

PROPOSED RULEMAKING

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 145] Industrialized Housing

The Department of Community and Economic Development (Department), under section 5 of the Industrialized Housing Act (act) (35 P. S. § 1651.5), proposes to amend 12 Pa. Code by revising Chapter 145 (relating to industrial housing and components). The purpose of the proposed rulemaking is to further clarify and strengthen the Department's and third-party's role in monitoring the production of industrialized housing; to eliminate redundant requirements; to update definitions to conformance with current terminology; to provide builders and code officials with documentation to clearly identify the manufacturer as approved to produce industrialized housing.

Introduction

The act established uniform State standards and procedures for the identification, inspection of manufacture and assembly, and certification of industrialized housing and those components forming integral parts of housing structures for use in all communities in this Commonwealth, and reciprocity in the recognition of certification of the industrialized housing and housing components, as standards for performance of industrialized housing and housing components are developed and adopted by the United States Department of Housing and Urban Development, other states, and the Commonwealth. The act authorized the Department to promulgate and amend rules and regulations to interpret and make specific the provisions of the act. The purpose of the proposed rulemaking is to update the regulations to bring them into conformance with current industry standards, codes and practices.

Analysis

Section 145.1 (relating to definitions) has been amended to update the definitions of "industrialized housing" and "residential occupancy" to reflect the changes in the use and occupancy groups as defined by the International Building Code; remove the definitions of "BOCA" and "CABO" as both are obsolete terms; add a definition of the term "Notice of Approval" which has been included into the regulations in § 145.82 (relating to issuance of building permits); and add a definition for the term "Site Installation Inspection Report Form" that has been required under § 145.91(e) (relating to reports to the Department) but not defined.

Section 145.33 (relating to manufactured homes excluded) has been expanded to provide clarity in regards to excluding industrialized homes from the Federal program for manufactured housing in an effort to assure that both consumers and local zoning and code officials are clear as to the type of housing product with which they are dealing.

Section 145.34 (relating to housing components) has been amended to reflect the current industry terminology for structural insulated panel which in the past was referred to as a sandwich panel.

Section 145.41(c) (relating to adoption of standards) has been amended to eliminate the need for duplicative paper work. By addressing floor insulation in the Site Installation Inspection Report Form (§ 145.91(e)), the Assignment of Responsibility Form is no longer needed and eliminates a redundant paperwork burden from the manufacturers.

Section 145.47 (relating to acquisition of adoption codes and amendments) has been amended to correct the address for the International Code Council; eliminate the reference to BOCA and CABO as these organizations no longer exist; and include information for the Pennsylvania Housing Research/Resource Center.

Section 145.54 (relating to building system approval report and summary) has been amended to require the manufacturer to revise the Building System Approval Report monthly if needed. Current regulation requires this report be updated every 2 years, which severely undermines the ability to effectively monitor the quality process at the manufacturing facility.

Sections 145.60 and 145.61 (relating to insignia of certification; and insignia of inspection agencies) have been revised to reflect the current industry practice of placing required insignias of certification and inspection agency insignias under the kitchen sink.

Section 145.62 (relating to data plates) has been amended to require the applicable code and edition be included on the data plate. This will correct an omission from the current regulations as this information is always provided by the industry as a practical matter in spite of the omission in the regulations.

Section 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification) has been revised to allow for electronic reporting to the Department and to achieve consistency with the reporting process established by other states.

Section 145.72(a) (relating to frequency of inspections) has been amended to provide clarity to the current factory certification process which is confusing and as a result misapplied. The revised process is consistent with the process used by other states. Additionally, the requirement for periodic inspection for storage and transportation methods and facilities has been clarified to require a monthly inspection.

Section 145.78(e) (relating to contractual arrangements) has been added to require a factory to seek approval from the Department prior to changing from one third-party agency to another. This will allow third-party agencies who provide inspection and evaluation services to the factories, to operate free from fear of losing a client as a result of enforcing this proposed rulemaking.

Section 145.82 has been amended to require the Notice of Approval (see § 145.1) be included with the other documentation needed to receive a building permit from the local enforcement agency. This Notice of Approval is similar to notices required by our neighboring states and serves to eliminate confusion regarding the type of housing being installed.

Section 145.91 has been amended to allow for electronic submission of the Site Installation Inspection Report Form and require that manufacturer receive this form as opposed to the inspection agency. The inspection agency

has no relationship with the person installing the industrialized home and as a result compliance with this requirement was weak.

Section 145.94 has been amended to recognize the industrialized housing components are more logically addressed as projects as opposed to individual pieces.

Fiscal Impact

No fiscal impact to the Commonwealth, political subdivisions and the public.

Paperwork

The proposed rulemaking does not impose new or different paperwork requirements. The Assignment of Responsibility Form that was required prior to shipment of every industrialized home is no longer required. Insignia reporting, which all agreed was cumbersome and confusing, has been streamlined consistent with the reporting required by other states. The existing requirement for the Site Installation Inspection Report Form to be submitted to the third-party agencies was unenforceable. The new requirement, that the form be returned to the manufacturer, is more logical and adds value to the process.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the agency submitted a copy of this proposed rulemaking on July 20, 2009, to the Independent Regulatory Review Commission (IRRC), the Chairperson of the House Urban Affairs Committee and the Chairperson of the Senate Community, Economic and Recreational Development Committee (Committees). In addition to submitting the proposed rulemaking, the agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed rulemaking, it will notify the agency by August 31, 2009. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the agency, the General Assembly and the Governor of objections raised.

Effective Date / Sunset Date

(a) The regulations will become effective by August 31, 2009.

(b) This proposed rulemaking is monitored on a regular basis and updated as needed

Contact Person

Interested persons are invited to submit in writing, by August 31, 2009, any comments, suggestions or objections regarding the proposed regulation to Mark Conte, Chief, Housing Standards Division, Department of Community and Economic Development, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120, (717) 720-7416.

JOHN P. BLAKE,
Acting Secretary

Fiscal Note: 4-91. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART V. COMMUNITY AFFAIRS AND DEVELOPMENT

Subpart C. COMMUNITY DEVELOPMENT AND HOUSING

CHAPTER 145. INDUSTRIAL HOUSING AND COMPONENTS

GENERAL PROVISIONS

§ 145.1. Definitions.

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

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[**BOCA—The Building Officials and Code Administrators International, Incorporated.**]

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[**CABO—The Council of American Building Officials.**]

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Industrialized housing—

(i) A structure designed primarily for residential occupancy [, and classified within Use Group R] or classified within Residential Group R in accordance with the standards adopted under § 145.41 (relating to adoption of standards) and which is wholly or in substantial part made, constructed, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on the building site so that concealed parts or processes of manufacture cannot be inspected at the site without disassembly, damage or destruction.

(ii) The term does not include a structure or building classified as an institutional building or manufactured home, as defined by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401—5426).

* * * * *

Notice of Approval—A notice issued by the Department to each manufacturer of industrialized housing or housing components that indicates the approval of the manufacturer's building systems documentation, compliance assurance program, and the authority to receive and attach insignias of certification to industrialized housing or housing components.

* * * * *

*Residential occupancy—*Occupancy of a structure or building, or part thereof, classified as a one or two family dwelling, townhouse or within [Use] Residential Group R in accordance with the standards adopted under § 145.41, by families, households or individuals for purposes of shelter and sleeping, without regard to the availability of cooking or dining facilities.

* * * * *

Site Installation Inspection Report Form—The element of the compliance control program that will identify the various aspects of construction that must be completed on site by the builder or contractor, that when properly completed will result in a conforming home.

* * * * *

SCOPE

§ 145.33. Manufactured homes excluded.

(a) Manufactured homes which are subject to sections 604 and 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5403 and 5424) and the regulations issued thereunder by the United States Department of Housing and Urban Development are not subject to this chapter.

(b) The following language must appear in the installation documentation provided with the industrialized home and the data plate:

The manufacturer certifies that the structure (insert serial number) is not a manufactured home subject to the provisions of the National Manufactured Housing Construction and Safety Standards Act and is

- (1) designed only for erection or installation on a site built permanent foundation
(2) not designed to be moved once so erected or installed
(3) designed and manufactured to comply with (insert applicable standards)
(4) to the manufacturer's knowledge not intended to be used other than on a site-built permanent foundation.

§ 145.34. Housing components.

Housing components which are subject to this chapter are utility core units, closed panels [and], sandwich panels and structural insulated panels.

STANDARDS

§ 145.41. Adoption of standards.

