive their grant moneys in a more timely manner.

#### F. Paperwork Requirements

The amendments will not change the amount of paperwork that State agencies, counties, municipalities and volunteer organizations submit to PEMA to receive a grant from the RTERF.

#### G. Sunset Requirement

PEMA has not set a sunset date for these amendments because the RTERF operates on a continuing basis. PEMA continues to monitor the operation of the RTERF and will propose improvements such as these amendments when required.

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 8, 1998, a copy of the notice of proposed rulemaking, published at 28 Pa.B. 2822 (June 20, 1998) was submitted to IRRC and the Chairpersons of the Senate State Government Committee and the House Veterans Affairs and Emergency Preparedness Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the agency also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

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

These final-form regulations were deemed approved by the House and Senate Committees on February 16, 1999. IRRC met on February 18, 1999, and approved the amendments in accordance with section 5(c) of the Regulatory Review Act.

#### I. Contact Person

Questions regarding these amendments may be directed to Mark Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, P. O. Box 3321, Harrisburg, PA 17108.

#### J. Findings

PEMA finds that:

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

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

(3) These amendments are necessary and appropriate for the administration and enforcement of the Radiation Protection Act (35 P. S. §§ 7110.101—7110.703) and 35 Pa.C.S. §§ 7101—7707 (relating to Emergency Management Services Code).

#### K. Order

PEMA, acting under the Radiation Protection Act and the Emergency Management Services Code, orders that:

(a) The regulations of PEMA, 4 Pa. Code Chapter 117, are amended by amending §§ 117.1, 117.2, 117.4, 117.6, 117.8 and 117.9 and by deleting § 117.7 to read as set forth in Annex A.

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

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

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

ROBERT E. CHURCHMAN,  
*Acting Director*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 1278 (March 6, 1999).)*

**Fiscal Note:** Fiscal Note 30-50 remains valid for the final adoption of the subject regulations.

### Annex A

#### TITLE 4. ADMINISTRATION

#### PART V. EMERGENCY MANAGEMENT AGENCY

#### CHAPTER 117. RADIATION TRANSPORTATION EMERGENCY RESPONSE FUND

#### § 117.1. Definitions.

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

*Act*—The Radiation Protection Act (35 P. S. §§ 7110.101—7110.703).

*Agency*—The Pennsylvania Emergency Management Agency.

*Applicant*—An all inclusive term that refers to all counties, municipalities, volunteer organizations and State agencies that are eligible to apply for funds from the RTERF.

*County*—A county that has within 5 miles of its jurisdictional borders an approved Nuclear Regulatory Commission/Commonwealth of Pennsylvania route for the shipment of spent nuclear fuel.

*EOP*—The Emergency Operation Plan of the Commonwealth.

*Municipality*—A city, town or borough that has within 5 miles of its jurisdictional borders an approved Nuclear Regulatory Commission/Commonwealth of Pennsylvania route for the shipment of spent nuclear fuel.

*RTERF—Radiation Transportation Emergency Response Fund*—A restricted account created in the General Fund of the Commonwealth for the deposit of fees received from the shipment of spent nuclear fuel to, within, through or across the boundaries of this Commonwealth.

*State agency*—A department or agency of the Commonwealth that has a health, safety or emergency response function or mission assigned to it by statute or by the EOP, Hazardous Materials Annex F.

*Volunteer organization*—An emergency services organization that has an emergency response mission assigned to it by either its articles of incorporation or by the EOP, Hazardous Materials Annex F.

**§ 117.2. Purpose.**

The purpose of this chapter is to accomplish the following:

- (1) Establish within the Agency a program for administering the RTERF under section 604(b) of the act (35 P. S. § 7110.604(b)).
- (2) Establish within the Agency a financial assistance program that will provide for the payment of costs incurred by an eligible applicant for the procurement of equipment and the training and employment of personnel as a result of direct participation in the development and implementation, or both, of the EOP, Hazardous Materials Annex F. Information about the EOP may be obtained from the Agency or the county emergency management office.

