

RULES AND REGULATIONS

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 101]

Private Driver Training Schools

The Secretary of Education (Secretary) amends Chapter 101 (relating to private driver training schools) to read as set forth in Annex A. These amendments are promulgated under authority of the Private Driver Training Schools Act (act) (24 P. S. §§ 2831—2931).

Scope and Purpose

Chapter 101 includes the requirement that a private driver training school teacher contracted for driver safety instruction in public schools meet the requirements in section 1519(b) of the Public School Code of 1949 (24 P. S. § 15-1519(b)). A 5 year limit is placed on the time that a private driver training school must maintain student records. Also, driving schools will now be permitted to advertise that they are licensed by the Department of Education (Department) for the classroom or for behind-the-wheel instruction, to offer discounts and other inducements for the purpose of soliciting prospective students to enroll, and to use private academic or trade school buildings as classroom sites and public school buildings as temporary classroom locations.

Furthermore, professional staff of private licensed driver training schools may now be employed by more than one driving school, and the holder of a valid Pennsylvania Teaching Certificate, with certification in Driver and Safety Education, is now exempted from the theoretical and practical examinations to be licensed as a driving school teacher. Finally, other changes brought about by the revisions of Chapter 101 include the requirement that a driving school teacher must submit a Criminal History Background Check and a Pennsylvania Child Abuse History Clearance prior to employment, and the requirement that the owner or director of a driving school have at least 2 years of successful driver education teaching experience.

Comments

The Department received comments from one driving school owner in response to publication of the proposed rulemaking as well as from the Independent Regulatory Review Commission (IRRC) and the House Education Committee. The Secretary considered all public and Legislative comments received and made some revisions to Chapter 101.

IRRC recommended that the amendments include a reference to section 1519 of the Public School Code of 1949 (24 P. S. § 15-1519) for situations when school districts contract with private driver training schools to instruct their students. This was raised due to a concern that the Department would not be able to require private driver training school teachers to have the proper amount of college credits to be able to instruct in public schools within this Commonwealth. However, under the Public School Code of 1949, "[n]o person shall teach in a public school in the Commonwealth unless he has met the certification requirements as established by the State Board of Education," which certification requirements include the requisite number of college credits. See 24 P. S. § 12-1252. Therefore, the Department decided not to

add specific wording that would require private driver training school instructors to have 3-to-12 credits in Driver and Safety Education to teach the classroom phase of driver education in a private driver training school setting. Instead, § 101.102(f) (relating to laws applicable to driver training schools) has been added to list section 15-1519(b) of the Public School Code of 1949 as one of the laws that are applicable to private driver training schools.

Secondly, IRRC questioned whether the Department was authorized to license the agents of private driver training schools. The Department has reviewed this issue and concluded that the Department does have authority to license agents under section 5 of the act (24 P. S. § 2835). Thus, no change was made in this regard.

Another concern raised by IRRC and the House Education Committee was the 10-year recordkeeping requirement for student records. As a result, § 101.104 (relating to records) has been changed to require schools keep student records for only 5 years. IRRC had suggested that a two-tier system be established whereby records of students who are 16 years old are retained for a 7-year period and the records of older students are maintained for shorter periods of time. However, the Department believes that this system would be too complex and would defeat the purpose of an efficient and timely method of student record disposal. The House Education Committee, on the other hand, had recommended that the time period for maintenance of records be reduced from 10 to 7 years. After considering these recommendations, the Department has concluded that the simplicity of the universal 5 year retention requirement best addresses both IRRC's and the House Education Committee's concerns that private driver training schools are overburdened by lengthy recordkeeping requirements.

Since the amendments provide for the ownership of a driver training school by individuals 18 years of age or older, the House Education Committee was concerned with possible legal limitations on business ownership by individuals under 21 years of age. After looking into this matter, the Department concluded that the act of June 16, 1972 (P. L. 434, No. 130) which amended the act of January 18, 1952 (P. L. (1951) 2128, No. 605) allows for the ownership of a driver training school by an individual 18 years of age or older. Also, section 4(8)(a) of the act (24 P. S. § 2834(8)(a)) reflects this amendment and states that the age requirement for ownership of a school is 18 years of age. Therefore, there is no need to list this provision specifically in § 101.102 since it already makes reference to section (8)(a) of the act.

In addition, the House Education Committee recommended that the word "supervisor" be used in place of the word "director" throughout the amendments due to the connotation of a "supervisor" being an immediate superior, whereas the term "director" could be confused with the owner of the school. To remain consistent with the statute, however, the Department decided not to change the terminology.

The House Education Committee commented that the level of medical payment insurance coverage in the proposed rulemaking was insufficient. The Department consulted with the Private Driver Training School Advisory Committee which suggested that the insurance coverage be kept at the statutory minimum amount of \$5,000. Following this suggestion, no change was made.