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(c) Insulation technique and installation applicable to the floor or foundation wall is not always practical at the manufacturing facility. Industrialized modular-housing builders or contractors may supply and install the required floor or foundation wall insulation. [If the builder or contractor supplies and installs the required floor or foundation wall insulation, an assignment of responsibility shall be used. The assignment of responsibility shall be signed by the authorized respective builder or contractor prior to the industrialized-modular-housing unit leaving the manufacturing plant. A manufacturer is required to retain the copies of the assignment of responsibility sheets in his files for inspection by the Department. Periodic inspections will be made on units with builder or contractor-installed floor or foundation wall insulation. Assignment of responsibility must be on forms provided by the Department which will conform to the following:

ASSIGNMENT OF RESPONSIBILITY

To: _____

I HEREBY ASSUME FULL RESPONSIBILITY FOR COMPLYING WITH THE FLOOR AND/OR FOUNDATION WALL INSULATION REQUIREMENTS AS MANDATED BY AMENDMENT TO THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT RULES AND

REGULATIONS UNDER THE PENNSYLVANIA INDUSTRIALIZED HOUSING ACT OF MAY 11, 1972.

THIS ASSIGNMENT OF RESPONSIBILITY SHALL APPLY TO THE FOLLOWING HOME(S):

BUILDER NAME: _____

CUSTOMER NAME: _____

MODEL: _____

SERIAL NO.: _____

_____ Date: _____

AUTHORIZED SIGNATURE

BUILDER, CONTRACTOR

(TO BE COMPLETED AND RETURNED TO THE ABOVE ADDRESS WITH SIGNED CONFIRMATION.)]

If the floor or foundation wall insulation is not installed at the manufacturing facility, the manufacturer shall indicate on the Site Installation Inspection Report referenced in § 145.91(e) (relating to reports to Department) that the insulation must be installed on site.

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§ 145.47. Acquisition of adopted codes and amendments.

(a) Copies of the ICC International Building Code, ICC International Residential Code, ICC International Mechanical Code and ICC International Plumbing Code adopted under §§ 145.41 and 145.42 (relating to adoption of standards; and alternate standards) may be obtained from:

International Code Council
[5203 Leesburg Pike
500 New Jersey Avenue, NW
Suite 708
Falls Church, Virginia 22041-3401]
500 New Jersey Avenue
NW 6th Floor
Washington, DC 20001-2070.

* * * * *

(c) [Copies of the 1993 BOCA National codes adopted in part under § 145.41, may be obtained from:

Building Officials and Code Administrators International, Inc.
4051 West Flossmoor Road
Country Club Hills, Illinois 60477

(d) Copies of other alternate standards adopted under § 145.42, including supplements, may be obtained from:

Table with 2 columns: Standard, Address. Rows include CABO One and Two Family Dwelling Code (1992 edition) and Building Officials and Code Administrators International, Inc. 4051 West Flossmoor Road Country Club Hills, Illinois 60477

(e) [Copies of Pennsylvania's Alternative Residential Energy Provisions adopted under § 145.42 may be obtained from:

**Pennsylvania Housing Research/Resource Center
The Pennsylvania State University
219 Sackett Building
University Park, PA 16801**

**INSIGNIA OF CERTIFICATION FOR
INDUSTRIALIZED HOUSING**

Serial No.

This insignia certifies that this dwelling unit of industrialized housing has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act, Title 35 of the Purdon's Pennsylvania Statutes Annotated, §§ 1651.1 to 1651.12, and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(d) The Department will provide, on request, a copy of currently applicable amendments of and additions to codes which are adopted under this chapter and are not published by NFPA, [**BOCA,**] ASHRAE or NCSBCS, as the case may be. The Department may charge a reproduction and handling fee not to exceed \$25, plus applicable postage, for each set of amendments and additions.

CERTIFICATION

§ 145.54. Building System Approval Report and Summary.

At the time that an evaluation agency approves a set of building system documentation under § 145.52 (relating to approval of building system documentation) and the related compliance assurance program under § 145.57 (relating to approval of compliance assurance program), it [**shall**] **must** prepare a Building System Approval Report (BSAR) and a Building System Approval Summary. The BSAR shall contain a list of the identification numbers of each sheet constituting the approved building system documentation, the Compliance Control Manual of the manufacturer, an Index of Code Compliance in the form specified by the Department for industrialized housing, a statement of the fire districts, if any, in which the industrialized housing can be installed, and the additional information relating to the building system documentation and the compliance assurance program as the evaluation agency deems necessary or as the Department may require. The Building System Approval Summary shall be prepared on a form furnished by the Department. The evaluation agency shall furnish to the Department and to the manufacturer one copy each of the BSAR and the Building System Approval Summary, clearly stating the date it is effective. The BSAR shall be revised [**every 2 years to reflect changes made in the manufacturing process**] **monthly as needed.**

(b) Each certified housing component **or components comprising a project in a single dwelling unit** must bear an insignia of certification **for housing components**. The insignia of certification must be furnished by the Department to the manufacturer under the procedures of § 145.63. The manufacturer shall permanently attach the insignia of certification to the housing component in a visible location identified in the building system documentation and in the Building System Approval Report. Each insignia of certification must bear an insignia serial number furnished by the Department and [**shall**] contain the following language:

**INSIGNIA OF CERTIFICATION FOR HOUSING
COMPONENTS**

Serial No.

This insignia certifies that this housing component has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act, Title 35 of the Purdon's Pennsylvania Statutes Annotated, §§ 1651.1 to 1651.12, and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania. [**If the size, shape or other physical characteristic of the housing component make impractical the use of such insignia of certification, the Department may specify such alternative forms of insignia as may be appropriate.**]

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§ 145.60. Insignia of certification.

(a) Certified industrialized housing constituting a single dwelling unit must bear insignia of certification for each module. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification). The manufacturer shall permanently attach the insignia of certification for each module **adjacent** to the data plate located in a visible location [**in the utility room or utility area or other area identified in the building system documentation and in the Building System Approval Report as provided in § 145.62(a) (relating to data plates)**] **in a cabinet under the kitchen sink, or if this cabinet is not available, the location must be clearly identified on the Site Installation Inspection Report referenced in § 145.91(e) (relating to reports to the Department). Insignias may not be attached to doors or other easily removable features of the home.** Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

§ 145.61. Insignia of inspection agencies.

(a) The inspection agency shall attach **to a housing component** its label, seal or other insignia **adjacent** to the data plate for each industrialized housing module.

(b) The inspection agency shall attach its label, seal or other insignia or other identification [**to each housing component which is transported to the building site for installation in a housing structure and to each separate element, if any, of the housing component which is transported to the building site for assembly and installation**] **for certified housing components comprising a project in a single dwelling unit.**

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§ 145.62. Data plates.

(a) A dwelling unit of certified industrialized housing must contain a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location [**in the utility room or utility area, if feasible, and other-**

wise in other areas identified in the building system documentation] as specified in § 145.60(a) (relating to insignia of certification). The data plate must contain sufficient space to permit the attachment of insignia of certification as provided in § 145.60(a) (relating to insignia of certification) and of the label, seal or other insignia of the inspection agency as provided in § 145.61(a) (relating to insignia of inspection agencies). The data plate must contain, but not be limited to, the following information:

* * * * *

(16) Applicable codes, including name of code, edition or year of publication.

* * * * *

§ 145.63. Procedures for requesting, controlling and attaching insignia of certification.

* * * * *

(b) The manufacturer shall entrust the custody of the insignia of certification received from the Department only to [employes] employees designated in the compliance control program as responsible for the custody and control of the insignia of certification. The manufacturer shall attach the insignia to dwelling units of industrialized housing or to housing components only in the circumstances prescribed in the compliance control program and only with the prior specific authorization from the inspection agency. The manufacturer shall attach the insignia of certification in the manner specified by the Department intended to assure that the insignia cannot be removed without destroying the insignia. The manufacturer shall promptly record the attachment of each insignia of certification on the Insignia of Certification Inventory Control List. A copy of the Insignia of Certification Inventory Control List, with all columns filled out by the manufacturer [to the extent of its knowledge], shall be sent by the manufacturer to the Department and to the inspection agency promptly following the use of all the [insignia] insignias listed on the list [or 3 months after receipt of the list from the Department, whichever occurs first]. The manufacturer shall report to the Department and to the inspection agency the status of all insignias issued to them on a monthly basis, utilizing a method approved by the Department.

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THIRD-PARTY AGENCIES

§ 145.72a. Frequency of inspections.

(a) In carrying out its monitoring responsibilities under § 145.72[(1) and (2)] (relating to responsibilities of inspection agencies), an inspection agency shall observe the following minimum frequency of inspection requirements: [for factory inspections when the inspection agency label is being attached to every dwelling unit produced in the factory:

(1) The inspection agency shall inspect each major subsystem of each unit produced by the factory during its start-up period or during the inspection agency's initial work at the factory.

