

# PROPOSED RULEMAKING

## BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

### [49 PA. CODE CH. 43b] Schedule of Civil Penalties

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend Chapter 43b (relating to Commissioner of Professional and Occupational Affairs) to read as set forth in Annex A.

#### *Effective Date*

The proposed rulemaking 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.

Annex A sets forth amendments to the civil penalty schedules of the State Board of Barber Examiners, the State Real Estate Commission, the State Board of Vehicle Manufacturers, Dealers and Salespersons and the State Architects Licensure Board. The proposed rulemaking was drafted following discussions with a representative of the Commissioner and the respective boards and commission at regularly scheduled public meetings.

#### *Description of the Proposed Rulemaking*

##### *State Board of Barber Examiners*

The proposed rulemaking would amend the schedule of civil penalties of the State Board of Barber Examiners (Barber Board) in § 43b.4 (relating to schedule of civil penalties—barbers and barber shops) by increasing the amount of the civil penalties across the board. The Barber Board has participated in the Act 48 citation program from its inception in 1996 and has not increased the civil

penalties since they were originally promulgated. Currently, the Barber Board has the most lenient civil penalty schedule and the Board feels that it is necessary to increase the civil penalties to improve their deterrent effects. In addition, the proposed rulemaking would increase the civil penalties for continuing violations based on the length of the violation. For example, the penalty for practicing on a lapsed or expired license would increase depending on the length of the lapse. Finally, a technical amendment is proposed to correct an error in the current schedule. The schedule cites section 8 of the act of June 19, 1931 (P. L. 589, No. 202) (63 P. S. § 558), known as the Barbers' License Law, as authority for disciplining a licensee for operating a business or facility on a lapsed or expired permit or license. The correct section is section 12(a)(2) of the Barbers' License Law (63 P. S. § 562(a)(2)). The former section relates to individual licenses to practice barbering; the latter section relates to licenses to operate shops and schools.

##### *State Real Estate Commission*

The civil penalty schedule for the State Real Estate Commission (Commission) in § 43b.8 (relating to schedule of civil penalties—real estate and cemetery brokers, real estate schools) would be amended to add increased penalties for second offenses and continuing violations under sections 301, 604(a)(21) and 2205(b)(2) of the Real Estate Licensing and Registration Act (63 P. S. §§ 455.301, 455.604(a)(21) and 2205(b)(2)) and § 35.242(a) (relating to office of broker or cemetery broker). These amendments are also intended to take further advantage of the efficiencies of the Act 48 citation process by making additional violations subject to citations. Specifically, the Commission proposes the addition of civil penalties for violations of §§ 35.286(a)(1), 35.292(a)(6), 35.305(b) and 35.334. Also, the proposed rulemaking would increase certain existing civil penalties to enhance their deterrent effect. Finally, the civil penalty schedule would be amended to make it consistent with recent amendments to §§ 35.304 and 35.305 (relating to disclosure of licensure when advertising own real estate; and business name on advertisements).

##### *State Board of Vehicle Manufacturers, Dealers and Salespersons*

The proposed rulemaking would amend the civil penalty schedule in § 43b.9 (relating to schedule of civil penalties—vehicle manufacturers, dealers and salespersons) to add civil penalties for additional violations of the Board of Vehicles Act (act). Specifically, the proposed rulemaking would add civil penalties to its schedule for unlicensed practice violations by dealers, auctions, manufacturers, distributors, factory representatives and distributor representatives under section 5 of the act (63 P. S. § 818.5). Additionally, owing to an increasing number of complaints involving activities at vehicle auctions in this Commonwealth, the proposed rulemaking seeks to take advantage of the efficiencies of the citation process for violations of section 19(29), (30) and (38) of the act (63 P. S. § 818.19(29), (30) and (38)) regarding vehicle auctions in section.

##### *State Architects Licensure Board*

The civil penalty schedule for the State Architects Licensure Board (Architects Board) in § 43b.11a (relating to schedule of civil penalties—architects) would be amended to provide a new civil penalty for delinquent payment of the renewal fee for registered architecture

firms. This fee was recently promulgated by the Architects Board and is being assessed biennially. The civil penalty schedule also provides for increased penalties based on continuing violations under this provision. Amendments would also be made to the schedule to make it consistent with recent amendments to sections 13 and 18 of the Architects Licensure Law (63 P. S. §§ 34.13 and 34.18) and to provide for increased penalties for practicing without a current license based on the length of the violation.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking 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*

Professional licensure statutes require each board and commission to be self-supporting. Therefore, boards and commissions continually monitor the cost effectiveness of regulations affecting their operations. 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 September 29, 2004, 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 Chairpersons of 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 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 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 Basil L. Merenda, 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:** 16-32. 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 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL**

**§ 43b.3. Procedures.**

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(b) *Citations.*

(1) If an inspection reveals a violation of a statute or a regulation for which a civil penalty has been established under the schedules in [ §§ 43b.4—43b.14a ] **this chapter**, the authorized agent may prepare a citation indicating the violations found and the penalties imposed. A copy of the citation will be provided to the respondent.

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**§ 43b.4. Schedule of civil penalties—barbers and barber shops.**

**STATE BOARD OF BARBER EXAMINERS**

<b>Violation under 63 P. S.</b>	<b>Title/Description</b>	<b>Civil Penalty</b>
Section 551	Practicing without a license	1st offense—\$[ 250 ] 500 2nd offense—Formal action
Section 557	Availability of current license on premises	1st offense—\$[ 50 ] 150 2nd offense—\$[ 250 ] 500
Section 558	Practicing on a lapsed or expired license	1st offense—Up to 90 days—Warning; 90 days [ or more ] to 1 year—\$[ 100 ] 250; <b>1 year to 2 years—\$500; over 2 years—\$1,000</b> 2nd offense—Formal action
Section [ 558 ] 562(a)(2)	Operating a business or facility on a lapsed or expired permit or license	1st offense—Up to 90 days—Warning; 90 days [ or more ] to 1 year—\$250; <b>from 1 year to 2 years—\$500; over 2 years—\$1,000</b> 2nd offense—Formal action
Section 559	Failure to employ licensed persons	1st offense—\$[ 250 ] 500 for each individual unlicensed barber 2nd offense—Formal action

**Violation under 63 P. S.**

	<b>Title/Description</b>	<b>Civil Penalty</b>
Section 560	Opening shop for business before shop inspected and approved	1st offense—\$[ 100 ] 200 2nd offense—Formal action
Section 560	Failure to file application when taking over as owner of existing shop	1st offense—\$[ 100 ] 500 2nd offense—Formal action
Section 562	Operating an establishment without supervision of manager barber	1st offense—\$[ 100 ] 250 2nd offense—Formal action
Section 563	Operating a business or facility without a permit or license	1st offense—\$[ 250 ] 500 2nd offense—Formal action
Section 563(a)	Licensee practicing in place other than licensed shop	1st offense—\$[ 150 ] 500 2nd offense—Formal action

**Violation Under 49 Pa. Code Chapter 3**

	<b>Title/Description</b>	<b>Civil Penalty</b>
Section 3.51(a)	Failure to obtain new shop license when shop moves	1st offense—\$[ 100 ] 500 2nd offense—[ \$250 ] Formal action
Section 3.51(b)	Failure to register [ tradename ] trade name	1st offense—\$[ 50 ] 100 2nd offense—Formal action
Section 3.54	Failure to meet minimum equipment requirements	1st offense—\$[ 50 ] 100 2nd offense—Formal action
Section 3.55	Failure to meet minimum maintenance and sanitation requirements	1st offense—\$[ 50 ] 100 2nd offense—Formal action
Section 3.85	School equipment does not meet requirements	1st offense—\$[ 50 ] 100 2nd offense—[ \$250 ] Formal action
Section 3.86	School maintenance and [ sterilization ] sanitation requirements not met	1st offense—\$[ 50 ] 250 2nd offense—[ \$100 per requirement ] Formal action
Section 3.89	School advertising requirements not met	1st offense—\$[ 50 ] 250 2nd offense—[ \$250 ] Formal action

**§ 43b.8. Schedule of civil penalties—real estate and cemetery brokers, real estate schools.**

**STATE REAL ESTATE COMMISSION**

**Violation under 63 P. S.**

	<b>Title/Description</b>	<b>Civil Penalty</b>
Section 455.301	Acting in capacity of cemetery broker or cemetery salesperson without a license * * * * *	1st offense—\$250 2nd offense—\$500
Section 455.604(a)(8)	Placing a “for sale” or “for rent” sign or advertising property without the written consent of the owner * * * * *	1st offense—\$[ 100 ] 250 2nd offense—\$[ 250 ] 500
Section 455.604(a)(21)	Failure of licensee to have current license when performing licensed activity * * * * *	1st offense—\$250 per month up to \$1,000 2nd offense—Formal action
Section 2205(b)(2)	Aiding and abetting cemetery or real estate sales activities by unlicensed individuals	1st offense—\$250 per individual 2nd offense—\$500 per individual

**Violation Under 49 Pa. Code Chapter 35**

	<b>Title/Description</b>	<b>Civil Penalty</b>
Section 35.242(a)	Failure of broker or cemetery broker to devote office to transaction of real estate business in privacy	1st offense—\$[ 100 ] 125 2nd offense—\$250
Section 35.242(b)	Failure of broker or cemetery broker to maintain separate entrance to office located in private residence * * * * *	1st offense—\$[ 50 ] 125 2nd offense—\$[ 100 ] 250

**Violation Under 49  
Pa. Code Chapter 35**

	<b>Title/Description</b>	<b>Civil Penalty</b>
Section 35.245(a)	Failure of broker, cemetery broker or rental listing referral agent to conspicuously display current license at main office * * * * *	1st offense—\$[ 100 ] 125 2nd offense—\$250
Section 35.245(c)	Failure of broker or cemetery broker to conspicuously display current branch office license at branch office	1st offense—\$[ 100 ] 125 2nd offense—\$250
Section 35.245(d)	Failure of broker or cemetery broker to maintain at main office list of licensed [ employes ] employees and branch offices at which [ employes ] employees work * * * * *	1st offense—\$[ 100 ] 125 2nd offense—\$250
<b>Section 35.286(a)</b>	<b>Failure of broker to retain a copy of the written estimate of reasonably foreseeable expenses required under § 35.334 (relating to statements of estimated cost and return)</b>	<b>1st offense—\$250 2nd offense—\$500</b>
<b>Section 35.286(a)(1)</b>	<b>Failure of broker, associate broker or salesperson to retain a copy of the acknowledgement portion of the Consumer Notice</b> * * * * *	<b>1st offense—\$250 2nd offense—\$500</b>
<b>Section 35.292(a)(6)</b>	<b>Failure of broker, associate broker or salesperson to provide a copy of the Consumer Notice as required under 63 P. S. § 455.608 regarding information to be given at initial interview</b> * * * * *	<b>1st offense—\$250 2nd offense—\$500</b>
Section 35.304	Failure of a [ broker ] licensee who sells or leases his own real estate to disclose in ads for the property that he is a [ real estate broker ] licensee * * * * *	1st offense—\$250 2nd offense—\$500
<b>Section 35.305(b)</b>	<b>Advertising or using a nickname that has not been registered with the Commission</b>	<b>1st offense—\$250 2nd offense—\$500</b>
Section 35.305[ (b) ](c)	Failure of [ associate broker, salesperson, associate cemetery broker or cemetery salesperson to include employing broker's name and telephone number on advertisement ] salesperson or associate broker to include the business name and telephone number of the broker in at least equal size on an advertisement	1st offense—\$[ 500 ]250 2nd offense—\$[ 750 ]500
<b>Section 35.334</b>	<b>Failure of broker to provide a written estimate of reasonably foreseeable expenses</b>	<b>1st offense—\$250 2nd offense—\$500</b>
Section 35.361(a)	Failure of real estate school to prominently display certificate of approval at main location and copy at each satellite location * * * * *	1st offense—\$[ 100 ] 125 2nd offense—\$250

**Violation Under 49 Pa. Code Chapter 35**

	<b>Title/Description</b>	<b>Civil Penalty</b>
Section 35.361(c)	Failure of real estate school to prominently display school director's letter of approval at main location and copy at each satellite location	1st offense—\$ [ 100 ] 125 2nd offense—\$250
Section 35.361(d)	Failure of real estate school to prominently display alphabetical list of courses and instructors at each school location	1st offense—\$ [ 100 ] 125 2nd offense—\$250
Section 35.361(e)	Failure of real estate school to prominently display a list of satellite locations at main location	1st offense—\$ [ 100 ] 125 2nd offense—\$250

**§ 43b.9. Schedule of civil penalties—vehicle manufacturers, dealers and salespersons.**

**STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS**

<b>Violation under 63 P. S.</b>	<b>Title/Description</b>	<b>Civil Penalty</b>
<b>Section 818.5(a)</b>	<b>Person or entity engaging in business of vehicle dealer, auction, manufacturer or distributor without license or acting as broker</b>	<b>Each offense—\$1,000</b>
<b>Section 818.5(a)</b>	<b>Person engaging in business as a factory representative or distributor representative without a license</b> * * * * *	<b>1st offense—\$100 2nd offense—\$500 3rd offense—\$1,000</b>
<b>Section 818.5(c)</b>	<b>Licensed salesperson working as salesperson for dealership other than for whom salesperson is licensed</b> * * * * *	<b>1st offense—\$100 2nd offense—\$500 3rd offense—Formal action</b>
<b>Section 818.19(29)</b>	<b>Wholesale auction permitting unlicensed or revoked or currently suspended dealer or vehicle business to buy, sell or represent vehicle at auction</b>	<b>1st offense—\$250 2nd offense—\$500 3rd offense—\$1,000 Subsequent offense— Formal action</b>
<b>Section 818.19(30)</b>	<b>Dealer permitting revoked or currently suspended salesperson to sell, represent or purchase vehicle at auction</b> * * * * *	<b>1st offense—\$500 2nd offense—\$1000 3rd offense— Formal action</b>
<b>Sections 818.5(f)(5) and (g)(1) and 818.19(38)</b>	<b>Person with revoked or currently suspended dealer or salesperson license physically present during auctioning of vehicles</b>	<b>Each offense \$1,000</b>

**§ 43b.11a. Schedule of civil penalties—architects.**

**STATE ARCHITECTS LICENSURE BOARD**

<b>Violation under 63 P. S.</b>	<b>Violation under 49 Pa. Code Chapter 9</b>	<b>Title/Description</b>	<b>Civil Penalty</b>
<b>§ 34.13(j)</b>	<b>§ 9.3</b>	<b>Delinquent payment of annual renewal fee for registered architecture firms (\$100 assessed biennially).</b>	<b>1st offense—0 to 2 years—\$500; 2nd offense—2 to 4 years—\$1,000; 3rd offense—over 4 years— Formal action</b>
<b>§ 34.13 [ (h) ](j)</b>	<b>§ 9.163</b>	<b>Engaging in the practice of architecture as a professional association, partnership, professional corporation, limited liability company, limited liability partnership or business corporation without first receiving the written approval of the Board.</b>	<b>1st offense—\$500 2nd offense—\$1,000 3rd offense—formal action</b>

Violation under 63 P. S.	Violation under 49 Pa. Code Chapter 9	Title/Description	Civil Penalty
§ 34.18(a) and (b)	§ 9.171	<b>[ Use of the word “architect” or “architects” in the surname, word or business title implying that an individual or business is engaged in the practice of architecture, without possessing current and proper licensing by the Board. ] An individual or business engaging in the practice of architecture or offering to engage in the practice of architecture in this Commonwealth, or using any title, sign, card or device implying that the individual or business is competent to engage in the practice of architecture during a period when the individual’s or business’s license is not current.</b>	1st offense—[ \$1,000 ] 0 to 2 years—\$500 2nd offense—[ formal action ] 2 to 4 years—\$1,000 3rd offense—over 4 years— Formal action

[Pa.B. Doc. No. 04-1850. Filed for public inspection October 8, 2004, 9:00 a.m.]

## DELAWARE RIVER BASIN COMMISSION

[25 PA CODE CH. 901]

### Amendment of the Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to the Commission’s *Water Quality Regulations, Water Code* and *Comprehensive Plan* to classify as Special Protection Waters the reach of the main stem Delaware River known as the Lower Delaware. The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile (RM) 209.5 to the head of tide at Trenton, NJ, RM 133.4.

#### *Supplemental Information*

##### *Background*

The Special Protection Waters regulations, consisting of § 3.10.3.A.1. of the Water Quality Regulations (Regulations), are intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives. The Regulations consist in large part of a series of policies regarding: water quality management (§ 3.10.3.A.2.b.); allowable discharges (§ 3.10.3.A.2.c.); wastewater treatment facilities (§ 3.10.3.A.2.d.); the control of nonpoint sources of pollution (§ 3.10.3.A.2.e.); and intergovernmental responsibilities (§ 3.10.3.A.2.f.). Other sections of the rule include definitions (§ 3.10.3.A.2.a.), a list of waters classified as Special Protection Waters (§ 3.10.3.A.2.g.), a table defining existing water quality with numeric values for a series of different parameters in each of the river sections classified as Special Protection Waters (Table 1) and a table describing the location of the Boundary and Interstate Special Protection Waters Control Points, which are

the locations used to assess water quality for purposes of defining and protecting existing water quality (Table 2).

To be protected as Special Protection Waters, stream reaches must be classified as either Outstanding Basin Waters or Significant Resource Waters. Outstanding Basin Waters are defined as “interstate and contiguous intrastate waters that are contained within the established boundaries of National parks; National wild, scenic and recreational rivers systems; and/or National wildlife refuges that are classified by the Commission under Subsection 2.g.1. [of the Regulations] as having exceptionally high scenic, recreational and ecological values that require special protection” (§ 3.10.3.A.2.a.1.). “Significant Resource Waters” are defined as “interstate waters classified by the Commission under Subsection 2.g.2. [of the Regulations] as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection” (§ 3.10.3.A.2.a.2.).

In accordance with § 3.10.3.A.2. of the Regulations, the Delaware Riverkeeper Network submitted to the Commission in April 2001 a nomination petition requesting that the Commission classify the Lower Delaware River as Special Protection Waters. The Commission initiated a 5-year monitoring program in May 2000 to characterize existing water quality in the Lower Delaware. Four years of data have been collected and analyzed. Data collection and analysis for the 5th year will be completed in 2004.

A series of studies, plans and policies and a Federal designation document the scenic, recreational, ecological and water supply values and uses of the Lower Delaware and support the goal of preserving these qualities. The 4 years of data and findings set forth in the report entitled, *Delaware Eligibility Determination for DRBC Declaration of Special Protection Waters* (DRBC, August 2004) demonstrate that water quality in the Lower Delaware River is better than the water quality criteria. The *Lower Delaware National Wild & Scenic River Study Report* (National Park Service, Northeast Region, 1999) documents that the Lower Delaware River includes islands, wetlands and diverse ecosystems that support rare and endangered plant and animal species and constitute scenic and recreational amenities. The *Lower Delaware River Management Plan* (Lower Delaware River Wild and Scenic

River Study Task Force and Local Government Committee, with assistance from the National Park Service, August 1997) (LDRMP) contains goals regarding water quality, natural resources, historic resources, recreation, economic development and open space preservation for the Lower Delaware River. Goal 1 of the LDRMP calls for maintaining, and when practical, improving existing water quality in the main stem of the Lower Delaware River and its tributaries. On November 1, 2000, the President of the United States signed Pub. L. No. 106-418, designating portions of the Lower Delaware River as part of the National Wild and Scenic Rivers System (system). The system was established by Congress in 1968 to preserve the character of rivers with "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values" and to ensure that designated rivers remain free-flowing (Pub. L. No. 106-418, 106th Congress). The *Water Resources Plan for the Delaware River Basin* (DRBC Watershed Advisory Committee, September 2004) (Basin Plan), which is supported by each of the Commission's signatories, directs "[w]here water quality meets or is better than standards for the protection of aquatic life and wildlife, implement anti-degradation regulations, policies and/or other mechanisms to maintain or improve existing water quality" (Basin Plan, p. 67).

#### *Proposed Amendments*

The Commission proposes to amend the Special Protection Waters regulations by adding one section of the main stem Delaware River to the list of stream reaches classified as Outstanding Basin Waters (see § 3.10.3.A.2.g.1) and two sections of the main stem Delaware River to the list of stream reaches classified as Significant Resource Waters (see § 3.10.3.A.2.g.2). The section of the main stem proposed to be classified as Outstanding Resource Waters is the reach extending from RM 171.4, a point just south of the Gilbert Generating Station in Holland Township, NJ, to RM 141.8, at Washington Crossing, PA. The sections of the main stem proposed to be classified as Significant Resource Waters extend from RM 209.5, the downstream boundary of the Delaware Water Gap National Recreation Area, to RM 171.4, the location of which is previously noted, and from RM 141.8 at Washington Crossing, PA, to RM 133.4, the location of the head of tide at Trenton, NJ.

The proposed amendments do not at this time include additions to Table 1, defining existing water quality in each classified reach with numeric values for a series of different parameters, or to Table 2, describing the location of the Boundary and Interstate Special Protection Waters Control Points. These amendments will be made at a later date, when analysis of a 5th year of water quality data for the Lower Delaware has been completed. Thus, the Commission proposes to add § 3.10.3.A.2.g.6), providing that the regulations that depend for enforcement upon the use of approved numeric values for existing water quality will not apply, under the proposed amendments, to regulated activities within the drainage area of the Lower Delaware River, and that all other provisions of § 3.10.3.A.2. will apply upon the effective date of the proposed amendments. Provisions of the Special Protection Waters regulations that will apply within the drainage area to the Lower Delaware River include the following: § 3.10.3.A.2.c.1.—3., in part requiring an analysis of alternatives to new or expanded discharges; § 3.10.3.A.2.d.1.—7., setting forth requirements for wastewater treatment facilities; and § 3.10.3.A.2.e.1. and 2., conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan for the

project area and requiring that approval of a new or expanded withdrawal or wastewater, or both, discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by nonpoint source control plans approved by the Commission.

#### *Dates*

The public hearing will be held on October 27, 2004, at approximately 2 p.m. as part of the Commission's regularly scheduled business meeting. This time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, at approximately 1:30 p.m. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event all those who wish to testify cannot be heard on October 27, 2004, the hearing will be continued at a date, time and location to be announced by the Commission chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary, (609) 883-9500, Ext. 224. Written comments will be accepted through Tuesday, November 30, 2004.

#### *Addresses*

The public hearing will be held in the Kirby Auditorium, National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia, PA. Written comments should be addressed to the Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360, fax (609) 883-9522, paula.schmitt@drbc.state.nj.us. Overnight mail should be sent to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

#### *Additional Information and Contact Person*

The full text of the draft resolution containing the proposed rule change, a map illustrating the proposed stream classifications, a map illustrating the Wild and Scenic Rivers System designations in the Lower Delaware and reports about the Lower Delaware is at the Commission's website: [www.drbc.net](http://www.drbc.net). The Commission will hold two informational meetings on the proposed rulemaking. One meeting will be held on Thursday, October 14, 2004, from 7 p.m. to 9 p.m. at the Delaware and Raritan Canal Commission Office, Prallsville Mills Complex, 33 Risler Street (Route 29), Stockton, NJ. A meeting will be held on Wednesday, October 20, 2004, from 7 p.m. to 9 p.m. in Room 315, Acopian Engineering Building, Lafayette College, High Street, Easton, PA. Directions to the meeting locations will be posted on the Commission's website in advance of the meeting dates. Contact Pamela Bush, (609) 883-9500 Ext. 203, with questions about the proposed rulemaking or the rulemaking process.

It is proposed to amend the *Water Quality Regulations* and *Water Code* as follows:

Section 3.10.3.A.2.g.1), listing stream reaches classified as Outstanding Basin Waters, is proposed to be amended by the addition of the following:

(e) The Lower Delaware River between River Miles 171.4 and 141.8 (a point just south of the Gilbert Generating Station in Holland Township, NJ to Washington Crossing, PA).

Section 3.10.3.A.2.g.2), listing stream reaches classified as Significant Resource Waters, is proposed to be amended by the addition of the following:

(b) The Lower Delaware River between River Miles 209.5 and 171.4 (the downstream boundary of the

Delaware Water Gap National Recreation Area to a point just south of the Gilbert Generation Station in Holland Township, NJ);

(c) The Lower Delaware River between River Miles 141.8 and 133.4 (Washington Crossing, PA to the Head of Tide at Trenton, NJ).

Section 3.10.3.A.2.g is proposed to be amended by the addition of the following:

6). For the stream reaches listed in Sections 3.10.3.A.2.g.1.(e) and 3.10.3.A.2.g.1.(b) and (c), all provisions of Section 3.10.3.A.2 shall be in effect except those that depend for enforcement upon the use of approved numeric values for existing water quality.

PAMELA M. BUSH,  
*Secretary*

**Fiscal Note:** 68-43. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 25. ENVIRONMENTAL PROTECTION

### PART V. DELAWARE RIVER BASIN COMMISSION

#### CHAPTER 901. GENERAL PROVISIONS

#### § 901.2. Comprehensive Plan and water quality.

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A [ (2001) ] (2004) and the Water Code and Water Quality Standards as set forth in 18 CFR Part 410 [ (2001) ] (2004) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 04-1851. Filed for public inspection October 8, 2004, 9:00 a.m.]

### [25 PA CODE CH. 901]

#### Amendment of the Water Quality Regulations, Water Code and Comprehensive Plan to Establish Pollutant Minimization Plan Requirements for Point and Nonpoint Source Discharges of Toxic Pollutants

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on a proposed amendment to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to establish pollutant minimization plan requirements for point and nonpoint source discharges of toxic pollutants following issuance of a total maximum daily load (TMDL) under section 303(d) of the Clean Water Act (CWA) (33 U.S.C.A. § 1313(d)) by either a member state or the United States Environmental Protection Agency (EPA) or issuance of an assimilative capacity determination by the Commission.