Finally, the following other changes were made in the amendments as a result of the comments received:

- § 101.101 (relating to definitions) was changed to include the statutory definition of "school," as suggested by IRRC.
- § 101.132 (relating to prohibited locations) was changed to include the language of section 4(1)(a)(i) and (ii) of the act, as suggested by IRRC.
- § 101.114 (relating to fees) was changed to include the entire schedule for license and renewal fees from section 606-A of The Administrative Code of 1929 (71 P. S. § 240.6A) and section 10 of the act (24 P. S. § 2840), as suggested by IRRC.
- § 101.153 (relating to locations) was changed to include the Department's address, as suggested by IRRC.
- § 101.181 (relating to outlines to Department) was changed to include the language of section 4(4)(b) and (c), as suggested by IRRC.
- The amendment were changed so that references of "teachers," "owners," "directors," and the like, were changed from the plural to the singular, as suggested by the House Education Committee.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 26, 1997, the Department submitted a copy of notice of proposed rulemaking, published at 27 Pa.B. 1648 to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Secretary also provided IRRC and the Committees with copies of the comments received and with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

In preparing these final-form regulations, the Secretary considered the comments received from the House Education Committee on May 14, 1997, from IRRC on June 5, 1997, and from the public during the official comment period. These final-form regulations were approved by the House and Senate Committees on March 9, 1998 and by IRRC on March 12, 1998, in accordance with section 5.1(c) of the Regulatory Review Act.

Cost and Paperwork Estimates

It is estimated that the cost for background checks and clearances for 150 licensed driving schools will total \$3,000 per year. There will be no new legal, accounting or consulting procedures for local governments; therefore, there are no additional costs for local governments.

The Department and the Department of Transportation will experience a savings because teacher examinations will no longer be administered to teachers who are certified in driver and safety education. However, the additional time involved in processing background checks and clearances will offset the time saved in testing. As a result, there will be no additional costs or savings to the Commonwealth associated with the implementation of the amendments.

Effective Date

These amendments will become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

These amendments will be reviewed every 3 years from the final publication date.

Contact Person

The official responsible for information on the Department's process of promulgating these amendments is Robert E. Roush, Jr., School Safety Education Advisor, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-6595.

Findings

The Secretary finds that:

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

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

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

Order

The Secretary orders that:

(a) The regulations of the Department, 22 Pa. Code Chapter 101, are amended by deleting §§ 101.1—101.3, 101.11—101.18, 101.21—101.25, 101.31—101.36, 101.41—101.46, 101.51—101.55, 101.61—101.64, 101.71—101.76, 101.81 and 101.91—101.93; and by adding §§ 101.101—101.105, 101.111—101.117, 101.131—101.137, 101.141—101.147, 101.151—101.157, 101.161—101.164, 101.171—101.176 and 101.181 to read as set forth in Annex A.

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

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

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

EUGENE W. HICKOK,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 1601 (March 28, 1998).)

Fiscal Note: Fiscal Note 6-257 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART VI. BUREAU OF PRIVATE SCHOOLS AND VETERANS EDUCATION

CHAPTER 101. PRIVATE DRIVER TRAINING SCHOOLS

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PRELIMINARY PROVISIONS

§ 101.101. Definitions.

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

Act—The act of January 18, 1952 (P. L. (1951) 2128, No. 605) (24 P. S. §§ 2831—2931), known as the Private Driver Education or Training School Act.

Agent—A person, whether employed by a private driver education or training school or operating in his own behalf, or whether acting in behalf of a school located within or outside of this Commonwealth, who personally solicits an individual within this Commonwealth to enroll in a school.

Department—The Department of Education of the Commonwealth.

Director—The supervisor or director of a private driver education or training school.

Identification card—A card issued by the Department to a private driver education or training school for a teacher employed by the school.

Location—Either the business address for a specific licensed private driver education or training school or the address of the site of the school's theoretical or classroom driver training area.

Owner—A person or business entity which owns a private driver education or training school but does not necessarily oversee the daily operation thereof.

Professional staff member—An agent, teacher or director of a private driver education or training school.

School—A school maintained, classes conducted or instruction offered by an individual, association, partnership or corporation, for a consideration, profit or tuition, the purpose of which is to educate individuals, either practically or theoretically, or both, to operate or drive a motor vehicle.

Teacher—A person who provides classroom instruction or practical behind-the-wheel instruction.

Vehicle—A car or truck weighing up to 11,000 pounds.

§ 101.102. Laws applicable to private driver training schools.

In addition to the act, the following laws apply to private driver training schools:

(1) *Fictitious Names Act*. 54 Pa.C.S. §§ 301—322 which states that an entity which either alone or in combination with another entity conducts business in this Commonwealth under or through a fictitious name shall register the fictitious name by filing an application for the registration of a fictitious name in the Department of State.

(2) *Untrue, false and misleading advertising*. 18 Pa.C.S. § 4107 which provides that it is unlawful for a person to make, in the course of business, a false statement in an advertisement for the purpose of promoting the purchase or sale of property or services.

(3) *Restraint of unlicensed activities*. The act of April 18, 1949 (P. L. 482, No. 106) (71 P. S. § 1036.1) which authorizes the Department to prohibit and restrain an unlicensed person, association, partnership or corporation from engaging in any activity for which a license is required or issued.

(4) *Cancellation of licenses*. Section 811 of The Administrative Code of 1929 (71 P. S. § 279.2) which authorizes the cancellation of a certificate, license, permit or registration obtained through fraud or misrepresentation.

(5) *Fire and panic regulations*. The fire and panic regulations drafted in accordance with the duties imposed on the Department of Labor and Industry by the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235.1) and pertain to Class I buildings as well as private schools located in places other than Philadelphia, Pittsburgh and Scranton.