**§ 117.4. Allocation of funds.**

- (a) Because the number of spent nuclear fuel shipments and the resulting revenue fees generated from those shipments will vary from year to year, no predetermined annual fund amount can be established for the RTERF.
- (b) An application from an eligible county or State agency will be processed by the Agency on an individual basis in the order that the application is received during a funding year—July 1 to June 30. The eligibility of an applicant, whether a county or State agency, is determined by the requirements in § 117.5 (relating to eligible expenditures).
- (c) The allocation of funds to an eligible applicant will be determined as the result of the application review process described in § 117.6 (relating to application and

review procedures for funding) and by the availability of funds being present in the RTERF at the time of the intended disbursement.

- (d) The RTERF will not contain funds for discretionary use by an eligible applicant. Funding allocations will only be for the approved eligible expenditures.
- (e) Funds that remain in the RTERF at the termination of the funding year—June 30—will be automatically placed in the RTERF of the succeeding funding year. That sum will be applied to only those funding requests submitted during that succeeding funding year.

**§ 117.6. Application and review procedures for funding.**

- (a) The application procedures in this section apply to eligible applicants that seek funding from the RTERF. The Agency will provide each applicant with the requisite application form.
- (b) Applicants, except for State agencies, shall submit a funding application to the appropriate county emergency management agency. The county emergency management agency shall review the application in terms of its compliance with and advancement of the county's Radiation Emergency Response Plan. Upon approval by the county emergency management agency, the individual funding application of the eligible municipality or volunteer organization shall be incorporated into the county's application for funding from the RTERF. State agencies shall submit funding applications directly to the Agency. That application shall be submitted under the signature of the State agency's secretary/director or a designee.

(c) It is the obligation of the county to participate in negotiations and revisions concerning its funding application. In particular, the county shall attempt to resolve disputes that arise between the county and its municipalities and volunteer organization, or both, concerning the inclusion of individual funding requests into the county's application. Disputes that cannot be resolved at the county level through negotiations will be resolved by the Agency during its review of the county's funding application.

(d) Upon receipt of a funding application, the Agency will review the application for accuracy and completeness. The Agency will apply the following standards to its application review process:

- (1) The expenditure will be incurred during the applicable funding year—July 1 to June 30.
- (2) The expenditure was not previously recouped or reimbursed from other sources.
- (3) The expenditure will be required as a direct result of the applicant's participation in a radiation transportation emergency response program.
- (4) The expenditure will be required for the payment of education, management and training or for the purchase of protective supplies and equipment needed to respond to a potential accident involving the shipment of spent nuclear fuel.
- (5) The expenditure shall be verifiable.

- (e) Upon the completion of the application review process, the agency will approve a funding allocation for the eligible applicant.
- (f) After the Agency's approval of a funding allocation, the Agency will forward the payment to an eligible applicant.

**§ 117.7. (Reserved)****§ 117.8. Retention of records for audit.**

(a) Records and supporting documents—that is, receipts, invoices, vouchers, and the like—related to grant funds shall be retained for 3 years. The retention period starts at the end of the funding year—June 30—in which the funding allocation was made.

(b) A county and State agency shall make the records described in subsection (a) available for audit by Commonwealth and Agency officials within 10 days after receiving a written request that those records be made available for audit. The audit request may be made at any time during the 3 year record retention period.

**§ 117.9. Agency report.**

On September 1 of a year, the Agency will submit a report on its operation of the RTERF for the preceding fiscal year to the Governor, the General Assembly and the Pennsylvania Emergency Management Council. The report will include a summary of the activities of the Radiation Transportation Emergency Response Program. The report will include a list of the applications received and the amounts allocated to eligible applicants. An analysis of the adequacy of the fee established for the shipment of spent nuclear fuel will also be included in the report.

[Pa.B. Doc. No. 99-1005. Filed for public inspection June 25, 1999, 9:00 a.m.]

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

[31 PA. CODE CH. 84]

#### Tables Approved for Use in Determining Minimum Nonforfeiture Standards and Minimum Standards for Valuation

The Insurance Department (Department) hereby amends Chapter 84 (relating to tables approved for use in determining minimum nonforfeiture standards and minimum standards for valuation) to read as set forth at 28 Pa.B. 4794 (September 26, 1998).