#### *Supplemental Information*

A TMDL establishes the maximum loading of a pollutant that a water body can receive without causing an impairment of the water quality standard, which includes designated uses, water quality criteria calculated to protect those uses and antidegradation requirements. When water quality standards are not attained, despite the technology-based control of industrial and municipal wastewater (point sources), the CWA requires that the impaired waters be identified on the state's Section 303(d)

list and that a TMDL be developed for the pollutant or pollutants causing the impairment. A determination of the assimilative capacity of a water body for a given pollutant under § 4.30.7 of the Commission's Water Quality Regulations is similar to the establishment of maximum total loading for a water body in a TMDL. The Commission may issue an assimilative capacity determination whenever a stream quality objective (the Commission's term for a numeric water quality criterion) is not being attained.

A TMDL or assimilative capacity determination does not in and of itself result in any improvement in water quality. Rather, the total loading or assimilative capacity must be allocated among the various sources contributing to the water quality impairment, and each discharger must reduce its discharge to achieve its allocated load. For point source discharges, the individual load allocation typically is converted to an effluent limitation in a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA (33 U.S.C.A. § 1342). For nonpoint sources, the load allocation typically is achieved through Best Management Practices (BMPs).

For certain toxic pollutants in water bodies within the Delaware River Basin, ambient or effluent, or both, monitoring shows that loadings are many times higher than the levels required to ensure that water quality standards are met. Substantial reductions in loadings of pollutants from all point and nonpoint sources are needed to protect the designated uses. However, the process of developing and allocating a total load or determining the assimilative capacity of the water body for the pollutant may take the regulatory agencies many years. As has become apparent in the case of the TMDL for polychlorinated biphenyls (PCBs) in the Delaware Estuary, issued by the EPA on December 15, 2003, on behalf of Delaware, New Jersey and the Commonwealth, it may be many more years before the states are able to incorporate implementing provisions into NPDES permits for point sources and require implementing BMPs for nonpoint sources. For PCBs, and possibly for other persistent bioaccumulative toxic chemicals, still more time, in some cases decades, will be needed before dischargers achieve sufficient load reductions to achieve the water quality standards. The proposed rulemaking is intended to accelerate real improvements in water quality by authorizing the Commission to require point and nonpoint source dischargers to initiate load reduction efforts sooner. No numeric targets are proposed. Rather, the rule is based on concepts of pollution prevention and sustainability and the recognition that dischargers that are familiar with their own operations may be best situated to identify opportunities for achieving prompt loading reductions in a cost-effective manner. To comply with the rule, dischargers must plan and implement measures for achieving the maximum practicable reduction of pollutant discharges to the air, soil and water.

The proposed rulemaking is primarily a gap-filling measure. For point sources, it will cease to apply to any discharge upon the next issuance by the state or the EPA of a NPDES permit or permit renewal with respect to that discharge. For nonpoint discharges, the Commission's intention is to apply the rule only where existing state and Federal programs will not ensure implementation of the TMDL or assimilative capacity determination.

The rule has four principal parts. Section A addresses the scope of the rule, both the pollutants and the entities intended to be regulated. Section B sets forth procedures



for submission, review, implementation and continuation of Pollutant Minimization Plans (plan) required under the rule, including the relationship of the rule to the NPDES permit program. Section C lists the elements required to be included in a plan. Section D sets forth the requirement that dischargers submit a report annually, quantifying changes in pollutant loadings since initiation of the plan and describing measures under way or completed to reduce loadings. Additional sections include a waiver provision and a provision for the development of guidance to assist dischargers in developing plans under the rule.

#### *Scope of the Proposed Rulemaking*

The scope of the proposed rulemaking is limited to toxic chemicals listed in Section A.1 of the rule. The proposed rule lists one pollutant, PCBs, for which the EPA issued a TMDL for the Delaware Estuary on December 15, 2003. Additional pollutants may be added to the rule only through notice and comment rulemaking.

Classes of dischargers or individual dischargers proposed to be subject to the rule may be added by amendment or by a directive of the Commission's Executive Director, upon approval by the Commission. Two classes of PCB dischargers are initially proposed to be included: those listed in Group 1 of Tables 3-2—3-5 of Appendix 3 of the document *U.S. Environmental Protection Agency Regions II and III, Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2-5 of the Tidal Delaware River* (December 15, 2003); and those listed in Group 2 of the same tables in the event that the presence of PCB congeners is confirmed through monitoring in accordance with the requirements set forth in Appendix 3 of the same document.

#### *Procedures for Submission, Review, Implementation and Continuation of Plans*

The proposed rulemaking requires dischargers to submit a plan to the Commission and the permitting agency, if any, within 3 months of publication of a final rule or issuance of a directive by the Executive Director. The Commission staff, in consultation with the permitting agency staff (if applicable), will review each plan for completeness, and the Executive Director will issue a completeness determination, either confirming that a plan contains all components required by the rule or identifying deficiencies in the plan. Where a deficiency is identified, a discharger has 30 days to submit a revised plan reflecting a good faith effort to cure the deficiency. The rule sets forth procedures for subsequent revisions if necessary and allows the Executive Director to seek penalties against a discharger for repeated failure to comply, or grant a waiver from a requirement of the rule for good cause shown. The discharger must commence implementation of its plan as submitted within 60 days of receipt of a determination of completeness.

Upon issuance of a final new or renewed NPDES permit by the EPA or a member state after the imposition of a plan requirement under the proposed rulemaking, the permit supersedes any provisions of the plan that relate to the NPDES-permitted discharge.

Plans for point source discharges will receive a thorough substantive review at the time of NPDES permit issuance or reissuance. Due to limited agency resources, earlier substantive review of plans by the Commission or the member states is authorized but not required. The rule provides that if the Commission determines at any time that a plan is not likely to achieve the maximum practicable reduction of pollutant discharges to the air,

soil or water, it may require the discharger to submit a revised plan to more aggressively reduce pollutant loading.

The initial term of the plan is to be 5 years. The term of any plan that is not superseded by an NPDES permit within 5 years may be extended by the Executive Director, following a review by the Commission Staff in consultation with the staff of the appropriate state environmental agency.

#### *Plan Elements*

Interested parties are referred to the text of the rule for the required elements of a plan. Notably, these elements include strategies for tracking down unknown sources of the pollutant, as well as for minimizing releases of the pollutant where sources are found. Plans also must include a description of the procedures to be used to measure, demonstrate and report progress in reducing potential and actual discharges of the pollutant, including annual sampling and analysis of discharges using a prescribed analytical method if one is listed in the rule. In the case of PCBs, dischargers are required to measure loadings annually using EPA Method 1668, Revision A. Dischargers are encouraged to use less complex and expensive analytical methods where possible for purposes of screening or identifying pollutant sources.

#### *Annual Report*

Annual sampling and reporting using a uniform method are required for dischargers and regulators to determine the effectiveness of a plan in reducing pollutant loadings to a waterway.

#### *Dates*

The public hearing will be held on October 27, 2004, at 11 a.m. as part of the Commission's regularly scheduled business meeting. The hearing will end 60 to 90 minutes later, at the discretion of the Commission chair. If necessary, the hearing will be continued at a date and location announced by the Commission chair, until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary, (609) 883-9500, Ext. 224. Written comments will be accepted through Friday, November 19, 2004.

#### *Addresses*

The full text of the proposed rulemaking is on the Commission's website: [www.drbc.net](http://www.drbc.net). The public hearing will be held in the Kirby Auditorium, National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia, PA. Written comments should be addressed to the Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360, fax (609) 883-9522, [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us). Overnight mail should be sent to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

#### *Further Information and Contact Person*

Contact Pamela Bush, (609) 883-9500, Ext. 203, with questions about the proposed rulemaking or the rulemaking process.

It is proposed to amend the Commission's Water Quality Regulations, Water Code and Comprehensive Plan by the addition of the following:

#### **4.30.9 Pollutant Minimization Plans for Toxic Pollutants**

*A. Applicability.* Following a determination of assimilative capacity by the Commission or the issuance of

a TMDL by the U.S. Environmental Protection Agency or a Basin State for a toxic pollutant, the Commission may require, or in accordance with Section 4.30.9.A.2. below, may authorize the Executive Director to require, classes of point or non-point dischargers or individual dischargers to prepare pollutant minimization plans ("PMPs") to reduce or prevent releases of the toxic pollutant to Basin waters.

1. In accordance with Section 5.2 of the *Delaware River Basin Compact*, the Commission has determined that the effectuation of the Comprehensive Plan requires control and abatement of the pollutants listed below, through the PMP requirements set forth herein. Additional toxic pollutants may be added to this section by amendment of this rule.

(a) Polychlorinated Biphenyls (PCBs).

2. The following classes of dischargers shall be subject to the requirements of this rule for the pollutants listed in Section 4.30.9.A.1. Additional classes of dischargers or individual dischargers may be added to this section by amendment of this rule. In addition, the Executive Director, upon approval by the Commission, is authorized to subject additional individual dischargers to this rule based upon a determination in each instance that the discharge has an adverse effect on the water resources of the Basin, subject to the right of the discharger to contest the determination under Article 6 of the *Rules of Practice and Procedure*.

(a) For PCBs:

(i) Dischargers listed in Group 1 of Tables 3-2 through 3-5 of Appendix 3 of the document, *U.S. Environmental Protection Agency Regions II and III, Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2-5 of the Tidal Delaware River* (December 15, 2003).

(ii) Dischargers listed in Group 2 of Tables 3-2 through 3-5 of Appendix 3 of the document, *U.S. Environmental Protection Agency Regions II and III, Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2-5 of the Tidal Delaware River* (December 15, 2003), in the event that the presence of PCB congeners is confirmed through monitoring in accordance with the requirements set forth in Appendix 3 of the same document.

**B. Procedures for Submission, Review, Implementation and Continuation of PMPs.** The following procedures shall apply to PMPs required under this rule:

1. *Time of Submission.* A discharger shall submit a PMP to the Commission and the permitting agency (if any) simultaneously within three months of publication of a final rule covering the discharger under Section 4.30.9.A.2. or Commission approval of a decision of the Executive Director to require a PMP, under the same section. The Commission shall provide written notice of the rule change or decision to affected dischargers.

2. *Completeness Determination.* The Commission staff, in consultation with permitting agency staff (if applicable), shall review each PMP for completeness, and the Executive Director shall issue a completeness determination to the discharger, copied to the permitting agency, confirming that a PMP is complete or identifying deficiencies in the PMP. The completeness determination shall not be construed as a determina-

tion of the adequacy of the PMP to achieve the maximum practicable reduction of pollutant discharges to the air, soil or water in accordance with Section C.9.

3. *Cure of Deficiency.* Within 30 days of receipt of a completeness determination in accordance with Section 4.30.9.B.2., above, dischargers shall submit a PMP to the Commission and the permitting agency (if applicable) that reflects a good faith effort to cure any deficiency identified in the determination. If the revised PMP is satisfactory, the Executive Director shall issue a second determination of completeness stating that the deficiency has been cured. If the revised PMP is still incomplete, the Executive Director in her discretion may either grant the discharger additional time to cure the deficiency or seek penalties against the discharger, unless for cause shown the Executive Director grants a waiver in accordance with Section 4.30.9.E. The Executive Director may commence an enforcement action and/or seek penalties in accordance with Section 14.17 of the *Compact* and Section 4.30.9.B.9 below in the event of persistent or bad faith failure by the discharger to submit a complete PMP.

4. *Commencement of PMP Implementation.* The discharger shall commence implementation of its PMP as submitted, within 60 days of receipt of a determination of completeness under Section 4.30.9.B.2 or B.3.

5. *Initial Term of PMP.* Each PMP shall be designed for an initial term of five years.

6. *Relationship to NPDES Permit.* Upon issuance of a final new or renewed NPDES permit by the U.S. Environmental Protection Agency or a Basin State after the imposition of a PMP requirement under this rule, the permit shall supersede any provisions of the PMP that relate to NPDES-permitted discharges. An NPDES permit modification shall supersede elements of a PMP relating to NPDES-permitted discharges only if the permit modification expressly so states.

7. *Additional Term of PMP.* For any discharge not controlled under the NPDES permit program, the term of the PMP shall be reviewed by the Commission staff in consultation with the state environmental agency staff, and an additional term shall be determined by the Executive Director.

8. *Plans Deemed Non-Compliant.* If the Commission determines at any time, upon the recommendation of the Executive Director, that a PMP developed under this rule is not likely to achieve the maximum practicable reduction of pollutant discharges to the air, soil and water, then the Commission may require a revised PMP to be submitted to more aggressively reduce pollutant loading. The discharger shall submit a revised PMP responsive to the Commission's request within 60 days of receipt of the request. The provisions of Sections 4.30.9.B.2 through B.4., with respect to curing a deficiency and commencing implementation, shall apply.

9. *Persistent or Bad Faith Failure to Comply.* The Executive Director is authorized to commence an enforcement action against a discharger in accordance with Article 7 of the Commission's *Rules of Practice and Procedure* for persistent or bad faith failure to submit a complete plan, to modify a plan deemed non-compliant, or to implement a plan.

C. *Plan Elements.* A PMP prepared in accordance with these regulations shall contain the following elements:

1. *Good Faith Commitment.* A signed and dated statement by the highest ranking official having day-to-day managerial and operational responsibilities for the facility, expressing the company's good faith commitment to reducing discharges of the target pollutant through the PMP process.

2. *Discharger Contact.* Name and contact information for an individual who will serve as the Commission's contact for information concerning the PMP.

3. *Description and Maps of Facility*

a. For Industrial Facilities:

—company and facility name and address;

—raw materials and industrial processes used, and products generate;

—for facilities accepting non-facility wastes, a description of all such wastes;

—map of all point and nonpoint source discharges from the facility or site and description of the nature of such discharges (i.e., continuous or intermittent, to surface water or groundwater, flow rate);

—all applicable local, state and federal discharge permits and permit numbers for permits that control the pollutant or relate to discharges that contain the pollutant; and

—receiving stream for all discharges, including River Mile in instances where the receiving stream is the main stem Delaware River.

b. For Municipal Wastewater Treatment Plants (WWTPs):

—facility name and address;

—description and map of the facility's service area;

—description and map or schematic diagram of the collection system;

—description of any wastes accepted from outside the collection system (e.g., wastes trucked or transported by rail to the site for treatment);

—map of all point and nonpoint source discharges from the facility or site and description of the nature of such discharges (i.e., continuous or intermittent, to surface or groundwater, flow rate);

—all local, state and federal permits and permit numbers for permits that control the pollutant or relate to discharges that contain the pollutant;

—receiving stream for all discharges, including River Mile in instances where the receiving stream is the main stem Delaware River; and

—a list of all industrial users of the collection system and pretreatment permit numbers if any.

4. *Description and Map of Known Sources*

a. Description of all materials, equipment, processes, soil areas or facilities within a facility, site, or service area, from which the pollutant is released directly or indirectly into a wastewater treatment system, sewage collection system, stormwater collection system, stream or river, including a description of the pathways if known.

b. Site map or service area map showing location of known sources and pathways.

5. *List of Materials, Equipment, Processes, Soil Areas or Facilities Containing or Generating the Pollutant, but Which are Not Known Sources*

a. For industrial dischargers, to the extent practicable, identify any material, equipment, process, soil area or facility on the site known to contain or generate the pollutant, but that is not deemed a source because it is not known to be releasing the pollutant or because no known pathway to surface water or groundwater exists. Identify pollutant concentration if known.

b. For municipal WWTPs, identify any material, equipment, process, soil area or facility that is part of the collection system or that is within the service area and that is known to contain the pollutant but that is not deemed a source because it is not known to be releasing the pollutant or because no known pathway to surface water or groundwater exists. Identify pollutant concentration if known.

6. *Strategy for Identifying Unknown Sources of the Pollutant (Trackdown)*

a. For industrial dischargers, the strategy for identifying pollutant sources may include, without limitation, investigation of an industrial process used by the discharger that is similar to one known to have generated the pollutant elsewhere; investigation of historic activities on the site; or investigation of possible soil or sediment contamination or stormwater management system contamination as a result of historic or ongoing activities.

b. For municipal WWTPs, trackdown strategy may include, without limitation, identification, through screening, of portions of the collection system containing higher concentrations or volumes of the pollutant; identification of industrial users of the collection system that are likely to have used or generated the pollutant in the past; industrial processes known to be in use that could generate the pollutant; sites containing equipment that is likely contaminated with the pollutant, sites that have been used to dispose of the pollutant, etc.

c. Trackdown efforts may rely upon analytical methods other than those required under Section 4.30.9.C.13, below, for purposes of screening or identification of pollutant sources.

7. *Previous, Ongoing or Planned Minimization Activities Undertaken Voluntarily or Required by Other Regulatory Programs.* Previous, ongoing or planned pollutant minimization activities under way or to be undertaken voluntarily or in accordance with a federal or state requirement for the pollutant that is the subject of the PMP, including the level of clean-up attained, level of clean-up targeted, measures completed, measures under way, and the schedule for planned activities.

8. *For Municipal WWTPs Only, Recommendations for Action Under Other Regulatory Programs.* Based on information known at the time of PMP submission or identified during implementation of the PMP, recommendations for remediation activities to be undertaken under the auspices of other agencies or regulatory programs.

9. *Pollutant Minimization Measures.* A description of measures to be taken to achieve the maximum practicable reduction of discharges to the air, soil or water. For known or potential sources, such measures

may include but are not limited to: source removal, changes in raw materials, industrial process modifications, treatment modifications, and elimination of pathways to surface and groundwater.

10. *Ranking.* Ranking of known and potential sources, either individually or in categories, from most to least significant, on the basis of available information. Factors to be considered in ranking known sources should include, without limitation, available information on volume of the discharge, concentration of the pollutant, and likelihood of release into Basin waters. Factors to be considered in ranking potential sources may include, without limitation, type of current or past industrial activity, presence and type of PCB containing equipment, waste management activities and overall condition of the site and facilities.

11. *Key Dates.* Date of submission of waste implementation plan; date by which initiation of plan activities is required (i.e., receipt of completeness determination plus 60 days); and schedule for implementation of each of the measures described in Section 4.30.9.C.9. above.

12. *Measurement of Progress.* Description of the procedures to be used to measure, demonstrate and report progress in reducing potential and actual discharges of the pollutant. These procedures shall include at a minimum the following:

- establishing a loading baseline, utilizing methods listed in Section 4.30.9.C.13. below, if applicable;
- annual sampling and analysis of discharges, utilizing methods listed in Section 4.30.9.C.13 below, if applicable

No PMP shall be deemed complete that does not demonstrate that a loading baseline has been or will be established and that changes to mass loadings shall be measured on an annual basis. However, additional measures of progress may be used, including, but not limited to, lists of PCB-containing equipment removed or pathways blocked, or in the case of municipal WWTPs, inventories of PCB-containing equipment initiated or completed; educational programs put in place; areas of the collection system targeted through trackdown; etc.

13. *Sampling and Analytical Methods.* The following sampling and analytical methods shall be used for establishing baseline discharges and for measuring pollutant reductions on an annual basis, unless this requirement is waived by the Executive Director in accordance with Section 4.30.9.E., below.

(a) PCBs—EPA Method 1668, Revision A.

14. *Material Modifications.* Within three months of any material modification to a facility's operations, site boundary, service area, or waste streams, the owner or operator must notify the Commission and make appropriate revisions to its PMP.

D. *Annual Report.* Each year, commencing one year from the date by which initiation of PMP activities is required to begin in accordance with Section 4.30.9.B.4 above, and continuing through the fifth year of the plan, the discharger shall submit to the Commission and the permitting agency (if any) an annual report:

1. demonstrating annual and cumulative changes from the pollutant loading baseline since initiation of the PMP; and

2. describing measures under way and completed to reduce loadings since initiation of the PMP.

E. *Waiver.* The Executive Director may waive any of the requirements set forth in Section 4.30.9., upon a showing that they are inapplicable to or inappropriate for a particular facility or site.

F. *Guidance.* The Commission may develop guidance consistent with the requirements set forth in Section 4.30.9.B and C. to assist the agencies and dischargers in the development of PMPs under this rule.

G. Nothing in this rule shall limit the authority of the Commission or the Executive Director under the *Compact* to control future pollution, abate existing pollution or require review under Section 3.8 of the *Compact*.

PAMELA M. BUSH,  
*Secretary*

**Fiscal Note:** 68-44. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART V. DELAWARE RIVER BASIN COMMISSION  
CHAPTER 901. GENERAL PROVISIONS**

**§ 901.2. Comprehensive Plan and water quality.**

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A [ (2001) ] (2004) and the Water Code and Water Quality Standards as set forth in 18 CFR Part 410 [ (2001) ] (2004) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 04-1852. Filed for public inspection October 8, 2004, 9:00 a.m.]

**DEPARTMENT  
OF REVENUE**

[61 PA. CODE CH. 901]

**Local Option Small Games of Chance**

The Department of Revenue (Department), under section 9 of the Local Option Small Games of Chance Act (act) (10 P. S. § 319), proposes to amend Chapter 901 (relating to small games of chance) to read as set forth in Annex A.

*Purpose of the Proposed Rulemaking*

This proposed rulemaking contains comprehensive amendments to Chapter 901 to incorporate legislative changes made to the act by the act of December 19, 1990 (P. L. 812, No. 195) (Act 195) and the act of October 18, 2000 (P. L. 602, No. 79) (Act 79). This proposed rulemaking also codifies policy and administrative changes regarding games of chance.

*Explanation of Regulatory Requirements*

The Department is proposing numerous global changes to Chapter 901 to reflect changes in terminology, including the deletion of the term "small" in conjunction with the phrase "games of chance." This amendment will make the regulation more consistent with the enabling statute. Examples of other changes include: the replacement of "club" with "eligible organization" to be consistent with

the change made in Act 195; the replacement of "county" with "licensing authority"; the replacement of "registration" with "certificate" and the replacement of "special permit" with "special raffle permit." Numerous minor additions, revisions and deletions are being proposed to sections throughout Chapter 901 for clarity (including changes from passive to active voice) and readability.

#### *Subchapter A. General Provisions*

##### *Definitions*

Numerous revisions to § 901.1 (relating to definitions) are proposed to bring the definitions into conformity with statutory changes and to codify policy and administrative changes. An explanation of each definition addition or change is as follows:

The following definitions are added for clarity: "applicant," "application," "license," "licensee," "manufacturer registration certificate or certificate," "nonoperating day," "Office of Attorney General," "pull-tab game," "punch," "registrant," "registration," "special raffle permit" and "State lottery law."

The following terms are referenced in Act 195 and the definitions are added to the explain terms: "auxiliary group," "normal business or operating site" and "operating day."

"Bona fide member" is amended to delete references to "club" and add references to "eligible organization."

"Civic and service association" is defined in section 3 of Act 195 (10 P. S. § 313) and is added for use in the regulation. Within the definition the term "bona fide" is used. For purposes of these regulations, "bona fide" shall be interpreted according to its common usage: in or with good faith; honestly, openly, and sincerely; without deceit or fraud.

"Club" was amended in section 3 of Act 195.

The following terms are defined in section 3 of Act 195 and are added for use in the regulation: "daily drawing," "dispensing machine," "eligible organization," "fraternal organization" and "passive selection device."

The following definitions amended for clarity: "deal," "flare," "manufacturer," "petition," "petitioner" and "punchboard."

"Distributor" is amended to delete references to "small" and "club" and add reference to "eligible organization."

The following definitions are amended to delete reference to "small": "distributor's representative" and "manufacturer's representative."

"Games of chance" is amended for clarity and because of revisions to section 3 of Act 195 and section 3 of Act 79 (10 P. S. § 313).

The following definitions added for use in the regulation: "hold ticket" and "seal card."

"Legitimate club purposes" is deleted in accordance with amendments to section 3 of Act 195. The term is replaced with "public interest purpose."

Although "licensed premises" was used in the original enabling statute, it was not defined in the original regulations. The term is again used in Act 195 and a definition is added for clarity.

"Limited occasion license" is added to explain a new type of license authorized in section 10(b.3) of Act 195 (10 P. S. § 320(b.3)).

"Lottery" is deleted in accordance with amendments in section 3 of Act 195.

"Operating week" is added for clarity and use in the regulation. The term replaces the phrase "7-day period."

"Public interest purposes" is defined in amendments to section 3 of Act 195. The term replaces "legitimate club purpose" and is added for use in the regulation.

"Pull-tab" and "raffle" are amended because of revisions to section 3 Act 195.

The definition of "responsible person"—is being amended for clarity, to update references from "club" to "eligible organization" and delete references to "small."

"Veterans organization" added because of revisions to section 3 of Act 195.

"Weekly drawing" is added because of revisions to section 3 of Act 79.

##### *General Applicability*

Section 901.21 (relating to applicability) is amended by adding a subsection which provides that to provide uniform practices, procedures and standards, the Department is promulgating certain enumerated regulatory sections for the benefit of and suggested use by the licensing authorities. However, the governing body of each county, on behalf of its licensing authority, must adopt the sections by independent act for the sections to have legal force and effect. With the addition of this language to § 901.21, §§ 901.181 and 901.211 (relating to local rules) are deleted.

Section 901.22 (relating to use of proceeds) is deleted because the subject matter is adequately addressed in § 901.701 (relating to games of chance permitted).

The existing text of § 901.23 (relating to restriction of sales) is deleted and replaced with more explanatory language regarding the restrictions on sales by a registered manufacturer and licensed distributor and the purchase of games of chance by an eligible organization. Subchapter I (relating to enforcement) is proposed and will include all enforcement provisions. Therefore, § 901.24 (relating to enforcement) is deleted.

Section 901.28(a)(2) (relating to inspection of premises) is amended to allow inspection when a reasonable belief exists that a violation of the act or Chapter 901 has occurred, is occurring or will occur. Paragraph (3) is amended to specifically provide that an inspection shall be limited to the inspection of matters, areas and records associated with games of chance to insure compliance with the act and this part. Subsection (b) is amended to allow the licensing authority or their authorized representatives to make annual inspections for compliance purposes.

Section 901.31 (relating to examination of records) is amended to clarify that an examination of records can be made apart from the examination made during an inspection of the premises. Subsections regarding actions by the district attorney and other law enforcement officials are deleted because they are beyond the scope of these regulations.

Section 901.34 (relating to disputes) is amended to clarify that the retention period for records regarding a dispute about whether the play or ticket is a winning play or ticket starts at the date of the dispute rather than the date of resolution.