(6) *The Public School Code of 1949, section 1519(b)*. A private driver training school teacher contracted for driver safety instruction in public schools shall meet the requirements in section 1519(b) of the Public School Code of 1949 (24 P. S. § 15-1519(b)).

§ 101.103. Correspondence.

(a) Inquiries and correspondences shall be directed to Private Driver Training Schools, Department of Education, 333 Market Street, Harrisburg, Pennsylvania 17126-0333.

(b) The Department will assist persons in meeting the requirements which underlie school and agent licensure and relicensure.

§ 101.104. Records.

Every school shall maintain adequate records of students, and shall maintain a permanent cumulative record for 5 years after the student completes driver training. The cumulative record shall include the number of clock hours of instruction received by each student, and shall

contain information on attendance, test scores, personal characteristics, health and other information deemed pertinent by the school. The records shall be current and available for inspection by the representatives of the Department during regular school hours.

§ 101.105. Advertising.

Licensed schools may advertise as "licensed for classroom by the Pennsylvania Department of Education" or "licensed for behind-the-wheel instruction by the Pennsylvania Department of Education."

APPLICATION FOR SCHOOL LICENSING

§ 101.111. Application forms.

- (a) An application for a license to conduct a school shall be made on forms furnished by the Department.
(b) An applicant for a school license shall certify, through completion of the self-authenticating document provided by the Department, its compliance with the act.
(c) An application shall be accompanied by a sworn affidavit certifying the truth of the statements made in the application.
(d) The Department will provide its approval of applications either by mail or facsimile.

§ 101.112. Additional application materials.

At the time of application, the following materials shall also be submitted:

- (1) For each individual proprietor of a school, each member of the partnership, association or company that owns a school, and each officer or director of a corporation that owns a school, who is directly connected with the conduct and operation of the education program:
(i) A statement certifying that the applicant is of good moral character and at least 18 years of age.
(ii) A list of names, addresses and telephone numbers of three persons serving as character references, none of whom are related to the applicant or are in any way connected to the school.

- (2) A statement certifying that persons employed by or directly connected with the conduct and operation of schools are not addicted to the use of alcoholic liquors, morphine, cocaine or other drugs that have a similar effect.

§ 101.113. Certification under the Fictitious Names Act.

- (a) An applicant for a license who is incorporated or subject to 54 Pa.C.S. Chapter 3 (relating to Fictitious Names Act) shall attach to the application a statement or certification from the Department of State verifying that the applicant has complied with the applicable statute.
(b) The application shall be filed under the fictitious name of the school with the individual, partnership or corporate name added thereto.

§ 101.114. Fees.

- (a) The amount of all license fees and renewal fees are as follows:
(1) School fees:
(i) Initial. \$500
(ii) Renewal. \$300
(2) Instructor fees:

- (i) Initial. \$30
(ii) Renewal. \$20
(3) Agent fees:
(i) Initial. \$5
(ii) Renewal. \$5
(4) Vehicle identification registration:
(i) Initial. \$10
(ii) Renewal/transfer. \$5

(b) All license fees and renewal fees shall be paid by money order or check, payable to the "Pennsylvania Department of Revenue" and shall be attached to the application for a license or license renewal.

§ 101.115. Changes in applications or school information.

- (a) If changes occur in the facts set forth in an original application for licensure or an application for relicensure, subsequent or supplemental information shall be filed with the Department, and be approved prior to the date the changes go into effect.
(b) The Department will accept changes in applications in person, by mail or by facsimile.
(c) A school wishing to change its location or the location of a practice private training area shall notify the Department in writing or by facsimile prior to the actual change.

- (d) A change in a school's location or a change of address of the residence of an owner, director, teacher or agent shall be filed with the Department by mail or by facsimile prior to the actual change.

§ 101.116. Lost or destroyed license.

If a license is lost, mutilated or destroyed, the Department will replace the license without charge. To obtain a replacement, the school shall surrender the mutilated license or attest by affidavit that the license was lost or destroyed.

§ 101.117. School license renewal applications.

- (a) A license renewal shall be made on an application furnished by the Department.
(b) An application for license renewal shall be filed with the Department on or before April 30 of each year. Applications filed after this date may result in the issuance of licenses or teacher identification cards after June 30.
(c) An incomplete application for license renewal may be returned to the school. License renewal may be delayed or denied when the full information requested is not supplied.

SCHOOL PLANT

§ 101.131. School licenses.

An applicant for a school license shall certify, through completion of the self-authenticating document issued by the Department, its compliance with section 4(1)(a)(i) and (ii) of the act (24 P. S. § 2834(1)(a)(i) and (ii)).

§ 101.132. Prohibited locations.

- (a) Only one school may be licensed for a particular location.
(b) A public school building will not be approved as the primary classroom site for a private driver training school.

(c) The situs of a school, branch school and practice driver training area shall be a distance of at least 1,500 feet from an official examination point used by the Department of Transportation for examining motor vehicle operators, which distance shall be measured along the public streets by the nearest route from the school, branch school or private driver training area to the official examination point.

