

RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 50]

Construction of Prisons, Jails, Reformatories and Houses of Correction

The Department of Labor and Industry (Department), by this order, amends § 50.1 (relating to occupancy groups). The amendment is adopted under section 15 of the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235) (act).

Notice of proposed rulemaking was omitted under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204) (CDL).

Section 50.1 and the act were adopted to assure that prisons, jails, and the like conform to National firesafety standards.

Contact Person

For further information, the contact person is James Varhola, Administrator of Technical Assistance, Bureau of Occupational and Industrial Safety, Room 1520, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120 (717) 787-3329.

Regulatory Review

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), on July 27, 1998, the Department submitted a copy of the final-form regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. On the same date, the final-omitted regulation was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, on August 17, 1998, this final-omitted regulation was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, on August 27, 1998, IRRC met and approved the final-omitted regulation.

Findings

The Department finds that:

(1) The proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202), are unnecessary.

(2) Public notice of intention to adopt the final-form regulation has been omitted under section 204 of the CDL and the regulation thereunder, 1 Pa. Code § 7.4.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 50, are amended by amending § 50.1 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

the 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*.

JOHNNY J. BUTLER,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 4683 (September 12, 1998).)

Fiscal Note: 12-51. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART I. DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 50. GENERAL REQUIREMENTS—BUILDINGS

OCCUPANCY GROUP

§ 50.1. Occupancy groups.

(a) *Class of building.* The Department will classify each building into one or more of the following occupancy groups according to the building use and the characteristics of the occupants.

(b) *Group A—Assembly.* Buildings primarily used or designed for the purpose of assembly of persons for amusement, entertainment, worship, transportation, recreation, sports, military drilling, dining or similar purposes shall be classified as Group A—Assembly Occupancies. Group A is divided into the following division:

<i>Division</i>	<i>Capacity</i>
A-1 (Chapter 51)	501 or more
A-2 (Chapter 52)	101 thru 500
A-3 (Chapter 53)	4 thru 100

(c) *Group B—Educational.* Buildings primarily used or designed for the purpose of education or instruction shall be classified as Group B—Educational Occupancies. Schools for business or vocational training shall be classified in the same occupancies and conform to the same requirements as the trade, vocation or business being taught. Nursery schools, day care centers, group day care homes and the like shall be classified as B occupancies. However, they may be housed in a building which has an A, C-1 or C-2 occupancy permit without submission of plans or approval as a B occupancy. Group day care homes and family day care homes may use the C-3 regulations for occupancies of eight or less children without a B occupancy approval. See Chapter 54 (relating to Group B—Educational).

(d) *Group C—Group habitation.* Buildings primarily used or designed for the purpose of habitation by four or more persons shall be classified as Group C—Group Habitation. Group C is divided into the following divisions:

(1) *Division C-1.* Health care institutions include buildings that provide sleeping facilities for four or more persons who are mostly incapable of self-preservation because of physical or mental illness or disease, or

persons convalescing from physical or mental illness or disease. Hospitals, sanitariums, nursing homes, convalescent homes, rest homes, and the like shall be classified as health care institutions. Personal care homes licensed by the Department of Public Welfare will not be considered health care institutions. Health care institutions shall comply with the following:

(i) Health care institutions which have plans approved by the Department after May 19, 1986, shall comply with NFPA-101, Life Safety Code, 1985 Edition published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(ii) Health care institutions or portions of health care institutions which have had plans approved by the Department from June 1, 1976, to May 19, 1986, shall be considered in compliance with this chapter as long as compliance is maintained in accordance with the provisions in force on the date of approval by the Department.

(iii) Health care institutions or portions of health care institutions which complied on May 31, 1976, with the requirements of NFPA-101, Life Safety Code, 1967 Edition will be considered in compliance with this chapter as long as compliance is maintained in accordance with NFPA-101, Life Safety Code, 1967 Edition published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(iv) Plan approval and field inspections for health care institutions, Division C-1, are conducted by the Department of Health.

(2) *Division C-2.* This division applies to a building, or a part thereof, where the occupants are in group habitation and are not included under Division C-1, C-3, C-4 or C-5. Hotels, apartment buildings, multiple dwellings, dormitories, lodging houses, orphanages, children's residential institutions, large personal care homes, group homes, group foster homes, and the like, shall be in this classification. See Chapter 55 (relating to Division C-2).

(3) *Division C-3.* This division applies to a building which only has a single living unit where four through eight residents are in group habitation. Small personal care homes, dormitories, lodging houses, orphanages, children's residential institutions, group homes, group foster homes, and the like having four through eight residents shall be in this classification. See Chapter 56 (relating to Division C-3).