Section 901.40 (relating to prohibition of gambling facilities) is added in accordance with section 10(b.4) of

Act 195. Section 901.41 (relating to operating days, nonoperating days and operating weeks) is added to provide guidance regarding the concept for purposes of game operations.

#### *Administration*

The introductory language in § 901.51(a) and (b) (relating to power and duties) is amended to clarify that the lists of powers and duties are not all inclusive. In addition, subsections (a)(10) and (b)(7) are added to specifically state that the Department and licensing authority have the power and authority to initiate legal proceedings, in law or equity, before any court or tribunal, for purposes of administering or enforcing the provisions of the act or Chapter 901. Other provisions are amended or added for clarity. Subsection (c) regarding the powers and duties of the district attorney and other law enforcement officials is deleted because it is beyond the scope of these regulations.

#### *Subchapter B. Licensing and Registration*

##### *Manufacturer Registration*

Sections 901.101 and 901.102 (relating to manufacturer registration and game approval required; and registration and game approval forms) are amended by adding language outlining the game approval process.

Section 901.103 (relating to manufacturer registration application form contents) is amended by adding new text to existing paragraph (12) to reflect the Department's current requirement that dispensing machine manufacturers provide the Department with a notarized affidavit indicating that its dispensing machines comply with the act and Chapter 901. Existing paragraph (12) was renumbered accordingly.

New § 901.103a (relating to change of application information) provides that a manufacturer shall report any changes to the information supplied in its application to the Department within 15 days of the change.

Section 901.106 (relating to registration term) is amended to more specifically detail the manufacturer registration term. Section 901.107 (relating to annual applications) is amended to give the Department 60 days to process registration applications prior to the end of the registration term as permitted under § 901.118 (relating to registration decision time limit). With this amendment, a manufacturer that complies should not have a break in its registration coverage.

Section 901.112 (relating to prohibited sales) is deleted because the topic is addressed in proposed § 901.23(a)(2).

Section 901.113(a) (relating to representative of manufacturer) is deleted because the topic is addressed in proposed § 901.23(a)(2). To bring § 901.114 (relating to dissolutions, terminations, mergers and bankruptcies) into conformity with § 901.148 (relating to dissolutions, terminations, mergers and bankruptcies), the section is amended by adding subsection (b) to provide that a notice of the decision to dissolve is required even if filing is not required.

Consistent with amendments to §§ 901.101 and 901.102 regarding game approval, § 901.117(a) (relating to denial, suspension and revocation) is amended by adding to the enumerated acts for which the Department has the authority to deny an application for a certificate, or suspend or revoke a certificate. The act of selling or offering for sale in this Commonwealth a game of chance that has not been approved by the Department. Subsection (b) is added to provide that the Department may

deny an application for a game of chance approval and may suspend or revoke an approved game of chance if the game fails to meet the requirements of the act or Chapter 901. New subsection (c) sets forth the rules governing suspensions and new subsection (d) describes the contents of a written notice of a denial, suspension, lifting of suspension or revocation as well as the procedure by which it will be mailed.

Section 901.117a (relating to registration following revocation) is added to provide guidance on the length of time a manufacturer whose certificate is revoked is ineligible to apply for and receive another certificate for a first, second, third and subsequent revocation.

Section 901.119 (relating to raffle, daily drawing and weekly drawing ticket manufacturers) is amended to clarify that §§ 901.101—901.118 do not apply to the manufacturers who only produce and sell raffle, daily drawing and weekly drawing tickets.

##### *Distributor Licensing*

Section § 901.132 (relating to license application form) is amended to clarify that to obtain a license, a distributor must submit a license application to the Department.

New § 901.133a (relating to change of application information) provides that a distributor shall report changes to the information supplied in its application to the Department within 15 days of the change.

Section 901.136 (relating to license term) is revised to provide a more accurate description of a distributor license term and to create a 60-day gap between the end of the registration term and licensing term to allow the Department adequate processing time. Section 901.137 (relating to annual application) is also completely revised to give the Department 60 days to process license applications prior to the end of the licensing term as permitted under § 901.152 (relating to licensing decision time limits). Thus, a distributor that complies with the licensing terms should not have a break in its licensing coverage.

Section 901.142(a) (relating to distributor's representative) is deleted because the topic is addressed in proposed § 901.23(b)(2). The remaining text is reformatted accordingly.

Section 901.150 (relating to changes in ownership or personnel) is amended by requiring changes in responsible persons to be reported to the Department within 15 days of the deletion or addition. The time period in which to make the report is amended to provide the Department with more current information.

Section 901.151 (relating to denial, suspension and revocation of licenses) is amended by adding clarifying language to new subsection (a) and by adding subsections (b) and (c) regarding suspensions and notice. The suspension and notice provisions are consistent with those added to § 901.117 for manufacturers. Section 901.151a (relating to licensing following revocation) is added to provide guidance on the length of time a distributor whose license is revoked is ineligible to apply for and receive another license for a first, second, third and subsequent revocation.

Section 901.153 (relating to raffle, daily drawing and weekly drawing ticket distributors) is amended to clarify that §§ 901.131—901.152 do not apply to distributors who only sell raffle, daily drawing and weekly drawing tickets.

*Board Procedures*

Sections 901.161, 901.165 and 901.168 (relating to jurisdiction and purpose; board practice and procedure; and stay of appeal) are amended to revise the wording to make it consistent with amendments being made throughout Chapter 901.

*Eligible Organization Licensing*

Section 901.182 (relating to license requirements) is amended to reflect the change in section 10(a) of Act 195 which allows auxiliary groups within an eligible organization to conduct games of chance. Additional amendment to the section provide guidelines for the operation of games of chance by auxiliary groups.

Section 901.183 (relating to filing) is amended to explain the filing requirements for license applications when an eligible organization does and does not own or lease a normal business site. With the addition of limited occasion licenses in Act 195, § 901.184 (relating to license fee) is amended to state the fee for a limited occasion license shall be \$10.

In response to feedback from both the licensing authorities and eligible organizations, the Department amended § 901.185 (relating to license term and annual applications) to provide for a rolling renewal date instead a fixed date.

To bring § 901.186 (relating to display) into conformity with the provisions of Act 195 regarding the playing of games of chance at a location off its premises, the section is amended to provide that a licensed eligible organization shall at all times publicly display its license at the site where it conducts games of chance.

Section 10(b.1), (b.2) and (d)(8) of Act 195 significantly revised the rules for eligible organizations regarding where games of chance can be played. Section 901.188 (relating to location) is amended to address these new rules. Section 901.189 (relating to transfer) is amended to clarify that a licensed eligible organization is prohibited from transferring or assigning its license.

In accordance with the changes in Act 195 regarding auxiliary groups, § 901.190 (relating to joint license prohibition) is amended to indicate that an auxiliary group may operate under its parent organization's license without violating the joint license prohibition. Minor amendments were made to § 901.191 (relating to license application form) to reflect the changes to section 10 of Act 195, including the addition of paragraph (20) requiring a list of the eligible organization's auxiliary groups which may operate games of chance under the eligible organization's license.

The current text of § 901.192 (relating to denial of application, revocation, suspension and refusal to renew club licenses) is deleted and replaced with a more logically organized section regarding denial, suspension and revocation of an eligible organization license. Section 901.194 (relating to change of personnel) is amended by requiring changes in personnel to be reported to the licensing authority within 15 days of the deletion or addition. The time period in which to make the report is amended to provide the licensing authority with more current information.

With the addition of the limited occasion license under section 10(b.3) of Act 195, the Department added § 901.195 (relating to types of licenses) to distinguish between a game of chance and limited occasion license and to clarify that an eligible organization may only hold one type of license at a time. Section 901.196 (relating to

limited occasion license requirements, limits and restrictions) is also added to provide information on the use of a limited occasion license and related restrictions. Section 901.197 (relating to change of application information) is added to provide that an eligible organization shall report any changes to the information supplied on its license application to the licensing authority within 15 days of the change.

*County Licensing Authority Procedures*

In accordance with the amendment to section 10(b) of Act 195, § 901.213 (relating to actions with respect to eligible organization licenses and applications) is amended by revising the time period for a licensing authority to approve or deny a license application in subsection (a) from 60 to 30 days. Also, in accordance with changes in section 10(g) of Act 195, subsection (b)(1) is amended to provide that the licensing authority shall send the license and notice of approval to the applicant along with an up-to-date listing of all municipalities within the licensing county that have approved games of chance by referendum.

Section 901.214 (relating to procedure for denial, suspension or revocation of eligible organization licenses) is amended in a number of areas. Minor wording changes are made to subsection (a) and the existing text of subsections (b), (c) and (e) is deleted because the subject matter is addressed in Subchapter I. Existing subsection (d) is deleted and replaced with subsection (b) that provides that the notice issued by the licensing authority will be dated, explains the action taken by the licensing authority, the reason for the action and the licensee or applicant's appeal rights. The licensing authority will serve the notice by certified or first-class mail. Subsection (c) is added to provide the rules governing suspensions. New subsection (d) describes the effect an appeal of a revocation has on an eligible organization.

*Subchapter C. Local Option**Local Option Requirement and Local Option Reporting*

Consistent with section 10(g) of Act 195, § 901.309 (relating to public information) is amended to acknowledge that information regarding the approval or disapproval of games of chance by local referendum can be obtained from the licensing authority as well as the county board of elections.

*Subchapter D. Recordkeeping**County Records and Reports*

Section 901.21(b) states that to provide uniform practices, procedures and standards, certain enumerated sections are promulgated for the benefit of and suggested use by the licensing authorities. If the governing body of a county, on behalf of its licensing authority, adopts the sections by independent act, those sections will in effect be regulations of the licensing authority. Because of this unique scenario, the Department is deviating from standard drafting rules in §§ 901.401—901.407 in that where "shall" would normally be used, it is instead using "will" since the provisions will be those of the licensing authority and the use of will is appropriate when the licensing authority is pledging to act.

In as much as there are now two types of licenses as a result of the addition of the limited occasion license by Act 195, § 901.401 (relating to application register) is amended so that the register or list will indicate the type of license for which each organization applied. Likewise, § 901.402 (relating to docket) is amended to require the docket to list which type of license was granted to the

organization. Section 901.404 (relating to violation report) is deleted because the subject matter is addressed in the Subchapter I.

To bring § 901.405 (relating to list of licensed eligible organizations) into conformity with the enabling statute, the section is amended to state that the licensing authority will submit, on a semiannual basis, a copy of all information regarding licensees to the Department. The section is further amended to require the information to include the type of license and any special raffle permit serial number.

Although some of these rules are noted elsewhere, new § 901.407 (relating to list of municipalities) provides the licensing authority with a central place to reference the rules regarding the maintenance of a list of municipalities that have approved the referendum question on games of chance.

#### *Licensed Eligible Organization Records*

For consistency with the rules regarding record requirements for raffles and daily drawings, paragraph (9) is added to § 901.464 (relating to punchboard and pull-tab records) requiring a list of winners' names and addresses for prizes in excess of \$100.

The definition of "games of chance" was broadened by section 3 of Act 195 to include daily drawings and by section 3 of Act 79 to include weekly drawings. Section 901.464a (relating to daily and weekly drawing records) is added to provide guidance regarding record keeping requirements for each of these games.

#### *Subchapter E. Prohibited Activities/Penalties*

##### *Prohibited Activities*

In accordance with section 15 of Act 195 (10 P.S. § 325), § 901.501 (relating to advertising) is amended to provide that an eligible organization may advertise prizes and values thereof in periodic publications that are limited in their circulation to members of the eligible organization.

Section 901.502(c) (relating to persons) is amended to reflect changes to section 10(d)(2) of Act 195 regarding conviction of a felony or of a violation of the Bingo Law (10 P.S. §§ 301—308.1).

Act 195 amended section 10(d)(3) by deleting the requirement that the persons conducting the games of chance be bona fide members of the club for at least 1 year. Therefore, § 901.504 (relating to persons who may conduct games) is amended to delete the 1 year requirement.

To be consistent with the prize limitation exceptions for both a daily drawing and weekly drawing in section 5(f) and (g) of Act 195 and section 5(g) and (h) of Act 79 (10 P.S. § 315(f)—(h)), §§ 901.507 and 901.508 (relating to prizes in excess of \$500; and prizes in excess of \$5,000) are amended.

Act 195 amended section 10(d)(7) regarding the use of a licensed eligible organization's premises by another licensed eligible organization. Section 901.510 (relating to use of licensed premises by more than one organization) is amended to incorporate the new statutory guidelines in this area.

Section 901.512 (relating to oral and written leases) is added to address the provisions of section 10(b.1) and (d) (5) of Act 195. Section 901.513 (relating to gambling facilities prohibited) is added to address section 10(b.4) of Act 195.

#### *Penalties*

To be consistent with the amendments to section 17 of Act 195 (10 P.S. § 327) regarding penalties for violations of the provisions of the act by eligible organizations and individuals, §§ 901.531 and 901.532 (relating to eligible organizations; and individuals) are amended.

#### *Subchapter F. Manufacturing Standards*

##### *Pull-Tab Manufacturing Standards*

Section 901.601(a) (relating to uniform minimum quality standards) is amended to correct the reference to the North American Gaming Regulations Association (N. A. G. R. A.) publication regarding manufacturing standards for pull-tab games and to provide clarity with regard to the application of the standards.

Sections 901.602 and 901.621 (relating to flares) are amended to clarify who can make a flare and who can alter a flare. Sections 901.608 and 901.627 (relating to standards for flares) are amended to clarify the rules regarding flares.

##### *Punchboard Manufacturing Standards*

Section 901.622 (relating to standards for construction) is amended by adding paragraph (1) to describe four general construction guidelines regarding the punchboard face sheet, flare, serial numbers and punches. The existing paragraphs are renumbered accordingly.

#### *Subchapter G. Operation of Games*

##### *Eligible Organization Operation of Games*

Section 901.702 (relating to prize limits) is amended to reflect various statutory revisions. The total cash value of prizes that can be awarded under special raffle permits in § 901.702(d) is amended to reflect the statutory change in section 5(d)(4) of Act 79. Subsection (e) is added to explain the prize limit exceptions for daily drawings in section 5(e)—(g) of Act 79. Subsection (f) is added to explain the prize limit exceptions for weekly drawings in section 5(g) and (h) of Act 79.

Section 901.703 (relating to place of conduct) is amended to reflect the statutory changes in section 10(b.1) and (b.2) of Act 195 regarding where games of chance can be conducted. Section 901.704 (relating to licensed premises) is amended to reflect the new statutory provisions regarding the location of games of chance in section 10(b.1) and (d)(5) of Act 195.

Section 901.705 (relating to purchase of games) is amended to incorporate the statutory change in section 10(d)(6) of Act 79 (10 P.S. § 320(d)(6)) regarding the purchase of weekly drawings.

Section 901.706 (relating to persons who may not operate or play games of chance) is amended to reflect the changes in section 10(d)(1) and (2) of Act 195 regarding persons permitted to operate or play games of chance and the conviction of a felony or of a violation of the Bingo Law.

The 1-year membership requirement in § 901.708 (relating to persons who may conduct games of chance) is deleted in accordance with the amendment to section 10(d)(3) of Act 195. Section 901.709 (relating to one eligible organization per premise) is amended to reflect section 10(b.1) of Act 195 regarding the use of a premise by more than one eligible organization. With the deletion of section 11(c) in Act 195 (10 P.S. § 321(c)) regarding the prohibition of use of a licensed premises by more than one licensed club for a special raffle permit in a calendar year, § 901.711 (relating to location for special permit raffles) is deleted.



*Punchboards and Pull-Tab Operation Procedures*

Section 901.731(b) (relating to punchboard and pull-tab operation) is amended by placing the current text in paragraph (1) and adding paragraph (2) to describe under what conditions a licensed eligible organization may alter a flare.

*Raffles*

With the removal of the restriction on sales of raffle tickets in section 10(d)(4) in Act 195, § 901.742 (relating to drawing dates) is amended to provide guidance on the new rules relating to raffle drawing dates consistent with the definition of "raffle" as amended in section 3 of Act 195.

Section 901.743(b) (relating to raffle tickets) provides that generally each part of a raffle ticket shall be imprinted with sequential numbers commencing with the number "1" through the maximum number of tickets to be sold. Subsection (b) is amended to clarify that when a raffle winner is determined by a drawing of the Pennsylvania State Lottery, the universe of eligible ticket numbers shall correspond to the universe of eligible numbers in the State Lottery drawing.

Consistent with the change to the definition of "raffle" in section 3 of Act 195, § 901.745 (relating to printing requirements) is amended to provide that dates, times and locations of the drawings shall be printed on each raffle ticket sold.

Section 901.751 (relating to ticket sales) is amended to incorporate the new rules relating to the sale of raffle tickets in a municipality located in a county other than the county in which the eligible organization is licensed in section 10(d)(8) of Act 195.

In accordance with the provisions in the definitions of "passive selection device" and "raffle" in section 3 of Act 195, § 901.753 (relating to means of determining winning numbers) is added to provide guidance in this area.

*Lotteries*

Because lotteries are no longer considered a separate game of chance but rather a type of raffle under the revisions to the definitions of "games of chance," "lottery" and "raffle" in section 3 of Act 195, §§ 901.761—901.778 are deleted.

*Daily Drawings*

Section 901.781—901.786 are added to provide guidance regarding the rules for daily drawings, which were authorized by Act 195.

*Weekly Drawings*

Sections 901.791—901.796 are added to provide guidance regarding the rules for weekly drawings, which were authorized by Act 79.

*Subchapter H. Special Raffle Permits**Special Raffle Permits*

The heading of § 901.801, currently listed as "(relating to price limit)" is corrected to reference "prize limit" and the section is amended to reflect the amendment to section 5(d)(4) of Act 79 regarding the total cash value permitted for all prizes for the calendar year.

In accordance with the deletion of paragraph (13) in section 12(a) of Act 195 (10 P. S. § 322(a)(13)), § 901.802 (relating to raffle number limit) is amended to delete the second sentence which provided that a club may hold only one raffle per month including a special permit raffle.

Section 5(d)(2) was amended by Act 195 to provide an exception to the general rule that an eligible organization shall be eligible to receive no more than two special

permits in any licensed year for volunteer fire, ambulance and rescue organizations. Section 901.803 (relating to special raffle permit limit) is amended to reflect this change. Section 901.806 (relating to required permit) is amended to clarify the special raffle permit requirements.

In accordance with section 11(a) of Act 195, § 901.807 (relating to fees) is amended to provide that the fee for the issuance of a special raffle permit shall not exceed \$25.

Section 901.811 (relating to location limits) is deleted because of the amendments to section 10(b.1) and (d)(7) of Act 195 regarding the use of a licensed premises by more than one eligible organization.

*Subchapter I. Enforcement*

Sections 901.901—901.908 are added to address specific enforcement issues.

*Affected Parties*

Manufacturers and distributors of games of chance doing business in this Commonwealth, licensing authorities and eligible organizations may be affected by the proposed rulemaking.

*Fiscal Impact*

The Department has determined that the proposed rulemaking, which provide clarification of existing policy, will have no significant fiscal impact on the Commonwealth.

*Paperwork*

The proposed rulemaking will not generate additional paperwork for the public or the Commonwealth.

*Effectiveness/Sunset Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of final-form publication. No sunset date has been assigned.

*Contact Person*

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days after the date of the publication of this notice in the *Pennsylvania Bulletin*.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 29, 2004, the Department 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 Chairpersons of the House Committee on Finance and the Senate Committee on Finance. 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 Department, the General Assembly and the Governor of comments, recommendations or objections raised.

GREGORY C. FAJT,  
Secretary

**Fiscal Note:** 15-425. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART VII. LOCAL OPTION SMALL GAMES OF CHANCE

CHAPTER 901. LOCAL OPTION SMALL GAMES OF CHANCE

Subchapter A. GENERAL PROVISIONS

DEFINITIONS

§ 901.1. Definitions.

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

\* \* \* \* \*

**Applicant**—A person who prepares and files an application.

**Application**—A form prescribed by the Department that a manufacturer, distributor or eligible organization must complete and file to obtain a license or certificate.

**Auxiliary group**—A subsidiary or affiliated organization of an eligible organization established for the purpose of aiding or assisting the eligible organization and its members in the fulfillment of the eligible organization's purposes.

\* \* \* \* \*

**Bona fide [ club ] member**—An individual who holds a [ full ] membership in the [ club ] eligible organization as defined by [ the club's ] that organization's constitution, charter, articles of incorporation or bylaws.

\* \* \* \* \*

**Civic and service association**—

(i) Any Statewide or a branch, lodge or chapter of a nonprofit National or State organization which is authorized by its written constitution, charter, articles of incorporation or bylaws to engage in a civic or service purpose within this Commonwealth, which shall have existed in this Commonwealth for 1 year.

(ii) The term also means a similar local nonprofit organization, not affiliated with a National or State organization, which is recognized by a resolution adopted by the governing body of the municipality in which the organization conducts its principal activities.

(iii) The term includes:

(A) Bona fide sportsmen's and wildlife associations, federations or clubs, Statewide or local in nature.

(B) Volunteer fire companies.

(C) Volunteer rescue squads.

(D) Volunteer ambulance associations.

(E) Bona fide senior citizens organizations.

(F) Nonprofit organizations that are recognized by a resolution adopted by the appropriate governing body and which are established to promote and encourage participation and support for extracurricular activities within the established primary and secondary public, private and parochial school systems.

**Club**—[ An entity which has been in existence and fulfilling its purposes for 2 years prior to the date of application for a license and is one of the following:

(i) An incorporated unit of a national veterans' organization, as defined in section 461.1 of the Liquor Code (47 P. S. § 4-461.1), and licensed to sell liquor at retail under that act.

(ii) A club, as defined in section 102 of the Liquor Code (47 P. S. § 1-102), that qualifies as an exempt organization under section 501(c) or 527 of the Internal Revenue Code (26 U.S.C.A. § 501(c) or § 527), and is licensed to sell liquor at retail and has a charitable, religious or civic purpose or is organized to benefit a political party.

(iii) An organized fraternal society created and carried on for the mutual benefit of its members, not-for-profit and not issuing capital stock, having a limited membership and a representative form of government and licensed to sell liquor at retail under the Liquor Code (47 P. S. §§ 1-101—8-803).

(iv) A not-for-profit religious organization conducting business under the express purpose of a written constitution, charter, articles of incorporation or bylaws.

(v) A charitable organization conducting business under the express purpose of a written constitution, charter, articles of incorporation or bylaws.

(vi) A volunteer fire company.

(vii) A volunteer rescue squad.

(viii) A volunteer ambulance association. ] A club, as defined in section 102 of the Liquor Code (47 P. S. § 1-102), that qualifies as an exempt organization under section 501(c) or 527 of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c) or § 527) and is licensed to sell liquor at retail and has a charitable, religious or civic purpose or is organized to benefit a political party.

**Daily drawing**—

(i) A game in which a bona fide member selects or is assigned a number in exchange for consideration for a chance at a prize with the winner determined by a random drawing to take place on the eligible organization's premises during the same operating day that the chances for the drawing are sold.

(ii) The term includes games commonly known as "member sign-in lotteries" and "half-and-half lotteries."

**Deal**—[ Pull-tab tickets of a game bearing the same serial number as well as a flare for the game. ] A set of pull-tabs bearing the same serial number.

\* \* \* \* \*

**Dispensing machine**—

(i) A device designed exclusively for the dispensing of games of chance authorized by the act, including ticket jars, fish bowls and stamp machines.

(ii) The term does not include any device commonly known as a "slot machine" or "video poker."

*Distributor*—A person who purchases or otherwise obtains [ **small** ] games of chance, including [ **lottery tickets,** ] punchboards or pull-tabs, from a manufacturer and sells or otherwise furnishes the [ **small** ] games of chance, with or without merchandise to be awarded as prizes in connection therewith, to another person for the resale, display or operation of the [ **small** ] games of chance by [ **a club** ] a licensed eligible organization.

*Distributor's representative*—

(i) A natural person who represents a distributor in connection with the sale or furnishing of [ **small** ] games of chance for use in authorized activities.

(ii) The term includes the distributor's sales personnel.

(iii) The term does not include warehouse personnel, delivery personnel and other [ **employees** ] employees who only have incidental contact with customers.

*Eligible organization*—An organization that meets all of the following:

(i) Nonprofit.

(ii) Charitable organization, religious organization, fraternal organization, veterans organization, club or civic and service association.

(iii) In existence and fulfilling its purposes for 1 year prior to the date of application for a license.

*Flare*—[ Sets forth the number of tickets and prizes contained in a deal, as well as the winning numbers, colors and symbols. ] A card, graphic, illustration or other document that accompanies a deal or punchboard and satisfies all of the following:

(i) Sets forth the number of pull-tabs or punches in a pull-tab game or punchboard.

(ii) Describes the nature of and rules for conducting a pull-tab game or punchboard.

(iii) Sets forth the winning numbers, colors and symbols and prizes to be won in a pull-tab game or punchboard.

*Fraternal organization*—A branch, lodge or chapter of a National or State nonprofit organization with its branch, lodge or chapter located within this Commonwealth that is created and carried on for the mutual benefit of its members, has a limited membership and representative form of government.

*Games of chance*—[ **Punchboards, lotteries** ]

(i) The following games: punchboards, daily drawings, weekly drawings, raffles and [ **pull-tabs** ] pull-tab games.

(ii) The term includes all of the parts, accessories and items necessary to play the games. The term also includes dispensing machines and passive selection devices.

(iii) The term does not include a game played by or with the assistance of mechanical, electronic or electrical devices or media [ **. The term does not include** ] or a game in which the particular chance taken by a person in the game is made contingent upon another occurrence or the winning of another contest. [ **The term includes a game in which the chance is determined solely at the discretion of the purchaser.** ]

(iv) This paragraph will not be construed to authorize another form of gambling currently prohibited under 18 Pa.C.S. (relating to the Crimes Code).

(v) The term does not include games commonly known, as "slot machines" or "video poker."

*Hold ticket*—A ticket in a subset of pull-tabs in a deal or punches in a punchboard one or more of which are designated in advance as a winning tab or punch for a specific prize. The winning ticket or tickets are revealed after all hold tickets are purchased. Hold tickets are typically used in conjunction with seal cards.