(d) The outdoor area used during the first 3 hours of practical instruction by persons who hold a learner's permit shall be one which is reasonably free of pedestrian and vehicular traffic, and may not include primary traffic arteries, main highway routes or other thoroughfares that carry large amounts of traffic.

§ 101.133. Fire regulations.

(a) Indoor instruction areas will be approved by the Department of Labor and Industry in accordance with the fire and panic regulations cited in § 101.102(e) (relating to laws applicable to private driver training schools). Each applicant for a school license and each applicant for a change of location of the indoor instructional area shall submit a statement or certificate from the proper authority certifying that the indoor instructional area has been approved.

(b) The indoor instructional areas of schools located in Philadelphia, Pittsburgh and Scranton, if occupied by five or more students at the same time, shall be approved from the standpoint of public safety by the respective fire marshal or other officers having jurisdiction.

§ 101.134. Space allotment of indoor instruction areas.

The indoor area used for the theoretical instruction of a group of five or more students shall provide a minimum of 15 square feet of floor area per student and 120 cubic feet of air space per pupil.

§ 101.135. Classroom equipment.

An applicant or licensee offering indoor group theoretical instruction to five or more students shall provide in each classroom the following items:

(1) A desk or an equivalent work station and a chair for each student in attendance.

(2) A writing board containing an area of at least 24 square feet.

§ 101.136. Lighting and seating arrangements.

A school or licensee may not use any seating plan or arrangement in the indoor instructional areas which faces the students toward a source of natural or artificial illumination.

§ 101.137. Lavatory facilities.

A school offering theoretical instruction to a group of five or more students shall provide lavatory and toilet facilities which meet State or local requirements.

PROFESSIONAL STAFF

§ 101.141. Professional staff applications.

(a) Professional staff members who are initially employed by a school, or who were employed by one school and obtain employment with another school after June 6, 1998, shall submit an application for approval to the Department upon the form provided by the Department.

(b) The application of a teacher and a director shall also serve as the application for the written theoretical and practical examinations.

(c) A person who holds a valid Pennsylvania Teaching Certificate, with certification in Driver and Safety Education, will be exempted from the theoretical and practical examinations. An exempted person shall apply for and obtain a valid teacher identification card from the Department prior to being employed by a private driver training school. A person desiring to teach driver education for a fee shall apply for a private driver training school license and teacher identification card.

§ 101.142. Additional staff application materials.

A professional staff member shall submit the following to the Department with the administrative and instructional staff application:

(1) A statement certifying that the applicant is of good moral character, a citizen of the United States and at least 18 years of age.

(2) A list of names, addresses and telephone numbers of three persons serving as character references, none of whom are related to the applicant or are in any way connected to the school in which the applicant is seeking employment.

(3) Criminal history background checks which comply with section 111 of the Public School Code of 1949 (24 P. S. §§ 1—111), known as Act 34 of 1985 and §§ 8.1—8.4 (relating to criminal history background checks).

(4) Official clearance statements which comply with 23 Pa.C.S. §§ 6354—6358 (relating to background checks for employment in schools).

§ 101.143. Driving records.

The following information shall also be submitted at the time of the staff application:

(1) *Driving experience.* By one of the following methods, a teacher and director shall produce evidence that he has driven a minimum of 15,000 miles as a licensed operator, under all kinds of weather conditions in both urban and rural areas:

(i) Submitting statements from previous or current employers, in affidavit form, that attest to the specified requirements.

(ii) Making certification on his own behalf, if never employed to operate a motor vehicle, attesting to the specified requirements.

(iii) Combining statements from previous or current employers, in affidavit form, with a certification made on his own behalf, all of which together attest to the specified requirements.

(2) *Accidents.* A teacher and director shall provide a 3-year driving abstract obtained from the Bureau of Driver Licensing, Department of Transportation. The abstract shall establish that he has not had more than one reportable accident resulting in a suspension or revocation of his motor vehicle operator's license during the 3-year period preceding the date of application for approval for instructional service. A "reportable accident" means any accident involving the injury or death of a person, or damage to a vehicle to the extent that it cannot be driven in a customary manner under its own power without further damage or hazard to the vehicle, to other traffic elements or to the roadway, and therefore requires towing.

§ 101.144. Owners and directors; experience.

A private driver training school owner or director shall submit documentary evidence of a minimum of 2 years of successful driver education teaching experience in a pri-

vate driver training school, private high school or public high school. The documentary evidence shall set forth the names of the schools or classes and the place, dates and length of instructional service, including a statement from the official head of the school or class certifying that the teaching experience was successful and attesting to the place, dates and length of the service.

§ 101.145. Foreign agents.

An individual who acts as an agent representing a school located outside this Commonwealth shall, in addition to the professional staff application, provide evidence clearly demonstrating that the owner of his school has fulfilled all statutory requirements of the Commonwealth relating to the registration of fictitious names, foreign corporations and business activities carried on in this Commonwealth by persons having commercial headquarters elsewhere.

§ 101.146. Incomplete applications.

Prior to the day on which an applicant is scheduled for examination, the applicant shall file with the Department a completed school staff application together with the required list of three references and the 3 year driving abstract. Failure to do so will preclude an applicant from taking the examination.

§ 101.147. Professional staff renewal applications.