The amendments to Chapter 84 adopt new mortality tables for use in determining the minimum reserves for annuities. These new minimum standards apply to annuities issued on or after June 26, 1999. The mortality tables are based on historical experience and have been developed by the Society of Actuaries. In December 1996, the National Association of Insurance Commissioners adopted the proposed mortality tables as part of its Model Rule (Regulation) For Recognizing A New Annuity Mortality Table For Use In Determining Reserve Liabilities For Annuities. The Department's adoption of the mortality tables will help to assure the solvency of insurance companies by requiring adequate reserves based on the most recent mortality tables.

*Statutory Authority*

The amendments are adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); section 301(c)(1) of The Insurance Department Act of 1921 (30 P. S. § 71(c)(1)); and section 410F(e)(8)(F) of The Insurance Company Law (40 P. S. § 510.1(e)(8)(F)).

*Comments*

Notice of proposed rulemaking was published at 28 Pa.B. 4794 with a 30-day public comment period.

No comments were received from the standing committees. The Insurance Federation of Pennsylvania, representing a substantial portion of the life insurance industry operating in this Commonwealth, has endorsed the revisions set forth in the proposed rulemaking. The Independent Regulatory Review Commission (IRRC) reviewed the amendments and had no objections, comments or suggestions to offer on these amendments. The amendments were deemed approved.

*Persons Regulated*

This final rulemaking applies to life insurance companies marketing annuity contracts in this Commonwealth.

*Fiscal Impact**State Government*

There will be no increase in cost to the Department due to the adoption of new annuity tables since the final rulemaking does not impose additional requirements on the insurance industry which the Department will monitor for compliance.

*General Public*

It is unlikely that there will be any adverse fiscal impact on the consumers who purchase annuity contracts. The general public will be purchasing annuity contracts from more financially stable insurers.

*Political Subdivisions*

The final rulemaking will strengthen the solvency requirements of insurance companies issuing annuity contracts. Increasing insurance company solvency requirements has the potential to minimize insurance company insolvencies which could result in less erosion of the tax base since insurers pay premium taxes on premium income and pay salaries which are taxed.

*Private Sector*

The final rulemaking may have some fiscal impact on insurance companies marketing annuity contracts. Insurers will be required to expend the time necessary to determine if their current annuity reserve standards meet the new requirements. To the extent that the standards do not comply with the new requirements, an insurance company must increase the reserves for contracts issued on or after June 26, 1999.

*Paperwork*

The adoption of this final rulemaking will not impose additional paperwork on the Department and the insurance industry. The rulemaking provides for the use of additional mortality tables and does not impose additional requirements resulting in additional paperwork.

*Contact Person*

Questions regarding these amendments, should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, or e-mail psalvato@ins.state.pa.us.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 14, 1998, the Department submitted a copy of the notice of proposed rulemaking, published at 28 Pa.B. 4794 to IRRC and to the Chairpersons of the House Insurance Committee and the Senate

Banking and Insurance Committee. In addition to the submitted amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

In preparing these final-form regulations, the Department considered all comments received from IRRC, the Committees and the public. These final-form regulations were deemed approved by the House and Senate Committees on May 18, 1999. In accordance with section 5a(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), IRRC met on May 20, 1999, and the final-form regulations were deemed approved in accordance with section 5a(e) of the Regulatory Review Act.

*Findings*

The Commissioner finds that:

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

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

*Order*

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

(a) The regulations of the Department, 31 Pa. Code Chapter 84, are amended by amending §§ 84.2 and 84.3 and by deleting § 84.4 to read as set forth at 28 Pa.B. 4794.

(b) The Commissioner shall submit this order and 28 Pa.B. 4794 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and 28 Pa.B. 4794 and deposit them with the Legislative Reference Bureau as required by law.

(d) The amendments adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 2933 (June 5, 1999).)*

**Fiscal Note:** Fiscal Note 11-181 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 99-1006. Filed for public inspection June 25, 1999, 9:00 a.m.]