\* \* \* \* \*

[ *Legitimate club purposes*—

(i) One or more of the following:

(A) Benefiting persons by enhancing their opportunity for religious or education advancement, by relieving or protecting them from disease, suffering or distress, by contributing to their physical, emotional or social well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded.

(B) Initiating, performing or fostering worthy public works or enabling or furthering the erection or maintenance of public structures.

(C) Lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people.

(D) Improving, expanding, maintaining or repairing real property owned or leased by a club and used for purposes specified in clauses (A)—(C).

(ii) The term does not include the erection or acquisition of real property, unless the property will be used exclusively for one or more of the purposes specified in this paragraph. ]

*License*—A document issued by:

(i) The Department, upon application, to a distributor authorizing the distributor to purchase games of chance from a registered manufacturer and sell games of chance in this Commonwealth to licensed eligible organizations, also known as a distributor's license.

(ii) A licensing authority, upon application, to an eligible organization authorizing the eligible organization to purchase games of chance from licensed distributors and conduct games of chance in this Commonwealth, also known as a small games of chance or games of chance license.

*Licensed premises*—The specific location upon which a licensed eligible organization is authorized to conduct games of chance.

*Licensee*—A distributor or eligible organization that has been issued a license.

\* \* \* \* \*

*Limited occasion license*—A license issued by a licensing authority to an eligible organization authorizing the organization to conduct games of chance on a limited basis.

**[ Lottery—**A game in which a bona fide club member or guest selects a number for a chance at a prize with the winner determined by a random drawing to take place on the licensed premises. The term includes games commonly known as “member sign-in lotteries” and “half-and-half lotteries.” This part will not be construed to permit lotteries which are conducted at locations other than the licensed premises, nor does the term include a game or contest in which the winning number is determined by another drawing or event, except that winning numbers may be determined by reference to drawings conducted by the Department under the State Lottery Law (72 P. S. §§ 3761-1—3761-15). ]

*Manufacturer—*

(i) A person who assembles from raw materials or subparts a completed [ **small** ] game of chance for use in authorized activities, [ **including punchboards and pull-tabs,** ] and who sells or otherwise furnishes the same to a licensed distributor.

(ii) The term does not include printers of **only raffle, daily drawing or weekly drawing** tickets.

**Manufacturer registration certificate or certificate—**A document issued by the Department, upon application, to a manufacturer authorizing the manufacturer to produce games of chance that have been approved by the Department and to sell those games to licensed distributors.

*Manufacturer's representative—*

(i) A natural person who represents a manufacturer in connection with the sale or furnishing of [ **small** ] games of chance for use in authorized activities.

(ii) The term includes the manufacturer's sales personnel.

(iii) The term does not include warehouse personnel, delivery personnel and other [ **employees** ] employees who only have incidental contact with the customers.

\* \* \* \* \*

**Nonoperating day—**A period of time equivalent to an eligible organization's operating day except that the eligible organization is closed to normal activities or to its members during that period of time.

**Normal business or operating site—**The location at which an eligible organization conducts its activities as permitted and enumerated in its constitution, charter, articles of incorporation, bylaws or other document of formation.

**Office of Attorney General—**The Attorney General of the Commonwealth.

**Operating day—**The period of time during any 24 hour period during which an eligible organization conducts its normal activities or holds itself open to its members.

**Operating week—**Seven consecutive operating days or nonoperating days.

**Passive selection device—**A device that is used to hold or denote all of the possible winning numbers or entrants in a daily drawing, weekly drawing or raffle. The device may not have the capability of being utilized to conduct or aid in unauthorized or illegal forms of gambling.

\* \* \* \* \*

**Petition—**A written statement of facts, under oath, submitted by one of the following:

(i) [ **An initial or renewal applicant for registration or licensure** ] A manufacturer or distributor who disagrees with the Department's decision to deny [ **the** ] or refuse to renew its application.

(ii) A [ **A registrant or licensee** ] registered manufacturer or licensed distributor who disagrees with the Department's decision to revoke his [ **registration** ] certificate or license.

**Petitioner—**[ **An applicant, licensee or registrant** ] A manufacturer or distributor who files a petition.

**Public interest purposes—**

(i) Any of the following:

(A) Benefiting persons by enhancing their opportunity for religious or education advancement, by relieving or protecting them from disease, suffering or distress, by contributing to their physical, emotional or social well-being, by assisting them in establishing themselves in life as worthy and useful citizens or by increasing their comprehension of and devotion to the principles upon which this nation was founded.

(B) Initiating, performing or fostering worthy public works or enabling or furthering the erection or maintenance of public structures.

(C) Lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people.

(D) Improving, expanding, maintaining or repairing real property owned or leased by an eligible organization and used for purposes specified in clauses (A)—(C).

(ii) The term does not include the erection or acquisition of any real property, unless the property will be used exclusively for one or more of the purposes specified in this definition.

**Pull-tab—**A single folded or banded ticket or a strip ticket or card with a face covered to conceal one or more numbers or symbols, where one or more tickets or cards in each deal has been designated in advance as a winner. [ **The term includes a ticket sold in a device known as a ticket-jar, fish-bowl or stamp machine.** ]

**Pull-tab game—**A deal and its corresponding flare.

**Punch—**A crimped strip of paper or similar material that is enclosed in a punchboard receptacle and contains either a winning or losing number or symbol printed on one side and a serial number printed on the other.

**Punchboard—**A board, placard or other device [ **marked off in a grid or columns, in which each section contains a hidden number or other symbol, which determines the winning chances, if the following exist:**

(i) A specific serial number is assigned to the punchboard and printed on each punch.

(ii) A flare or face sheet covers the receptacles and sets out the winning numbers or symbols and prizes which may be won.

(iii) Upon the payment of consideration, a player may select and remove a punch from a receptacle.

(iv) A prize is awarded if the number or symbol set out on the selected punch matches a predetermined winning symbol on the flare or face sheet. ] comprised of receptacles, usually laid out in a grid or column pattern, that each contain a hidden punch or punches, and its corresponding flare. Upon the payment of consideration, a player may select and remove the punches contained in a receptacle. A prize is awarded to a player who selects a receptacle containing a punch with a predetermined winning number or symbol.

Raffle—

(i) A game in which a participant buys a ticket for a chance at a prize with the winner determined by a random drawing of corresponding ticket stubs to take place at a location and date or dates printed upon each ticket.

(ii) The term includes lotteries but not daily or weekly drawings.

(iii) The term does not include the [ playing ] paying of money or merchandise at roulette wheels, at cards, dice, other tables or another form of gambling not specifically authorized by law.

Registrant—A manufacturer who is issued a manufacturer registration certificate.

Registration—The process of applying to the Department for a manufacturer registration certificate.

\* \* \* \* \*

Responsible person—A person who is connected or associated with [ a club ] an eligible organization, distributor or manufacturer in a manner that meets at least one of the following criteria:

\* \* \* \* \*

(ii) Has the control, receipt, custody or disposal of the [ small ] games of chance proceeds.

(iii) Has the control, receipt, custody and disposal of available cash on hand or other quick or liquid assets or pays the liabilities of the [ club ] eligible organization, manufacturer or distributor.

(iv) Has the duty, power or authority to do one of the following:

\* \* \* \* \*

(D) Direct the payment of the [ entities ] entity's liabilities.

\* \* \* \* \*

(F) Direct the disposition and use of [ small ] games of chance proceeds.

\* \* \* \* \*

(J) Direct the transaction involved with the sale, manufacture or use of [ small ] games of chance.

(v) Is [ a club ] an eligible organization's manager, officer, director or bar personnel involved with the conduct of [ small ] games of chance.

Seal card—A flare for a pull-tab game or punchboard containing hold tickets that designates, among the other winning tickets in the

pull-tab game or punchboard, the winning hold ticket numbers or symbols each of which are concealed by a paper cover typically referred to as a seal.

\* \* \* \* \*

Special raffle permit—A document issued by a licensing authority to a licensed eligible organization that authorizes the eligible organization to conduct a raffle with prize limits exceeding the standard prize limits for raffles.

\* \* \* \* \*

State Lottery Law—The State Lottery Law (72 P. S. §§ 3761-101—3761-2102).

Veterans organization—

(i) A Congressionally chartered organization within this Commonwealth, or any branch or lodge or chapter of a nonprofit National or State organization within this Commonwealth, the membership of which consists of individuals who were members of the armed services or armed forces of the United States.

(ii) The term includes home associations.

Weekly drawing—A game in which a bona fide member selects or receives a number or numbers in exchange for consideration during an operating week for a chance at a prize with the winner determined by a random drawing to take place on the eligible organization's premises on the last operating day of the eligible organization's operating week.

GENERAL APPLICABILITY

§ 901.21. Applicability.

(a) This part applies to manufacturers and distributors [ of small ] who sell or intend to sell games of chance in this Commonwealth and to [ clubs ] eligible organizations located in municipalities within this Commonwealth which have adopted the act by an affirmative vote in a municipal referendum under the act.

(b) To provide uniform practices, procedures and standards, the following enumerated sections of this part are promulgated for the benefit of and suggested use by the licensing authorities: §§ 901.28, 901.31, 901.51(b), 901.185(b), 901.192, 901.193, 901.196, 901.212—901.219, 901.401—901.407, 901.467 and 901.807. The governing body of each county, on behalf of its licensing authority, shall adopt the sections by independent act for the sections to have legal force and effect.

§ 901.22. [ Use of proceeds ] (Reserved).

[ The proceeds of small games of chance conducted by a club may not be used for the benefit of a person other than the club conducting the activity. Proceeds may only be used for legitimate club purposes as defined in this part or the act. ]

§ 901.23. Restriction of sales.

(a) [ A person may not sell, offer for sale or furnish games of chance for use in this Commonwealth except to a club or distributor licensed under the act and this part.

(b) Games of chance, other than a raffle conducted with a special permit, sold or offered for sale or furnished for use in this Commonwealth

may not contain, permit, depict or designate a prize having a cash value in excess of \$500. ] *Manufacturers.*

(1) *Registration.* A manufacturer shall register with the Department and obtain a manufacturer registration certificate to sell, offer for sale or furnish games of chance for use in this Commonwealth. This paragraph does not apply to manufacturers that only sell, offer for sale or furnish raffle, daily drawing or weekly drawing tickets for use in this Commonwealth.

(2) *Sales.* A registered manufacturer may only sell, offer for sale or furnish games of chance that have been approved by the Department for sale in this Commonwealth. A registered manufacturer may only sell, offer for sale or furnish approved games of chance for sale in this Commonwealth to a licensed distributor. This paragraph does not apply to the sale of raffle, daily drawing or weekly drawing tickets.

(3) *Sales invoice.* A registered manufacturer selling to a licensed distributor shall indicate on the sales invoice the games of chance that the Department has approved for sale in this Commonwealth.

(b) *Distributors.*

(1) *Licensure.* A distributor shall apply for and obtain a distributor license to sell, offer for sale or furnish games of chance in this Commonwealth. This paragraph does not apply to distributors that only sell, offer for sale or furnish raffle, daily drawing or weekly drawing tickets.

(2) *Sales.* A licensed distributor may only sell, offer for sale or furnish approved games of chance for use within this Commonwealth to another licensed distributor or a licensed eligible organization. This paragraph does not apply to the sale of raffle, daily drawing or weekly drawing tickets.

(3) *Purchase.* A licensed distributor may only purchase approved games of chance for resale in this Commonwealth from a registered manufacturer or licensed distributor. This paragraph does not apply to the purchase of raffle, daily drawing or weekly drawing tickets.

(c) *Eligible organizations.*

(1) *Licensure.* An eligible organization shall apply for and obtain a games of chance license before purchasing games of chance for use in this Commonwealth.

(2) *Purchase.* A licensed eligible organization may not purchase or lease games of chance for use in this Commonwealth except from a licensed distributor. This paragraph does not apply to the purchase of raffle, daily drawing or weekly drawing tickets.

§ 901.24. [ Enforcement ] (Reserved).

[ (a) *District attorney.* The district attorney will investigate alleged violations of the act. If the district attorney finds probable cause that a violation has occurred, he may file a complaint against the alleged violator in the court of common pleas of the county, except in counties of the first class, where the complaint may be filed in the municipal court. The district attorney will prosecute the complaint in the manner provided by law.

(b) *Other law enforcement officials.* The power of State, county or local enforcement officials to conduct an investigation and enforce the act and this part is not restricted. ]

§ 901.25. Vested rights.

[ A license issued by the county or a license or registration issued by the Department will not be construed as granting a vested right in the privileges so conferred. ] A certificate or license confers only a privilege on the holder. A certificate or license confers no vested right in the privilege so conferred.

§ 901.26. Background checks.

(a) As a condition precedent to the issuance of a license or [ registration ] certificate, the licensing authority or Department may require background checks on a person seeking a license or for whom [ registration ] a certificate is sought, or [ employees ] employees thereof, or of a person participating as an [ employe ] employee who will be involved in the operation of [ small ] games of chance or a person with equity ownership of 10% or more.

(b) The applicant or the person for whom a license or [ registration ] certificate is requested shall cooperate with the licensing authority or Department and shall assist in its investigation.

§ 901.28. Inspection of premises.

(a) Licensed premises, or premises relating to or being used for activities conducted under the act and this part by a licensed [ club ] eligible organization, registered manufacturer or licensed distributor shall be open to inspection by the [ county, ] licensing authority and the Department or their authorized representatives [ and other law enforcement officials, ] but the inspection shall:

\* \* \* \* \*

(2) Take place [ at times ] only when a reasonable belief exists that a violation of the act or this part [ exist ] has occurred, is occurring or will occur.

(3) Be limited to the inspection of matters, areas and records associated with games of chance to insure compliance with the act and this part.

(b) The Department [ reserves ] and the licensing authority, or their authorized representatives, reserve the right to enter and make [ the ] annual inspections [ annually ].

§ 901.30. Prohibited practices, contracts, gifts [ , ] and the like.

\* \* \* \* \*

(b) A manufacturer, distributor or representative thereof may not sell to or solicit from a person an order for a [ small ] game of chance contingent upon that person or another purchasing or ordering some other [ small ] game of chance.

(c) [ Prices charged by manufacturers, distributors and clubs for goods and services may not be fixed by agreement. A manufacturer, distributor or club, by express or implied agreement with another manufacturer, distributor or club, may not fix the price at which a small games of chance prize or

another item used in connection with the small games of chance activities shall be sold, or for which services in connection therewith shall be rendered. The price of these items in the competitive market place shall be established by each manufacturer, distributor or club for the products and services offered by each and may not be established, directly or indirectly, in concert with one another. ] A manufacturer, distributor or licensed eligible organization may not fix by express or implied agreement with another manufacturer, distributor, eligible organization or any other person, the prices charged for games of chance or goods, prizes or services sold or rendered in connection with games of chance.

§ 901.31. Examination of records.

[ (a) The ] In addition to the examination of records authorized during an inspection of the premises, the Department or [ county ] licensing authority is authorized to examine the reports, books, accounts and records, and the inventory of [ small games of chance of ] a licensed distributor, registered manufacturer, [ their representative or clubs ] licensed eligible organization or their representatives. Every [ person ] manufacturer, distributor or eligible organization is directed and required to give to the Department [ , ] or [ county ] licensing authority, or their authorized representative the means, facilities and opportunity for the examinations.

[ (b) The district attorney may require licensed clubs, manufacturers and distributors or their representatives, to produce the books, accounts and records relating to small games of chance to determine whether a license should be revoked, suspended or renewal thereof be denied.

(c) Licensees and registrants, upon a reasonable request, shall also produce the books, accounts and records relating to small games of chance to other law enforcement officials. ]

§ 901.32. Ownership of [ small ] games of chance.

[ A small game of chance play or ticket is owned by the physical possessor of the ticket ] The physical possessor of a game of chance play or ticket is the owner of the play or ticket until a name is imprinted or placed upon [ the play or ticket ] it. When a name is placed upon the play or ticket, the person whose name appears on the play or ticket is the owner and is entitled to a prize attributable to it [ and is the owner of the play or ticket ].

§ 901.34. Disputes.

If a dispute occurs about whether [ the ] a play or ticket is a winning play or ticket and the dispute cannot be resolved through normal verification procedures or other appropriate means the [ club ] licensed eligible organization may retain the play or ticket and replace it with an equivalent play or ticket in a like game of chance. This is the exclusive remedy of the owner of the play or ticket. Detailed records regarding the dispute, the reasons for the dispute and the play or ticket shall be maintained by the [ club ] eligible organization for a minimum of 2 years from the date the dispute arose.

§ 901.35. Termination of [ small ] games of chance.

[ The club ] A licensed eligible organization may announce a termination date at which point no further plays or tickets may be sold, and a date by which all claims or prizes [ will ] shall be made. This date may not be less than 30 days after the last date for play of the game being terminated.

§ 901.36. Federal withholding and reporting requirements.

A licensed [ club ] eligible organization is responsible for complying with Internal Revenue Service rules for reporting and withholding on gambling and lottery winnings.

§ 901.37. State withholding and reporting requirements.

A licensed [ club ] eligible organization is responsible for complying with Commonwealth rules for reporting and withholding on gambling and lottery winnings.

§ 901.38. Commonwealth resident designee.

A person [ seeking registration or licensing ] applying for a certificate or distributor's license under the act or this part is required to designate a person and location within this Commonwealth for purposes of service of process and the person shall agree to submit to the jurisdiction of the courts of the Commonwealth and law enforcement officials of the Commonwealth and its subdivisions.

§ 901.40. Prohibition of gambling facilities.

(a) A person, corporation, association, partnership or other business entity may not offer for rent or offer for use a building or other facility to be used exclusively for conducting games of chance.

(b) A licensed eligible organization may not lease, under any terms, a facility or building which is used exclusively for conducting games of chance.

§ 901.41. Operating days, nonoperating days and operating weeks.

(a) An operating day or a nonoperating day may not exceed 24 consecutive hours. An operating day or a nonoperating day may not overlap with any other operating day or nonoperating day.

(b) An operating day may extend from 1 calendar day to another so long as the eligible organization's normal activities or business hours extend from 1 calendar day to another. For example, an eligible organization's operating day may begin at 9 a.m. and end at 3 a.m. the following calendar day (that is, 18 consecutive hours over 2 calendar days).

(c) If an eligible organization operates on a 24 hour-a-day basis, the eligible organization's operating day shall be any consecutive 24-hour period as chosen by the organization. For example, an eligible organization could choose its operating day to be from 9:01 a.m. to 9 a.m. the following calendar day or from 12:01 a.m. to midnight on the same calendar day.

(d) An operating week shall consist of 7 consecutive, reoccurring operating or nonoperating days.

(e) An eligible organization shall choose its operating day and week and report them on its license application.

(f) A licensed eligible organization may change its operating day and week. The eligible organization shall amend its license before the new operating day or week becomes effective.

ADMINISTRATION

§ 901.51. Power and duties.

(a) The Department has the power and authority granted to it by the Legislature under the act, including the power and authority to do the following:

(1) Review the tax status of an applicant for [ registration or licensure by the Department ] a certificate or distributor license.

\* \* \* \* \*

(4) Establish procedures by which manufacturers may apply for a certificate and distributors [ of games of chance ] may apply for [ registration and ] licensure.

\* \* \* \* \*

(6) [ Provide ] Prescribe procedures for the suspension or revocation of [ distributor ] licenses [ or manufacturer ] and certificates for violations of the act or this title.

(7) Prescribe the form to be used by the licensing authority to license [ clubs ] eligible organizations.

(8) Conduct investigations prior to licensure and registration [ and determine that ] to ensure compliance with the requirements and prohibitions of the act and this part [ are being complied with ]. [ Violations are grounds for revocation, suspension and denial of licensure or registration as provided elsewhere in this part. ]

(9) Collect a fee for the issuance of a manufacturer registration certificate or distributor license.

(10) Initiate legal proceedings, in law or equity, before any court or tribunal, for purposes of administering or enforcing the provisions of the act or this part.

(11) Notify the Office of Attorney General of violations of the act and this part and request the Attorney General to initiate legal proceedings, criminal or civil, legal or equitable, to enforce the provisions of the act and this part.

(12) Do other matters necessary or desirable for the efficient operation and administration of [ small ] games of chance and to carry out the act and this part.

(b) [ The ] Although not limited to the following, the licensing authority has the power and duty to [ do the following ]:

(1) Issue special raffle permits.

(2) License [ clubs ] eligible organizations upon application to conduct and operate games of chance after the games have been approved in a municipal referendum.

(3) Send to the Department a [ copy ] list, on a semiannual basis, of the [ names of the licensees to the Department ] eligible organizations licensed to conduct games of chance.

(4) Collect a fee for the issuance of a games of chance license to eligible organizations. Establish and collect a fee not to exceed \$25 for the issuance of special raffle permits.

\* \* \* \* \*

(7) Initiate legal proceedings, in law or equity, before any court or tribunal, for purposes of administering or enforcing the provisions of the act or this part.

[ (c) The district attorney and other law enforcement officials have the power to do the following:

(1) Require licensees to produce books, accounts and records.

(2) Investigate alleged violations of the act or this part.

(3) File complaints against the alleged violator in the appropriate court.

(4) Prosecute complaints in the manner provided by law. ]

§ 901.52. Administrative entity.

The Department will carry out its powers provided in the act or this part through the Bureau of Business Trust Fund Taxes—[ Registration ] Miscellaneous Tax Division. The administrative entity may be changed by notice published in the *Pennsylvania Bulletin*.

Subchapter B. LICENSING AND REGISTRATION  
MANUFACTURER REGISTRATION

§ 901.101. Manufacturer registration and game approval required.

[ A person may not sell or otherwise furnish games of chance to a distributor in this Commonwealth unless that person is currently registered by the Department under this chapter. ]

(a) A person shall be registered with the Department and possess a manufacturer's registration certificate to sell or otherwise furnish games of chance to licensed distributors within this Commonwealth.

(b) A registered manufacturer may not sell a game of chance in this Commonwealth to a licensed distributor until the Department has approved it.

(c) If a registered manufacturer modifies an approved game of chance in any substantial way so that the nature or identity of the game is changed, the rules of the game change or the prizes or payouts change, the game of chance must be considered a new game of chance and be submitted for approval.

§ 901.102. Registration and game approval forms.

(a) A person seeking a manufacturer registration [ as a manufacturer ] certificate shall submit [ one copy of a ] to the Department an application form [ provided ] as prescribed by the Department. [ A registered manufacturer seeking to renew registration shall submit the same form but indicate in the appropriate box that the request is for renewal. The form shall be completed in full and will not be considered to be received until it has been completed in full. ]



(b) A person seeking an approval of a game of chance shall submit its request for approval to the Department on a form prescribed by the Department.

(c) The application forms referenced in subsections (a) and (b) shall be completed in full and will not be considered to be received until completed in full.

§ 901.103. Manufacturer registration application form contents.

An application for registration as a manufacturer of [small] games of chance shall contain at a minimum the following information:

\* \* \* \* \*

(5) A complete list or catalogue of all [small] games of chance to be manufactured.

\* \* \* \* \*

(8) Pennsylvania tax information, [if otherwise required under Pennsylvania law] including:

\* \* \* \* \*

(12) A notarized affidavit for each dispensing machine sold or offered for sale in this Commonwealth indicating that the dispensing machine complies with the act and this part. A form affidavit will be available from the Department.

(13) Other documents as identified in the application materials.

§ 901.103a. Change of application information.

A manufacturer shall report any changes to the information supplied in its application to the Department within 15 days of the change.

§ 901.104. Waiver of confidentiality.

[An applicant] By filing an application for the grant [or renewal] of a manufacturer registration [by the filing of an application insofar as it relates to the Department] certificate, the applicant waives confidentiality with respect to Commonwealth tax information in the possession of the Department, the Office of Attorney General or the Department of Labor and Industry regarding the applicant, regardless of the source of that information, and consents to the provision of that information to the Department by the Office of Attorney General or the Department of Labor and Industry.

§ 901.106. Registration term.

[The registration certificate is valid through the following March 31.] A registration term must begin on April 1 and end on March 31 of the succeeding year. A certificate issued during a registration term is only valid from the date of issuance to the end of the registration term.

§ 901.107. Annual [renewal] applications.

[A registered manufacturer shall renew its registration annually by March 31.] A registered manufacturer should file an application for a certificate 60 days prior to the expiration date of its existing certificate in order to ensure that the manufacturer's registration with the Department is not interrupted.

§ 901.108. Registration number.

[A manufacturer will be assigned an identification number which shall be referred to as a registration number. The name and registration number of the manufacturer shall appear on all orders, documents and other paperwork, and the like, involved with or related to the sale, offer for sale or other provision of small games of chance.] The Department will assign a registration number and issue a certificate to each manufacturer that it approves for registration. The registered manufacturer shall place the registration number on all documents used in any transactions under the act or this part.

§ 901.109. [Registration certificate] Certificate.

The [registration] certificate issued [shall] must be conspicuously displayed on the premises of the manufacturer.

§ 901.110. Duplicate [registration] certificate.

If a [registration] certificate is defaced, destroyed or lost, the Department may issue a duplicate to the holder of the certificate upon submission of a duplicate [registration] application form. A \$100 fee will be charged for the duplicate [registration] certificate.

§ 901.111. Transfer.

[The transfer or assignment of a manufacturer's registration] A manufacturer is prohibited from transferring or assigning its certificate.

§ 901.112. [Prohibited sales] (Reserved).

[Manufacturers of small games of chance are prohibited from selling or otherwise furnishing small games of chance to a person not licensed as a distributor unless the manufacturer is also a licensed distributor in which case the manufacturer may sell or otherwise provide small games of chance to licensed clubs.]

§ 901.113. Representatives of manufacturer.

[ (a) A representative of a small games of chance manufacturer may sell to only a licensed distributor.

(b) ] A representative of a manufacturer acts as an agent of the manufacturer in activities conducted under the manufacturer's registration certificate.

§ 901.114. Dissolutions, terminations, mergers and bankruptcies.

(a) [The] A manufacturer shall notify the Department in writing within 10 days of one or more of the following actions on the part of [a registered] the manufacturer:

\* \* \* \* \*

(2) [A notice of the decision to dissolve is required if filing is not required.

(3) ] The filing of a petition in bankruptcy or receivership by the manufacturer.