(a) A professional staff license renewal shall be made on an application furnished by the Department

(b) An application for a professional staff license renewal shall be filed with the Department on or before April 30 of each year. Applications filed after this date may result in the issuance of licenses or identification cards after June 30.

(c) An incomplete application for license renewal may be returned to the school. License renewal may be delayed or denied when the full information requested is not supplied.

APPLICANT EXAMINATIONS

§ 101.151. Prerequisite evidence.

To qualify as a teacher in a private driver training school, an applicant shall successfully complete written and practical examinations. Prior to testing, an applicant shall obtain a valid Pennsylvania Class A, B or C driver's license, file a completed school staff application with the Department and submit written evidence that the applicant has done one of the following:

- (1) Secured employment in an established, licensed private driver training school.
- (2) Filed an application for a license to conduct a private driver training school.
- (3) Is a prospective employe of a school not yet licensed but whose application for an original license has been properly filed with the Department.

§ 101.152. Opportunities to pass.

For each original staff application filed with the Department, the applicant will be granted three opportunities to pass the written examination and three opportunities to pass the practical examination after passing the written examination.

§ 101.153. Locations.

Examinations shall be given at various stipulated locations throughout this Commonwealth. Times and places may be ascertained by contacting the Department at

Private Driver Training Schools; Department of Education; 333 Market Street; Harrisburg, Pennsylvania 17126-0333.

§ 101.154. Identification cards.

(a) After an applicant has passed the written and practical examinations, the Department will issue a valid identification card to the school for each teacher. An Instructor's Examination Permit bearing the stamp of the Department of Transportation may serve as a temporary identification card for 45 days from the date that the driving examination was passed.

(b) A teacher shall hold a valid identification card made out in the name of the school employing the teacher and issued to that school by the Department.

(c) A teacher or director who gives practical driver training shall carry an identification card on his person.

(d) Upon terminating a teacher's employment, the school shall file a termination of employment form and return the teacher identification card to the Department.

(e) To teach classroom or behind-the-wheel instruction for more than one private driver training school, a teacher shall obtain separate cards from the Department by completing the proper applications.

§ 101.155. Lost or destroyed identification cards.

If an identification card is lost, mutilated or destroyed, the Department will replace the card without charge. To receive replacements for lost, stolen or destroyed identification cards, the teacher shall surrender the mutilated identification card or attest by affidavit that it was lost or destroyed.

§ 101.156. Loss of operating privilege.

A teacher who loses his privilege to operate a motor vehicle in this Commonwealth shall immediately surrender his identification card to the Department. A teacher shall also give written notification to his employer and to the Department of the violations, all pertinent facts and the dates upon which the behind-the-wheel instructional activities ceased.

§ 101.157. Time limits.

Applications for teacher identification cards and vehicle identification cards filed after April 30 will be valid until June 30 of the following year.

REEMPLOYMENT

§ 101.161. Reemployment within 12 months.

A teacher changing employment to another school within 12 months of employment shall complete an instructional staff application and submit a criminal history background check to secure a valid identification card.

§ 101.162. Reemployment after 12 months.

When a continuous period of 12 months or more has elapsed without employment as a driver training teacher, the applicant shall comply with the requirements stated in §§ 101.141—101.143 (relating to professional staff; additional staff application materials; and driving records).

§ 101.163. Notice of employment.

A school, upon the employment of a new teacher or the reinstatement of a former employe, shall immediately notify the Department of the dates that the employes were employed.

§ 101.164. Termination of employment.

A school shall immediately notify the Department upon terminating the employment of a teacher, stating the starting date of employment and the termination date. This information shall be supplied on the forms provided by the Department.

VEHICLES AND INSURANCE**§ 101.171. Insurance coverage for vehicles.**

(a) Each school shall provide and maintain insurance on all vehicles used in practical driver training and file a current, valid certificate of insurance for each vehicle with the Department.

(b) The minimum required insurance coverage on each vehicle is: \$50,000—\$100,000, public liability; \$5,000, property damage; and \$5,000, medical payment.

(c) A certificate of insurance shall set forth the year, make and serial number of the vehicle covered, the expiration date of the coverage, and the amounts of medical payment, property damage and public liability coverage carried under that certificate.

(d) A licensee shall immediately notify the Department when any of the required insurance is cancelled.

§ 101.172. Vehicle identification card.

Each vehicle used for practical driver training shall carry an identification card issued by the Department. It shall be affixed to the right sun visor or in a manner that makes the identification visible to the vehicle's occupants.

§ 101.173. Age of vehicles.

(a) A vehicle used for practical driver training may not be more than 5 years old or have more than 50,000 miles, whichever occurs later.

(b) The date appearing on the face of the original certificate of title shall be used as the date the vehicle was placed in service. Five years from that date will determine the permissible period of operation.

§ 101.174. Changes or additions to the fleet.

A school shall immediately report changes or additions to the teaching fleet to the Department prior to the vehicle being placed in service. Each vehicle added to the school fleet shall be registered with the Department by filing a current, valid insurance certificate containing the required information and an affidavit setting forth the year, make, serial number and registration plate of the new vehicle and the fact that the vehicles are equipped with:

- (1) An operable extra brake pedal, and in the case of vehicles equipped with standard transmission an operable extra clutch pedal.
- (2) A defroster and heater in working order.
- (3) A rear-view mirror placed on the inside of the car in the vicinity of the cowl and two outside rear-view mirrors, one on each side of the vehicle.
- (4) Cushions for the proper seating of the student.