(2) At any time after a minimum of ten complete units have been inspected as required by paragraph (1), the inspection agency may reduce the frequency of inspection, but not to less than a 20% frequency of inspection level. A "20% frequency of inspection" means that the inspection agency will

inspect either one complete dwelling unit (including four major subsystems) out of every five dwelling units produced or one-fifth of major subsystems approximately evenly distributed among a larger sampling of dwelling units, that is 20 major subsystems in 25 dwelling units of production.]

(1) During the inspection agency's initial work at the factory or after revocation under § 145.67 (relating to revocation of certification of industrialized housing and housing components), the inspection agency shall monitor the manufacturers approved compliance control program by inspecting industrialized homes throughout every work station, until it can be certified that the manufacturer is producing conforming homes on an ongoing basis.

(2) At a minimum, ten industrialized homes shall be inspected at every work station prior to granting the manufacturer authority to receive and attach insignias of certification for industrialized housing. At least one home through this certification process must be an industrialized house or housing component destined for a site in this Commonwealth.

* * * * *

(c) An inspection agency's monitoring responsibilities under § 145.72(1) and (2) [shall] include the [periodic] monthly inspection of the storage and transportation methods and facilities employed by or on behalf of the manufacturer for as long as the manufacturer retains title to or effective control over the dwelling units to insure that the units are not altered from the manner in which they were approved.

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§ 145.78. Contractual arrangements.

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(e) A manufacturer of industrialized housing or housing components operating under an implementing contract with an approved evaluation agency and an approved inspection agency, who wishes to enter into an implementing contract with a different evaluation or inspection agency, shall provide justification and receive approval from the Department prior to entering into the new contract.

LOCAL ENFORCEMENT AGENCIES

§ 145.82. Issuance of building permits.

(a) A person seeking a building permit from a local enforcement agency for industrialized housing or a housing structure in which will be installed housing components shall furnish a current Notice of Approval and a statement signed by the person seeking the building permit or, if a corporation, by an officer or authorized representative of the corporation, that the work to be performed under the building permit will include the installation of certified industrialized housing or certified housing components, bearing the insignia of certification issued by the Department under the act and this chapter.

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ADMINISTRATIVE PROVISIONS

§ 145.91. Reports to the Department.

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(e) A person installing industrialized housing or housing components for use on a site in a jurisdiction in this Commonwealth shall prepare and [mail to the inspection agency] return to the manufacturer a Site Installation Inspection Report on a form furnished by the manufacturer as part of [their] the approved compliance control program. The manufacturer is responsible for furnishing to the person performing the installation a copy of the Site Installation Inspection Report [form] Form and instructions as to its intended use.

§ 145.94. Fees.

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(d) Each manufacturer requesting the Department under § 145.63 to issue insignia of certification for housing components shall pay a fee of \$40 for each housing component which will bear insignia of certification. [The fee payable under this subsection for housing components to be installed in a single-dwelling unit may not exceed \$100.]

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[Pa.B. Doc. No. 09-1372. Filed for public inspection July 31, 2009, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 1187 AND 1189] Nonpublic and County Nursing Facilities

Statutory Authority

Notice is hereby given that the Department of Public Welfare (Department) under the authority of the Public Welfare Code (62 P. S. §§ 201(2), 206(2), 403(b) and 443.1) as amended by the act of July 4, 2008 (Act 44) (62 P. S. § 443.1(7)) intends to amend the regulations as set forth in Annex A.

Purpose of Rulemaking

The purpose of this proposed rulemaking is to amend the payment methodology for Medical Assistance (MA) nursing facility services as directed by Act 44 and to make other revisions to streamline and simplify rate-setting for nonpublic nursing facilities and to eliminate obsolete regulatory provisions.

Requirements

The following is a summary of the specific provisions in the proposed rulemaking under Act 44 revisions:

1. Phase-out of county costs in nonpublic nursing facility rate setting—§§ 1187.96, 1187.97 and 1187.98 (relating to price- and rate-setting computations; rates for new nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities; and phase-out median determination).

Effective January 1, 1996, the Department began setting payment rates for both county and nonpublic MA nursing facility providers using the case-mix payment methodology in Chapter 1187 (relating to nursing facility services). Under the case-mix payment methodology, nursing facilities, other than special rehabilitation facilities and hospital-based nursing facilities, are classified into peer groups based upon their size and geographic loca-

tion. The MA audited allowable costs of the facilities in the peer group are used to establish prices for the net operating components of the facilities' case-mix per diem rates. The prices are used to cap the net operating rates components.

Beginning July 1, 2006, the Department established a new payment methodology for county nursing facility providers, which is based on the counties' certified public expenditures to provide nursing facility services to MA recipients. In establishing this separate payment methodology, the Department recognized that the county nursing facilities' MA audited allowable costs would no longer be included in the rate-setting database used to calculate peer group prices for nonpublic facilities, and that as a result the rates for these facilities could decline. To mitigate any adverse impacts of this change on nonpublic nursing facilities, the Department adopted amendments to Chapter 1187 authorizing the continued use of county costs in the rate-setting process for nonpublic nursing facilities for a 2-year period, which ended June 30, 2008.

Act 44 directs the Department to include county costs in calculating rates for nonpublic nursing facilities for an additional rate year, and to propose regulations to phase-out the use of county costs over a 3-year period beginning July 1, 2009, and ending June 30, 2012. To comply with Act 44, the Department is proposing to revise the rate-setting methodology in §§ 1187.96, and 1187.98, and to make a related change to § 1187.97.

The Department is proposing to revise § 1187.96 to specify that it will use phase-out medians, as determined in accordance with § 1187.98 to set prices for the net operating cost centers (resident care, other resident related and administrative) for each peer group that contains a county nursing facility for the 3-year phase out period, rate years 2009-2010, 2010-2011 and 2011-2012.

The Department is proposing to revise § 1187.98 to specify how phase-out medians will be calculated for the 3-year phase-out period. Under the proposed revisions, the Department will continue to include county nursing facilities in determining peer groups in accordance with § 1187.94(1) (relating to peer grouping for price setting) for rate years 2009-2010, 2010-2011 and 2011-2012. Once peer groups have been determined, the Department will calculate an interim median by adding each county nursing facility's costs from the three most recent audited cost reports to a noncollapsed peer group based on bed size and MSA group. The Department will then calculate the phase-out median as follows:

For rate year 2009-2010, the phase-out median will equal 75% of the interim median plus 25% of the median calculated in accordance with § 1187.96.

For rate year 2010-2011, the phase-out median will equal 50% of the interim median plus 50% of the median calculated in accordance with § 1187.96.

For rate year 2011-2012, the phase-out median will equal 25% of the interim median plus 75% of the median calculated in accordance with § 1187.96.

For rate year 2012-2013 and thereafter, county nursing facility MA allowable costs will not be used in the rate-setting process for nonpublic nursing facilities.

The 3-year phase-out of the use of county nursing facility costs should provide a transition period for nonpublic nursing facilities to adjust their business practices accordingly.

In addition to providing authority for calculation and use of phase-out medians, the Department is proposing to

make a related change to § 1187.97 to extend application of this provision, which specifies how payments for county nursing facilities that privatize are calculated, to coincide with the phase-out of the county nursing facility costs in setting nonpublic nursing facility payment rates.

2. Bed hold day, otherwise referred to as a hospital reserved bed day—§§ 1187.97 and 1187.104 and 1189.103 (regarding limitations on payment for reserved beds).

Currently, the Department pays nonpublic and county nursing facilities a maximum of 15 consecutive reserved bed days per hospitalization to hold a bed for a resident who requires hospitalization. The payment is made at a rate of 1/3 of the nursing facility's per diem rate on file with the Department at the time of the hospitalization, and is paid regardless of the nursing facility's overall total occupancy rate.

Act 44 directs the Department to propose regulations to establish minimum occupancy requirements as a condition for MA nonpublic and county nursing facilities to receive reserved bed day payments for MA residents, and to phase-in the use of these requirements over a period of 2 rate years beginning July 1, 2009, and ending June 30, 2011. To comply with Act 44, the Department is proposing to revise the rate-setting methodology in §§ 1187.97, 1187.104 and 1189.103 as follows:

Beginning July 1, 2009, and ending June 30, 2010, the Department is proposing to amend §§ 1187.104 and 1189.103 to specify that it will only pay a nonpublic or county MA nursing facility for a hospital reserved bed day if the facility's overall total occupancy for the applicable picture date is equal to or greater than 75%. Beginning July 1, 2010, and thereafter, the Department is proposing to pay a facility for a hospital reserved bed day only if the facility's overall total occupancy for the applicable picture date is equal to or greater than 85%. The Department is also proposing to amend §§ 1187.97 and 1189.103 to exempt a new nursing facility from these occupancy requirements until CMI Reports for the three picture dates used to calculate overall occupancy are available for the rate quarter.