**INSURANCE DEPARTMENT**  
**[31 PA. CODE CH. 125]**  
**Title Insurance Rebates**

The Insurance Department (Department) amends Chapter 125 (relating to title insurance rebates) to read

as set forth at 28 Pa.B. 4796 (September 26, 1998) and in Annex A.

The rulemaking amends Chapter 125 to make it consistent with the act of December 21, 1995 (P. L. 714, No. 79) (Act 79). This chapter, originally adopted in 1968, identified and defined prohibited rebating and inducement activities associated with title insurance transactions.

*Statutory Authority*

This chapter is amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 701(4) and 731 of the act of May 17, 1921 (P. L. 682, No. 284) (40 P. S. §§ 910-1(4) and 910-31); and sections 635 and 636 of the act of May 17, 1921 (P. L. 789, No. 285) (40 P. S. §§ 275 and 276).

*Comments*

Notice of the proposed rulemaking was published at 28 Pa.B. 4796 with a 30-day public comment period.

No comments were received from the standing committees or the Independent Regulatory Review Commission (IRRC). Comments regarding the proposed amendments were received during the 30-day comment period from the Insurance Federation of Pennsylvania, Inc. (IFP). IFP endorsed the amendment as recommended.

The Department in preparing this final-form rulemaking noted that the reference in § 125.4 (relating to participation fees) to cash commissions should have been removed due to the previous deletion of § 125.1(b) (relating to prohibited rebates and inducements). An editorial change has been made to correct the oversight.

*Fiscal Impact*

There is no fiscal impact as a result of this final-form rulemaking.

*Paperwork*

This final-form rulemaking will affect all licensed title insurers, agents and approved attorneys in this Commonwealth.

*Persons Regulated*

This final-form rulemaking applies to all title insurance companies licensed by the Commissioner to transact business in this Commonwealth.

*Contact Person*

Any questions regarding this final-form rulemaking, should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, or e-mail psalvato@ins.state.pa.us.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 14, 1998, the Department submitted a copy of this final-form rulemaking to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted final-form rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

In preparing this final-form rulemaking, the Department considered all comments received from IRRC, the Committees and the public. This final-form rulemaking was deemed approved by the House and Senate Committees on May 18, 1999. In accordance with section 5a(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), IRRC met on May 20, 1999, and deemed approved the regulation in accordance with section 5a(e) of the Regulatory Review Act.

#### Findings

The Commissioner finds that:

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

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

#### Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 125, are amended by amending §§ 125.1 and 125.3 and by deleting §§ 125.5—125.9 to read as set forth at 28 Pa.B. 4796 and by amending § 125.4 to read as set forth in Annex A.

(b) The Commissioner shall submit this order, 28 Pa.B. 4796 and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order, 28 Pa.B. 4796 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The amendments adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

*(Editor's Note: The amendment of § 125.4, amended in this document, was not included in the proposal at 29 Pa.B. 4796. For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 2933 (June 6, 1999).)*

**Fiscal Note:** Fiscal Note 11-175 remains valid for the final adoption of the subject regulations.

### Annex A

#### TITLE 31. INSURANCE

##### PART VIII. MISCELLANEOUS PROVISIONS

##### CHAPTER 125. TITLE INSURANCE REBATES

#### § 125.4. Participation in fees.

Participation by a person in any of the fees charged by a title insurance company or agent thereof for title insurance, including, but not limited to, charges for special insurance, is an illegal rebate and inducement.

[Pa.B. Doc. No. 99-1007. Filed for public inspection June 25, 1999, 9:00 a.m.]

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

#### [58 PA. CODE CHS. 51, 65 AND 111]

#### Order to Show Cause; Trout Run Reservoir, Berks County—Fishing; Duck Harbor Pond, Wayne County—Boating

The Fish and Boat Commission (Commission) by this order amends Chapters 51, 65 and 111 (relating to administrative provisions; special fishing regulations; and special regulations counties). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments deal with administration, fishing and boating.

#### A. Effective Date

The amendments will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

#### B. Contact Person

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

#### C. Statutory Authority

The amendments are published under the statutory authority of sections 928(c), 2102 and 5124 of the code (relating to revocation, suspension or denial of license; permit or registration; rules and regulations; and particular areas of water).