§ 101.175. Vehicle identification card renewal applications.

(a) A vehicle identification card renewal shall be made on an application furnished by the Department.

(b) An application for a vehicle identification card renewal shall be filed with the Department on or before

April 30 of each year. Applications filed after this date may result in the issuance of vehicle identification cards after June 30.

(c) An incomplete application for vehicle identification card renewal may be returned to the school. Vehicle identification card renewal may be delayed or denied when the full information requested is not supplied.

§ 101.176. Lost or destroyed vehicle identification cards.

If a vehicle identification card is lost, mutilated or destroyed, the Department will replace the card without charge. To receive replacements for lost, stolen or destroyed vehicle identification cards, the licensee shall surrender the mutilated identification card or attest by affidavit that it was lost or destroyed.

PROGRAM OF INSTRUCTION**§ 101.181. Outlines to Department.**

(a) In addition to the requirements in §§ 101.111—101.115, an applicant for an original license shall provide the Department with an outline for the theoretical and practical instruction in driver education.

(b) Theoretical instruction in driver education shall include subject matter relating to rules and regulations of the road, safe driving practices, pedestrian safety, care and mechanics of motor vehicles, driver responsibility, theory of driving, types of automobile insurance and the use of automobile safety devices.

(c) Practical instruction in driver education shall include the demonstration of and actual instruction in starting, stopping, shifting, turning, backing, parking and steering in a training vehicle.

[Pa.B. Doc. No. 98-887. Filed for public inspection June 5, 1998, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL AFFAIRS

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

Therapeutic Drugs

The State Board of Optometry (Board) amends Chapter 23 (relating to State Board of Optometry) by: (1) adding a new definition in § 23.1 (relating to definitions); (2) amending § 23.82 (relating to continuing education hour requirements); and (3) adding §§ 23.201 and 23.202 (relating to qualifications for certification; and application procedure) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The amendments are authorized under sections 3(b)(14) and 4.1 of the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.3(b)(14) and 244.4a).

C. Background and Purpose

The amendments implement the act of October 30, 1996 (P. L. 719, No. 129) (Act 130). Act 130 amends the act (63 P. S. §§ 244.1—244.12), to require the certification

and regulation of the prescription and administration by optometrists of pharmaceutical agents for therapeutic purposes (therapeutic drugs). The Board is required to certify eligible optometrists in two categories. The first requires an applicant to have: (1) graduated from an accredited school of optometry where a condition for graduation is or was the successful completion of a minimum of 100 hours in therapeutic drugs; and (2) passed a licensure examination to practice optometry which included therapeutic drugs. The second requires an applicant to have: (1) completed a Board-approved course of a minimum of 100 hours in therapeutic drugs; and (2) passed an examination in therapeutic drugs prepared and administered by a qualified and approved professional testing organization.

New provisions also require optometrists to obtain 30 hours of approved continuing optometric education every 2 years beginning with license renewals in 1998. For optometrists certified in therapeutic drugs, 6 of those hours must concern the prescription and administration of these drugs. Prior law required a minimum of 24 hours of continuing education every 2 years.

Finally, Act 130 empowers the Secretary of Health to approve the drugs which a Board-certified optometrist may use. The approved therapeutic drug list will be established in separate rulemaking by the Department of Health.

D. Summary of Comments on Proposed Rulemaking and Board Responses

Notice of proposed rulemaking was published at 27 Pa. B. 4466 (August 30, 1997). The Board received comments from 97 public commentators, including the Pennsylvania Optometric Association, the Pennsylvania College of Optometry, individual optometrists, Legislators, a physician and an attorney. The House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC) also provided comments and recommendations which the Board has considered in preparing final rulemaking.

The vast majority of commentators expressed concern that the proposed amendments treated optometrists who graduated from optometric school prior to April of 1993 differently from those who graduated after April of 1993. In particular, the commentators objected to the requirement that those who graduated prior to April of 1993 take a 100-hour course in therapeutic drugs offered subsequent to October 30, 1996, as well as passing the Treatment and Management of Ocular Disease (TMOD) examination subsequent to completing the course. Both the House Committee and IRRC suggested that the Legislative intent of mandating current training and testing would be achieved by requiring optometrists who graduated prior to April of 1993 to have completed a 100-hour course in therapeutic drugs and passed the TMOD after April of 1993. Additionally, IRRC recommended that a date certain, that is, April 1, 1993, be used as the transition date.

In response to these comments and recommendations, the Board has in final rulemaking applied the April 1, 1993, transition date to all applicants for certification. Accordingly, optometrists who graduated on or after April 1, 1993, will be certified to prescribe and administer therapeutic drugs upon proof of graduation from an accredited school of optometry where a condition for graduation is or was the successful completion of a minimum of 100-hours in therapeutic drugs and successful passage of a licensure examination to practice optom-

etry which included therapeutic drugs. Optometrists who graduated prior to April 1, 1993, will be required to complete a Board-approved course of 100 hours in therapeutic drugs offered on or after April 1, 1993, and pass the TMOD on or after April 1, 1993. The foregoing would apply to applicants for licensure by examination or by reciprocity.