The intent of these proposed changes is to ensure that MA recipients continue to receive access to medically necessary nursing facility services while encouraging nursing facility efficiency and economy associated with nursing facility occupancy levels.

Other revisions:

1. Fixed property component of a nonpublic nursing facility's capital rate—§§ 1187.2, 1187.51, 1187.57, 1187.91, 1187.96 and 1187.112.

Currently under the case-mix payment system, the Department annually computes a facility-specific capital rate for each nursing facility. The nursing facility's capital rate consists of a fixed property component, a movable property component, and a real estate tax component. The fixed property component is based on the fair rental value of the nursing facility's fixed property which is determined by an appraisal completed by an independent appraisal firm under contract with the Department. The nursing facility's fair rental value is adjusted by the appraised depreciated replacement cost of the nursing facility's fixed property to account for the per bed limitation of \$26,000 and the bed moratorium provision contained in § 1187.113 (relating to capital component payment limitation). The adjusted amount is then multiplied by the financial yield rate.

For Fiscal Year (FY) 2008-2009, only six of the 595 nonpublic nursing facilities participating in the MA pro-

gram were appraised at a fair rental value under \$26,000. Therefore, the Department determined that to continue the use of an appraisal process in the establishing of a nonpublic nursing facility's fixed property component of their capital rate is unnecessarily burdensome and costly. Beginning in FY 2009-2010, the Department is proposing to amend §§ 1187.51, 1187.57, 1187.91 and 1187.96 to eliminate references to the use of appraisals in the establishment of the fixed property component of a nonpublic nursing facility's capital rate, and to specify instead that the fixed property component of a nonpublic nursing facility's capital rate will be based on the number of MA allowable beds multiplied by an assigned per bed cost of \$26,000. The result of this calculation will then be multiplied by the financial yield rate. The Department will also add a new definition of "allowable bed" to § 1187.2 (relating to definitions).

The elimination of the use of appraisals in the establishment of the fixed property component of a nonpublic nursing facility's capital rate will make certain terms and other provisions of Chapter 1187 obsolete. Specifically, the terms, "appraisal," "bed cost limitation," "FRV-fair rental value," "initial appraisal," "limited appraisal," "movable property appraisal," "reappraisal" and "updated appraisal" will no longer be used in the payment methodology. In addition, because all allowable beds will be assigned a fixed value of \$26,000, the cost per bed maximum limitation in § 1187.112 (relating to cost per bed limitation adjustment) will be obsolete. Therefore, the Department is proposing to remove these definitions from § 1187.2, and rescind § 1187.112 in its entirety.

2. Obsolete moveable property provisions—§§ 1187.57, 1187.91, 1187.96 and 1187.97.

The Department is also proposing to delete the major movable property provisions that relate to cost report periods prior to January 1, 2001, contained in §§ 1187.57, 1187.91, 1187.96 and 1187.97. All nursing facility cost reports contained in the database used for rate setting are for a period beginning after January 1, 2001; therefore, the provisions related to the cost report periods prior to January 1, 2001, are obsolete. This deletion does not change the method used by the Department to determine a nonpublic nursing facility's major movable component of their capital rate. In accordance with current regulation, a nonpublic nursing facility's major movable property component will be based on the nursing facility's audited cost of major movable property. Each nursing facility shall report the acquisition cost of all major movable property on the major movable property line of its MA-11 and shall report the cost of minor movable property and the cost of supplies as net operating costs in accordance with § 1187.51 (relating to scope) and instructions for the MA-11.

Affected Individuals and Organizations

This proposed rulemaking will affect all nonpublic and county nursing facilities enrolled in the MA Program.

Accomplishments and Benefits

This proposed rulemaking will benefit this Commonwealth's MA nursing facility residents by assuring they will continue to have access to medically necessary nursing facility services while providing for reasonable and adequate payments to MA nursing facility providers consistent with the fiscal resources of this Commonwealth.

Fiscal Impact

No fiscal impact is anticipated as a result of these changes through June 30, 2011.

Paperwork Requirements

There are no new or additional paperwork requirements.

Effective Date

The proposed effective date for the proposed rulemaking is July 1, 2009.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Tom Jayson, Department of Public Welfare, Office of Long-Term Living, P. O. Box 2675, Harrisburg, PA 17105, within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-516 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 21, 2009, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare (Committees). In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has any comments, recommendations or objections to any portion of the proposed rulemaking, it may notify the Department and the Committees within 30 days after the close of the public comment period. The notification shall specify the Regulatory Review Criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-516. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1187.2. Definitions.

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

* * * * *

Allowable bed—A nursing facility bed that is not subject to the limitation in § 1187.113 (relating to capital component payment limitation).

* * * * *

[*Appraisal*—A determination of the depreciated replacement cost of fixed or movable property, made by qualified personnel of an independent appraisal firm under contract with the Department.]

* * * * *

[*Bed cost limitation*—The fixed property cost limited by the amount identified in § 1187.112 (relating to cost per bed limitation adjustment).]

* * * * *

[*FRV*—*Fair rental value*—The imputed rent for the fixed or movable property used at a nursing facility to provide nursing facility services to its MA residents.]

* * * * *

[*Initial appraisal*—An appraisal of the fixed property of a new nursing facility, made for the purpose of computing the fixed property component of that nursing facility's initial capital rate. An initial appraisal will be based, in part, upon an onsite inspection of the new nursing facility's fixed property conducted by qualified personnel of an independent appraisal firm under contract with the Department.]

* * * * *

[*Limited appraisal*—An appraisal requested by a nursing facility and conducted to determine the effect of changes in the fixed property of a nursing facility, where the cost of the changes to the nursing facility was more than \$200,000 or 10% of the most recent appraised depreciated replacement cost of the nursing facility's fixed property, whichever is lower. A limited appraisal results in the modification of the depreciated replacement cost set forth in an initial appraisal, a reappraisal or an updated appraisal.]

* * * * *

[*Movable property appraisal*—An appraisal of some or all of the movable property of a nursing facility. Depending upon circumstances, this appraisal may pertain to all movable property or only to major movable property. Movable property appraisals are conducted by qualified personnel of an independent appraisal firm under contract with the Department.]

* * * * *

[*Reappraisal*—An appraisal of the fixed property of a nursing facility, made for the purpose of computing the fixed property component of that nursing facility's capital rate. A reappraisal will be based, in part, upon an onsite inspection of the nursing facility's fixed property conducted by qualified personnel of an independent appraisal firm under contract with the Department.]

* * * * *

[*Updated appraisal*—An appraisal of a nursing facility's fixed property that is based upon the depreciated replacement cost set forth in the nursing facility's initial appraisal or most recent reappraisal and brought forward to a new date. An updated appraisal does not involve an additional

onsite inspection of the nursing facility's fixed property. The depreciated replacement costs set forth in an updated appraisal are determined through the application of factors to allow for appreciation and depreciation estimated to have taken place between the two appraisal dates.]

* * * * *

Subchapter E. ALLOWABLE PROGRAM COSTS AND POLICIES

§ 1187.51. Scope.

* * * * *

(e) Within the limits of this subchapter, allowable costs for purposes of cost reporting include those costs necessary to provide nursing facility services. These may include costs related to the following:

* * * * *

(4) *Capital costs.*

(i) [**Fair rental value**] Assigned cost of fixed property.

(ii) [**Movable**] Acquisition cost of major movable property.

[(A) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the fair rental value of major and minor movable property.

(B) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the audited acquisition cost of major movable property.]

* * * * *

§ 1187.57. Selected capital cost policies.

The Department will establish a prospective facility-specific capital rate annually for each nursing facility. That rate will consist of three components: the fixed property component, the movable property component and the real estate tax component.

(1) *Fixed property component.*

[(i) The Department will base the nursing facility's fixed property component on the depreciated replacement cost of the nursing facility's fixed property and the associated financial yield rate.

(ii) On an annual basis, the Department will determine the depreciated replacement cost of each nursing facility's fixed property as of March 31, and will use that determination in setting the fixed property component for the rate year beginning on the following July 1.

(iii) The basis for the Department's determination of the depreciated replacement cost of the nursing facility's fixed property will be the most recent of the following appraisals, as modified by any limited appraisals, as of March 31:

- (A) An initial appraisal.
- (B) A reappraisal.
- (C) An updated appraisal.

(iv) An initial appraisal of the nursing facility's fixed property will be conducted for any new nursing facility.

(v) A reappraisal of the nursing facility's fixed property will be conducted at least every 5 years.

(vi) In situations where neither an initial appraisal nor a reappraisal has been done within the 12-month period preceding March 31, the depreciated replacement cost will be based upon an updated appraisal.

(vii) A limited appraisal will be conducted if the nursing facility notifies the Department that a limited appraisal is needed. For the results of a limited appraisal to be included in the determination of a nursing facility's fixed property component for the next rate year, a limited appraisal must be requested by the nursing facility by January 31 of the preceding rate year.

