

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH [28 PA. CODE CH. 23] School Immunizations

The Department of Health (Department) and the State Advisory Health Board (Board) are amending Chapter 23, Subchapter C (relating to immunization) by adding hepatitis B to the list of diseases requiring proof of immunization for entrance to school and by amending the requirements for vaccination against polio, measles (rubeola), tetanus, diphtheria, mumps and rubella (German measles) to read as set forth in Annex A. There are, additionally, several miscellaneous amendments to existing school immunization regulations, such as allowing for schools to store immunization data electronically.

Summary and Purposes

Subchapter C is amended by dividing school immunization requirements into those required for entrance into school for the first time, those required for attendance at school (any grade) and those which will be required for attendance beginning the school year 2000/2001. The regulations add hepatitis B to the list of diseases which require immunization for entry into school. This addition is required by a recently-enacted statute, the Hepatitis B Prevention Act (act) (35 P. S. §§ 630.1—630.3). That act requires that standards for hepatitis B immunization be made a condition for entry into school effective for the school year beginning in August/September 1997. The regulation requires all first-time entrants to school to show proof of having had three properly-spaced doses of hepatitis B vaccine.

The Department decided to take this opportunity to also update the other, outdated school immunization regulations to conform with the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC) of the United States Department of Health and Human Services, the American Academy of Pediatrics and the American Academy of Family Physicians. To that end, the Department will require that children who are entering school for the first time have received the following: four or more doses of diphtheria toxoid; four or more doses of tetanus toxoid; three or more doses of polio vaccine; and two doses of measles (rubeola) vaccine. These requirements will also be effective for the upcoming school year, beginning in August/September 1997.

Beginning in the school year 2000/2001, the Department will require a second dose of measles (rubeola) vaccine or proof of measles immunity for attendance at school in all grades. Information previously recorded and stored by schools on the paper "Certificate of Immunization" may now be recorded and maintained in a computer data base. Children who attend school in home education programs will now be specifically included in the list of categories of persons who are affected by these regulations. The Department now recommends the administration of combined vaccines for measles, mumps and rubella (MMRII) and for diphtheria, tetanus and pertussis (DTP), rather than a single antigen vaccine.

Under section 204(3) of the act July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), the Department and the Board are dispensing with notice of proposed rule-making and the procedures for adopting final form regulations, as specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202). The Department and the Board find that those procedures are, in the circumstances, contrary to the public interest because the vaccinations required by the regulations are either required by law (hepatitis B) or strongly recommended by the highest and most qualified relevant government and professional bodies: 1) the ACIP; 2) the American Academy of Pediatrics; and 3) the American Academy of Family Medicine. Furthermore, there is a significant time deadline involved. The act requires hepatitis B immunization for children who are entering school in August/September 1997. The sooner Pennsylvania schoolchildren are appropriately immunized, the better protected they will be against highly contagious diseases which can have serious, lifelong consequences, including acutely disabling illness, which requires both the child and a parent or other adult to stay home. It is now well known, for example, that requiring only one dose of measles (rubeola) vaccine, as is presently the case in this Commonwealth, can lead to a significant number of measles cases, as one dose is insufficient to provide continued immunity to 5 of every 100 vaccine recipients. Medical knowledge changes periodically and the Department's regulations must be updated in a timely fashion to reflect new and important information.

A brief discussion of each affected section follows:

§ 23.81. *Purpose and scope.* The category of children who attend school at home is specifically included in the scope of the regulations under the rubric "home education programs." The term "home education programs" appears in this rulemaking wherever there is a reference to categories of children who attend school. See, for example, § 23.83(a).

§ 23.82. *Definitions.* The definition for "certificate of immunization" is expanded to include the option of schools maintaining immunization information in a computer database.

§ 23.83. *Immunization requirements.* The current regulation, as that portion is revised, is presented in subsection (a), which pertains to immunization required as a condition for attendance at school. For polio vaccination, the Department now requires three doses of either oral polio vaccine or enhanced inactivated polio vaccine, but if a child received any doses of inactivated polio vaccine before 1988, a fourth dose of inactivated vaccine is required. The fourth dose of inactivated polio vaccine is required because of evidence that this vaccine, in the form administered before 1988, is less effective in achieving lasting protection against polio.