[ (4) ] (3) \* \* \*

[ (5) ] (4) \* \* \*

(b) A notice of the decision to dissolve is required even if filing is not required.

§ 901.117. Denial [ of application, revocation, suspension or refusal to renew manufacturer's registration ] suspension and revocation.

(a) *Manufacturer registration certificate.* The Department [ has the power to deny the application or suspend, revoke or refuse to renew the registration of a manufacturer, ] may deny an application for a certificate or suspend or revoke a certificate if the manufacturer or a person required to be identified in the application form commits one or more of the following acts:

\* \* \* \* \*

(2) Has failed to comply with or engaged in an activity prohibited by the act or this part.

\* \* \* \* \*

(4) Has been convicted of, forfeited bond upon a charge of or pleaded guilty or nolo contendere to one of the following:

\* \* \* \* \*

(vi) A crime, whether a felony or a misdemeanor, involving a gambling activity or a felony involving [ , ] moral turpitude.

\* \* \* \* \*

(5) Has refused to permit an inspection of its records or premises under one of the following:

(i) Section 901.28 (relating to inspection of premises) or § 901.31 (relating to examination of records).

\* \* \* \* \*

(9) Sells or offers for sale in this Commonwealth a game of chance that has not been approved by the Department as provided for in this part.

(b) *Game of chance approval.* The Department may deny an application for a game of chance approval and may suspend or revoke an approved game of chance if the game of chance fails to meet the requirements of the act or this part.

(c) *Suspensions.*

(1) A suspension of a certificate or a game of chance approval is issued for violations enumerated in subsection (a) or (b), as applicable, that have not substantially harmed the public and can be timely remedied.

(2) A suspension period may not exceed 30 days, unless the manufacturer requests an extension, in writing, and the Department approves the extension.

(3) The Department will lift a suspension when the manufacturer has demonstrated compliance.

(4) If the Department determines that the manufacturer is still in violation under subsections (a) or (b), as applicable, by the end of the suspension period, the Department will revoke the certificate or game approval as applicable.

(5) There is no right to appeal a suspension.

(d) *Notice.*

(1) The Department will issue a written notice of a denial, suspension, lifting of suspension or revocation. The notice will provide:

- (i) The issue date of the notice.
- (ii) The action taken by the Department.
- (iii) The reason for the action.
- (iv) The manufacturer's appeal rights.

(2) The Department will serve the notice by certified or first-class mail.

(3) The Department will mail the notice to the manufacturer's Commonwealth resident designee.

§ 901.117a. Registration following revocation.

Unless otherwise provided by the act or this part:

(1) A manufacturer whose certificate is revoked is ineligible to apply for and receive another certificate for the remaining registration term or 6 months, whichever is longer.

(2) For a second revocation, the manufacturer is ineligible to apply for and receive another certificate for the remaining registration term as well as the following registration term.

(3) For a third and subsequent revocation, the manufacturer is ineligible to apply for and receive another certificate for 30 months.

§ 901.119. Raffle, daily drawing and weekly drawing ticket manufacturers.

This section [ does ] and §§ 901.101—901.118 do not apply to the manufacturers [ of ] who only produce and sell raffle, daily drawing and weekly drawing tickets.

DISTRIBUTOR LICENSING

§ 901.131. Distributor license requirement.

[ A person may not sell, offer for sale or otherwise furnish small games of chance to licensed clubs in this Commonwealth unless the person is currently licensed by the Department under this section and §§ 901.132—901.153. ] A person shall be licensed by the Department and possess a license to sell, offer for sale or otherwise furnish games of chance to licensed eligible organizations in this Commonwealth.

§ 901.132. License application form.

[ A person seeking licensure as a distributor shall submit one copy of a form prescribed by the Department. A licensed distributor seeking to renew a license shall submit the same form but indicate in the appropriate block that it is a renewal request. ] For a distributor to obtain a license to sell games of chance in this Commonwealth, the distributor shall submit a license application to the Department in the form prescribed by the Department. The application form shall be completed in full and will not be considered to be received until it has been completed in full.

§ 901.133. Distributor license application form contents.

The application form shall include the following:

\* \* \* \* \*

(5) A list of all types of [ small ] games of chance to be distributed.

\* \* \* \* \*

**§ 901.133a. Change of application information.**

A distributor shall report any changes to the information supplied in its application to the Department within 15 days of the change.

**§ 901.136. License term.**

[The distributor license is valid through the following April 30.] A license term must begin on June 1 and end on May 31 of the succeeding year. A license issued during a license term is only valid from the date of issuance to the end of the license term.

**§ 901.137. Annual [renewal] application.**

[A licensed distributor shall renew its license annually by April 30.] A licensed distributor should file an application for a license 60 days prior to the expiration date of its existing license in order to ensure that the distributor's licensure with the Department is not interrupted.

**§ 901.138. License number.**

[Every distributor will be assigned an identification number which shall be referred to as a license number. The name and license number of the distributor shall appear on all orders, documents or other paperwork, and the like, involved with or related to the sale, offer for sale or other provision of small games of chance.] The Department will assign a license number and issue a license to each distributor it approves for licensure. A licensed distributor shall place its business name and license number on all documents used in any transaction under this part.

**§ 901.139. License [certificate].**

The license [certificate shall] must be conspicuously displayed at all times at the place of business of the person licensed.

**§ 901.140. Duplicate license.**

Whenever a license [certificate] is defaced, destroyed or lost, the Department may issue a duplicate to the holder of the license upon submission of a duplicate License Application Form. A \$100 fee will be charged for the duplicate license [certificate].

**§ 901.141. Transfer.**

[The transfer or assignment of a distributor licensed] A licensed distributor is prohibited from transferring or assigning its license.

**§ 901.142. [Representatives of distributors] Distributor's representative.**

[ (a) A representative of a small games of chance distributor shall sell only to licensed clubs.

(b) A distributor's representative [of a distributor] acts as an agent of the licensee in activities conducted under the distributor's license [certificate].

**§ 901.143. Restrictions on distributorship interest.**

(a) [An] A licensed eligible organization [which is licensed to conduct games of chance] may not be a distributor.

(b) A person who is an officer, director, proprietor, consultant, [employee] employee or owner of a dis-

tributorship may not have a pecuniary interest in the operation of [small] games of chance.

(c) A distributor or person who has a financial interest in a distributorship may not be a lessor of premises, directly or indirectly, to a [club] licensed eligible organization.

**§ 901.144. Restrictions of distributor [employees] employees.**

(a) An [employee] employee of a distributorship may not be an [employee] employee, consultant or volunteer of a licensed [club] eligible organization unless the [employee] employee has first made a full written disclosure of the [employee's] employee's distributorship employment to the [club] eligible organization.

\* \* \* \* \*

(c) An [employee] employee of a distributorship may not play games of chance at the site of a [club] licensed eligible organization if that [club] eligible organization is a customer of the distributorship.

(d) A Department [employee] employee assigned to the bureau responsible for administering the act or this part may not have an interest in a distributor licensed under the act or this part.

**§ 901.146. Sales promotion.**

A distributor may not use as a sales promotion a statement, demonstration or implication that a certain portion of a deal [of small games of chance tickets] contains more winners than other portions of the [set] deal or that a [set] game of chance may be played by a [club] licensed eligible organization in a particular manner that would give the organization an advantage in selling more [of the small games of chance] chances before having to pay out winners.

**§ 901.147. Fixed prices.**

A distributor may not enter into an express or implied agreement with another distributor to fix the price at which [small] games of chance may be sold, or for which services in connection therewith may be rendered. The price of these items in the competitive marketplace [shall] must be established by each distributor for the [small] games of chance and services offered by each and may not be directly or indirectly established in concert with one another.

**§ 901.148. Dissolutions, terminations, mergers and bankruptcies.**

(a) [The] A distributor [shall] will notify the Department, in writing, within 10 days of one or more of the following actions on the part of [a registered] the distributor:

\* \* \* \* \*

**§ 901.149. Change of address.**

[The] A distributor will notify the Department, in writing, 10 days prior to a change of address.

**§ 901.150. Changes in ownership or personnel.**

The distributor shall make a written report to the Department of changes of responsible persons engaged in the business of the distributor. This report [shall] must also include a change in the management, ownership,

directorship or equity ownership of 10% or more, or a change in the manufacturer's representatives. The report [ shall ] must be filed [ on October 15 ] within 15 days of the addition or deletion.

§ 901.151. [ Revocation, denial, suspension or rejection of renewal of distributor license ] Denial, suspension and revocation of licenses.

(a) *Distributor license.* The Department [ has the power to deny the application or suspend, revoke or refuse to renew the license of a distributor under the following circumstances ] may deny a license application or suspend or revoke a license if the distributor or a person required to be identified in the application form commits one of the following acts:

\* \* \* \* \*

(2) Has failed to comply with or engaged in an activity prohibited by the act or this part.

\* \* \* \* \*

(5) Has refused to permit an inspection of its records or premises under one of the following:

(i) Section 901.28 (relating to inspection of premises) or § 901.31 (relating to examination of records).

\* \* \* \* \*

(b) *Suspensions.*

(1) A suspension of a license is issued for violations enumerated in subsection (a) that have not substantially harmed the public and can be timely remedied.

(2) A suspension period may not exceed 30 days, unless the distributor requests an extension, in writing, and the Department approves the extension.

(3) The Department will lift a suspension when the distributor has demonstrated compliance.

(4) If the Department determines that the distributor is still in violation under subsection (a) by the end of the suspension period, the Department will revoke the license.

(5) There is no right to appeal a suspension.

(c) *Notice.*

(1) The Department will issue a written notice of a denial, suspension, lifting of suspension or revocation. The notice will provide:

- (i) The issue date of the notice.
(ii) The action taken by the Department.
(iii) The reason for the action.
(iv) The distributor's appeal rights.

(2) The Department will serve the notice by certified or first-class mail.

(3) The Department will mail the notice to the distributor's Commonwealth resident designee.

§ 901.151a. Licensing following revocation.

Unless otherwise provided by the act or this part:

(1) A distributor whose license is revoked is ineligible to apply for and receive another license for the remaining license term or 6 months, whichever is longer.

(2) For a second revocation, the distributor is ineligible to apply for and receive another license for the remaining license term as well as the following license term.

(3) For a third and subsequent revocation, the distributor is ineligible to apply for and receive another license for 30 months.

§ 901.153. Raffle, daily drawing and weekly drawing ticket distributors.

This section and §§ 901.131—901.152 do not apply to [ the distribution of ] distributors who only sell raffle, daily drawing and weekly drawing tickets.

BOARD PROCEDURES

§ 901.161. Jurisdiction and purpose.

The Board will receive and review petitions [ to review Department ] challenging the Department's decisions to deny [ an initial or renewal application ] an application for a manufacturer registration [ or licensure ] certificate or game of chance approval or a distributor license. The Board will also receive and review petitions from [ registrants or licensees who have been notified of the Department's intent to revoke registration or licensure ] manufacturers or distributors challenging the Department's revocation of a manufacturer registration certificate, game of chance approval or a distributor license. The Board will provide petitioners with the opportunity for a hearing and will make recommendations to the Secretary regarding petitions.

§ 901.165. Board practice and procedure.

\* \* \* \* \*

(g) *Bond.* [ An applicant, ] A registrant or licensee [ whose application has been denied or ] whose license or registration has been revoked [ , suspended or not renewed ] due to Commonwealth tax liabilities, and who has been notified of the [ denial, nonrenewal or ] revocation, shall file a bond in an amount of 120% of the tax and interest with the Department [ pending the outcome of ] in order for an appeal of [ a decision of the Department with regard to registration or licensing ] the revocation to stay the revocation [ or suspension of the registration or license ].

\* \* \* \* \*

§ 901.168. Stay of appeal.

(a) Actions to [ suspend or ] revoke a registration [ or ], license or game approval will be stayed pending the decision of the Secretary when a petition has been filed with the Board. [ , except when the registration or license is immediately suspended for a period not to exceed 30 days because, in the opinion of the Department, one or more of the following has occurred:

(1) The license or registration has been obtained by fraud, trickery, misrepresentation, concealment or through inadvertence or mistake.

(2) The licensee, registrant or other person required to be identified in the application has engaged in an act or practice that would operate as a fraud or deceit upon a person.

(3) The licensee or registrant has failed to comply with the act or this part, after having been previously notified by the Department or its authorized representatives or law enforcement personnel, that a violation had been or was being committed by the licensee, registrant or other person required to be identified on the application.

(4) The licensee or registrant has been convicted of, forfeited bond upon a charge of or pleaded guilty or nolo contendere to one of the following:

- (i) Forgery.
- (ii) Larceny.
- (iii) Extortion.
- (iv) Conspiracy to defraud.

(v) Willful failure to make required payments or reports to a governmental agency or filing false reports.

(vi) A crime, whether a felony or a misdemeanor, involving a gambling activity or a felony involving moral turpitude.

(vii) Other similar offenses. ]

(b) During the pendency of the appeal, the certificate, game approval or license will be suspended.

#### [ CLUB ] ELIGIBLE ORGANIZATION LICENSING

§ 901.181. [ Local rules ] (Reserved).

[ The licensing authority of the counties of this Commonwealth may adopt local rules regulating club licensing that are not inconsistent with the act. If the licensing authority does not adopt rules, this part is binding. ]

§ 901.182. License requirements.

(a) [ A club ] *Eligible organizations.* An eligible organization may not conduct or operate [ small ] games of chance unless the [ club ] eligible organization obtains and maintains a valid license issued under the act and this part. An eligible organization must be in existence and fulfilling its purposes for 1 year prior to the date of application for a license.

(b) *Auxiliary groups.*

(1) An auxiliary group may conduct or operate games of chance under its parent organization's license. An auxiliary group may not be licensed separately. Any auxiliary group that conducts games of chance must be listed on the parent organization's license application.

(2) An auxiliary group that conducts games of chance under its parent organization's license acts in lieu of the eligible organization and is bound by the restrictions and limitations of the eligible organization and its license under the act and this part. Prizes from games of chance conducted by an auxiliary group must be included in the total prizes paid out by the licensed eligible organization for purposes of determining the licensed eligible organization's adherence to the prize limits under the act and this part.

(3) A licensing authority may not charge an additional licensing fee for an auxiliary group's right to conduct games of chance under its parent eligible organization's license.

§ 901.183. Filing.

License applications shall be filed with the licensing authority in the county where the [ club is physically located ] eligible organization maintains its normal business or operating site that will be used as its licensed premises. When an eligible organization does not own or lease a location to conduct its normal business, the organization shall file its application with the licensing authority in the county where the eligible organization maintains its licensed premises.

§ 901.184. [ Licensee ] License fee.

The annual license fee is \$100. The fee for a limited occasion license is \$10.

§ 901.185. [ Annual renewal ] License term and annual applications.

(a) [ The ] A license is valid [ through the succeeding June 30 ] for 1 year from its date of issuance.

(b) [ Applications for renewal should be received at least ] A licensed eligible organization should apply for a license 30 days prior to the expiration date of [ the ] its existing license to ensure that its licensure will not be interrupted.

§ 901.186. Display.

[ The license issued shall be publicly displayed at all times on the premises of the club. ] The licensed eligible organization shall at all times publicly display its license at the site where it conducts games of chance.

§ 901.188. Location.

(a) A license issued under [ this section and ] §§ 901.181—901.187, this section and [ 901.189—901.194 ] 901.189—901.196 will be valid at [ only one location in the county which issued the license ] and authorize the holder to conduct games of chance on the organization's licensed premises as provided in § 901.704 (relating to licensed premises).

(b) A licensed eligible organization may conduct games of chance at a location off its premises when such games of chance are part of an annual carnival, fair, picnic or banquet held or participated in by that eligible organization on a historical basis. The organization shall notify, in writing, the district attorney and licensing authority of the location, date and times of such events.

(c) A license issued in one county will be valid for purposes of [ conducting a raffle in another county if the transactions occur ] selling raffle tickets in municipalities of another county which have specifically approved [ small ] games of chance [ and other provisions of this part and the act are met ] by an affirmative vote in a municipal referendum. A licensed eligible organization that plans to sell raffle tickets in a municipality located in a county other than the county in which it is licensed shall notify that county's district attorney and licensing authority as to the location and the dates that the organization plans to sell raffle tickets.

§ 901.189. Transfer.

[ The transfer or assignment of licenses between locations and clubs ] A licensed eligible organization is prohibited from transferring or assigning its license.

§ 901.190. Joint license prohibition.

[ A joint license for the holding, operating and conducting of a game of chance will not be issued to two or more clubs. ] A licensing authority may not issue a joint license to two or more eligible organizations. An auxiliary group may operate under its parent organization's license, but may not hold a license of its own.

§ 901.191. License application form.

The license application form shall contain, at a minimum, the following information:

\* \* \* \* \*

(2) The type of [ the ] organization.

\* \* \* \* \*

(5) The name of the municipality where the applicant will maintain its licensed premises.

(6) [ The place of conduct for games of chance. ] The eligible organization's licensed premises.

(7) The [ dates and hours the club normally operates for its members ] eligible organization's operating day and week.

\* \* \* \* \*

(11) The names and addresses of persons who will be responsible for the operation of games of chance, including [ club employees ] eligible organization employees, bar personnel, auxiliary group members and other persons who will obtain the games of chance and coordinate their use.

(12) A statement under oath in the form of an affidavit, affirmed by the executive officer or secretary of the [ club ] eligible organization, stating the following:

(i) A person 17 years of age or younger [ , or in the case of a club holding a liquor license, 20 years of age or younger, ] will not be permitted by the [ club ] eligible organization to operate or play games of chance.

\* \* \* \* \*

(iii) The [ club ] eligible organization is the owner of the premises upon which the games of chance are played or, if it is not, the [ club ] eligible organization is not leasing the premises from the owner thereof under an oral agreement, nor is it leasing the premises from the owner thereof under a written agreement at a rental which is determined by the amount of receipts realized from the playing of games of chance or by the number of people attending, excepting the lease of a facility for a banquet where a per head charge is applied in connection with the serving of a meal.

(13) A copy of a corporate applicant articles of incorporation and bylaws; or, if not a corporation, a copy of bylaws and other documents which set out the organizational [ structural ] structure and purpose [ of the organization ].

(14) A copy of a nonprofit charitable applicant's Internal Revenue Service tax exemption letter if one has been obtained and a copy of other documents indicating the [ club ] eligible organization is a nonprofit charitable organization.

(15) The details and copies of the lease [ or ] , rental or other arrangements[ , ] between the applicant and the owner of the premises upon which the [ gambling activity ] games of chance will be conducted, if the premises are not owned by the [ club ] eligible organization.

(16) The names, addresses, dates of birth and the [ social security ] Social Security numbers of each paid [ employe ] employee, auxiliary group member or agent who will be involved with the activities for which the license is sought.

\* \* \* \* \*

(18) [ A ] The type of license applied for and a list of all types of games of chance to be operated by the [ club ] eligible organization.

(19) A list of distributors of games of chance with whom the [ club ] eligible organization does business.

(20) A list of the eligible organization's auxiliary groups that will operate games of chance under the eligible organization's license.

§ 901.192. Denial [ of application, revocation, suspension and refusal to renew club licenses ] suspension and revocation of an eligible organization license.

[ (a) The licensing authority shall revoke or refuse to renew the license of a club whenever the district attorney finds upon complaint and investigation that one of the following exists:

(1) The funds derived from the operation of games of chance are used for a purpose other than for legitimate club purposes or for the purchase of games of chance.

(2) A person 17 years of age or younger, or in the case of a club holding a liquor license, 20 years of age or younger, is operating or playing games of chance.

(3) The club has permitted a person who has been convicted of a felony or a violation of the Bingo Law, or the act to manage, set up, supervise or participate in the operation of games of chance.

(4) The facility in which the games of chance are played does not have adequate means of ingress and egress and does not have adequate sanitary facilities available in the area.

(5) A person other than a manager, officer, director, bar personnel or a bona fide member of the club has been involved in managing, setting up, operating or running games of chance.

(6) A person has received compensation for conducting games of chance.

(7) A prize has been awarded in excess of the limits prescribed by the act.

(8) The club has violated a condition of a special permit.

(9) The club conducts the games of chance upon premises which it does not own or lease in accordance with the restrictions of the act or this part and is leasing the premises from the owner thereof under one of the following:

(i) An oral agreement.

(ii) A written agreement at a rental which is determined by the amount of receipts realized from the playing of games.

(10) False or erroneous information was provided in the original application.

(11) The club has been convicted of a violation of the act.

(12) The club has permitted another club to use its licensed premises for the conduct of games of chance.

(13) A club has conducted more than one raffle in a calendar month.

(b) The licensing authority shall revoke, or refuse to renew the license of a club whenever the licensing authority, its designee or a law enforcement official finds upon complaint and investigation that:

(1) The funds derived from the operation of games of chance are used for a purpose other than for legitimate club purposes or for the purchase of games of chance as permitted by the act.

(2) A person 17 years of age or younger, or in the case of a club holding a liquor license, a person 20 years of age or younger, is operating or playing games of chance as defined in the act.

(3) The club has permitted a person who has been convicted of a felony or a violation of the Bingo Law or the act to manage, set up, supervise or participate in the operation of games of chance.

(4) The facility in which the games of chance are played does not have adequate means of ingress and egress and does not have adequate sanitary facilities available in the area.

(5) A person other than a manager, officer, director, bar personnel or a bona fide member of the club has been involved in managing, setting up, operating or running games of chance.

(6) A person has received compensation for conducting games of chance.

(7) A prize has been awarded in excess of the limits prescribed by the act.

(8) The club has violated a condition of a special permit.

(9) The club conducts the games of chance upon premises which it does not own or lease in accordance with the restrictions of the act or this part and is leasing the premises from the owner thereof under one of the following:

(i) An oral agreement.

(ii) A written agreement at a rental which is determined by the amount of receipts realized from the playing of games.

(10) False or erroneous information was provided in the original application.

(11) The club has been convicted of a violation of the act.

(12) The club has permitted another club to use its licensed premises for the conducting of games of chance.

(13) A club has conducted more than one raffle in a calendar month.

(c) The licensing authority shall sanction by suspending or revoking a license or refusing to renew the license of a club whenever the licensing authority, its designee or a law enforcement official finds upon complaint and investigation that the club or a party in interest in the license application, or a holder of the license:

(1) Has failed to comply with the act or subsection (a) or (b).

(2) Has obtained a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

(3) Has submitted a license application containing false information.

(4) Has been convicted or, forfeited bond upon a charge of or plead guilty or nolo contendere to one of the following:

(i) Forgery.

(ii) Larceny.

(iii) Extortion.

(iv) Conspiracy to defraud.

(v) Willful failure to make required payments or reports to a governmental agency.

(vi) Filing of false reports.

(vii) A crime, whether a felony or misdemeanor, involving gambling activity or a felony involving moral turpitude.

(viii) Other similar offenses.

(5) Has refused to permit an inspection of its records or premises under one of the following:

(i) Section 901.28 (relating to inspection of premises).

(ii) A search warrant.

(iii) A court order.

(6) Has failed to display its license on the premises where the licensed activity is conducted at all times during the operation of the licensed activity.

(7) Has made a misrepresentation of, or fails to disclose, a material fact to the licensing authority, law enforcement officials or the Department.

(8) Has failed to provide the licensing authority information required under the county's rules within a written request by the county, or within the time specified by the county rule.

(9) Has allowed a person who has been convicted of or forfeited bond upon one or more of the offenses listed in this subsection to participate in the management or operation of an activity regulated by the act or this part without prior written approval of the Department or the licensing authority.

(10) Has purchased games of chance from a distributor who is not currently licensed by the Department.

(d) The licensing authority shall deny the application of a club for licensure whenever the licensing authority, district attorney or other law enforcement official finds upon complaint and investigation that the club, the applicant or a party in interest in a license application, or holder of the license has committed one or more of the offenses described in subsection (a), (b) or (c). ]

(a) *Denial.* A licensing authority may deny an eligible organization's application when the licensing authority determines that the eligible organization has violated the act or this part.

(b) *Suspension.* A licensing authority may suspend an eligible organization's license when the licensing authority determines that the eligible organization has violated the act or this part, the violation has not substantially harmed the public and the violation can be timely remedied.

(c) *Revocation and denial.*

(1) A licensing authority may revoke an eligible organization's license when the licensing authority determines that all of the following have occurred:

(i) The eligible organization has violated the act or this part.

(ii) The violation has substantially harmed the public.

(iii) The violation cannot be remedied by the eligible organization.

(2) A licensing authority shall revoke the license of an eligible organization when the eligible organization has not remedied a violation for which a suspension is issued within the suspension period.

(3) A licensing authority shall revoke or deny the license of an eligible organization when the district attorney finds upon complaint and investigation that:

(i) The funds derived from the operation of games of chance are used for a purpose other than for public interest purposes or for the purchase of games of chance as permitted by the act.

(ii) A person 17 years of age or younger is operating or playing games of chance as defined in the act.

(iii) The eligible organization has permitted a person who has been convicted of a felony in a Federal or State court within the past 5 years or has been convicted in a Federal or State court within the past 10 years of a violation of the Bingo Law or the act, to manage, set up, supervise or participate in the operation of games of chance.

(iv) The facility in which the games of chance are played does not have adequate means of ingress and egress and does not have adequate sanitary facilities available in the area.

(v) A person other than a manager, officer, director, bar personnel or a bona fide member of the eligible organization has been involved in managing, setting up, operating or running games of chance.

(vi) A person has received compensation for conducting games of chance.

(vii) A prize has been awarded in excess of the limits prescribed by the act.

(viii) The eligible organization has violated a condition of a special raffle permit.

(ix) The eligible organization conducts games of chance on a leased premises under an oral agreement, or on a leased premises under a written agreement at a rental which is determined by the amount of receipts realized from the playing of games.

(x) False or erroneous information was provided in the original application.

(xi) The eligible organization has been convicted of a violation of the act.

(xii) The eligible organization has permitted another eligible organization to conduct games of chance on its licensed premises without suspending its own operation of games of chance during the period that the other licensed eligible organization is conducting games of chance on the premises.

§ 901.194. Change of personnel.