#### D. Purpose and Background

The amendments are designed to update, modify and improve the Commission's administrative, fishing and special boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. Prior to final consideration by the Commission of the amendment to § 111.64 (relating to Wayne County), the Commission's Boating Advisory Board reviewed the proposal and recommended adoption by the Commission.

#### E. Summary of Changes

(1) *Section 51.23 (relating to order to show cause).* The Commission's regulations provide that when the Executive Director, after seeking staff input, determines that revocation or suspension proceedings should go forward, he will cause the violator to be served with an order to show cause (why the violator's boating or fishing privileges should not be revoked or suspended). Current regulations provide that service of the order to show cause shall be by certified or registered mail. Many times, however, the violator fails or refuses to claim the certified mail that contains the order to show cause. After three unsuccessful attempts to deliver the certified letter, the post office returns it to the Commission. Staff then, under current practice, resend the letter by means of regular mail. The Commission has amended § 51.23 so that the regulations are consistent with the current practice.

(2) *Section 65.24 (relating to miscellaneous special regulations).* At 21 Pa.B. 3693 (August 31, 1991), the Commission designated Trout Run Reservoir in Berks County as a water to be regulated and managed under § 65.9 (relating to big bass special regulations). At that time, Trout Run Reservoir was closed to public fishing

under § 65.24. When the water was added to the Big Bass Special Regulations program, it was intended that it be removed from miscellaneous special regulation. However, due to an oversight, this was never done. The Commission recently discovered this omission and has amended the regulation to correct the error.

(3) *Section 111.64 (relating to Wayne County)*. The Commission received a petition requesting that the Commission modify special boating regulations on Duck Harbor Pond. The regulations, in place since 1983, prohibit waterskiing except between 10 a.m. and 6 p.m. on weekdays and between 10 a.m. and 4 p.m. on weekends. The petition requested that the Commission permit waterskiing and other high speed boat operation between the hours of 10 a.m. and 6 p.m. and create a 10 mph speed limit from 6 p.m. until 10 a.m.

Duck Harbor Pond is located in Wayne County. Due to the shoreline structure and shallow stump areas, the lake has about 150 acres of usable open water. Since the early 1980s a number of cottages have been built on the land surrounding the lake. It is a popular boating lake, and while the fisheries have declined in recent years, it still provides angling opportunities. Most access is gained through private docks and moorings. The Commission maintains a small access area at the west end of the lake. Joe Harcum is the owner of the land under and around most of the lake. He supports the modifications to the special regulations.

Although the petition sought a speed limit of 10 mph, the Commission's Bureau of Law Enforcement had concerns regarding the enforcement of the limit. Therefore, the Commission has amended the special regulations to limit the speed of boats to slow, minimum height swell speed between the hours of 6 p.m. and 10 a.m.

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of proposed rulemaking was published at 29 Pa.B. 1224 (March 6, 1999). The Commission did not receive any public comments regarding the proposal.

*Findings*

The Commission finds that:

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

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

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

*Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 51, 65 and 111, are amended by amending §§ 51.23, 65.24 and 111.64 to read as set forth at 29 Pa.B. 1224.

(b) The Executive Director will submit this order and 29 Pa.B. 1224 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 29 Pa.B. 1224 and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-96 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 99-1008. Filed for public inspection June 25, 1999, 9:00 a.m.]

FISH AND BOAT COMMISSION  
[58 PA. CODE CH. 63]  
Sale and Purchase of Fish

The Fish and Boat Commission (Commission) by this order amends § 63.19 (relating to sale and purchase of fish). The Commission is publishing this amendment under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendment relates to the sale and purchase of fish.

A. *Effective Date*

The amendment will go into effect upon publication of an order adopting the amendment in the *Pennsylvania Bulletin*.

B. *Contact Person*

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

C. *Statutory Authority*

The amendment is published under the statutory authority of section 2102(c) of the code (relating to rules and regulations, transportation and sale of fish).

D. *Purpose and Background*

The amendment is designed to update, modify and improve Commission regulations relating to the sale and purchase of fish. The specific purpose is described in more detail under the summary of changes.