(viii) The depreciated replacement cost of the nursing facility's fixed property is subject to the cost per bed limitation in § 1187.112 (relating to cost per bed limitation adjustment) and, if applicable, the bed moratorium limitation in § 1187.113 (relating to capital component payment limitation).

(ix) The cost to purchase, construct or renovate the fixed property of the nursing facility will not be a factor in determining the appraised depreciated replacement cost.

(x) When there is a change in nursing facility ownership, the new nursing facility owner is deemed to have the same appraised depreciated replacement cost as the former owner.

(xi) The appraisals of fixed property will be performed by qualified personnel from an independent appraisal firm under contract with the Department.]

The Department will base the nursing facility's fixed property component on an assigned cost of \$26,000 per allowable bed.

(2) *Movable property component.*

(i) [When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the Department will determine the movable property component of each nursing facility's capital rate as follows:

(A) The Department will base the nursing facility's movable property component on the depreciated replacement cost of the nursing facility's major and minor movable property and the associated financial yield rate.

(B) On an annual basis, the Department will determine the depreciated replacement cost of each nursing facility's movable property as of March 31, and will use that determination in setting the movable property component for the rate year beginning on the following July 1.

(C) The Department will base the determination of the depreciated replacement cost of each nursing facility's movable property on a movable property appraisal.

(D) When there is a change in nursing facility ownership, the new nursing facility owner is

deemed to have the same appraised depreciated replacement cost as the former owner.

(ii) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the] The Department will determine the movable property component of each nursing facility's capital rate as follows:

[(A)] (i) The Department will base the nursing facility's movable property component on the nursing facility's audited cost of major movable property, as set forth in that MA-11.

[(B)] (ii) Each nursing facility shall report the acquisition cost of all major movable property on the major movable property line of its MA-11 and shall report the cost of minor movable property and the cost of supplies as net operating costs in accordance with § 1187.51 (relating to scope) and instructions for the MA-11.

* * * * *

Subchapter G. RATE SETTING

§ 1187.91. Database.

The Department will set rates for the case-mix payment system based on the following data:

* * * * *

(2) Capital costs.

(i) Fixed property component. The fixed property component of a nursing facility's capital rate will be based upon the [fair rental value] total assigned cost of the nursing facility's [fixed property] allowable beds.

(ii) Movable property component.

[(A) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the movable property component of a nursing facility's capital rate will be based upon the fair rental value of the nursing facility's major and minor movable property.

(B) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the] The movable property component of a nursing facility's capital rate will be based upon the audited costs of the nursing facility's major movable property as set forth in the nursing facility's most recent audited MA-11 cost report available in the NIS database.

* * * * *

§ 1187.94 Peer grouping for price setting.

To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program into 14 mutually exclusive groups as follows:

(1) Nursing facilities participating in the MA Program, except those nursing facilities that meet the definition of a special rehabilitation facility or hospital-based nursing facility, will be classified into 12 mutually exclusive groups based on MSA group classification and nursing facility certified bed complement.

* * * * *

(v) For rate years 2009-2010, 2010-2011 and 2011-2012, county nursing facilities will be included when determining the number of nursing facilities in a peer group in accordance with subparagraph (iv).

* * * * *

§ 1187.96 Price- and rate-setting computations.

(a) Using the NIS database in accordance with this subsection and § 1187.91 (relating to database), the Department will set prices for the resident care cost category.

* * * * *

(3) For rate years 2006-2007 [and], 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the resident care price will be the phase-out median as determined in accordance with § 1187.98 (relating to phase-out median determination).

* * * * *

(b) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set prices for the other resident related cost category.

* * * * *

(3) For rate years 2006-2007 [and], 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the other resident related price will be the phase-out median as determined in accordance with § 1187.98.

* * * * *

(c) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set prices for the administrative cost category.

* * * * *

(3) For rate years 2006-2007 [and], 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the administrative price will be the phase-out median as determined in accordance with § 1187.98.

* * * * *

(d) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set a rate for the capital cost category for each nursing facility by adding the nursing facility's fixed property component, movable property component and real estate tax component and dividing the sum of the three components by the nursing facility's total actual resident days, adjusted to 90% occupancy, if applicable.

(1) The Department will determine the fixed property component of each nursing facility's capital rate as follows:

(i) The Department will [adjust the appraised depreciated replacement cost of the nursing facility's fixed property to account for the per bed limitation in § 1187.112 (relating to cost per bed limitation adjustment) and the bed moratorium addressed in § 1187.113 (relating to capital component payment limitation)] multiply the total number of the nursing facility's allowable beds as of April 1, immediately preceding the rate year, by \$26,000 to determine the nursing facility's allowable fixed property cost.

(ii) The Department will multiply the [adjusted depreciated replacement costs of the fixed property]

result by the financial yield rate. [to determine the fair rental value for the nursing facility's fixed property.

(iii) The nursing facility's fixed property component will equal the fair rental value of its fixed property.]

(2) The Department will determine the movable property component of each nursing facility's capital rate [as follows:

(i) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001:

(A) The Department will multiply the depreciated replacement costs of the movable property by the financial yield rate to determine the fair rental value for the nursing facility's movable property.

(B) The nursing facility's movable property component will equal the fair rental value of its movable property.

(ii) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the amount of the movable property component will be] based [upon] on the audited actual costs of major movable property as set forth in the most recent audited MA-11 cost report available in the NIS database in accordance with § 1187.91(a)(ii). This amount is referred to as the nursing facility's [most recent] allowable movable property cost.

* * * * *

§ 1187.97. Rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities.

The Department will establish rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities as follows:

(1) New nursing facilities.

* * * * *

(ii) [For nursing facilities enrolled in the MA Program prior to January 1, 2001, the three components of the capital portion of the case-mix rate are determined as follows:

(A) The fixed property component will be determined in accordance with § 1187.96(d)(1) (relating to price and rate setting computations).

(B) The movable property component will be determined in accordance with § 1187.96(d)(2).

(C) The real estate tax cost component will be determined based on the audited actual real estate tax cost.

(iii) For nursing facilities enrolled in the MA Program on or after January 1, 2001, the] The three components of the capital portion of the case-mix rate are determined as follows:

* * * * *

(B) Movable property component. The movable property component will be determined as follows:

(I) The nursing facility's acquisition cost, as determined in accordance with § 1187.61(b) (relating to movable property cost policies), for any new items of movable property acquired on or before the date of enrollment in the MA program, will be added to the nursing facility's remaining book value for any used movable property as of the date of enrollment in the MA program to arrive at the nursing facility's movable property cost. [If the nursing facility does not have a depreciation schedule for its used movable property, the allowable cost for those items will be the depreciated replacement cost as determined by qualified personnel of the Department's independent appraisal contractor.]

* * * * *

[(iv)] (iii) Newly constructed nursing facilities are exempt from the adjustment to 90% occupancy until the nursing facility has participated in the MA Program for one full annual price setting period as described in § 1187.95 (relating to general principles for rate and price setting).

(iv) A new nursing facility is exempt from the occupancy requirements in § 1187.104 (1)(ii) (relating to limitations on payment for reserved beds) until a CMI Report for each of the three picture dates used to calculate overall occupancy as set forth in § 1187.104(1)(iii) is available for the rate quarter.

(2) Nursing facilities with a change of ownership and reorganized nursing facilities.

(i) New provider. The new nursing facility provider will be paid exactly as the old nursing facility provider, except that, if a county nursing facility becomes a nursing facility between July 1, 2006, and June 30, [2008] 2012, the per diem rate for the nursing facility will be computed in accordance with § 1187.96, using the data contained in the NIS database. Net operating and capital rates for the old nursing facility provider will be assigned to the new nursing facility provider.

* * * * *

§ 1187.98. Phase-out median determination.

(a) For rate years, 2006-2007 and 2007-2008, the Department will determine a phase-out median for each net operating cost center for each peer group to calculate a peer group price. The Department will establish the phase-out median as follows:

* * * * *

(b) For rate years, 2009-2010, 2010-2011 and 2011-2012, the Department will determine a phase-out median for each net operating cost center for each peer group to calculate a peer group price. The Department will establish the phase-out median as follows:

(1) The Department will establish an interim phase out median for the rate year as specified in subsection (a).

(2) The phase-out median for the 2009-2010 rate year will equal 75% of the interim median calculated in accordance with paragraph (1) plus 25% of the median calculated in accordance with § 1187.96.

(3) The phase-out median for the 2010-2011 rate year will equal 50% of the interim median calculated in accordance with paragraph (1) plus 50% of the median calculated in accordance with § 1187.96.

(4) The phase-out median for the 2011-2012 rate year will equal 25% of the interim median calculated in accordance with paragraph (1) plus 75% of the median calculated in accordance with § 1187.96.