For measles (rubeola), mumps and rubella (German measles) immunizations, the Department recommends the combined MMRII vaccine instead of single antigen vaccines, to avoid placing the unnecessary burden of three times the number of injections, with the attendant risk of noncompliance and decreased protection, increased expense, and additional suffering of the recipient children and their caregivers.

Subsection (b) is new and pertains to immunizations required as a condition for entry into school. It provides that three properly-spaced doses of hepatitis B vaccine are required for entry to school for the first time, to comply with the act. It also requires an additional dose of both diphtheria and tetanus toxoid, with one dose administered on or after the fourth birthday, to meet the recommendations of the CDC and relevant professional organizations. The Department is recommending that a combined vaccine, DTP, be administered, for the same reasons cited in the discussion of subsection (a).

Three or more properly spaced doses of any combination of oral polio vaccine or enhanced inactivated polio vaccine are required, to meet the recommendations of the CDC and relevant professional organizations.

The Department is requiring an additional dose of measles (rubeola) vaccine, with the first dose administered at 12 months of age or older, or a history of measles immunity proved by serological evidence, to improve the status of schoolchildren immunity, thereby increasing the percentage of children who will be protected from this disease. This section meets the recommendations of the CDC and relevant professional organizations. The Department also recommends that a combined vaccine be used, the MMRII vaccine, rather than a single antigen vaccine, for the same reasons cited previously.

Subsection (c) is also new and pertains to immunizations required as a condition for attending school beginning in the school year 2000/2001. It requires that all children who attend school, beginning in the school year 2000/2001, have a second dose of measles (rubeola) vaccine or have a proved history of measles immunity. The first dose of measles vaccine must be administered at age 12 months or after. The Department is making this requirement to increase the number of children protected against measles (rubeola), to make sure this sector of the population is protected well into adulthood, and to comply with the recommendations of the CDC and relevant professional organizations. The Department recommends that a combined measles vaccine be used, the MMRII vaccine, rather than a single antigen vaccine, for the same reasons cited previously.

Sections 23.85 and 23.87 (relating to responsibilities of schools and school administrators; and responsibilities of the Department) are being changed to allow for contemporary methods of capturing and storing information, and to save money and promote efficiency. Section 23.85 (a), (e) and (f) and § 23.87 (b) are amended by adding the option of allowing schools to record and maintain immunization information in a computer database. Instead of the paper certificate of immunization, previously required by § 23.85 (f), the amendments will permit schools to issue a computer-generated facsimile of the certificate of immunization.

Fiscal Impact

The fiscal impact resulting from these amendments will be limited because most children who are entering school for the first time have already been appropriately immunized. In the longer term, the fiscal impact, although difficult to measure, should be positive because of the savings resulting from better health, more productive use of time and lower medical costs which result by decreasing the numbers of children and adults who contract hepatitis B, polio, measles (rubeola), rubella (German measles), mumps, diphtheria, tetanus and pertussis (whooping cough). The amendments add three doses of hepatitis B vaccine and one dose each of measles, diph-

theria and tetanus vaccines, and in some cases, one dose of polio vaccine to school entry and attendance requirements.

Hepatitis B vaccine was added in 1991 to the Recommended Childhood Immunization Schedule, to be given routinely to all normal infants and children. For the past 4 years, hepatitis B vaccine has been provided through the public clinics in the State to all babies born in this Commonwealth. According to the latest National Immunization Survey (NIS) conducted by the CDC, 60% of 2-year old children in this Commonwealth have received three doses of hepatitis B vaccine. The Department estimates that at least 70% of the children affected by these amendments (children who are about 5 years old) have received the required doses of hepatitis B vaccine.