In this final rulemaking, the Board has also removed the language requiring that the TMOD be passed after completion of the 100-hour course. In this way, the Board has resolved the concerns expressed by certain commentators that they would be required to retake the TMOD examination which they had already passed on or after April 1, 1993.

A number of commentators suggested that optometrists in neighboring states who were authorized by those states' licensure laws and who have been prescribing and administering therapeutic drugs in those states should be certified in this Commonwealth without having to meet additional requirements. IRRC also suggested that section 6(c) of the act (63 P. S. § 244.6(c)) provides the necessary statutory authority for the Board to issue therapeutic drug certification based on the licensure and experience of optometrists in other states.

In reviewing this suggestion, the Board carefully examined Act 130's amendments to its licensure law. The Board observed that section 6(c) of the act authorizes the Board to issue a license without examination to an applicant who has practiced in another state for a minimum of 4 years preceding application. The section does not, the Board observed, reference therapeutic drug certification, which the act identifies as a separate certification obtainable by licensed optometrists who have fulfilled the further requirements of section 4.1 of the act.

The Board further noted that IRRC's suggestion appears to run counter to the Legislative intent expressed by the House Committee. Likewise, permitting out-of-State optometrists to avoid the certification requirements of section 4.1 of the act imposed on in-State practitioners may implicate constitutional equal protection concerns.

Several commentators also suggested that the Board review individual credentials on a case-by-case basis to determine competency in the prescription and administration of therapeutic drugs. The act does not, however, provide exceptions to the certification requirements of section 4.1 of the act, nor does it authorize the Board to do case-by-case credentialing.

Additional commentators suggested that optometrist educators who have been teaching approved courses in therapeutic drugs at accredited optometric institutions be exempt from the certification requirements. The act does not, however, as the Board has noted, exempt educators or others who may otherwise be qualified to prescribe and administer therapeutic drugs.

Several commentators also suggested that prohibitions in Act 130 regarding the treatment of glaucoma and the use of steroids fail to recognize the education of optometrists in these areas. The Board cannot address these concerns because they relate solely to the Legislation and not to the Board's implementing regulations.

The Board does find merit in numerous commentators' contention that additional training and examination requirements are unnecessary for three groups of pre-1993 graduates. Those groups involve optometrists who have: (1) been prescribing therapeutic drugs in surrounding

states where drug authorization is broader; (2) successfully completed more than 100 hours in therapeutic drugs both in school and through continuing education since the 1980's; or (3) passed the TMOD which has remained basically unchanged since its first administration in 1985. The final rulemaking, however, is designed to track the Legislative intent expressed by a unanimous House Committee.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendments the Board solicited input from the regulated community as well as the Secretary of Health, the Pennsylvania Optometric Association, the Pennsylvania College of Optometry and the Pennsylvania Academy of Ophthalmology. The Board reviewed and incorporated many of the comments of the various individuals and professional organizations in the amendments.

F. Fiscal Impact and Paperwork Requirements

The amendments will have no fiscal impact on the Commonwealth or its political subdivisions. Applicants for certification in therapeutic drugs will be required to pay a small fee to cover the costs of certification. Similarly, the applicants may be required to pay additional costs for specified therapeutic drug training and examinations. The public may benefit from reduced costs of health care in that optometrists will be permitted to treat minor eye diseases and conditions without multiple examinations by various health care providers.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 30, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 4466 to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were approved by the House Committee on April 22, 1998, and deemed approved by the Senate Committee on April 26, 1998. IRRC met on May 7, 1998, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

I. Public Information

Interested persons may obtain information regarding the amendments by writing to Deborah L. Smith, Board Administrator, State Board of Optometry, P. O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

J. Findings

The Board finds that:

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

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

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 4466.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 23, are amended by amending §§ 23.1 and 23.82 to read as set forth at 27 Pa.B. 4466 and by adding §§ 23.201 and 23.202 to read as set forth in Annex A.

(b) The Board shall submit this order, 27 Pa.B. 4466 and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order, 27 Pa.B. 4466 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

JAY B. TANNER, O.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)

Fiscal Note: Fiscal Note 16A-525 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY CERTIFICATION IN PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES

§ 23.201. Qualifications for certification.

(a) *Category 1.* To obtain certification to prescribe and administer pharmaceutical agents for therapeutic purposes, an applicant licensed by examination to practice optometry in this Commonwealth or another jurisdiction on or after April 1, 1993, shall meet the following requirements:

(1) Graduation from an accredited optometric educational institution in the United States or Canada where a condition for graduation at the time the applicant graduated was the successful completion of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(2) A passing score on one of the following examinations taken on or after April 1, 1993:

(i) The TMOD portion of Part II (Clinical Sciences) of the National Board Examination.

(ii) The TMOD.

(iii) An examination for licensure in another jurisdiction which required passing scores on the prescription and administration of pharmaceutical agents for therapeutic purposes.

(b) *Category 2.* To obtain certification to prescribe and administer pharmaceutical agents for therapeutic purposes, an applicant licensed by examination to practice optometry in this Commonwealth or another jurisdiction before April 1, 1993, shall meet the following requirements:

(1) Successful completion of a course offered on or after April 1, 1993, consisting of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes offered by an accredited optometric educational institution in the United States or Canada.