(c) For the rate year, 2012-2013 and thereafter, county nursing facility MA allowable costs will not be used in the rate-setting process for nonpublic nursing facilities.

**Subchapter H. PAYMENT CONDITIONS,
LIMITATIONS AND ADJUSTMENTS**

§ 1187.104. Limitations on payment for reserved beds.

(a) The Department will make payment to a nursing facility for a reserved bed when the resident is absent from the nursing facility for a continuous 24-hour period because of hospitalization or therapeutic leave **subject to the limits in subsection (b)**. A nursing facility shall record each reserved bed for therapeutic leave on the nursing facility's daily census record and MA invoice. When the bed reserved for a resident who is hospitalized is temporarily occupied by another resident, a nursing facility shall record the occupied bed on the nursing facility's daily MA census record and the MA invoice. During the reserved bed period, the same bed shall be available for the resident upon the resident's return to the nursing facility. [**The following limits on payment for reserved bed days apply:**]

(b) **The payment for reserved bed days is subject to the following limits:**

(1) *Hospitalization.*

(i) A resident receiving nursing facility services is eligible for a maximum of 15 consecutive reserved bed days per hospitalization. The Department will pay a nursing facility at a rate of 1/3 of the nursing facility's current per diem rate on file with the Department for a hospital reserved bed day **if the nursing facility meets the overall occupancy requirements of subparagraphs (ii)**.

(ii) [**If the resident's hospital stay exceeds the Department's 15 reserved bed day payment limitation, the nursing facility shall readmit the resident to the nursing facility upon the first availability of a bed in the nursing facility if, at the time of readmission, the resident requires the services provided by the nursing facility.**] A nursing facility's overall occupancy rate shall equal or exceed the following:

(A) During the rate year 2009-2010, the nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs must equal or exceed 75%.

(B) Beginning with the rate year 2010-2011 and thereafter, the nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs must equal or exceed 85%.

(iii) [**Hospital reserved bed days may not be billed as therapeutic leave days.**] The Department will calculate a nursing facility's overall occupancy rate for a rate quarter as follows:

(A) The Department will identify the picture date for the rate quarter as specified in § 1187.96(a)(5) (relating to price-and rate-setting computations) and the two picture dates immediately preceding this picture date.

(B) The Department will calculate the nursing facility's occupancy rate for each of the picture dates identified in clause (A) by dividing the total number of assessments listed in the facility's CMI report for that picture date by the number of the facility's certified beds on file with the Department on the picture date and multiplying the result by 100%. The Department will assign the highest of the three picture date occupancy rates as the nursing facility's overall occupancy rate for the rate quarter.

(C) The Department will only use information contained on a valid CMI report to calculate a nursing facility's overall occupancy rate. If a nursing facility did not submit a valid CMI report for a picture date identified in clause (A), the Department will calculate the nursing facility's overall occupancy rate based upon the valid CMI reports that are available for the identified picture dates. If no valid CMI reports are available for the picture dates identified in clause (A), the nursing facility is not eligible to receive payment for hospital reserve bed days in the rate quarter.

(D) For purposes of this subsection, a valid CMI report is a CMI report that meets the requirements of § 1187.33(a)(5) and (6) (relating to resident data and picture date reporting requirements).

(iv) If the resident's hospital stay exceeds the Department's 15 reserved bed day payment limitation, the nursing facility shall readmit the resident to the nursing facility upon the first availability of a bed in the nursing facility if, at the time of readmission, the resident requires the services provided by the nursing facility.

(v) **Hospital reserved bed days may not be billed as therapeutic leave days.**

* * * * *

**§ 1187.112. [Cost per bed limitation adjustment]
(Reserved).**

(Editor's Note: The Department is proposing to delete the text of 1187.112 as it currently appears in the Pennsylvania Code pages 1187-52.15 and 1187-52.16 (serial pages (320661) and (320662)).

**CHAPTER 1189. COUNTY NURSING FACILITY
SERVICES**

§ 1189.103. Limitations on payment for reserved beds.

(a) [**The Department will make payment to a county nursing facility**] A county facility may be eligible for payments for a reserved bed when the resident is absent from the nursing facility for a continuous 24-hour period because of hospitalization or therapeutic leave. A county nursing facility shall record each reserved bed for therapeutic leave on the nursing facility's daily census record and MA invoice. When the bed reserved for a resident who is hospitalized is temporarily occupied by another resident, a county nursing facility shall record the occupied bed on the nursing facility's daily MA census record and the MA invoice. During the reserved bed period the same bed shall be available for the resident upon the resident's return to the nursing facility.

(b) The following limits on payment for reserved bed days apply:

(1) *Hospitalization.*

* * * * *

(ii) A county nursing facility's overall occupancy must meet the occupancy requirements in this subparagraph. For each rate quarter, the criteria for meeting the overall occupancy limits will be calculated and applied to the rate quarter based on the highest of the overall occupancy calculated for three picture dates. The three picture dates will be the picture date for the current rate quarter (July 1 rate quarter—February 1 picture date; October 1 rate quarter—May 1 picture date; January 1 rate quarter—August 1 picture date; and April 1 rate quarter—November 1 picture date) and the two picture dates directly preceding this picture date. Overall occupancy for each picture date will be calculated by dividing the total number of assessments listed in the facility's CMI report for the picture date by the number of the facility's certified beds on file with the Department on the picture date. The highest of the results will be used to determine whether the county nursing facility meets the overall occupancy criteria set forth as follows:

(A) During rate year 2009-2010, the county nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurred must be equal or exceed 75%.

(B) Beginning with rate year 2010-2011 and thereafter, the county nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs must equal or exceed 85%.

(iii) County nursing facilities not submitting a valid CMI report for the three picture dates do not meet the criteria for payment for reserved bed days, unless subparagraph (iv) applies.

(iv) New county nursing facilities are eligible for payment for reserved bed days as set forth in subparagraph (i) until CMI Reports for the three picture dates used to calculate overall occupancy as set forth in subparagraph (ii) are available for the rate quarter.

(v) If the resident's hospital stay exceeds the Department's 15 reserved bed days payment limitation, the county nursing facility shall readmit the resident to the nursing facility upon the first availability of a bed in the county nursing facility if, at the time of readmission, the resident requires the services provided by the county nursing facility.

[(iii)] (vi) Hospital reserved bed days may not be billed as therapeutic leave days.

* * * * *

[Pa.B. Doc. No. 09-1373. Filed for public inspection July 31, 2009, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 233]

Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues

The Department of Transportation (Department), Bureau of Highway Safety and Traffic Engineering, under 75 Pa.C.S. § 3116 (relating to automated red light enforcement systems in first class cities) proposes to add Chapter 233 (relating to transportation enhancement grants from automated red light enforcement system revenues) as set forth in Annex A.

Purpose of this Chapter

The purpose of this chapter is to implement 75 Pa.C.S. § 3116(1)(2) which requires the Department to develop, by regulation, a Transportation Enhancements Grant Program (Program) for the use of revenue generated from automated red light enforcement systems.

Purpose of this Proposed Rulemaking

The purpose of this proposed rulemaking is to prescribe how the Department will administer the Program for the use of revenue generated from automated red light enforcement systems, under 75 Pa.C.S. § 3116(1)(2).

The Program will be funded by revenues generated from fines paid by violators of 75 Pa.C.S. § 3112(a)(3), where the enforcement mechanism is approved automated red light enforcement systems located at signalized intersections approved by the Department.

At the present time, 75 Pa.C.S. § 3116 only provides legal authority to implement automated red light enforcement systems within the City of Philadelphia (City), and it designates the Philadelphia Parking Authority as the "system administrator."

Section 3116(1)(2) of the Vehicle Code allows the system administrator to deduct automated red light enforcement program operation and maintenance costs from fine revenue before remitting the balance to the Department for deposit into the Motor License Fund.

The proposed rulemaking is written so they will still apply if the 75 Pa.C.S. (relating to Vehicle Code) is amended in the future to permit automated red light enforcement systems in other Commonwealth jurisdictions beyond the City.

Summary of Significant Provisions

The definitions of local authorities and sponsor in § 233.2 (relating to definitions) and the information in § 233.5 (relating to application procedure) indicate that local authorities (county, municipal, and other local boards or bodies having authority to enact laws relating to traffic), metropolitan planning organizations, rural planning organizations, county planning organizations, or Commonwealth agencies would be eligible to apply for a transportation enhancement grant from automated red light enforcement system revenues.

Section 233.3 (relating to eligibility requirements and criteria) indicates that all worthwhile projects that involve improvements to highway safety or mobility may be considered, with the exception of transportation impact studies and highway improvements that are the responsibility of the applicant for a Department Highway Occupancy Permit.