The CDC and the American Academy of Pediatrics have recommended since 1989 that all children 1 year of age and older in the United States should receive two doses of MMRII vaccine (a combined vaccine for measles, mumps and rubella), unless there is a medical contraindication. Two doses of MMRII have routinely been administered to children at State clinics since 1990, yet the requirements for admission to school have not changed. According to the latest NIS surveys published by the CDC, 93% of 2-year old children in this Commonwealth have received at least one dose of MMRII vaccine. The Department estimates that at least 70% of the children affected by these regulations have received two doses of MMRII vaccine. By the school year 2000/2001, when students in all grades will be required to have received two doses of MMRII vaccine, nearly all children will be immunized when they come to school.

The addition of a fourth dose to the requirement for diphtheria and tetanus vaccines should have a similarly minimal cost to the public and a positive long-term fiscal impact. The combined DTP (diphtheria, tetanus and pertussis) vaccine has been available to the general public for over 30 years. Five doses are now generally recommended to be administered from 2 months to 4 years of age. The latest NIS results show 83% of 2-year olds in this Commonwealth have had four doses of DTP vaccine. The Department estimates that at least 90% of new school students will have had the required four doses.

It is unlikely that all persons affected by these amendments, who do not already have the additionally required vaccines, will opt to receive them from public clinics. If they do, however, the total fiscal impact on the Department is estimated to be \$2.1 million. The most likely scenario is this: the parents of 15,000 affected children will have to pay about \$200 each (or a total of \$3 million) to their physicians to receive the additional vaccines required. The Department will provide any extra vaccines needed to the remaining 30,000 affected children for a cost of approximately \$1.4 million.

Some additional assumptions have been made in calculating the costs resulting from these regulations. If a child is vaccinated by a private physician, it will cost about \$150 for the three doses of hepatitis B vaccine and \$50 for each dose of MMRII vaccine. The cost to the Department of these vaccines, if given in public clinics, is \$23 for all three doses of hepatitis B vaccine, \$16 for one dose of MMRII vaccine and \$6 for one dose of DTP vaccine. Typically, 10—15% of the Commonwealth's children receive vaccines from public clinics. Just in terms of the cost of the Department's disease control interventions when there is an outbreak of one of these diseases in the school population, the benefits of these amendments would negate the costs of immunization in only 2 to 3

years. In terms of the bigger picture, however, immunizations are one of the most cost-beneficial medical procedures available. For example, every \$1 spent on purchasing and administering childhood vaccines saves an average of \$14 in physician and hospital fees, laboratory costs and other medical expenses. If indirect cost savings are considered, such as health effects, productive time (or lost work time), and medical costs which result by decreasing the numbers of children and adults who contract hepatitis B, polio, measles (rubeola), rubella (German measles), mumps, diphtheria, tetanus and pertussis (whooping cough), then the overall benefit of immunization would be considerably higher.

The vaccines required by these amendments are safe and effective; they are available at no cost or low cost at public clinics for those who cannot afford to pay for them; they are recommended by the ACIP, the American Academy of Family Physicians and the American Academy of Pediatrics; most states already require them for school entry; and sufficient Federal grant funds are available through the Department to underwrite the modest additional costs which will result from these amendments.

Paperwork Requirement

Eventually, with computerization of immunization certificates, the paperwork requirement should decrease. Otherwise, no significant additional paperwork is contemplated.

Effective Date/Sunset Date

Since the act provides an effective date of August/September 1997, it makes sense to coordinate the effective date for all the changes in the school immunization regulations. The Department published a notice on December 28, 1996, of its intent to have these regulations go into effect for the 1997-98 school year, so that schools, families and health care providers could prepare for the statutory deadline for hepatitis B immunization.

There is no sunset date for any of the related statutes or regulations. The Department continually monitors school immunization needs and related clinical and research evidence and, on that basis, decides when new regulations are necessary.

Statutory Authority

The act mandates that the Department establish a Statewide program for the prevention of hepatitis B through immunization of children consistent with the recommendations of the ACIP. Furthermore, the statute requires the Secretary of Health to place hepatitis B on the list of diseases that require immunization for entry into school after August 1, 1997.

Section 1303 of the Public School Code of 1949 (24 P. S. § 13-1303a), requires school administrators to determine whether school children are immunized in accordance with the directions of the Secretary of Health, against diseases which may appear on a list to be made and reviewed by the Board and as evidenced by a certificate of immunization.