[ Additions ] An eligible organization shall report the addition or [ deletions ] deletion of an [ employe ] employee, officer or other person engaged in the operation of the [ club ] licensed eligible organization or games of chance, or both, or a change in management or directorship, and the like, [ shall be reported in writing ] to the licensing authority [ on November 15 ] within 15 days of the addition or deletion.

§ 901.195. Types of licenses.

Two types of licenses are available. An eligible organization may only hold one type of license at a time. The types of licenses are as follows:

(1) *Games of chance license.* A games of chance license authorizes the licensee to conduct games of chance as prescribed by the act and this part during the eligible organization's licensing term. A licensee is eligible to apply for special raffle permits.

(2) *Limited occasion license.* A limited occasion license authorizes the licensee to conduct games of chance on a limited basis as provided in § 901.196 (relating to limited occasion license requirements, limits and restrictions).

§ 901.196. Limited occasion license requirements, limits and restrictions.

(a) Organizations that do not own or lease a premises or do not have a specific location at which they conduct their normal business are only eligible for a limited occasion license.

(b) Limited occasion licensees are not eligible for the following:

(1) Special raffle permits.

(2) A games of chance license.

(c) Limited occasion licensees may conduct games of chance on no more than three occasions over a period of no more than 7 days during the license term.

(d) No more than two raffles may be conducted under a limited occasion license.

(e) The fee for a limited occasion license is \$10.



(f) The licensee shall provide 10 days prior written notice of its intent to conduct games of chance under its license to the licensing authority that issued its license.

**§ 901.197. Change of application information.**

An eligible organization shall report any changes to the information supplied in its license application to the licensing authority within 15 days of the change.

**COUNTY LICENSING AUTHORITY PROCEDURES**

**§ 901.211. [ Local rules ] (Reserved).**

[ The licensing authority of the counties of this Commonwealth may adopt local rules regulating their procedures consistent with the act. If the licensing authority does not adopt rules, this section and §§ 901.212—901.219 are binding. ]

**§ 901.212. General provisions.**

(a) *Scope.* This section and §§ 901.211 and 901.213—901.219 govern practice and procedure before the licensing authority except as otherwise provided in this part. The provisions of 2 Pa.C.S. §§ [ 501—508 and 701—704 ] 551—555 and 751—754 (relating to the [ Administrative Agency Law ] Local Agency Law) do not apply to practice and procedure before the licensing authority to the extent that those provisions are inconsistent with this section and §§ 901.211 and 901.213—901.219.

(b) *Construction of rules.* This section and §§ 901.211 and 901.213—901.219 will be liberally construed to aid the efficient operation of the licensing authority and the orderly administration of the act and this part.

**§ 901.213. Actions with respect to [ club ] eligible organization licenses and applications.**

(a) The licensing authority shall approve or deny license applications within [ 60 ] 30 days of their receipt unless the applicant is notified in writing of the specific reason for the delay. If the applicant requests in writing, the delayed application will be denied and may be immediately appealed. Applications are considered to be received when they arrive at the licensing authority as evidenced by the date stamp placed on the application.

(b) The licensing authority shall determine whether an applicant is eligible for a license under the act and this part and notify the applicant in writing of its determination.

(1) If the application is approved, the licensing authority shall send the license and notice of approval [ shall be sent ] to the applicant along with an up-to-date listing of all municipalities within the licensing county that have approved games of chance by referendum.

(2) If the application is denied, the licensing authority shall give notice, in writing, of the denial as set forth in § 901.214[ (d) ](b) (relating to procedure for denial, suspension[, ] or revocation [ or refusal to renew club ] of eligible organization licenses).

(c) If [ a club ] an eligible organization's license is suspended or revoked by the licensing authority, the licensing authority will give notice to the [ club ] eligible organization in writing of its determination as provided in § 901.214[ (d) ](b).

(d) If an appeal is not taken from a denial or from a revocation within the time prescribed in this chapter, the decision of the licensing authority will become final.

**§ 901.214. Procedure for denial, suspension[, ] or revocation [ or refusal to renew club ] of eligible organization licenses.**

(a) *Commencement of action.* [ An action to suspend or revoke a club license shall be commenced ] A licensing authority may deny an eligible organization's application or suspend or revoke an eligible organization's license following a finding of grounds under § 901.192 (relating to denial of [ application, revocation, suspension and refusal to renew club licenses ], suspension and revocation of eligible organization licenses).

(b) [ Investigations.

(1) The licensing authority, its designee, district attorney or other law enforcement officials shall investigate a complaint against a club.

(2) Complaints may be made by the licensing authority, the Department, district attorney, other law enforcement officials or by any person. If possible, complaints shall be in writing and shall identify the complainant. Evidence supplied by the complainant shall be attached to the written complaint.

(3) The licensing authority may request information on complaints received by the district attorney, other law enforcement officials or the Department involving a club.

(4) With respect to a club, the licensing authority may request information on an ongoing investigation conducted by the district attorney, other law enforcement officials or the Department.

(5) The district attorney, the Department or other law enforcement official will notify timely the licensing authority upon a finding that a violation of the act or this part has occurred and provide the licensing authority with a copy of the findings involving a club.

(6) The Department may request information on complaints prior to conducting an investigation. If a complaint is made to the district attorney, licensing authority or other law enforcement officials concerning misconduct by a manufacturer or distributor, the Department will not interfere with an investigation conducted as a result of these complaints.

(7) The district attorney, licensing authority or other law enforcement officials shall timely notify the Department upon a finding that a violation of the act or this part has occurred, and shall provide the Department with a copy of the findings involving a distributor or manufacturer.

(c) *Licensing authority determination.* The licensing authority shall review the report of each investigation and, based upon the findings, determine whether a club license will be suspended or revoked.

(d) *Notice to licensee:*

(1) Upon the determination of the licensing authority that a club license will be suspended or

revoked, the licensing authority shall notify the club in writing of its determination.

(2) Upon the determination of the licensing authority that a club license application will be denied or not be renewed, the licensing authority shall notify the club in writing of its determination.

(3) The notice will set forth:

(i) The action being taken by the licensing authority.

(ii) The reason for the action.

(iii) A notice to the licensee or applicant of the opportunity to appeal the determination and to have a hearing prior to final action by the licensing authority, except as provided in subsection (e).

(4) Notice shall be received at least 15 days prior to the date the action takes effect except as provided in subsection (e). ]

*Notice.*

(1) A licensing authority shall provide written notice to an eligible organization of its denial of the eligible organization's license application or the suspension or revocation of the eligible organization's license.

(2) The notice must provide:

(i) The date of the notice.

(ii) The action taken by the licensing authority.

(iii) The reason for the action.

(iv) The licensee or applicant's appeal rights.

(3) The licensing authority will serve the notice by certified or first-class mail.

(c) *Suspension.*

(1) A suspension of an eligible organization's license is issued for violations of the act and this part that have not substantially harmed the public and can be timely remedied.

(2) A suspension period may not exceed 30 days, unless the eligible organization requests an extension, in writing, and the licensing authority approves the extension.

(3) The licensing authority will lift a suspension when the eligible organization has demonstrated compliance.

(4) If the licensing authority determines that the eligible organization is still in violation of the act or this part by the end of the suspension period, the licensing authority will revoke the eligible organization's license.

(5) There is no right to appeal a suspension.

[ (e) *Licenses temporarily suspended pending a hearing.* The licensing authority may temporarily suspend a club license issued under this part pending a hearing upon suspension or revocation of the license or a renewal thereof, for a period not to exceed 30 days, when, in the opinion of the licensing authority:

(1) The licensee has obtained the license by fraud, trick, misrepresentation, concealment or through inadvertence or a mistake.

(2) The licensee has engaged in an act, practice or course of operation which would operate as a

fraud or deceit upon a person, or has employed a device, scheme or artifice to defraud a person.

(3) The licensee has failed to comply with the act or this part, after having been previously notified by the licensing authority, its authorized representatives or local law enforcement personnel that a violation of the same or similar provisions had been or were being committed by the licensee.

(4) Immediate cessation of licensed activities by the licensee is necessary for the protection or preservation of the welfare of the community within which these activities are being conducted. ]

(d) *Effect of appeal.* Actions of the licensing authority to revoke an eligible organization's license will be stayed pending the decision of the licensing authority on the appeal. During the pendency of the appeal, the eligible organization's license shall be suspended.

§ 901.215. Appeals.

(a) *Generally.* [ An appeal by an applicant or licensee ] An applicant or licensee's appeal from a licensing authority determination[ , ] shall be addressed to the licensing authority at the office of the licensing authority unless the notice of determination specifically directs otherwise. The person filing the appeal on behalf of the applicant or licensee shall state his name, address and the party he represents.

(b) *Timely appeal required.* An appeal required or permitted to be filed under this part shall be received for filing at the office of the licensing authority within 30 days of receipt of notice by the [ club ] eligible organization. The date of receipt at the office of the licensing authority, and not the date of deposit in the mail, is the filing date for purposes of this section.

(c) *Form and content of appeal.* An appeal shall be in writing, signed by [ a club ] an eligible organization's officer or authorized representative, and shall contain:

\* \* \* \* \*

(2) The name and address of the [ club ] eligible organization's officer or authorized representative, if any.

\* \* \* \* \*

§ 901.216. Representation before licensing authority.

(a) *Representation, generally.* A bona fide member of [ a club ] an eligible organization may represent the applicant or licensee. The licensing authority or its designee may represent the licensing authority in presenting submittal to a licensing authority.

\* \* \* \* \*

(c) *Notice of appearance.*

(1) If an officer or member of an applicant or licensee appears on behalf of the applicant or licensee before a licensing authority in a proceeding involving a hearing or an opportunity for hearing, the officer or member shall file with the licensing authority an address at which a notice or other written communication required to be served upon the [ club ] eligible organization may be sent.

\* \* \* \* \*

§ 901.219. Decisions.

(a) Review. Upon the close of a hearing, the licensing authority shall review evidence and testimony presented along with relevant documents and render a written decision. The decision concerning the [ club ] eligible organization's license or application will be served upon the parties in the manner consistent with §§ 901.211—901.218 and this section.

\* \* \* \* \*

Subchapter C. LOCAL OPTION

LOCAL OPTION REQUIREMENT AND LOCAL OPTION REPORTING

§ 901.307. Withdrawal of approval.

The referendum procedures contained in §§ 901.301—901.306, this section, 901.308 and 901.309 shall also be available to withdraw the approval of the issuance of [ club ] eligible organization licenses within the municipality which was granted through a prior referendum.

§ 901.308. Reporting.

A county board of elections shall certify to the Department the question and the results no later than 40 days following the primary election on which a referendum question relating to [ small ] games of chance appears on the ballot.

§ 901.309. Public information.

Information supplied with regard to the approval or disapproval of [ small ] games of chance by local referendum shall be available from the county board of elections and the licensing authority.

Subchapter D. RECORDKEEPING COUNTY RECORDS AND REPORTS

§ 901.401. Application register.

The licensing authority [ shall ] will keep a register or list of [ club ] eligible organization applications filed, containing the following:

\* \* \* \* \*

(11) The type of license for which each organization applied.

§ 901.402. Docket.

The licensing authority [ shall ] will also keep and maintain a docket with a separate sheet for each licensee on which it shall enter the following:

\* \* \* \* \*

(2) The special raffle permit number of special raffle permits issued to each license.

(3) The date on which special raffle permits were issued.

\* \* \* \* \*

(5) The type of license granted.

§ 901.403. Special raffle permit docket.

The licensing authority [ shall ] will keep and maintain a docket in which the following shall be entered:

(1) The serial number of the special raffle permits issued.

(2) The date the special raffle permits were issued.

(3) The dates the special raffle permit is valid.

(4) The name of the [ club ] licensed eligible organization to which the special raffle permit was issued.

(5) The [ small ] games of chance license number of the [ club ] licensed eligible organization being issued the special raffle permit.

(6) [ The date the special permit was returned to the licensing authority.

(7) ] The maximum cash value of prizes to be awarded under each special raffle permit.

§ 901.404. [ Violation report ] (Reserved).

[ The licensing authority shall provide the Department with a list of licensed clubs, distributors, registered manufacturers and other persons who are under investigation, charged with or found guilty of violations of the act, the Bingo Law or other gambling related offenses under 18 Pa.C.S. (relating to the Crimes Code) or other comparable state or Federal law. This list shall be provided in writing on or before November 15 of each year. ]

§ 901.405. List of licensed [ clubs ] eligible organizations.

The licensing authority [ shall ] will send a list of licensees to the Department on or before January 15 and July 15 of each year. Upon request, the licensing authority [ shall ] will provide the Department with a copy of [ the club's ] an eligible organization's license. The list shall identify the [ club ] eligible organization, its full address [ and ], its license number, type of license and any special raffle permit serial number.

§ 901.406. Other records and reports.

[ Other ] The licensing authority will keep and maintain other records and reports the licensing authority deems reasonable and necessary or are required by this part.

§ 901.407. List of municipalities.

(a) The licensing authority will keep and maintain an up-to-date list of those municipalities within the licensing authority's county that permit games of chance.

(b) The licensing authority will give a copy of the list to every eligible organization at the time of licensure.

(c) The licensing authority will make the list available to licensed eligible organizations who provide notice to the licensing authority of raffle sales within the licensing authority's county.

(d) Any time the list is updated, the licensing authority will submit a copy of the list to the Department within 30 days of the update.

MANUFACTURING RECORDS AND REPORTS

§ 901.421. Distributor license copy.

A manufacturer shall maintain a copy of the valid [ small ] games of chance license of each distributor to which it sells or otherwise furnishes games of chance.

§ 901.423. Annual records.

A registered manufacturer shall keep and maintain permanent annual records of the activities related to [ small ] games of chance.

§ 901.425. Records.

A record shall include the following:

(1) Sales invoices. A manufacturer shall record every sale, return or other type of transfer of [small] games of chance by completing a sales invoice or credit memo. An invoice [shall] must be prenumbered at the time of purchase. The numbering [shall] must be consecutive, using [not less than] at least four digits. Manufacturers may use a computer generated numbering system if the same system is used for all sales and specific numbers cannot be input by use of a manual terminal or other device. The invoice [shall] must contain the following information:

\* \* \* \* \*

DISTRIBUTOR RECORDS AND REPORTS

§ 901.441. License of purchaser.

A distributor shall keep a copy of the valid [small] games of chance license of each [club] eligible organization to which it sells or otherwise furnishes games of chance.

§ 901.443. Annual records.

A licensed distributor shall keep and maintain permanent annual records of its activities related to [small] games of chance.

§ 901.445. Records.

A record shall include the following:

(1) Sales invoices. A distributor shall record every sale, return or other type of transfer of [small] games of chance by completing a standard sales invoice or credit memo. An invoice [shall] must be prenumbered at the time of purchase. The numbering [shall] must be consecutive using at least four digits. The invoice [shall] must contain the following information:

\* \* \* \* \*

(iii) The [purchasing club] name, address and license number of the licensed organization.

\* \* \* \* \*

(vi) The gross amount of each sale to each [club] licensed eligible organization, including all discount terms and the total dollar amount of any discount.

\* \* \* \* \*

[CLUB] LICENSED ELIGIBLE ORGANIZATION RECORDS

§ 901.461. Annual records.

[A club] An eligible organization licensed to conduct [small] games of chance shall keep and maintain permanent annual records of the activities related to [small] games of chance with separate totals of activity under the license for each [7-day period] operating week.

§ 901.462. General records required.

A record shall include the following:

(1) The gross receipts from the conduct of [small] games of chance.

(2) The full details of the expenses related to the conduct of [small] games of chance.

(3) The total cost of the prizes paid out for [small] games of chance.

(4) The details as to how the proceeds from [small] games of chance were used or disbursed by the [club] eligible organization.

§ 901.464. Punchboard and pull-tab records.

Detailed annual records for the operation of punchboards and pull-tabs, [including] must include the following:

\* \* \* \* \*

(7) The cost to the [club] eligible organization of the prizes paid, including cash and merchandise.

\* \* \* \* \*

(9) A list of winners' names and addresses for prizes in excess of \$100.

§ 901.464a. Daily and weekly drawing records.

A licensed eligible organization shall maintain the following records and information with regard to each daily or weekly drawing:

(1) A type of drawing (daily or weekly).

(2) The operating day or operating week as applicable during which chances were sold and the date of the drawing.

(3) The list of entrants in the drawing.

(4) Each entrant's assigned or chosen number.

(5) The cost per chance.

(6) The proceeds from the sale of chances and the prize payout percentage.

(7) The winner's name.

(8) The prize paid to the winner.

(9) The winner's name and address for a prize over \$100.

(10) The winner's signed acknowledgment for receipt of the prize.

(11) A notation if the drawing is a carryover, and the amount of the jackpot being carried over to the next drawing.

§ 901.465. Cash over and short.

Cash over and short [shall] must be determined by:

(1) Subtracting actual cash from net receipts for [small] games of chance paying cash prizes.

(2) Subtracting actual cash from gross receipts for [small] games of chance which award merchandise prizes.

§ 901.466. Prize records.

A separate annual record shall be kept which may be easily cross-referenced to the other required records and which identifies the following:

\* \* \* \* \*

(2) The total amount of prizes awarded [in each 7-day period] per operating week.

\* \* \* \* \*

**Subchapter E. PROHIBITED  
ACTIVITIES/PENALTIES  
PROHIBITED ACTIVITIES**

**§ 901.501. Advertising.**

[ A club ] An eligible organization or other person may not advertise the prizes or their dollar value to be awarded in games of chance. [ Prizes may be identified on a raffle ticket. ] Raffle tickets may identify the raffle prizes. An eligible organization may advertise prizes and values thereof in periodic publications that are limited in their circulation to members of the eligible organization.

**§ 901.502. Persons.**

(a) A person having a pecuniary interest in a distributor or manufacturer or operator of games of chance may not have been:

\* \* \* \* \*

(b) A person 17 years of age or younger [ , or 20 years of age or younger in the case of a club holding a liquor license, ] may not be permitted to operate or play [ small ] games of chance.

(c) A [ club ] licensed eligible organization may not permit a person who has been convicted of a felony [ or a ] in a Federal or State court within the past 5 years or has been convicted in a Federal or State court of a violation of the Bingo Law or the act within the past 10 years to manage, set up, supervise or participate in the operation of games of chance.

**§ 901.503. Compensation.**

A [ club ] licensed eligible organization may not pay compensation to a person for conducting games of chance.

**§ 901.504. Persons who may conduct games.**

Persons may conduct [ small ] games of chance only if they are [ club ] licensed eligible organization managers, officers, directors, bar personnel or bona fide members [ of the club for at least 1 year ].

**§ 901.505. Promotional use of games of chance.**

[ Small games ] Games of chance may not be used as a part of promotional or advertising methods.

**§ 901.506. Credit play.**

\* \* \* \* \*

(e) A [ club ] licensed eligible organization may not permit the purchase of tickets by means of a deferred payment plan.

(f) [ Clubs ] Licensed eligible organizations may establish their own policies concerning acceptance of checks. A [ club ] licensed eligible organization is not required to accept a check.

(g) A [ club ] licensed eligible organization, manufacturer or distributor may not grant a non [ diminimis ] de minimis loan or gift to a player, a [ club ] licensed eligible organization, distributor or manufacturer.

\* \* \* \* \*

(i) On the specific date on which the check was written, a [ club ] licensed eligible organization may allow a

player to buy back a check with cash or return a player's check to the player as part of a prize payout. [ Clubs ] Licensed eligible organizations may not unnecessarily delay the bank deposit of a check to accommodate either of these activities.

(j) A [ club ] licensed eligible organization may not lend or provide the use of gambling funds to a person as a loan.

**§ 901.507. Prizes in excess of \$500.**

[ An ] A licensed eligible organization may not award an individual prize [ which ] that exceeds \$500 [ may not be awarded ] except under a special raffle permit [ raffle ], a carryover daily drawing as provided in § 901.702(e)(1) (relating to prize limits) or a weekly drawing.

**§ 901.508. Prizes in excess of \$5,000.**

A licensed eligible organization may not award a prize [ which ] that causes the total prizes awarded for [ the 7-day period ] an operating week to exceed \$5,000 [ may not be awarded ] except under a special raffle permit, a carryover daily drawing as provided in § 901.702(e)(1) or (2) (relating to prize limits) or a weekly drawing as provided in § 901.702(f)(2). [ Prizes awarded in raffles are not included in this amount. ]

**§ 901.509. Monthly raffle limit.**

A licensed eligible organization may not award a raffle prize [ which ] that causes the total prizes awarded in raffles to exceed \$5,000 for the month [ may not be awarded ] except under a special raffle permit [ raffle ].

**§ 901.510. [ One club per location ] Use of licensed premises by more than one organization.**

[ A location or licensed premises may not be used by more than one licensed club for the conduct of games of chance. ] A licensed eligible organization may not permit its premises to be used for games of chance by another licensed eligible organization at the same time that it is conducting games of chance on the premises. When a licensed eligible organization permits another licensed eligible organization to use its premises for purposes of games of chance, it shall cease the operation of its own games of chance during the period that the other licensed eligible organization is conducting its games on the premises.

**§ 901.511. Other activities.**

Other activities [ which ] that are grounds for revocation, suspension, denial or termination of a [ registration ] certificate or license are also prohibited.

**§ 901.512. Oral and written leases.**

(a) An eligible organization may only lease a location or premises for the operation of games of chance under a written agreement.

(b) An eligible organization may not lease a location or premises for the operation of games of chance under a written agreement that provides for a rental price determined by the amount of receipts realized from the playing of games of chance or by the number of people attending,

except that an eligible organization may lease a location or premises for a banquet where a per head charge is applied in connection with the serving of a meal.

§ 901.513. Gambling facilities prohibited.

(a) A person, corporation, association, partnership or other business entity may not offer for rent or offer for use a building or facility to be used exclusively for conducting of games of chance.

(b) A licensed eligible organization may not lease under any terms a facility or building that is used exclusively for conducting of games of chance.

PENALTIES

§ 901.531. [ Summary offense ] Eligible organizations.

[ A club ] An eligible organization violating the act is guilty of a summary offense, and upon conviction will be sentenced to pay a fine not exceeding \$1,000[ , ] and shall, for a first offense forfeit [ a ] its license [ and shall be ineligible for any license renewal for 30 months from the date of conviction ] to conduct games of chance for the remainder of the license term or 6 months, whichever is longer; for a second offense, forfeit its license for the remainder of the license term and be ineligible to be licensed for the following license term; for a third or subsequent offense, forfeit its license; and be ineligible for a license renewal for 30 months thereafter.

§ 901.532. [ Misdemeanor ] Individuals.

A person who conducts, or who assists in the conduct of, games of chance in violation of the act is guilty of a summary offense for the first violation, a misdemeanor of the third degree of a second violation and a misdemeanor of the first degree for a third or subsequent violation.

§ 901.533. Distributors and manufacturers.

A person who distributes games of chance without a license or in violation of the act or this part and a manufacturer of games of chance who delivers games of chance for sale or distribution in this Commonwealth who fails to obtain a [ registration ] certificate therefor, is guilty of a misdemeanor of the first degree. A license or [ registration ] certificate is not required for the manufacture or distribution of raffle, daily drawing or weekly drawing tickets.

§ 901.535. Contingent fees.

A person who distributes, manufactures or operates a [ small ] game of chance and who requires a payment equal to a percentage of the total winnings of a game for equipment furnished or to play a game commits a misdemeanor of the first degree.

Subchapter F. MANUFACTURING STANDARDS

PULL-TAB MANUFACTURING STANDARDS

§ 901.601. Uniform minimum quality standards.

(a) [ Pull-tabs ] Pull-tab games manufactured for sale or other distribution in this Commonwealth shall conform to the act, this part and N. A. G. R. A.'s [ "Uniform Minimum Quality Standards For The Manufacture of Charity Game Tickets." ] manufacturing standards for pull-tab games to the extent

consistent with this part. Copies of [ these ] N. A. G. R. A. standards are available from the Department.

\* \* \* \* \*

§ 901.602. [ Substitute flares ] Flares.

[ A flare may not be used on a pull-tab deal except those provided by the manufacturer unless the flare is made by the club and contains the information required under § 901.608 (relating to standards for flares) ]. A flare provided by the manufacturer must accompany every deal. However, a licensed eligible organization may alter a flare as provided in § 901.731(b)(2) (relating to punchboard and pull-tab operation).

§ 901.608. Standards for flares.

[ Except as provided by § 901.602 (relating to substitute flares), the flare identifying prizes available from the operation of a pull-tab deal shall be made only by the manufacturer. Winning numbers or symbols may not be altered by a club or distributor, and shall: ]

(a) A pull-tab game flare must be made only by the manufacturer. Except as provided by § 901.731(b)(2) (relating to punchboard and pull-tab operation), a flare may not be altered after it leaves the manufacturer's possession and control.

(b) Except as otherwise provided in this part, a flare for a pull-tab game must comply with N. A. G. R. A. manufacturing standards for pull-tab game flares.

(c) A pull-tab game flare must:

(1) Be placed only upon the face, or on the top, of a dispenser used to dispense the pull-tabs or must be printed on or made part of each pull-tab in a deal.

\* \* \* \* \*

(d) The flare for any pull-tab game containing hold tickets must provide for a section on the flare, either on the front or back, that contains the hold ticket numbers or symbols and a corresponding space beside each number or symbol upon which the holder of each hold ticket shall sign his name.

PUNCHBOARD MANUFACTURING STANDARDS

§ 901.621. [ Substitute flares ] Flares.

[ Flares may not be used on a punchboard except those provided by the manufacturer unless the flare is made by the club and contains the information required under § 901.627 (relating to standards for flares). ] A flare provided by the manufacturer must accompany every punchboard. However, a licensed eligible organization may alter a flare as provided in § 901.731(b)(2) (relating to punchboard and pull-tab operation).

§ 901.622. Standards for construction.

Punchboards sold for use in this Commonwealth [ shall comply ] must be in compliance with the following standards:

(1) General.

(i) A punchboard must have a face sheet that covers the punchboard receptacles.

(ii) The flare for the punchboard may be manufactured to also serve as the face sheet for the punchboard.

(iii) A punchboard, its punches and its flare must be assigned an identical serial number.

(iv) Each punchboard receptacle must contain an identical number of punches.