(2) A passing score as determined by the NBEO on the TMOD taken on or after April 1, 1993.

§ 23.202. Application procedure.

(a) An applicant for certification under Category 1 shall submit the following to the Board:

(1) A completed application obtained from the Board together with the certification fee required by § 23.91 (relating to fees).

(2) Certification on a form provided by the Board from an accredited optometric educational institution in the United States or Canada that the applicant graduated from the institution and that a condition for the applicant's graduation was the successful completion of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(3) Certification from the NBEO that the applicant obtained a passing score on the TMOD portion of Part II (Clinical Sciences) of the National Board Examination taken on or after April 1, 1993, or a passing score on the TMOD taken on or after April 1, 1993, or certification on a form provided by the Board from the appropriate licensing authority of another jurisdiction that the applicant obtained a passing score on a licensing examination in that jurisdiction taken on or after April 1, 1993, which required a passing score on the prescription and administration of pharmaceutical agents for therapeutic purposes at the time the applicant passed the examination.

(b) An applicant for certification under Category 2 shall submit the following to the Board:

(1) A completed application obtained from the Board together with the certification fee required by § 23.91 (relating to fees).

(2) Certification on a form provided by the Board from an accredited optometric educational institution in the United States or Canada that the applicant has successfully completed its course offered on or after April 1, 1993, consisting of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(3) Certification from the NBEO that the applicant has obtained a passing score on the TMOD taken on or after April 1, 1993.

(c) On and after June 6, 1998, applicants for licensure as optometrists by examination who meet the qualifications, including a passing score on the TMOD portion of

Part II (Clinical Sciences) of the National Board Examination and graduation from an accredited optometric educational institution in the United States or Canada shall be certified to prescribe and administer pharmaceutical agents for therapeutic purposes without further application.

[Pa.B. Doc. No. 98-888. Filed for public inspection June 5, 1998, 9:00 a.m.]

**STATE BOARD OF DENTISTRY
[49 PA. CODE CH. 33]**

Fees

The State Board of Dentistry (Board) amends § 33.3 (relating to fees) to read as set forth at 27 Pa.B. 1577 (March 29, 1997).

A. Effective Date

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

B. Statutory Authority

Sections 4(a) and 11.7(b) of the Dental Law (act) (63 P. S. §§ 123(a) and 130h(b)) require the Board to fix the fees for licenses, certificates and temporary permits by regulation.

C. Background and Purpose

This amendment establishes application, temporary permit, verification and renewal fees for expanded function dental assistants (EFDAs) and increases the application fees for dentists and dental hygienists. The fees offset the identifiable costs incurred by the Board to process the documents and defray a portion of the Board's overhead.

The act of December 27, 1994 (P.L. 1361, No. 160) amended the act throughout to require the certification and regulation of EFDAs. In accordance with section 11.7 of the act, the Board issued temporary permits to qualified EFDA applicants. To date, approximately 1,700 temporary permits have been issued but no fee has been charged.

In processing the temporary permit applications, the clerical staff spends approximately 15 minutes on each application. The applications are reviewed for completeness, the education and experience are verified and the applicants are requested to provide missing information. If the application is acceptable, it is processed through the computer and the applicant is notified. Applications deemed deficient on their face are forwarded to a Committee of the Board for review. If necessary, additional information is requested and reviewed, and the applicant is notified of the final action. The \$15 fee is a combination of these processing costs and the administrative overhead.

The biennial renewal, criteria approval, verification and certification fees for EFDAs match those charged to dentists and dental hygienists. These fees are based upon the average biennial regulatory expense per certificate holder added to the average biennial regulatory expense per certificate holder.

The application fee for dentists and dental hygienists has also been increased from \$15 to \$20 to cover processing costs.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa.B. 1577. The Board received no public comment.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendment, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals.

F. Fiscal Impact and Paperwork Requirements

The amendment requires dentists, dental hygienists and EFDAs who wish to practice in this Commonwealth to pay for the Board's expenses in processing their applications for licenses, certificates or temporary permits. There is no fiscal impact on the private sector, the general public or the political subdivisions.

The only additional paperwork requirement will be on the Board which will have to alter its application forms to reflect the new fees.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 29, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 1577 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing this final-form regulation, the Board has considered all comments received from IRRC, the Committees and the public.

This final-form regulation was approved by the House Committee on April 22, 1998, and deemed approved by the Senate Committee on May 3, 1998. IRRC met on May 7, 1998, and approved the amendment in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a).

I. Public Information

Interested persons may obtain information regarding the amendment by writing to June L. Barner, Board Administrator, State Board of Dentistry, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649.

J. Findings

The Board finds that:

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

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

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 1577.

(4) This amendment is necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 33, are amended by amending § 33.3 to read as set forth at 27 Pa.B. 1577.

(b) The Board shall submit this order and 27 Pa.B. 1577 to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and 27 Pa.B. 1577 and deposit them with the Legislative Reference Bureau as required by law.

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

EDWIN F. WEAVER, III, D.D.S.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)

Fiscal Note: Fiscal Note 16A-463 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 98-889. Filed for public inspection June 5, 1998, 9:00 a.m.]