Section 16 (a)(6) and (7) of the Disease Prevention and Control Law of 1955 (35 P. S. § 521.16(a)(6) and (7)) authorizes the Department, with the approval of the Board, to issue rules and regulations with regard to immunization of persons to protect against reportable communicable diseases and the prevention and control of disease in public and private schools. All the diseases affected by these regulations are reportable and must be prevented and controlled in this Commonwealth's schools.

Section 2111 (c.1) of The Administrative Code of 1929 (71 P. S. § 541(c.1)) mandates that the Board shall make and revise a list of communicable diseases against which children shall be required to be immunized as a condition of attendance at any school in this Commonwealth. That list shall be promulgated by the Secretary of Health, along with necessary rules and regulations for effectiveness and verification.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5.1(c)), on July 17, 1997, the Department of Health submitted a copy of these amendments with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, the amendments were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In addition to submitting the amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In accordance with section 5.1(d) and (e) of the Regulatory Review Act, these amendments were deemed approved by the House Committee on Health and Human Services on August 6, 1997, and by the Senate Committee on Public Health and Welfare on August 6, 1997. IRRC met on August 7, 1997, and approved the amendments.

Contact Persons

For an explanation of these regulations or to receive a copy of the regulations in an alternative format, contact Alice Gray, Division Director, Division of Immunization, Bureau of Communicable Disease, Room 1006, P. O. Box 90, Harrisburg PA 17108 or Robert E. Longenecker, Public Health Advisor, Immunization Program, at the same address. The telephone number is (717) 787-5681.

Findings

The Department and the Board find that:

(1) The amendments to existing regulations may be adopted under section 204(3) of the CDL with the omission of notice of proposed rulemaking otherwise required under sections 201 and 202 of the CDL because the procedures specified in sections 201 and 202 of the CDL are, in the circumstances, contrary to the public interest. The sooner Commonwealth schoolchildren are appropriately immunized, the better protected they will be against highly contagious diseases which can have serious, life-long consequences.

(2) The regulations are necessary and appropriate for the administration and enforcement of the authorizing statutes. The vaccinations required by these regulations are either required by law (hepatitis B) or strongly recommended by the highest and most qualified relevant government and professional bodies. Significant time deadlines are involved, since the school year begins in August/September and one relevant statute requires children entering school in kindergarten or first grade for the first time in 1997 should already have been immunized.

Order

The Department and the Board, acting under the authorizing statutes, order that:

(a) The regulations of the Department and the Board, 28 Pa. Code Chapter 23, are amended by amending §§ 23.81—23.87 to read as set forth in Annex A.

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

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

(d) These amendments are effective upon publication.

DANIEL F. HOFFMANN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 4400 (August 23, 1997).)

Fiscal Note: 10-151. (1) General Fund; (2) Implementing Year 1997-98 is \$1,300,00; (3) 1st Succeeding Year 1999-99 is \$650,000; 2nd Succeeding Year 1999-00 is \$325,000; 3rd Succeeding Year 2000-01 is \$0; 4th Succeeding Year 2001-02 is \$0; 5th Succeeding Year 2002-03 is \$0; (4) FY 1996-97 \$10,900,000; FY 1995-96 \$10,200,000; FY 1994-95 \$9,200,000; (7) State Health Care Centers; (8) recommends adoption. In the third succeeding fiscal year cost savings are expected to exceed the cost of providing the immunizations.

ANNEX A

TITLE 28. HEALTH AND SAFETY

PART III. PREVENTION OF DISEASES

CHAPTER 23. SCHOOL HEALTH

Subchapter C. IMMUNIZATION

Sec.	
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§ 23.81. Purpose and scope.

This subchapter has been promulgated to insure that school children are immunized against diseases which spread easily in schools and interrupt school life and learning for individuals and groups. This subchapter affects public, private and parochial schools, including kindergartens, special education classes, home education programs and vocational classes in this Commonwealth.

§ 23.82. Definitions.

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

Ascertain—To determine whether or not a child is immunized as defined in this subchapter.

Attendance at school—The attendance at a grade, or special classes, kindergarten through 12th grade, including public, private, parochial, vocational, intermediate unit and home education students.