E. *Summary of Changes*

The act of October 16, 1998 (P. L. 768, No. 94) (Act 94) amended the Commonwealth's agriculture laws to designate aquaculture as a normal farming activity. This amendment transferred most administrative functions related to commercial artificial propagation from the Commission to the Department of Agriculture (Department). Effective December 16, 1998, the Department will register commercial propagators of fish as well as dealers in live aquatic animals. The Commission will no longer

issue artificial propagation licenses, live fish, fishbait and baitfish dealer licenses and resident and nonresident fish transportation licenses.

The Commission has been working with the Department to ensure smooth implementation of the amendment. In addition, the Commission has been reviewing the amendment to determine whether it has left any holes in the Commission's authority. Act 94 repealed Chapter 33 of the code (relating to propagation and sale of fish). In general, this repeal does not diminish the Commission's authority to protect this Commonwealth's waters and the fish in those waters. The Commission retains regulatory jurisdiction under section 2102(c) of the code over transportation or introduction of fish into this Commonwealth's waters, exporting of fish, sale, offering for sale or purchase of fish and the disturbing of fish in their natural habitat. Violations are summary offenses of the second degree. The Commission retains authority to license use of nets and regulated fishing lakes. The Commission's general statutory authority to make regulations for the protection, preservation and management of fish and fish habitat gives the agency regulatory authority over stocking of fish.

The Commission's enforcement officers have clear authority to enforce the prohibitions in the new law since it is a Commonwealth law related to fish. While the Department will have primary authority to enforce this law, it is certainly possible that the Commission's officers could become involved in enforcement where an unregistered propagator or dealer unlawfully sells fish. The wording of the new provisions on sale of fish defines prohibited and permitted acts with regard to sale of fish, 3 Pa.C.S. §§ 4221 and 4223 (relating to activities under registration for artificial propagation; and prohibited propagation and penalties). It is clear that only registered artificial propagators and dealers may sell fish and that they may not sell fish except those taken from the specified facilities. Registered propagators are not authorized to take fish out of natural streams on their property or from any other waters of this Commonwealth for the purpose of sale.

The Commission has adopted a regulation on sale of fish that is clearly applicable to all Commonwealth waters and all persons taking fish from those waters.

#### F. Paperwork

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

#### G. Fiscal Impact

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

#### H. Public Involvement

A notice of proposed rulemaking containing the proposed amendment was published at 29 Pa.B. 205 (January 9, 1999). The Commission did not receive any public comments regarding this proposal.

#### Findings

The Commission finds that:

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

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

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

#### Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 63, are amended by amending § 63.19 to read as set forth at 29 Pa.B. 205.

(b) The Executive Director will submit this order and 29 Pa.B. 205 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 29 Pa.B. 205 and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-89 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 99-1009. Filed for public inspection June 25, 1999, 9:00 a.m.]

## FISH AND BOAT COMMISSION [58 PA. CODE CHS. 63 AND 65]

### Sale, Purchase or Barter of Fish Parts and Fish Eggs; Miscellaneous Special Regulation

The Fish and Boat Commission (Commission) by this order amends Chapters 63 and 65 (relating to general fishing regulations; and special fishing regulations). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to fishing.

#### A. Effective Date

The amendments will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

#### B. Contact Person

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

#### C. Statutory Authority

The amendments are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

#### D. Purpose and Background

The amendments are designed to update, modify and improve Commission regulations relating to fishing. The specific purpose of each amendment is described in more detail under the summary of changes.

E. *Summary of Changes*

(1) *Section 63.42 (relating to sale, purchase or barter of fish parts and fish eggs).* The Commission recently received inquiries as to whether it is legal to sell fish parts and fish eggs. The principal focus of these inquiries has been on the sale of steelhead eggs taken from Lake Erie and its tributaries. Various groups and individuals have expressed the belief that the taking and killing of these sportfish for purpose of selling their eggs is inappropriate.

It has been the Commission staff's position that the sale, offer for sale or purchase of fish, fish parts and fish eggs by anglers is prohibited by section 3311 of the code (relating to sale of certain fish prohibited). There are limited exceptions to this general rule for species authorized to be taken by holders of Lake Erie commercial fishing licenses. In addition, holders of live bait fish, live fish bait and live fish dealers licenses may sell or purchase certain species (not including steelhead) of live fish.