Section 233.4 (relating to limits of funding) provides that grants may cover the entire cost of an eligible project, so matching funds are not required. Grants may also be used for a portion of a larger project if other funding sources are secured.

Section 233.5 describes the application procedure and required information.

Section 233.6 (relating to deadline for applications) establishes an annual grant application period from June 1—30.

The criteria to be used in the review of grant applications are set forth in § 233.8 (relating to grant selection process and criteria). A debriefing would be available for unsuccessful applicants upon request.

Provisions pertaining to offers and acceptance of a grant, standards and special conditions, audits and recordkeeping, inspections, and payment procedures are addressed in §§ 233.9—233.13 respectively.

Persons and Entities Affected

This proposed rulemaking affects various entities involved with the current automated red light enforcement program within the City. These include the City, which is the only permissible host community for automated red light enforcement based on the enabling legislation; the Philadelphia Parking Authority, which is the designated system administrator in the enabling legislation; and the Traffic Engineering Division of the City of Philadelphia, Department of Streets, which owns, operates and maintains the traffic signals at which automated red light enforcement systems are installed within the City.

Other affected entities are sponsors that choose to apply for, or receive, a transportation enhancement grant under the provisions of the proposed regulations. These include local authorities (county, municipal and other local boards or bodies having authority to enact laws relating to traffic), metropolitan planning organizations, rural planning organizations, county planning organizations or Commonwealth agencies.

The Department is certainly affected since it will be administering the Program established by the proposed rulemaking. Section 3116 of the Vehicle Code defines various other Department roles and responsibilities related to the automated red light enforcement program. The Department is also affected by virtue of the fact that most of the automated red light enforcement system equipment is installed on State-designated highways.

In the future, other local authorities would be affected if the Vehicle Code is amended to permit automated red light enforcement systems in other Commonwealth jurisdictions beyond the City.

Fiscal Impact

The proposed rulemaking will not require the expenditure of additional funds by the Commonwealth or any other entity. The revenue for the Program comes from the collection of fines from red light running violators. Almost all of these violations would not have been detected without the automated system or a large, ongoing expenditure to provide significant police presence for expanded, conventional enforcement efforts.

The Program provides an additional revenue source to fund worthwhile projects. While entities must compete for a grant through an application process, entities are not compelled to apply for grants, nor are matching funds required. Grants can also be used for a portion of a larger project if other funding sources are secured.

Entities seeking a grant would need to prepare a grant application. The recordkeeping and payment procedures prescribed in the proposed rulemakings would need to be followed by entities that accept a grant offer from the Department.

The Department would have various program administration and oversight duties. These include the review of grant applications, the selection of projects to be funded by means of grants, grant agreement processing, reviews of submissions, project reviews and inspections and related activities.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 21, 2009, the agency submitted a copy of this proposed rulemaking on July 21, 2009, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees (Committees). In addition to submitting the proposed regulations, the agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

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

Sunset Date

The Department is not establishing a sunset date for this rulemaking, since this rulemaking is needed to administer provisions required under the Vehicle Code. The Department, however, will continue to closely monitor this rulemaking for its effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding these proposed regulations to Glenn C. Rowe, P. E., PTOE, Acting Director, Bureau of Highway Safety and Traffic Engineering, Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120-0064, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person is Glenn C. Rowe, P. E., PTOE, Acting Director, Bureau of Highway Safety and Traffic Engineering, Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120-0064, (717) 787-7350.

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-415. No fiscal impact; (8) recommends adoption.

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

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 233. TRANSPORTATION ENHANCEMENT GRANTS FROM AUTOMATED RED LIGHT ENFORCEMENT SYSTEM REVENUES

Sec.	
233.1.	Purpose.
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233.3.	Eligibility requirements and criteria.
233.4.	Limits of funding.
233.5.	Application procedure.
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233.7.	Public records.
233.8.	Grant selection process and criteria.
233.9.	Offer and acceptance of a grant.
233.10.	Standards, methods, techniques, designs and special conditions.
233.11.	Audit and recordkeeping.
233.12.	Inspection.
233.13.	Payment procedures.
233.14.	Liability; forfeiture of funds; repayment.
233.15.	Waiver.
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§ 233.1. Purpose.

This chapter sets forth requirements and criteria relating to transportation enhancement grants from automated red light enforcement system revenues.

§ 233.2. Definitions.

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

Automated red light enforcement system—A vehicle sensor installed to work in conjunction with a traffic-control signal which automatically produces one or more recorded images of a vehicle at the time the vehicle is used or operated in a manner which is a violation under 75 Pa.C.S. § 3112(a)(3) (relating to traffic-control signals).

Department—The Department of Transportation of the Commonwealth.

Director—The Director of the Center for Program Development and Management of the Department.

Grant—An offer of funding assistance from the Department to a sponsor for a project governed by this chapter.

Highway—

(i) The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(ii) The term includes a roadway open to the use of the public for vehicular travel on grounds of a college or university or public or private school or public or historic park.

Local authorities—County, municipal, and other local boards or bodies having authority to enact laws relating to traffic.

Official traffic-control devices—Signs, signals, markings, and devices consistent with 75 Pa.C.S. (relating to Vehicle Code) placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Recorded image—An image recorded by an automated red light enforcement system on a photograph, a digital image, or any other image-capture technology.

Secretary—The Secretary of the Department.

Sponsor—A local authority, metropolitan planning organization, rural planning organization, county planning organization, or Commonwealth agency applying for, or receiving, a transportation enhancement grant under this chapter.

Traffic—Pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances, whether singly or together, using any highway for purposes of travel.

Traffic-control signal—A device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

Vehicle—

(i) Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

(ii) The term does not include a self-propelled wheelchair or an electrical mobility device operated by and designed for the exclusive use of a person with a mobility-related disability.

§ 233.3. Eligibility requirements and criteria.

(a) The minimum requirement for eligibility to apply for a transportation enhancement grant under this chapter is that the project must involve improvement to highway safety and mobility within this Commonwealth.

(b) It is the intent of this grant program to fund worthwhile projects that can be completed at a relatively low cost.

(c) All projects may be considered for a transportation enhancement grant from automated red light enforcement system revenues, with the exception of transportation impact studies and highway improvements that are the responsibility of the applicant for a Department Highway Occupancy Permit.

§ 233.4. Limits of funding.

Grants under this chapter may cover the entire cost of an eligible project, so matching funds are not required. Grants may also be used for a portion of a larger project if other funding sources are secured.

§ 233.5. Application procedure.

(a) A sponsor shall submit a written request in the form of an application to the Director: Attention—Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues.

(b) The application shall be prepared in accordance with instructions provided by the Department. The application must contain sufficient information to enable the Department to complete its evaluation of the proposed project.

(c) An application must set forth, at a minimum, the following information:

(1) *Project description*. Provide a general description of the project and the objectives that are desired to be achieved.

(2) *Project location*. Provide a location map. Clearly identify the beginning and ending points of the project, the associated counties, municipalities, routes, segments

and offsets. Provide a general description of the location of the project and the surrounding area. Indicate roadway type/classification and length of the project in miles. Provide information on annual average daily traffic (AADT), current roadway geometry (number of lanes), speed limits, adjoining land uses, and number/location of signalized intersections.

(3) *Official traffic-control device description.* For projects involving official traffic-control devices, briefly describe the existing official traffic-control devices.

(4) *Project justification.* Outline why the project is being nominated for this grant program and the benefits that would be obtained.

(5) *Potential improvements and cost.* Provide a description of the potential improvements, and their associated estimated costs. Estimated costs should be as detailed and accurate as possible, and include all aspects of the project (design, construction, and the like).

(6) *Schedule.* Provide information that indicates the time frame necessary to complete the project. Indicate whether the project can be completed during 1 year or if it would be a multiyear project.

(7) *Other programmed projects.* Describe other improvement projects that are in the vicinity of the proposed project and have been programmed on the Regional Transportation Improvement Program (include location, time frame, cost, and the like).

(8) *Anticipated development.* Describe known major developments that are anticipated within the next 10 years in the vicinity of the proposed project.

(9) *Professional engineer.* Identify the professional engineer or consulting engineering firm that will provide engineering services for the project.

(10) *Contact person.* Provide the name, address, telephone number and e-mail address of a contact person for the sponsor.

(11) *Other information.* The sponsor shall provide other information that the sponsor believes may justify the project or that is requested by the Department.

(d) The sponsor shall complete the application and submit it before the deadline under § 233.6 (relating to deadline for applications).

§ 233.6. Deadline for applications.

(a) Applications for transportation enhancement grants under this chapter will be considered on an annual basis. From the completed applications on file for a given year, projects will be selected for grants. Applications on file, but incomplete, may be excluded from consideration for grants in that year.

(b) Sponsors may submit a completed application for a transportation enhancement grant under this chapter beginning on June 1 of each year until the close of business on June 30 of that year.