Certificate of immunization—The official form furnished by the Department. The certificate is filled out by the parent or health care provider and signed by the health care provider, public health official or school nurse or a designee. The certificate is given to the school as proof of

immunization. The school maintains the certificate as the official school immunization record or stores the details of the record in a computer data base.

Department—The Department of Health of the Commonwealth.

Immunization—The requisite number of dosages of the specific antigens at the recommended time intervals under this subchapter.

Record of immunization—A written document showing the date of immunization—that is, baby book, Health Passport, family Bible, other states' official immunization documents, International Health Certificate, immigration records, physician record, school health records and other similar documents or history.

Secretary—The Secretary of the Department.

§ 23.83. Immunization requirements.

(a) *Required for attendance.* The following immunizations are required as a condition of attendance at school in this Commonwealth.

(1) *Diphtheria.* Three or more properly spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine for children under 7 years of age.

(2) *Tetanus.* Three or more properly spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine for children under 7 years of age.

(3) *Poliomyelitis.* Three or more properly spaced doses of either oral polio vaccine or enhanced inactivated polio vaccine, but if a child received any doses of inactivated polio vaccine prior to 1988, a fourth dose of inactivated polio vaccine is required.

(4) *Measles (rubeola).* One dose of live attenuated measles vaccine administered at 12 months of age or older or a history of measles immunity proved by serological evidence showing antibody to measles determined by the hemagglutination inhibition test or a comparable test. Measles vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.

(5) *German measles (rubella).* One dose of live attenuated rubella vaccine administered at 12 months of age or older or a history of rubella immunity proved by serological evidence showing antibody to rubella determined by the hemagglutination inhibition test or a comparable test. Rubella vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.

(6) *Mumps.* One dose of attenuated mumps vaccine administered at 12 months of age or older or a physician diagnosis of mumps disease indicated by a written record signed by the physician or the physician's designee. Mumps vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.

(b) *Required for entry.* The following immunizations are required for entry into school for the first time at the kindergarten or first grade level, at any public, private or parochial school, including special education and home education programs.

(1) *Hepatitis B*. Three properly-spaced doses of hepatitis B vaccine.

(2) *Diphtheria*. Four or more properly-spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine. One dose shall be administered on or after the 4th birthday.

(3) *Tetanus*. Four or more properly-spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine. One dose shall be administered on or after the 4th birthday.

(4) *Poliomyelitis*. Three or more properly-spaced doses of any combination of oral polio vaccine or enhanced inactivated polio vaccine.

(5) *Measles (Rubeola)*. Two properly-spaced doses of attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity proved by serological evidence showing antibody to measles as determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.

(c) *Required for the school year 2000/2001*. The following immunization shall be an all-grades requirement at the beginning of the 2000/2001 school year (August/September 2000) for attendance at school in this Commonwealth:

Measles (Rubeola). Two properly-spaced doses of attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity, proved by serological evidence showing antibody to measles as determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as a single antigen. The Department recommends the combined MMRII vaccine.

§ 23.84. Exemption from immunization.

(a) *Medical exemption*. Children need not be immunized if a physician or the physician's designee provides a written statement that immunization may be detrimental to the health of the child. When the physician determines that immunization is no longer detrimental to the health of the child, the child shall be immunized according to this subchapter.

(b) *Religious exemption*. Children need not be immunized if the parent, guardian or emancipated child objects in writing to the immunization on religious grounds or on the basis of a strong moral or ethical conviction similar to a religious belief.

§ 23.85. Responsibilities of schools and school administrators.

(a) The administrator in charge of a school shall appoint a knowledgeable person to perform the following:

(1) Inform the parent, guardian or emancipated child at registration or prior to registration, if possible, of the requirements of this subchapter.

(2) Ascertain the immunization status of a child prior to admission to school or continued attendance at school.

(i) The parent, guardian or emancipated child shall be asked for a completed certificate of immunization.

(ii) In the absence of a certificate of immunization, the parent, guardian or emancipated child shall be asked for a record or history of immunization which indicates the month, day and year that immunizations were given. This information shall be recorded on the certificate of immunization and signed by the school official or the official's designee, or the details of the record shall be stored in a computer database.