(2) Patterns. The punchboard [ shall ] must be manufactured with special care to eliminate patterns between punchboards, or portions of punchboards, from which the location or approximate location of winning punches may be determined. A manufacturer shall employ at least the following steps to ensure that no pattern exists:

(i) The form or permanent number sheets from which the individual punches shall be cut [ shall ] must be mixed prior to cutting.

(ii) After the [ strips—straws— ] punches have been crimped, the [ strips shall ] punches must be thoroughly mixed prior to insertion in punchboards.

\* \* \* \* \*

[ (2) ] (3) \* \* \*

[ (3) ] (4) \* \* \*

[ (4) ] (5) \* \* \*

[ (5) ] (6) \* \* \*

\* \* \* \* \*

§ 901.627. Standards for flares.

[ The flare advertising prizes available from the operation of a punchboard shall be made only by the manufacturer. Winning numbers or symbols may not be altered by a club or distributor, and shall: ]

(a) A punchboard flare must be made only by the manufacturer. Except as provided by § 901.731(b)(2) (relating to punchboard and pull-tab operation), a flare may not be altered after it leaves the manufacturer's possession and control.

(b) A punchboard flare must:

\* \* \* \* \*

(c) The flare for any punchboard containing hold tickets must provide for a section on the flare, either on the front or back, that contains the hold ticket numbers or symbols and a corresponding space beside each number or symbol upon which the holder of each hold ticket shall sign his name.

Subchapter G. OPERATION OF GAMES

[ CLUB ] ELIGIBLE ORGANIZATION OPERATION OF GAMES

§ 901.701. Games of chance permitted.

(a) [ Games ] A licensed eligible organization may conduct games of chance [ may be conducted ] only for the purpose of raising funds for [ legitimate club ] public interest purposes as defined in the act or this part.

(b) [ Proceeds shall be used ] A licensed eligible organization shall use games of chance proceeds

exclusively for [ legitimate club ] public interest purposes or for the purchase of games of chance permitted by the act or this part.

§ 901.702. Prize limits.

\* \* \* \* \*

(b) Weekly limit. No more than \$5,000 in cash or merchandise may be awarded by a [ club in a 7-day period ] licensed eligible organization during an operating week. [ Prizes awarded in a raffle are not included in this amount. ]

(c) Raffle limit. No more than \$5,000 in cash [ for ] or merchandise may be awarded in raffles in a calendar month except under a special raffle permit [ raffle ].

(d) Special raffle permit [ raffles ]. A [ club ] licensed eligible organization may conduct a raffle and award a prize valued in excess of \$500 only if it has obtained a special raffle permit. The total cash value of prizes awarded under [ a ] all special [ permit raffle may be no more than \$25,000 ] raffle permits during a calendar year may be no more than \$100,000.

(e) Prize limit exceptions for daily drawings.

(1) A licensed eligible organization may award a prize in excess of the prize limitations in subsections (a) and (b) if the prize is the result of a carryover of a drawing when the following conditions apply:

(i) The winning number was not held by one of the eligible entrants in the drawing.

(ii) The carryover is not the result of the licensed eligible organization's failure to hold a drawing on an operating day during which chances for a daily drawing were sold.

(iii) The chances for the daily drawing were not sold for an amount in excess of \$1.

(iv) No eligible participant was sold more than one chance.

(2) A licensed eligible organization may award a prize in excess of the prize limitation in subsection (b) if the prize is the result of a daily drawing that is set up to pay out no less than 100% of the gross revenues from such drawing. The prizes are still subject to the prize limitation in subsection (a). The limitation in subsection (b) may be exceeded only by the amount of the daily drawing paying 100% of its gross revenues.

(f) Prize limit exceptions for weekly drawings.

(1) The prize limitation in subsection (a) does not apply to weekly drawings. Weekly drawings are subject to the prize limitations in subsection (b).

(2) A licensed eligible organization may award a prize in excess of the prize limitation in subsection (b) if either:

(i) The prize is the result of a carryover of a drawing when the winning number was not held by one of the eligible entrants in the drawing, and the following conditions apply:

(A) The carryover is not the result of the licensed eligible organization's failure to hold a weekly drawing at the end of the operating week during which chances were sold.

(B) The chances for the weekly drawing were not sold for an amount in excess of \$1.

(ii) The drawing is set up to pay out no less than 100% of the gross revenues from the drawing.

§ 901.703. Place of conduct.

[ Games shall be conducted ] A licensed eligible organization shall conduct games of chance only on the licensed eligible organization's licensed premises or when otherwise provided by the act and this part. [ Raffle tickets may be sold within any county at other locations for drawings to be held once a month but raffle tickets may be sold ] A licensed eligible organization may sell raffle tickets off the licensed premises but only in municipalities [ which ] that have approved games of chance through a valid referendum.

§ 901.704. [ Club ] Licensed premises.

(a) [ The club shall own the premises upon which games of chance are played or shall lease or sublease the premises under a written agreement for a rental which is not determined by either the amount of receipts realized from the playing of games of chance or the number of people attending.

(b) A club may not lease the premises from a person who has been convicted of a felony or a violation of the act or the Bingo Law within 10 years of the date of the lessor's conviction.

(c) A club may not permit another club to use its premises for the conduct of games of chance. ] An eligible organization's licensed premises must be the location or premises owned or leased by the organization for use as its normal business or operating site. When the premises consists of more than one building, the organization shall designate which building will be used as the licensed premises for the operation of games of chance. If the organization wishes to conduct games of chance in a different building on its licensed premises, it shall notify, in writing, the district attorney and the licensing authority of the change in building site and the date and times that will be affected.

(b) If an eligible organization does not own or lease a location or premises for use as its normal business or operating site, the organization may:

(1) With the written consent of another eligible organization, use another eligible organization's licensed premises for purposes of conducting games of chance so long as the use complies with §§ 901.510 and 901.709 (relating to use of licensed premises by more than one organization; and eligible organizations per premises).

(2) Lease a location or premises on which to conduct games of chance as long as the lease does not violate § 901.513 (relating to gambling facilities).

(3) Make other arrangements to acquire a location or premises, consistent with the act and this part, on which to conduct games of chance.

(c) An eligible organization may not lease a location or premises as a licensed premises under an oral agreement. An eligible organization may lease a location or premises under a written agreement. The rental price may not be based on either the

amount of receipts realized from the playing of games of chance or the number of people attending. An eligible organization may lease a facility for a banquet where a per head charge is applied in connection with the serving of a meal.

(d) An eligible organization may not lease a location or premises as a licensed premises from any person who has been convicted of a violation of the act or this part within 10 years of the date of the lessor's conviction.

§ 901.705. Purchase of games.

[ Games ] A licensed eligible organization shall [ be purchased ] purchase games of chance only from a licensed distributor. Raffles, daily drawings and weekly drawings are excluded from this requirement.

§ 901.706. Persons who may not operate or play [ small ] games of chance.

(a) A person 17 years of age or younger[ , or 20 years of age or younger in the case of a club holding a liquor license, ] may not be permitted to operate or play games of chance.

(b) A [ club ] licensed eligible organization may not permit a person who has been convicted of a felony in a State or Federal court within the past 5 years or a violation of the Bingo Law or the act[ , ] in a State or Federal court within the past 10 years to manage, set up, supervise or participate in the operation of games of chance.

§ 901.707. Compensation.

A [ club ] licensed eligible organization may not pay compensation to a person for conducting games of chance.

§ 901.708. Persons who may conduct games of chance.

[ Games of chance may be conducted only by club ] Only licensed eligible organization managers, officers, directors, bar personnel or persons who [ have been ] are bona fide members of the licensed [ club for a least 1 year ] eligible organization may conduct games of chance.

§ 901.709. One [ club ] eligible organization per [ premise ] premises.

[ A location or licensed premises may not be used by more than one licensed club for conducting games of chance. ] Only one licensed eligible organization may use a licensed premise to conduct games of chance. A licensed eligible organization may allow another licensed eligible organization that does not own or lease a normal business premises to conduct games of chance on its premises. When an eligible organization uses the premises of another eligible organization, each eligible organization shall notify its respective licensing authority and district attorney in writing.

§ 901.710. Other standards and requirements.

A [ club ] licensed eligible organization may not provide for play or purchase a [ small ] game of chance [ which ] that violates the act or this part.



§ 901.711. [ Location for special permit raffles ] (Reserved).

[ A location or licensed premises may not be used by more than one licensed club for a special permit raffle in a calendar year. ]

**PUNCHBOARD AND PULL-TAB OPERATION PROCEDURES**

**§ 901.731. Punchboard and pull-tab operation.**

(a) A person 17 years of age and younger[, or 20 years of age or younger in the case of a club holding a liquor license,] or a person visibly intoxicated or visibly under the influence of a [narcotic] controlled substance may not be allowed to play or sell a punchboard or pull-tab. It is the responsibility of the licensee and the responsibility of the person physically selling the punchboard or pull-tab deal to determine that an unauthorized person is not allowed to play or sell.

(b) Limitations on punchboards, pull-tabs and flares are as follows:

(1) A [club] licensed eligible organization may not permit the display or operation of a punchboard or pull-tab which may have been marked, defaced, tampered with or otherwise placed in a condition or operated in a manner which may deceive the public or which affects the chances of winning or losing upon the taking of a chance thereon.

(2) A licensed eligible organization may alter a flare to indicate that merchandise of equivalent value will substitute for a cash prize in a punchboard or pull-tab game.

\* \* \* \* \*

(d) When [clubs] licensed eligible organizations purchase merchandise to be used as prizes on punchboards or pull-tab deals, the following information [shall] must be on the invoice provided by the seller:

\* \* \* \* \*

(e) Limitations on pull-tab dispensers are as follows:

\* \* \* \* \*

(4) A pull-tab deal once placed in or upon a pull-tab container out for play may not be removed from the container until the deal is permanently removed from public play, except as follows:

\* \* \* \* \*

(ii) Pull-tabs removed by representatives of the county, or other law enforcement agency inspecting the [small] games of chance.

\* \* \* \* \*

**§ 901.733. Control of prizes.**

\* \* \* \* \*

(c) The [club] licensed eligible organization shall display prizes so arranged that a customer can easily determine which prizes are available from a particular punchboard or pull-tab deal located upon the premises.

\* \* \* \* \*

(e) A [club] licensed eligible organization may not offer to pay or actually pay cash in lieu of merchandise prizes which may be won.

(f) When a person wins a cash prize of over \$100 or wins a merchandise prize with a cash value of over \$100 from the play of a punchboard or pull-tab deal, the [club] licensed eligible organization shall make a record of the win. The record [shall] must disclose, at a minimum, the following information:

\* \* \* \* \*

(g) A [club] licensed eligible organization shall keep the record of prizes awarded containing the information required in subsection (f), and of winning plays for a minimum of 2 years and shall display the record to a representative of the Department, county licensing authority, district attorney or law enforcement [officials] official upon demand. The [club] licensed eligible organization shall immediately mark or perforate the winning pull-tab or punch so that the play cannot be presented again for payment.

**§ 901.734. Punchboard and pull-tab inventory and retention.**

[ A punchboard and pull-tab deals purchased or otherwise obtained by a club shall be controlled and accounted for ] A licensed eligible organization shall control and account for punchboard and pull-tab games as follows:

(1) A [club] licensed eligible organization shall closely monitor [punchboard] punchboards and pull-tab [deals] games purchased to assure that serial numbers are correctly entered in records and that each [deal] punchboard and pull-tab game purchased is recorded. The following control procedures apply:

(i) At the close of business on December 31 of each year and before operating punchboards and pull-tab [deals] games after that date, the [club] licensed eligible organization shall take a physical inventory of punchboards and pull-tab [deals] games in play and awaiting play and record the following information separately for punchboards and pull-tab [deals] games:

\* \* \* \* \*

(ii) At the time punchboards and pull-tab [deals] games are delivered, a [club] licensed eligible organization shall assure that purchase invoice data is correct by comparing the actual serial numbers on each punchboard or pull-tab [deal] game to the numbers entered on the purchase invoices.

(iii) The purchases of punchboards or pull-tab [deals] games shall be recorded on a standard distributor's invoice, which includes space for the [club] licensed eligible organization to either attach a records entry label or enter the serial number and the date the [deal] punchboard or the pull-tab game was placed out for play. For punchboards or pull-tab [deals] games purchased, the [club] licensed eligible organization shall enter the data and the serial number in the space on the invoice, adjacent to the distributors entry, by either attaching a records entry label or by written entry.

(2) A punchboard or pull-tab [deal] game which is removed from play [together with the flare], unplayed punches or pull-tabs and winning punches or [plays] pull-tabs for prizes in excess of \$100[, ] shall be retained by the [club] licensed eligible organiza-

tion for at least 2 years following the last day of the month in which it was removed from play. The board, unplayed punches or pull-tabs, flare and winning punches or pull-tabs [ shall ] must remain available for inspection on the licensed premises.

(3) A punchboard or pull-tab [ deal ] game which is not placed out for public play or is not returned to the distributor from whom it was originally purchased [ shall ] must be retained on the licensed premises and made available for inspection for at least 2 years.

**RAFFLES**

**§ 901.741. Prize limits.**

A prize awarded may not have a value in excess of \$500 unless the raffle is conducted under a special raffle permit. [ No ] A licensed eligible organization may not award more than \$5,000 in cash or merchandise [ may be awarded ] in raffles in a calendar month [ by a licensee ].

**§ 901.742. [ Raffle number limited ] Drawing dates.**

[ Only one raffle may be held per calendar month including a special permit raffle. ] Raffles may have one or more drawing dates. The drawing dates and times must be printed on the raffle tickets.

**§ 901.743. Raffle tickets.**

\* \* \* \* \*

(b) Tickets for use in a raffle shall have a stub or other detachable section, be consecutively numbered and be accounted for separately through the use of a log book showing to whom the tickets were given to be sold. The ticket stub or other detachable section of the ticket [ shall ] must bear a duplicate number corresponding to the numbers on the ticket and shall contain the purchaser's name, complete address and telephone number. Both parts [ shall ] must be imprinted with sequential numbers commencing with the number "1" through the maximum number of tickets to be sold; or in the case of a raffle where the winner is determined by a drawing of the Pennsylvania State Lottery, the universe of eligible ticket numbers must correspond to the universe of eligible numbers in the State Lottery drawing.

\* \* \* \* \*

(e) A ticket seller shall return the stubs or other detachable section of tickets sold to the [ club ] eligible organization. The [ club ] eligible organization shall then place each stub or other detachable section of ticket sold into a [ receptable ] receptacle out of which the winning tickets are to be drawn. The [ receptable shall ] receptacle must shall be designed so that each ticket placed therein has an equal opportunity with every other ticket to be the one withdrawn.

\* \* \* \* \*

**§ 901.744. Control of raffle prizes.**

A [ club ] licensed eligible organization conducting a raffle in which real or personal property prizes are to be awarded shall have paid for in full or otherwise become the owner, without lien or interest of others, of the real or personal property prior to the drawing at which the winners of the prizes are to be determined.

**§ 901.745. Printing requirements.**

The following information shall be printed upon each raffle ticket sold:

- (1) The [ date ] dates and [ time ] times of the [ drawing ] drawings.
- (2) The location of the [ drawing ] drawings.
- (3) The name of the [ club ] licensed eligible organization conducting the raffle.
- (4) The [ small ] games of chance license number of the [ club ] licensed eligible organization.
- (5) The special raffle permit number, if applicable.

\* \* \* \* \*

**§ 901.746. Prize awarding.**

(a) [ Raffle ] A licensed eligible organization shall award raffle prizes [ shall be awarded ] on the [ date ] dates indicated on the raffle ticket unless the licensed eligible organization approves a different date [ is approved by the club ] and purchasers of tickets are notified in writing. The [ date ] dates of the drawing may be extended only if one of the following occurs:

\* \* \* \* \*

(c) If a raffle prize remains unclaimed by the winner for 90 days following the date of the raffle drawing and the [ club ] licensed eligible organization has made a good faith effort to contact the winner [ via ] by means of telephone and registered mail, for redemption of the prize, the [ club ] licensed eligible organization may retain the prize or award it in another [ small ] game of chance. A record of the attempted contact shall be maintained for a minimum of 2 years.

**§ 901.748. Prohibition of joint raffles held by licensees.**

[ Raffles shall be conducted by individual clubs. Licensees ] A licensed eligible organization may not join together with another [ club ] licensed eligible organization to conduct [ raffles ] a raffle.

**§ 901.749. Open drawing.**

\* \* \* \* \*

(b) [ Stubs or detachable sections drawn shall be immediately exhibited and shall be held open for inspection until the end of the occasion. Stubs or detachable sections shall be retained by the club under this part. ] A licensed eligible organization shall immediately exhibit and hold open for inspection drawn raffle ticket stubs or detachable sections until the end of the raffle. A licensed eligible organization shall retain the stubs or detachable sections as provided under the act or this part.

**§ 901.751. Ticket sales.**

[ Raffle ] A licensed eligible organization may only sell raffle tickets [ may only be sold ] in municipalities [ which ] that have approved the use of [ small ] games of chance [ via ] by means of a valid local referendum in accordance with the act. [ Raffle ] A licensed eligible organization may sell raffle tickets [ may be sold ] at locations other than the [ club ]

licensed eligible organization premises. A licensed eligible organization that plans to sell raffle tickets in a municipality located in a county other than the county in which it is licensed shall notify that county's district attorney and licensing authority in writing of the location and date that the eligible organization plans to sell raffle tickets.

**§ 901.752. Printer requirements.**

An entity providing raffle tickets to a licensed [ clubs ] eligible organization shall attach a copy of the [ club's small ] organization's games of chance license to the raffle ticket purchase invoice or other document evidencing the sale. If the raffle pays a prize or prizes in excess of \$500 each, a copy of the [ club's ] licensed eligible organization's special raffle permit shall also be attached.

**§ 901.753. Means of determining winning numbers.**

A licensed eligible organization may use the following means to determine the winners in a raffle:

- (1) A random drawing of ticket stubs.
- (2) By reference to a specified drawing of the Pennsylvania State Lottery. Both the date of the drawing and the State Lottery game that will be used must be identified on the raffle ticket.
- (3) A passive selection device.

**[ LOTTERIES ]**

*(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 901.761—901.778, which appears in 61 Pa. Code pages 901-68—901-72, serial pages (265918) to (265922). The following §§ 901.781—901.786 and 901.791—901.796 are proposed to be added. The sections are printed in regular type to enhance readability.)*

**§§ 901.761—901.778. (Reserved).**

**DAILY DRAWINGS**

**§ 901.781. Daily drawing procedures.**

(a) A licensed eligible organization may sell chances for and hold only one daily drawing during each operating day. Bona fide members may purchase chances in a daily drawing only during the operating day on which the drawing will be held.

(b) Daily drawing winners must be determined by random drawing. Daily drawing winners may be determined with the aid of a passive selection device or by reference to drawings conducted by the Department under the State Lottery Law.

(c) A daily drawing must take place on the eligible organization's licensed premises and be conducted in plain view.

(d) A daily drawing must begin and end on the same operating day. An eligible organization may conduct no more than 7 daily drawings during an operating week.

(e) A licensed eligible organization may not sell chances for or conduct a daily drawing during a period when weekly drawing chances are being sold or a weekly drawing is taking place.

(f) Immediately prior to each daily drawing, the eligible organization shall announce the prize amount for the drawing.

(g) The name of a daily drawing prize winner or the fact that a winner was not selected must be prominently

displayed on the licensed premises for at least 7 days after the drawing date. If a winner does not claim a prize within 7 days of the drawing, the eligible organization shall notify the winner of the prize and the requirements for claiming the prize.

**§ 901.782. Daily drawing chances.**

(a) Only a bona fide member of an eligible organization may purchase a chance in a daily drawing.

(b) A licensed eligible organization shall sell a chance in a daily drawing only to a bona fide member.

(c) A chance in a daily drawing may not be sold to or purchased by one bona fide member for the benefit of another bona fide member.

(d) A licensed eligible organization may not sell a chance in a daily drawing for more than \$1.

(e) A licensed eligible organization may sell no more than one chance per daily drawing to each of its bona fide members.

(f) A chance in a daily drawing may be sold and purchased only on the eligible organization's licensed premises.

**§ 901.783. Posting rules.**

(a) An eligible organization shall prominently display the rules for each daily drawing in the area where the chances for the drawing are sold.

(b) At a minimum, the posted rules must include:

- (1) The cost of the chance.
- (2) The manner of selecting the winner.
- (3) The time during which chances may be purchased.
- (4) The time of the drawing.
- (5) The payout percentage.

(6) Whether the drawing is a carryover drawing and the amount of the carryover jackpot.

(7) The requirements and time limits for claiming prizes as provided for in § 901.784 (relating to claiming prizes).

**§ 901.784. Claiming prizes.**

(a) The winner of a daily drawing need not be present at the time of the drawing to claim the prize.

(b) An eligible organization may not impose a penalty or limit the amount of a prize based upon a winning member's nonattendance at the time of the drawing.

(c) Only the daily drawing winner may claim the daily drawing prize.

(d) A daily drawing winner shall claim the prize in person and sign for receipt of the prize.

(e) A prize winner shall claim the prize within 30 days from the date of the drawing.

**§ 901.785. Invalid State Lottery drawing.**

A drawing of the State Lottery that is invalidated must also result in an invalid drawing in a licensed eligible organization's daily drawing which is tied to the State Lottery drawing.

**§ 901.786. Unclaimed prize money.**

A daily drawing prize that remains unclaimed more than 30 days after the drawing shall be retained by the eligible organization for public interest purposes.

**WEEKLY DRAWINGS****§ 901.791. Weekly drawing procedures.**

(a) A licensed eligible organization may sell chances for and hold only one weekly drawing during an operating week. Bona fide members may purchase chances in a weekly drawing only during the operating week in which the drawing will be held. The drawing must be held at the end of the operating week.

(b) Weekly drawing winners must be determined by random drawing. Weekly drawing winners may be determined with the aid of a passive selection device or with reference to drawings conducted by the Department under the State Lottery Law.

(c) A weekly drawing must take place on the eligible organization's licensed premises and be conducted in plain view.

(d) A licensed eligible organization may not sell chances for or conduct a weekly drawing during a period when daily drawing chances are being sold or a daily drawing is taking place.

(e) Immediately prior to each weekly drawing the eligible organization shall announce the prize amount for the drawing.

(f) The name of a weekly drawing prize winner or the fact that a winner was not selected must be prominently displayed on the licensed premises for at least 7 days after the drawing date. If a winner does not claim a prize within 7 days of the drawing, the eligible organization shall notify the winner of the prize and the requirements for claiming the prize.

**§ 901.792. Weekly drawing chances.**

(a) Only a bona fide member of an eligible organization may purchase chances in a weekly drawing.

(b) A licensed eligible organization shall sell chances in a weekly drawing only to a bona fide member.

(c) A chance or chances in a weekly drawing may not be sold to or purchased by one bona fide member for the benefit of another bona fide member.

(d) A licensed eligible organization may not sell chances in a weekly drawing for more than \$1 each.

(e) Chances in a weekly drawing may be sold and purchased only on the eligible organization's licensed premises.

**§ 901.793. Posting rules.**

(a) An eligible organization shall prominently display the rules for each weekly drawing in the area where the chances for the drawing are sold.

(b) At a minimum, the posted rules must include:

- (1) The cost of the chance.
- (2) The manner of selecting the winner.
- (3) The time during which chances may be purchased.
- (4) The time of the drawing.
- (5) The payout percentage.

(6) Whether the drawing is a carryover drawing and the amount of the carryover jackpot.

(7) The requirements and time limits for claiming prizes as provided for in § 901.794 (relating to claiming prizes).

**§ 901.794. Claiming prizes.**

(a) The winner of a weekly drawing need not be present at the time of the drawing to claim the prize.

(b) An eligible organization may not impose a penalty or limit the amount of a prize based upon a winning member's nonattendance at the time of the drawing.

(c) Only the weekly drawing winner may claim the weekly drawing prize.

(d) A weekly drawing winner shall claim the prize in person and sign for receipt of the prize.

(e) A prize must be claimed within 30 days from the date of the drawing.

**§ 901.795. Invalid State Lottery drawing.**

A drawing of the State Lottery that is invalidated must also result in an invalid drawing in a licensed eligible organization's weekly drawing which is tied to the State Lottery drawing.

**§ 901.796. Unclaimed prize money.**

A licensed eligible organization shall retain for public interest purposes a weekly drawing prize that remains unclaimed more than 30 days after the drawing.

**Subchapter H. SPECIAL RAFFLE PERMITS****SPECIAL RAFFLE PERMITS [ AND SPECIAL PERMIT RAFFLES ]****§ 901.801. [ Price ] Prize limit.**

The total value of **all special raffle permit prizes during a calendar year** may be no more than **[ \$25,000 for each raffle ] \$100,000**.

**§ 901.802. Raffle number limit.**

Only one raffle may be conducted under each special raffle permit. **[ The club may hold only one raffle per month including a special permit raffle. ]**

**§ 901.803. Special [ permits ] raffle permit limit.**

A **[ club ] licensed eligible organization** is **[ not ]** eligible to receive **[ more than ]** two special raffle permits in a calendar year, **except volunteer fire, ambulance and rescue organizations are eligible to receive three special raffle permits in a calendar year.**

**§ 901.804. Issuance of permits.**

Special raffle permits shall be obtained from the licensing authority at least 30 days before the date on which ticket sales are to begin.

**§ 901.805. Rule applicability.**

The rules contained in this part apply to special raffle permits. To the extent they are inconsistent with §§ 901.801—901.804, this section and §§ 901.806—901.811, these provisions supersede those elsewhere in this part.

**§ 901.806. Required permit.**

A special raffle permit is required for each raffle in which a **[ club ] licensed eligible organization** proposes to award **[ a ] an individual prize [ or prizes ]** having a cash value in excess of \$500 **[ each ] or total prizes having a cash value in excess of \$5,000**.

**§ 901.807. Fees.**

The licensing authority may establish a fee for the issuance of a special [permits] raffle permit. The fee may not exceed \$25.