To clarify the interpretation of existing law and enhance its enforceability, the Commission has adopted an amendment to its general fishing regulations.

(2) *Section 65.24 (relating to miscellaneous special regulations).* For some years now, portions of Paden (Finley) Creek and Linesville Creek, Crawford County, have had miscellaneous special regulations in effect during the walleye run each spring. During a recent review of these regulations, Commission staff noted that clarification is necessary to protect walleye in these rather small streams during the spawning season. Linesville Creek flows into Pymatuning Sanctuary while Paden (Finley) Creek enters the main lake north of Clark Island. Both streams are conducive to poaching activity (including spearing) when walleye are running.

The Commission believes that it is appropriate to declare portions of both streams as nursery waters under § 67.1 (relating to nursery waters and exhibition areas) and to close them to all fishing during the period March 1 through April 15. This will provide adequate protection to walleye stocks. The designation will apply to the reach of Paden (Finley) Creek from the mouth upstream to "Finley Bridge" on State Route 6 and to Linesville Creek from the mouth (Pymatuning Sanctuary) upstream to the Conrail Railroad bridge north of State Route 6 in Linesville. Furthermore, the nursery water designation will prohibit spearing or gigging, or both, on these streams during the March 1 through April 15 period as a further measure to protect walleye during the spawning run. This designation makes unnecessary the current special regulation prohibiting spear fishing during the walleye run each spring when Finley and Linesville Creeks are so posted. Therefore, the Commission has amended § 65.24 to remove both streams from miscellaneous special regulation.

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of proposed rulemaking was published at 29 Pa.B. 823 (February 13, 1999). The Commission did not receive any public comments concerning this proposal.

*Findings*

The Commission finds that:

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

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

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

*Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 63 and 65, are amended by amending §§ 63.42 and 65.24 to read as set forth at 29 Pa.B. 823.

(b) The Executive Director will submit this order and 29 Pa.B. 823 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 29 Pa.B. 823 and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-91 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 99-1010. Filed for public inspection June 25, 1999, 9:00 a.m.]

FISH AND BOAT COMMISSION  
[58 PA. CODE CH. 91]

Lake Winola, Wyoming County; Special Boating Regulations

The Fish and Boat Commission (Commission) by this order amends § 91.4 (relating to age of operator). The Commission is publishing this amendment under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendment concerns boating.

A. *Effective Date*

This amendment will go into effect on January 1, 2000.

B. *Contact Person*

For further information on the amendment, contact John F. Simmons, Director, Bureau of Boating and Education, (717) 657-4538, or Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

This amendment is published under the statutory authority of section 5123 of the code (relating to general boating regulations).

*D. Purpose and Background*

The amendment is designed to update, modify and improve Commission regulations pertaining to boating. The specific purpose of the amendment is described in more detail under the summary of changes. Prior to consideration by the Commission on proposed rulemaking, the Commission's Boating Advisory Board reviewed the proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

*E. Summary of Proposal*

The Commission has amended § 91.4 so that a person 11 years of age or younger may not operate a motorboat propelled by a motor greater than 10 horsepower, regardless of whether a person 16 years of age or older is present onboard. Subsection (b) currently provides that a person 11 years of age or younger may not operate a personal watercraft (PWC). The amendment makes the regulations consistent. The amendment also reflects a belief held by some that persons under 12 should not operate any motorboat greater than 10 horsepower (not just PWCs).

*F. Paperwork*

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

*G. Fiscal Impact*

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

*H. Public Involvement*

A notice of proposed rulemaking was published at 28 Pa.B. 6184 (December 19, 1998). The Commission did not receive any public comments regarding the proposal during the public comment period.

*Findings*

The Commission finds that:

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

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

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

*Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 91, are amended by amending § 91.4 to read as set forth at 28 Pa.B. 6184.

(b) The Executive Director will submit this order and 28 Pa.B. 6184 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 28 Pa.B. 6184 and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-87 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 99-1011. Filed for public inspection June 25, 1999, 9:00 a.m.]