(b) If the knowledgeable person designated by the school administrator is unable to ascertain whether a child has received the immunizations required by § 23.83 (relating to immunization requirements) or by subsection (e) or is exempt under § 23.84 (relating to exemption for immunization), the school administrator may admit the child to school or allow the child's continued attendance at school only according to the requirements of subsections (d) and (e).

(c) The parent or guardian of a child or the emancipated child who has not received the immunizations required by § 23.83 shall be informed of the specific immunizations required and advised to go to the child's usual source of care or nearest public clinic to obtain the required immunizations.

(d) A child not previously admitted to or not allowed to continue attendance at school because the child has not had the required immunizations shall be admitted to or permitted to continue attendance at school only upon presentation to the school administrator or school administrator's designee of a completed certificate of immunization or immunization record, upon submission of information sufficient for an exemption under § 23.84, or upon compliance with subsection (e).

(e) If a child has not received all the antigens described in § 23.83, the child may be provisionally admitted to school only if evidence of the administration of at least one dose of each antigen described in § 23.83 is given to the school administrator or the administrator's designee and the parent or guardian's plan for completion of the required immunizations is made part of the child's health record. The plan for completion of the required immunizations shall be reviewed every 60 days by the school administrator or the administrator's designee. Subsequent immunizations shall be entered on the certificate of immunization or entered in the school's computer database. Immunization requirements described in § 23.83 shall be completed within 8 months of the date of provisional admission to school. If the requirements are not met, the school administrator may not admit the child to school or permit continued attendance.

(f) A school shall maintain on file a certificate of immunization for a child enrolled. An alternative to maintaining a certificate on file is to transfer the immunization information from the certificate to a computer database. The certificate of immunization or a facsimile thereof generated by computer shall be returned to the parent, guardian or emancipated child or the school shall transfer the certificate of immunization (or facsimile) with the child's record to the new school when a child withdraws, transfers, is promoted, graduates or otherwise leaves the school.

§ 23.86. School reporting.

(a) A public, private or parochial school shall report immunization data to the Department by October 15 of each year, using forms provided by the Department.

(b) The school administrator or the administrator's designee shall forward the reports to the Immunization Program, Bureau of Communicable Diseases, Post Office Box 90, Harrisburg, Pennsylvania 17108.

(c) Duplicate reports shall be submitted to the county health department if the school is situated in a county with a full-time health department.

(d) Content of the reports shall include the following information:

(1) The identification of the school including the name of the school, the school district, the county, the intermediate unit and the type of school.

(2) The month, day and year of report.

(3) The number of students attending school by grade-level.

(4) The number of students attending school by grade-level who were completely immunized.

(5) The number of students attending school by grade-level who were classed as medical exemptions.

(6) The number of students attending school by grade-level who were classed as religious exemptions.

(7) The number of students provisionally admitted.

(8) The number of children who were denied admission because of their inability to qualify for provisional admission.

(9) Other information as required by the Department.

(e) For purposes of reporting the immunization status of a school's students to the Department, the following grade-levels will be used: kindergarten, grades 1-6, 7-9, 10-12 and special education.

§ 23.87. Responsibilities of the Department.

(a) The Department will provide the certificates of immunization to schools.

(b) The Department will monitor school districts for compliance with this subchapter and shall have access to school immunization records whether the records are maintained as certificates or whether the records are contained in a school's computer database.

(c) Questions concerning this subchapter should be addressed to the Immunization Program, Bureau of Communicable Diseases, Post Office Box 90, Harrisburg, Pennsylvania 17108, (717) 787-5681.

[Pa.B. Doc. No. 97-1346. Filed for public inspection August 22, 1997, 9:00 a.m.]

Title 61—REVENUE

**DEPARTMENT OF REVENUE
[61 PA. CODE CH. 2]
Employment Incentive Payment**

The Secretary of Revenue, under the authority contained in section 491 of the Public Welfare Code (62 P. S. § 491) and section 6 of the Fiscal Code (72 P. S. § 6), by this notice of final rulemaking, for which proposed rule-

making has been omitted, adopts amendments to §§ 2.1 and 2.3 (relating to general explanation; and issuance of certificate (Form REV-1601)) to read as set forth in Annex A.