(c) If the deadline for applications occurs on a weekend or legal holiday when Commonwealth offices are closed, the deadline will be the close of the next business day.

(d) The Department may consider applications for transportation enhancement grants under this chapter which may be technically incomplete on the application deadline, but which are made complete in a timely fashion.

§ 233.7. Public records.

An application for a transportation enhancement grant under this chapter will be considered a public record at the time of filing, and will be made available for inspection.

§ 233.8. Grant selection process and criteria.

(a) *Consideration.* Following the closing date for receipt of applications, properly completed applications filed within the application period will be considered for funding during the next fiscal year.

(b) *Additional information.* If it is determined that an application is incomplete and that additional information is necessary, the sponsor shall provide that additional information to allow further consideration of the application.

(c) *Review by Director.* The Director will review and evaluate applications with respect to applicable criteria for project funding, available funds, current priorities for traffic safety and mobility, and other factors.

(d) *Criteria used in review.* In considering an application, the Director will give weight and consideration to the following criteria:

(1) The sponsor's past maintenance and operational history for traffic-control signals, official traffic-control devices, or other items of work that are project components.

(2) The anticipated benefits of the project considering traffic safety benefits, mobility benefits and delay reduction, energy savings and greenhouse gas reductions.

(3) The estimated cost of the project.

(4) The local and regional impact of the project.

(5) The results of similar types of projects that have already been completed.

(6) The results of previous projects completed by the sponsor.

(7) Cost sharing by sponsor or other entities.

(8) Other criteria which the Department determines should be considered.

(e) *Discretion in evaluation.* In consideration of the various criteria applicable to the review of an application, the Department may take into account unique or special factors that may arise in the administration of the grant program.

(f) *Debriefing.* At the request of a sponsor, the Department will conduct a debriefing with a sponsor whose application has been denied.

§ 233.9. Offer and acceptance of a grant.

(a) *Issuance of grant offers.* The Department will, in writing, notify each sponsor who has submitted an application whether or not they will receive a grant offer.

(b) *Grant agreement.* A grant offer issued to a sponsor will describe any specific grant conditions and include the conditions as terms in the accompanying grant agreement.

(c) *Grant conditions.* The Department may or may not fully fund the entire cost of the project. The grant agreement will specify the total amount to be funded under the grant offer, the scope of the project, and the items of work to be included. The Department may also require sponsors to conduct before and after studies to determine project effectiveness.

(d) *Acceptance.* A sponsor who has received a grant offer shall, within 30 days indicate, by registered mail, acceptance of the offer.

(1) Acceptance of an offer is not binding on a sponsor until the execution of the grant agreement between the Department and the sponsor.

(2) Failure of a sponsor to indicate acceptance of the terms of an offer within the 30-day response period will be considered as a rejection of the offer and withdrawal of the application.

(e) *Discretion of Department.* Unless otherwise restricted by statute, the Department has absolute discretion in the selection of projects and in the determination of funding levels, priorities, critical project selection criteria, project phasing, project design and specifications, and performance criteria.

(f) *Amendments to projects.* In the consideration of an application, the Department may determine that a proposed project should be amended to accommodate available funding, application traffic design criteria, anticipated use, or to better accommodate potential user needs. The Department may offer a transportation enhancement grant under this chapter for a project whose cost, specifications, terms, or scope have been modified by the Department.

(g) *Consultation does not insure offer.* In the event that the Department confers with a sponsor to amend a proposed project, the sponsor should understand that consultation and amendment does not insure that an offer will be made.

§ 233.10. Standards, methods, techniques, designs, and special conditions.

(a) The Department reserves the right to specify or make determinations as to the standards, methods, techniques, designs and dimensional criteria acceptable in projects funded by transportation enhancement grants under this chapter.

(b) The design and construction of an approved project are subject to the review and approval of the Department, including costs, materials, plans, specifications, and design and operational details.

(c) Failure to meet special conditions, performance criteria, or specifications may result in the withdrawal of the transportation enhancement grant, disqualification from future consideration for a transportation enhancement grant under this chapter, or declaration of a sponsor to be in default of the terms of the grant agreement.

§ 233.11. Audit and recordkeeping.

(a) *General.*

(1) A sponsor receiving a transportation enhancement grant under this chapter shall keep records as the Department may prescribe, including records which fully disclose the amount and the disposition by the sponsor of the grant proceeds, the total cost of the plan or program in connection with which the transportation enhancement grant is given or used, and the amount and nature of that portion of the cost of the plan or program supplied by other sources, as well as records that will facilitate an effective audit.

(2) The Department will have access, for the purpose of audit and examination, to books, documents, papers and records of the sponsor that are pertinent to a transportation enhancement grant issued under this chapter. This includes progress audits during the project.

(3) A sponsor is required to establish and maintain an adequate accounting record for an individual project, which will allow the Department to determine the allowability of costs incurred for the project.

(4) A sponsor shall maintain effective control over and accountability for all funds, property, and other assets. Sponsors shall adequately safeguard assets and assure that they are used solely for authorized purposes.

(5) A sponsor shall establish procedures to minimize the time elapsing between the transfer of funds from the Department and the disbursement by the sponsor whenever funds are advanced by the Department. If this elapsed time exceeds the standards of this chapter, the Department may require the return of interest earned on payments made.

(6) The sponsor shall include, in any contract related to the grant, a clause which allows the Department access to the sponsor's contractor's records for purposes of accounting and audit.

(b) *Retention of records.*

(1) A sponsor shall retain, for 3 years after the date of the submission of the final Department payment, documentary evidence such as invoices, cost estimates, and negotiation documents relating to any item of project cost. These documents include, but are not limited to, vendor's invoices, applicable purchase orders, receiving reports, inventory records, method of pricing, returns, catalog cuts, plans, inspection reports, final inspection report showing acceptance of the project, and a record of disposition or correction of unsatisfactory work.

(2) A sponsor shall retain for 3 years after the date of the submission of the final Department payment, evidence of payments for items of project costs including, but not limited to, vouchers, cancelled checks or warrants and receipts for cash payments.

(3) If audit findings have not been resolved, records shall be retained until the findings have been resolved.

§ 233.12. Inspection.

(a) The Department or an agency of the Commonwealth, or both, or person designated or authorized by the Department has the absolute right to inspect, without notice, the project sites, proposed project sites, records, and construction materials relating to a project funded by a transportation enhancement grant from automated red light enforcement system revenues.

(b) An inspection ordered by the Department or conducted under its authority may include, but not necessarily be limited to, the reproduction and examination of records, the taking of samples applicable to evaluation or project quality control, or the assessment of any factor relevant to a project, application, or contracts and terms related to the process for transportation enhancement grants from automated red light enforcement system revenues.

(c) A sponsor's denial of access to records, failure to produce records, or obstruction with an inspection may result in withdrawal of the transportation enhancement grant and disqualification from future consideration for a transportation enhancement grant under this chapter.

§ 233.13. Payment procedures.

Unless otherwise specified by the Department, the following general procedures are to be used for funds from a transportation enhancement grant under this chapter:

(1) Prior to disbursement of funds, the Department reserves the right to conduct inspections or testing, or to review and audit records or accounts to validate, to the satisfaction of the Department, that disbursement of funds is warranted.

(2) A sponsor, having received payment or partial payment or reimbursement under a transportation enhancement grant under this chapter, shall make payments, within 30 calendar days from receipt of funds, to vendors and contractors for services and materials properly invoiced under the project.

(3) A sponsor shall forward requests for payment to the Department on the forms provided or in a manner specified by the Department. A request must include submission of actual cost documentation, consisting of approved contract estimates of work-in-place, approved invoices or other evidence of incurred costs, satisfactory to the Department. The final 10% of the total payment will not be paid by the sponsor until final inspection and approval of the project by the Department.

(4) Payment requests shall be limited to monthly submissions.

§ 233.14. Liability; forfeiture of funds; repayment.

If a sponsor fails to comply with the terms of a transportation enhancement grant issued under this

chapter, the sponsor shall immediately reimburse the Department the amount for which a demand is made by the Department.

§ 233.15. Waiver.

(a) *Waiver of requirements.* The Department may waive requirements to submit specific maps, reports, plans, information or data normally required for a grant application. The waivers may be granted only after written request to the Director and formal written response to the sponsor by the Director prior to submission of the completed application to the Bureau.

(b) *Special projects procedures.* The Department may develop modified procedures for grant applications pertaining to Department-specified projects funded by transportation enhancement grants under this chapter

§ 233.16. Appeal.

A person aggrieved by a decision of the Department under § 233.14 (relating to liability; forfeiture of funds; repayment) may take an appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

[Pa.B. Doc. No. 09-1374. Filed for public inspection July 31, 2009, 9:00 a.m.]