**§ 901.808. Special raffle permit application.**

The application for a special raffle permit [shall] must be made to the licensing authority. The application [shall] must include the following information:

- (1) The [club] licensed eligible organization's name.
- (2) The [club's small] licensed eligible organization's games of chance license number.

\* \* \* \* \*

**§ 901.810. Effective period.**

A special raffle permit will remain effective from the date on which ticket sales begin until the earlier of the date of the drawing, the expiration date of their [small] games of chance license held when the special raffle permit was issued or 6 months.

**§ 901.811. [Location limits] (Reserved).**

**[A location or licensed premises may not be used by more than one licensed club for a special permit raffle in a calendar year.]**

(Editor's Note: The following text is proposed to be added. It is printed in regular text to enhance readability.)

**Subchapter I. ENFORCEMENT**

Sec.

- 901.901. Criminal complaints.
- 901.902. Requests for information on criminal complaints, investigations and convictions.
- 901.903. Notice of eligible organization violation.
- 901.904. Notice of manufacturer or distributor violation.
- 901.905. Investigations of manufacturers, distributors and eligible organizations.
- 901.906. Investigations of a manufacturer or distributor.
- 901.907. Notice of investigations.
- 901.908. Information sharing.

**§ 901.901. Criminal complaints.**

The district attorney of each county investigates criminal violations of the act. Complaints for criminal violations of the act are initiated as provided by law for criminal complaints and actions.

**§ 901.902. Requests for information on criminal complaints, investigations and convictions.**

The Department and licensing authority may request information on a complaint, investigation or conviction involving a manufacturer, distributor or eligible organization or a responsible person or member of the organization for purposes of initiating administrative action against the manufacturer, distributor eligible organization.

**§ 901.903. Notice of eligible organization violation.**

A person may notify the licensing authority of a licensed eligible organization's violation of the act or this part. The notice must be given to the licensing authority that issued the eligible organization's license.

**§ 901.904. Notice of manufacturer or distributor violation.**

A person may notify the Department of a registered manufacturer or licensed distributor's violation of the act or this part.

**§ 901.905. Investigations of manufacturers, distributors and eligible organizations.**

The licensing authority, or its designee, may investigate an eligible organization when it has reason to believe that a violation of the act or this part has occurred or is occurring.

**§ 901.906. Investigations of a manufacturer or distributor.**

The Department, or its designee, may investigate a manufacturer or distributor when it has reason to believe that a violation of the act or this part has occurred or is occurring.

**§ 901.907. Notice of investigations.**

(a) The licensing authority and the Department may provide information and documentation regarding an investigation of a manufacturer, distributor or eligible organization to the district attorney or law enforcement official for purposes of criminal investigation and prosecution.

(b) The licensing authority may provide information and documentation to the Department about violations of the act or this part by a manufacturer or distributor that it discovers as part of an investigation involving an eligible organization.

(c) The Department may provide information and documentation to a licensing authority about violations of the act or this part by an eligible organization that it discovers as part of an investigation involving a manufacturer or distributor.

**§ 901.908. Information sharing.**

The right of the Department, licensing authorities, district attorneys and law enforcement officials to transmit and share information for purposes of enforcing the act or this part may not be restricted by this section or this part.

[Pa.B. Doc. No. 04-1853. Filed for public inspection October 8, 2004, 9:00 a.m.]

## STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

### Biennial Renewal Fees—Dentist, Restricted Anesthesia Permit II

The State Board of Dentistry (Board) proposes to amend §§ 33.3 and 33.339 (relating to fees; and fees for issuance of permits) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for dentists from \$100 to \$250 and would increase the biennial renewal fee for a restricted anesthesia permit II from \$25 to \$50. A restricted anesthesia permit II authorizes the permit holder to administer nitrous oxide/oxygen analgesia.

*Effective Date*

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*. The new fees will take effect for the biennial period beginning March 31, 2005.

### *Statutory Authority*

Section 4(b) of The Dental Law (act) (63 P. S. § 123(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures. Section 11.2(6) of the act (63 P. S. § 130c(a)(6)) specifically authorizes the Board to assess biennial renewal fees for anesthesia permits.

### *Background and Need for the Proposed Rulemaking*

The Board's current biennial license renewal fee for dentists was established by regulation on July 1, 1995. See 25 Pa.B. 2598 (July 1, 1995). The Board's current fee schedule for renewal of anesthesia permits was established by regulation on July 9, 1988. See 18 Pa.B. 3045 (July 9, 1988). Under section 4(b) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises virtually all of its revenue through biennial renewal fees.

At Board meetings in November 2003 and July 2004, the Department of State's Offices of Revenue and Budget (Offices) presented a summary of the Board's revenue and expenses for fiscal years 2001-2002 and 2003-2004, and projected revenue and expenses through 2007-2008. The Offices projected a deficit of \$838,225.49 in fiscal year 2004-2005, a deficit of \$1,900,225.49 in fiscal year 2005-2006, a deficit of \$1,743,225.49 in fiscal year 2006-2007 and a deficit of \$2,876,225.49 in fiscal year 2007-2008. The Offices recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act.

The Board's review of its actual and projected expenses over the past 5 years revealed significant shortfalls in the areas of hearing expenses, Board administration and legislative and regulatory analysis. For example, despite annual budget increases, the hearing expenses were \$6,225 over budget in 1999-2000, \$3,188 over budget in 2000-2001, \$19,954 over budget in 2001-2002 and \$11,283 over budget in 2002-2003. The amount budgeted for hearing expenses has risen from \$3,000 in FY 1999-2000 to \$26,000 in FY 2003-2004. Nevertheless, the hearing expenses are expected to be \$43,310 over budget in 2003-2004. Similarly, the budgeted amounts for law enforcement have risen from \$233,000 in FY 1999-2000 to \$345,000 in 2003-2004. The Board has also experienced significant increases in actual expenses over estimated expenses in other areas of the legal office and the Professional Health Monitoring Program. Overall increased expenditures in these program areas have resulted from greater enforcement activity and increases in the number of disciplinary actions and in the numbers of licensees participating in the Bureau-wide program for impaired professionals. At the same time, the Board's licensee population has declined by about 400 licensees over the past 5 years, decreasing the Board's biennial revenue. The Budget Office anticipates that the proposed new biennial renewal fees will enable the Board to recapture the current deficit and meet its estimated expenditures for at least 7 or 8 years.

In determining the fee, the Board also considered the renewal fees charged to dentists in surrounding states. The Board found that the proposed increase to \$250 would be consistent with the renewal fees charged in the surrounding states.

The Board also proposes to remove the anesthesia permit biennial renewal fee from § 33.3 and move it to § 33.339. The Board finds that § 33.339 is the more appropriate place for these fees because it lies within Subchapter E (relating to administration of general anesthesia, conscious sedation, and nitrous oxide/oxygen analgesia), which relates solely to anesthesia permits and standards for the administration of anesthesia in dental offices. In a proposed rulemaking earlier this year, the Board filed notice that it intends to amend § 33.339 to reflect new fees for anesthesia permits. See 34 Pa.B. 1949 (April 10, 2004). Finally, the Board will add a cross reference in § 33.3 to § 33.339.

### *Description of Proposed Rulemaking*

Based upon the expense and revenue estimates provided to the Board, the Board proposes to amend § 33.3 to increase the fee for biennial renewal of licenses for dentists from \$100 to \$250. The Board declined to assess an across-the-board increase on all its renewal fees based on its assessment that additional expenditures can be more equitably borne by dentists rather than by their employees, who must work under the supervision of a dentist. The Board also proposes to remove the renewal fees for anesthesia permits from § 33.3 and move them to § 33.339 and to increase the biennial renewal fee for a restricted anesthesia permit II from \$25 to \$50. The biennial renewal fees for an unrestricted anesthesia permit and a restricted anesthesia permit I were already amended in the Board's proposed rulemaking published at 34 Pa.B. 1949.

### *Fiscal Impact*

The proposed rulemaking will increase the biennial renewal fee for dentists and will increase the biennial renewal fee for a restricted anesthesia permit II. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

### *Paperwork Requirements*

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the proposed rulemaking should not create additional paperwork for the private sector.

### *Sunset Date*

The act requires that the Board monitor its revenue and cost on a fiscal year and biennial basis. 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 September 29, 2004, the Board 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 Chairpersons of 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, suggestions or objections regarding this proposed rulemaking to Lisa Burns, Administrator, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin.

VEASEY B. COLLEN, Jr., D.M.D., Chairperson

Fiscal Note: 16A-4615. 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 33. STATE BOARD OF DENTISTRY

Subchapter A. GENERAL PROVISIONS

§ 33.3. Fees.

Following is the schedule of fees charged by the Board:

\* \* \* \* \*

Biennial renewal fee—dentists.....\$ [ 100 ] 250

\* \* \* \* \*

[ Biennial renewal fee—unrestricted or restricted anesthesia permit.....\$25 ]

\* \* \* \* \*

For fees related to anesthesia permits, refer to § 33.339 (relating to fees for issuance of permits).

Subchapter E. ADMINISTRATION OF GENERAL ANESTHESIA, CONSCIOUS SEDATION AND NITROUS OXIDE/OXYGEN ANALGESIA

§ 33.339. Fees for issuance of permits.

The following fees are charged for the issuance of permits under this subchapter:

(1) Unrestricted permit.

(i) [ Issuance under § 33.335(a)(1) or (2) ]

Initial.....\$ [ 15 ] 100

(ii) [ Issuance under § 33.335(a)(3) ]

Renewal.....\$ [ 300 ] 200

(iii) Temporary ..... \$100

(2) Restricted permit I.

(i) [ Issuance under § 33.336(a)(1) ]

Initial.....\$ [ 15 ] 100

(ii) [ Issuance under § 33.336(a)(2) ]

Renewal.....\$ [ 300 ] 200

(iii) Temporary ..... \$100

(3) Restricted permit II.

(i) [ Issuance under § 33.337(a)(1) ] Initial..... \$15

(ii) [ Issuance under § 33.337(a)(2) ]

Renewal.....\$ [ 15 ] 50

(iii) Temporary ..... \$15

[Pa.B. Doc. No. 04-1854. Filed for public inspection October 8, 2004, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Drug Therapy and Injectable Medications, Biologicals and Immunizations

The State Board of Pharmacy (Board) proposes to amend §§ 27.1, 27.32 and 27.91 (relating to definitions; continuing education; and schedule of fees) and to add §§ 27.301 and 27.401—27.406 to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon publication as final-form rulemaking in the Pennsylvania Bulletin.

Statutory Authority

The amendments are authorized under sections 4(j), 6(k)(1) and (9), 8.2(a), 9.1(d)(3) and (e) and 9.2(a) of the Pharmacy Act (act) (63 P. S. §§ 390-4(j), 390-6(k)(1) and (9), 390-8.2(a), 390-9.1(d)(3) and (e) and 390-9.2(a)).

Background and Purpose

In August 2002, the act was amended to add sections 9.1 and 9.2, as well as to modify and add several definitions to the act. The additional sections authorize pharmacists to manage drug therapy by means of a written protocol as well as administer injectable medications, biologicals and immunizations. This proposed rulemaking is required to implement the new provisions of the act.

Description of Proposed Rulemaking

The Board proposes to amend § 27.1 by adding the definition of "Bureau" to define the term as it is used in the regulations. The Board also proposes to amend § 27.1 by changing the definitions of "institution" and "practice of pharmacy" to correspond with the definitions in the act.

The Board proposes to amend § 27.32 to remove obsolete portions of the regulation and add the continuing education requirements necessary to renew the authority to administer injectable medications, biologicals and immunizations.

The Board proposes to amend § 27.91 to add the fees necessary for pharmacists to apply for and renewal the approval to administer injectable medications, biologicals and immunizations.

Proposed § 27.301 (relating to written protocol) sets out the requirements for the drug therapy management written protocol. Proposed § 27.301 incorporates the requirements under section 9.1 of the act and adds a section that requires the protocol to identify the types of drug therapy management decisions that the pharmacist is authorized to make, the ailments or diseases involved in the physician's scope of practice and types of drug therapy management authorized. The act also requires the Board to

promulgate regulations with regard to self-insurance for pharmacists engaging in drug therapy management by means of a written protocol. The Board has deferred proposing regulations for self-insurance until the details of the regulations can be worked out with the Insurance Commissioner.

Proposed § 27.401 (relating to qualifications for authority) lists the qualifications that a pharmacist must have to be granted the authority to administer injectable medications, biologicals and immunizations. A pharmacist must hold an active license to practice pharmacy in this Commonwealth; complete a course of education and training related to the administration of injectable medications, biologicals and immunizations offered by an approved provider; and hold a current basic cardiopulmonary resuscitation (CPR) certificate from an approved provider.

Proposed § 27.402 (relating to application and renewal procedures) outlines the application and renewal process for the authority to administer injectable medications, biologicals and immunizations. An applicant for the initial authority shall certify that the applicant has completed the educational requirement and that the applicant holds an acceptable CPR certificate. A pharmacist may renew the authority along with the biennial pharmacist license renewal. To renew the authority, the pharmacist must certify that a minimum of 2 continuing education hours in the administration of injectable medications, biologicals and immunizations were completed. Lastly, the pharmacist must submit proof of a current CPR certificate.

Proposed § 27.403 (relating to conditions for administration) details the conditions for administration of injectable medications, biologicals and immunizations. Pharmacists may only administer injectable medications, biologicals and immunizations to persons who are more than 18 years of age. The proposed rulemaking defines what "more than 18 years of age" means. The proposed rulemaking also mandates that the administration of injectable medications, biologicals and immunizations shall not be delegated to another person.

Proposed § 27.404 (relating to authority and requirements) sets forth the scope of authority and requirements for administering injectable medications, biologicals and immunizations. A pharmacist with the authority to administer injectable medications, biologicals and immunizations may do so only under an order or written protocol. This section details the requirements for the order and written protocol.

Proposed § 27.405 (relating to recordkeeping) sets forth the recordkeeping requirements for pharmacists who administer injectable medications, biologicals or immunizations. All of the records shall be kept for a minimum of 2 years. Additionally, the proposed rulemaking lists the additional information that shall be maintained when an immunization is administered.

Proposed § 27.406 (relating to notification requirements) details the notification requirements when a pharmacist administers an injection. The notification requirements are different depending on whether the administration is done under an order or a written protocol. The notification requirement when the administration is done under an order places a shorter timeframe within which the pharmacist shall notify the prescriber. When the administration is done under a written protocol the pharmacist has a longer period of time to notify the prescriber.

The Board reviewed and considered all comments and suggestions received from interested parties during the regulatory development process.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would have a fiscal impact on the Board in that there would be revenue to the Board through the licensure and renewal fees for the authority to administer injectable medications, biologicals and immunizations. The proposed rulemaking would require the Board to develop an application for the authority to administer injectable medications, biologicals and immunizations. The Board would also have to revise the pharmacist license renewal form to allow for the renewal of the authority to administer injectable medications, biologicals and immunizations.

#### *Sunset Date*

The Board reviews the effectiveness of its regulations on an ongoing basis. 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 September 29, 2004, the Board 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 Chairpersons of 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 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, suggestions or objections regarding this proposed rulemaking to Carole Clarke, Counsel, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

MICHAEL J. ROMANO, R.Ph.,

*Chairperson*

**Fiscal Note:** 16A-5412. 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 27. STATE BOARD OF PHARMACY**

#### **GENERAL PROVISIONS**

#### **§ 27.1. Definitions.**

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



\* \* \* \* \*

**Bureau**—The Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth.

\* \* \* \* \*

**Institutions**—[ Extended care facilities, nursing homes, nursing care facilities, convalescent homes, resident care facilities, hospitals or another place which offers medical treatment to patients who require food, board and overnight sleeping facilities and care. ]

(i) A health care facility that offers care and medical treatment to patients who require food, board and overnight sleeping facilities and provides clinically related services, including, a general or special hospital, including psychiatric hospitals, rehabilitation hospitals, ambulatory surgical facilities, long term care nursing facilities, cancer treatment centers using radiation therapy on an ambulatory basis, and inpatient drug and alcohol treatment facilities, both profit and nonprofit and including those operated by an agency or State or local government.

(ii) The term also includes a hospice that offers care and medical treatment to patients who require food, board and overnight sleeping facilities.

(iii) The term does not include an office used primarily for the private or group practice by health care practitioners where no reviewable clinically related health service is offered, a facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of any church or religious denomination or a facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other persons in a religious profession who are members of the religious denominations conducting the facility.

\* \* \* \* \*

**Practice of pharmacy**—[ The practice of that profession concerned with the art and science of preparing, compounding and dispensing drugs and devices, whether dispensed on the prescription of a medical practitioner or legally dispensed or sold directly to the ultimate consumer. The term includes the proper and safe storage and distribution of drugs, the maintenance of proper records therefor and the responsibility of relating information as required concerning the drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease. ] The provision of health care services by a pharmacist, which includes:

- (i) The interpretation, evaluation and implementation of medical orders for the provision of pharmacy services or prescription drug orders.
- (ii) The delivery, dispensing or distribution of prescription drugs.
- (iii) Participation in drug and device selection.
- (iv) Drug administration.
- (v) Drug regimen review.
- (vi) Drug or drug-related research.
- (vii) Compounding.

(viii) Proper and safe storage of drugs and devices.

(ix) Managing drug therapy in an institutional setting consistent with the institution's assignment of clinical duties.

(x) Maintaining proper records.

(xi) Patient counseling.

(xii) Acts, services operations or transactions necessary or incident to the provision of these health care services.

\* \* \* \* \*

**RENEWAL OF PHARMACIST LICENSE AND PHARMACY PERMIT**

**§ 27.32. Continuing education.**

(a) [ Beginning with 1988 renewals, the ] The Board will renew the license of a pharmacist who has completed [ the required hours of continuing professional education.

(1) For 1988 renewals, a pharmacist shall have completed a minimum of 25 contact hours (2.5 CEU) of programs offered by providers approved by the ACPE.

(2) For 1990 renewals and thereafter, a pharmacist shall have completed ] a minimum of 30 contact hours (3 CEU) of continuing education during the proceeding biennial renewal period. For licensees with authority to administer injectable medications, biologicals and immunizations in accordance with section 9.2 of the act (63 P. S. § 390-9.2) and §§ 27.301 and 27.302 (relating to qualifications for authority; and application and renewal procedures), at least 2 of the required 30 hours shall concern the administration of injectable medications, biologicals and immunizations, including disease epidemiology, vaccine characteristics, injection technique, emergency response to adverse events and related topics. Programs offered by providers accredited by the ACPE are approved by the Board.

\* \* \* \* \*

**FEES**

**§ 27.91. Schedule of fees.**

An applicant for a license, certificate, permit or service shall pay the following fees at the time of application:

\* \* \* \* \*

<b>Application for approval to administer injectables</b> .....	<b>\$30</b>
<b>Biennial renewal of approval to administer injectables</b> .....	<b>\$30</b>

**DRUG THERAPY MANAGEMENT**

**§ 27.301. Written protocol.**

(a) The written protocol for drug therapy management between licensed physicians and pharmacists shall contain:

- (1) A statement identifying the physician responsible for authorizing drug therapy management.
- (2) A statement identifying the pharmacist authorized to perform the drug therapy management.
- (3) A statement requiring that drug therapy regimens be initiated by a licensed physician for patients referred to a pharmacist for drug therapy.

(4) A statement identifying the types of drug therapy management decisions that the pharmacist is authorized to make, including a statement of the ailments or diseases involved within the physician's scope of practice, and types of drug therapy management authorized.

(5) A statement of the functions and tasks the pharmacist shall follow in the course of exercising drug therapy management authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation of each intervention must occur within 72 hours in the patient medical record and must also be recorded in the pharmacist's records.

(6) A statement that establishes an appropriate time frame, not to exceed 72 hours, within which the licensed pharmacist must notify the licensed physician of any changes in dose, duration or frequency of medication prescribed.

(7) A provision for execution of the agreement when any licensed physician or licensed pharmacist may be temporarily absent from a practice setting or temporarily unavailable to participate in its execution.

(8) A provision for notification of the role of the pharmacist by a licensed physician to each referred patient whose drug therapy management may be affected by the agreement and providing an opportunity for the patient to refuse drug therapy management by a pharmacist.

(9) The signatures of the licensed physicians and licensed pharmacists who are entering into the written protocol, and the dates signed.

(10) A statement allowing for the termination of the agreement at the request of any party to it at any time.

(b) The written protocol must be available as follows:

(1) At the practice site of any licensed physician who is a party to the agreement.

(2) At the practice site of any licensed pharmacist who is a party to the agreement.

(3) At the institution where a written agreement or protocol is in place.

(4) To any patient whose drug therapy management is affected by the agreement.

(5) Upon request, to representatives of the Bureau and the Department of Health.

(c) The written protocol must be filed with Bureau.

(d) The written protocol must be effective for a period not to exceed 2 years from the date of execution. At the end of the 2-year period, or sooner, the parties shall review the agreement and make a determination as to its renewal, necessary modifications or termination.

**ADMINISTRATION OF INJECTABLE MEDICATIONS,**

**BIOLOGICALS AND IMMUNIZATIONS**

**§ 27.401. Qualifications for authority.**

A candidate for authority to administer injectable medications, biologicals and immunizations shall meet the following requirements:

(1) The pharmacist holds an active license to practice pharmacy in this Commonwealth.

(2) The pharmacist has completed a course of education and training which includes the current guidelines and recommendations related to the administration of injectable medications, biologicals and immunizations of the Centers for Disease Control and Prevention or a similar health authority or professional body approved by the Board offered by providers accredited by the ACPE or a similar health authority or professional body approved by the Board.

(3) The pharmacist holds a current basic cardiopulmonary resuscitation (CPR) certificate issued by the American Heart Association, American Red Cross or a similar health authority or professional body approved by the Board.

**§ 27.402. Application and renewal procedures.**

(a) An applicant for authority to administer injectable medications, biologicals and immunizations shall submit the following to the Board:

(1) An application obtained from the Board along with the fee required by § 27.91 (relating to schedule of fees).

(2) Certification that the pharmacist has completed the required education and training.

(3) Certification that the pharmacist holds an acceptable, current CPR certificate.

(b) A holder of the authority to administer injectable medications, biologicals and immunizations shall renew the authority every 2 years along with the license to practice pharmacy. Renewal requires completion of a form provided to the pharmacist by the Board in advance of the renewal period, payment of the fee specified by § 27.91, certification of completion of 2 hours of continuing education required by section 9.2 of the act (63 P. S. § 390-9.2) and § 27.32 (relating to continuing education), and proof of a current CPR certificate.

**§ 27.403. Conditions for administration.**

(a) A pharmacist who is granted authority may administer injectable medications, biologicals and immunizations to persons who are more than 18 years of age. A person is more than 18 years of age on the day following the person's 18th birthday.

(b) A pharmacist may not delegate the administration of injectable medications, biologicals and immunizations to another person.

**§ 27.404. Authority and requirements.**

(a) A pharmacist authorized by the Board to administer injectable medications, biologicals and immunizations may only do so under either an order or written protocol.

(b) The order from a licensed prescriber must be written, received electronically or if received orally be reduced to writing, and contain at a minimum the following:

(1) The identity of the licensed prescriber issuing the order.

(2) The identity of the patient to receive the injection.

(3) The identity of the medication, immunization or vaccine, and dose, to be administered.

(4) The date of the original order and the date or schedule, if any, of each subsequent administration.

(c) An authorized pharmacist may enter into a written protocol, either approved by a physician or authorized by the medical staff of an institution, governing the administration of injectable medications, biologicals and immunizations for a specific period of time or purpose. The written protocol may be valid for a time period not to exceed 2 years. The protocol must include the following:

(1) The identity of the participating pharmacist and physician or institution.

(2) The identification of the medication, biological or immunization, which may be administered.

(3) The identity of the patient or groups of patients to receive the authorized injectable medication, biological or immunization.

(4) The identity of the authorized routes and sites of administration allowed.

(5) A provision establishing a course of action the pharmacist shall follow to address emergency situations including adverse reactions, anaphylactic reactions and accidental needle sticks.

(6) A provision establishing a length of time the pharmacist shall observe an individual for adverse events following an injection.

(7) The identity of the location at which the pharmacist may administer the authorized medication, biological or immunization.

(8) Recordkeeping requirements and procedures for notification of administration.

(9) A provision that allows for termination of the protocol at the request of any party to it at any time.

#### § 27.405. Recordkeeping.

(a) A pharmacist who administers an injectable medication, biological or immunization shall maintain the following records regarding each administration for a minimum of 2 years:

(1) The name, address and date of birth of the patient.

(2) The date of the administration and site of the injection.

(3) The name, dose, manufacturer, lot number and expiration date of the medication, biological or immunization.

(4) The name and address of the patient's primary health care provider, as identified by the patient.

(5) The name or identifiable initials of the administering pharmacist.

(6) Documentation of provision of informed consent for administration of injectable medications, biologicals and immunizations.

(7) The nature of an adverse reaction and who was notified.

(b) A pharmacist who administers an immunization shall also maintain the following records regarding each administration for a minimum of 2 years:

(1) An identification of the Vaccine Information Statement (VIS) that was provided.

(2) The date of publication of the VIS.

(3) The date and to whom the VIS was provided.

(c) In an institution, the information required to be maintained in subsections (a) and (b) may be maintained in the patients' medical records.

#### § 27.406. Notification requirements.

A pharmacist administering injectable medications, biologicals or immunizations shall meet the following notification requirements:

(1) When administration has occurred under an order, the pharmacist shall notify the ordering prescriber within 72 hours of the following:

(i) The identity of the patient.

(ii) Identity of the medication.

(iii) Biological or immunization administered.

(iv) The route of administration.

(v) The site of the administration.

(vi) The dose administered.

(vii) The date of administration.

(viii) The nature of any adverse events or reactions experienced by the patient.

(2) When the administration has occurred under a written protocol, the pharmacist shall notify the participating physician within 14 days of the following:

(i) The identity of the patient.

(ii) The identity of the medication.

(iii) The biological or immunization administered.

(iv) The site of the administration.

(v) The dose administered.

(vi) The date of administration.

(vii) The nature of any adverse events or reactions experienced by the patient.

[Pa.B. Doc. No. 04-1855. Filed for public inspection October 8, 2004, 9:00 a.m.]