The Department of Revenue (Department), under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204) (CDL) and the regulation thereunder, 1 Pa. Code § 7.4, finds that notice of proposed rulemaking is, under the circumstances, unnecessary and contrary to the public interest and, therefore, may be omitted.

Publication of the regulatory changes as proposed rulemaking is unnecessary because there are no parties who would be disadvantaged by the changes.

Extending the deadline for submission of the Employment Incentive Program (Program) certification request to 21 days benefits those businesses that wish to participate in the Program but had difficulty complying with the existing "same day as the person began work" standard. Welfare recipients seeking jobs will benefit because additional employers will be able to participate, and more potential jobs will be available for recipients.

Expanding the methods permitted for submitting the Program certification request to include facsimile or other electronic means will facilitate the certification process. This will benefit employers, and ultimately, the employable welfare recipients.

Publication of the regulatory changes as proposed rulemaking rather than final rulemaking would also be contrary to the public interest.

The Commonwealth, through the Department of Public Welfare, began implementation of Statewide Federal and State welfare reforms on March 3, 1997. As a result, both the Commonwealth and employable welfare recipients face more stringent programmatic employment requirements.

Decreased employment opportunities increase the risk of adverse consequences for both the State and employable recipients. If the Department of Public Welfare fails to meet Federally-mandated participation rates, Federal financial penalties may result. Program participants must meet time-limited eligibility standards for work. The additional time required to give notice of proposed rulemaking would delay implementation of the regulatory provisions, and would therefore cause:

(1) Employers to miss opportunities to participate in the Program.

(2) Employers to delay (or put off altogether) decisions to hire welfare recipients.

(3) The Commonwealth and taxpayers to continue to bear the expense of maintaining unhired persons on public assistance.

Purpose of Regulation

In 1988, the Department adopted numerous amendments to Chapter 2 (relating to employment incentive payment). Since that time, there have been changes to various Federal programs that have prompted the amendment of § 2.3. This amendment conforms the regulation to be consistent with those Federal programs.

Explanation of Regulatory Requirements

Section 2.3(b) is amended to extend the time period in which an employer may request a Program certificate from the Department of Public Welfare from the date the

employed welfare recipient begins work to no later than 21 days following the actual date the employed welfare recipient began work. This time period is consistent with the time period under the Federal Work Opportunities Tax Credit Program.

Requests shall be considered timely in compliance with subsection (b) if either:

(1) Received on and date-stamped by a Department of Public Welfare-approved facsimile machine, computer or other electronic device no later than 21 days following the actual date the person began work.

(2) Postmarked by the United States Postal Service no later than 21 days following the actual date the person began work.

The following summarizes the issues prompting the amendments to § 2.3:

One of the amendments adopted in 1988 related to co-promotion of EIP with the similar Federal Targeted Jobs Tax Credit (TJTC) Program. The TJTC Program lapsed more than a year ago, and the Federal Aid to Families with Dependent Children (AFDC) Program terminated March 3, 1997. AFDC has been replaced by the Temporary Assistance for Needy Families Program.

Experience has shown that the existing timeliness criteria deters small employers from participating in the Program, for they are unable to get forms completed and mailed by midnight of the first day a welfare recipient begins to work. The 21-day extension will enable a much larger population of smaller employers to participate in the Program.

The growth of electronic communications offers the potential for more efficient and useful options of requesting Program certification, rather than depending solely upon the United States mail.

Fiscal Impact

The Department has determined that the final-form regulations will have an unknown fiscal impact on the Commonwealth. In FY 1995-96, credits claimed totaled less than \$700,000. Over the next 3 years, it is improbable that the additional small businesses claiming this credit will cause the total amounts of credits claimed to approach the \$25 million annual cap. The extended filing period for EIP certificates is intended to enable increased numbers of small businesses to utilize the credit. The increase in certificates issued to these businesses will induce an increase in the total amount of credits claimed. In theory, the total costs associated with the EIP credit are more than offset by the savings of the projected future welfare payments if the new hires were to remain unemployed and continue to draw benefits.

Paperwork

The final-form regulations may generate additional paperwork for the public or the Commonwealth to the extent that there is an increase in the number of businesses utilizing the credit.

Effectiveness/Sunset Date

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

Contact Person

The contact person for an explanation of the regulations is Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on July 9, 1997, the Department submitted a copy of the regulations with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the Senate and House Committees on July 29, 1997. IRRC met on August 7, 1997, and approved the regulations.

Findings

The Department finds that the regulations are necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary and contrary to public interest and, therefore, may be omitted.

Order

Acting under the authorizing statute, the Department orders that:

(a) The regulations of the Department, 61 Pa. Code Chapter 2, are amended by amending §§ 2.1 and 2.3 to read as set forth in Annex A.

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

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

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

ROBERT A. JUDGE, Sr.
Secretary

Fiscal Note: 15-384. No fiscal impact; (8) recommends adoption.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 4400 (August 23, 1997).)

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 2. EMPLOYMENT INCENTIVE PAYMENT CREDIT

§ 2.1. General explanation.

Under the act of April 8, 1982 (P. L. 231, No. 75) (62 P. S. §§ 201, 403, 404.1, 405.1, 405.2, 408, 408.1, 422, 423, 432, 432.2—432.7A, 432.9, 432.11, 432.12, 432.15, 432.16, 432.19—432.21, 442.1, 443.6, 475, 481, 487 and 489) a tax credit is available for persons who employ certain welfare recipients, with additional tax credit for those who provide day care services for the welfare recipient's child or children. This chapter explains the scope and effect of the employment incentive payment tax credit (the "EIP credit"), the manner in which it is

validated, procedures established by the Department for verification and application of tax credits, and the manner in which they may be used by employers.

§ 2.3. Issuance of certificate (Form REV-1601).

(a) The issuance of EIP certificates and verification of entitlement thereto is the responsibility of the Department of Public Welfare. The criteria for issuance of EIP certificates is established by the act of December 19, 1985 (P. L. 356, No. 102) (72 P. S. § 8701-A) and by 55 Pa. Code (relating to Public Welfare).

(b) An EIP Program Certificate shall be issued upon request to an employer who hires a person who is receiving Temporary Assistance to Needy Families or any form of General Assistance at the time of employment. The employer shall request the certificate from the Department of Public Welfare in writing no later than 21 days following the actual date upon which the newly-employed welfare recipient began work. Requests shall be considered to be timely in compliance with this subsection if either:

(1) Received on and date-stamped by a Department of Public Welfare-approved facsimile machine, computer or other electronic device no later than 21 days following the actual date the person began work.

(2) Postmarked by the United States Postal Service no later than 21 days following the actual date the person began work.

(c) An employer may not request an EIP certificate for the employment of the following persons:

(1) A person who displaces another individual, unless the individual was discharged for cause as certified by the Office of Employment Security.

(2) A closely related person to the employer.

(3) A domestic or other household employe in the home of the employer.

(4) Subject to the provisions of subsection (d), a person for whom the employer is simultaneously receiving Federal or State funded job training payments.

(5) An individual who is the employer, such as self-employed.

(6) A shareholder who owns more than 50% of the value of the outstanding stock of the employing corporation, bank, savings institution, company, insurance company or mutual thrift institution.

(7) A member of an employing partnership.

(8) An employe of an estate or trust if the employe is a grantor, beneficiary or fiduciary of the estate or trust.

(d) If for a period an employer receives State or Federally funded payments for on-the-job training for an employe, none of the wages paid to that employe for the training qualify for EIP credit. Wages paid to the employe after completion of the State or Federally funded job training may qualify for EIP credit. In such cases, the EIP certificate shall be requested in writing under subsection (b) no later than the date upon which the employe begins training.

(e) Within 30 days of the date of issuance of the EIP certificate by the Department of Public Welfare, the employer shall forward a copy of the completed certificate to the Department.

[Pa.B. Doc. No. 97-1347. Filed for public inspection August 22, 1997, 9:00 a.m.]