(4) *Division C-4.* This division applies to apartment units which qualify for a single means of egress. See Chapter 57 (relating to Division C-4).

(5) *Division C-5.* This division applies to a building, or a part thereof, where the occupants are in group habitation, and are mostly incapable of self-preservation, because they are under restraint. Prisons, jails, reformatories, houses of correction and the like shall be in this classification. C-5 occupancies which have plans approved on or after November 30, 1998, shall comply with Chapters 3, and 14, and all other sections specifically referred to in Chapters 3 and 14 of NFPA-101, Life Safety Code, 1997 Edition published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(e) *Group D—Commercial, Office, Industrial.* Buildings primarily used or designed for the purpose of commercial, storage, office or other like purposes shall be classified as Group D—Commercial, Office, Industrial Occupancies. Group D is divided into the following divisions:

(1) Division D-O (ordinary occupancy) includes occupancies involving the manufacture, assembling, warehousing, use, sale or storage of combustible but not highly flammable products and materials and buildings used for offices and the like. See Chapter 58 (relating to Division D-O).

(2) Division D-H (hazardous occupancies) includes occupancies involving highly combustible, explosive or unstable products or materials that constitute a special fire, life or toxic hazard because of the forms, characteristics or volume of the materials used. A building, structure or a part thereof used for storage, warehousing, manufacturing, processing, use or sale of highly combustible products or materials, including the following and those of equal fire and life hazard shall be classified under D-H hazardous occupancies. See Chapter 59 (relating to Division D-H).

(i) Chemicals which pose serious flame or explosive hazards upon coming into contact with water or moisture, such as aluminum powder, calcium carbide, red phosphorous, metallic sodium, metallic potassium, sodium peroxide, calcium phosphide, yellow phosphorous and metallic magnesium powder.

(ii) Processes which produce dust, lint or other particles or matter liable to instantaneous ignition or explosion.

(iii) Ammonia, chlorine, phosgene, carbon bisulphide and other toxic irritants or corrosive and fume hazard gases such as acetylene, ether, ethyl chloride, ethylene, liquified hydrocarbons, ethyl chloride gas and similar gases.

(iv) Naptha, ether, benzol, styrene, butadiene, collo-dion, ethyl, acetate, amyl acetone, amyl alcohol, kerosene, turpentine, petroleum paint, including paint mixing and spraying rooms, varnish, dryer, gasoline, alcohol, oil in bulk quantities and similar highly inflammable liquids. Paint spray booth approved by the Department will be classified as D-O occupancies.

(v) Manufacture and processing of imitation leather, paint and other pyroxylin products.

(vi) Storage of nitrocellulose, or products composed in whole or in part of nitrocellulose or similar flammable materials, such as films, combs, pens.

(vii) Hydrochloric, nitric, sulphuric and hydrofluoric acids.

(viii) Asphalt, tar pitch, resin, waxes and fats, either alone or combined with other materials.

(ix) Flammable fibrous materials such as hay, straw, broomcorn, hemp, tow, jute, sisal, excelsior, kapok, oakum, and the like.

(x) Processing or storing of artificial flowers, matches, mattresses, rubber, cork, brooms, carpet linings, paper, pasteboard, feathers, cotton, including cotton rag sorting rooms, shoddy mills, oil refineries, distilleries, sugar refineries, cereal, flour, grist and starch mills, rendering plants, drying rooms, and occupancies of equal fire and life hazard.

[Pa.B. Doc. No. 98-1941. Filed for public inspection November 27, 1998, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF AUCTIONEER EXAMINERS [49 PA. CODE CH. 1] Biennial Renewal Fees

The State Board of Auctioneer Examiners (Board) amends Chapter 1 by adding § 1.41 (relating to schedule of fees) and amending §§ 1.23 and 1.26 (relating to auctioneer licensure examination; and application for auction house and auction company licenses) to read as set forth in Annex A.

The amendments raise the biennial renewal fee for auctioneers, apprentice auctioneers, auction houses and auction companies for the upcoming biennial renewal. The current biennial period expires on February 28, 1999. The biennial renewal fee for apprentice auctioneers increases from \$30 to \$100 and the biennial renewal fees for auctioneers, auction companies and auction houses increase from \$50 to \$200.

A. Effective Date

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

B. Statutory Authority

Section 6(a) of the Auctioneer and Auction Licensing Act (act) (63 P.S. § 734.6(a)), requires the Board to establish fees by regulation. Section 6(b) of the act, requires the Board to increase fees to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures.

C. Purpose and Need for the Amendments

The current biennial renewal fees for auctioneer licensees have not been increased since 1978 when they were established in the Bureau of Professional and Occupational Affairs Fee Act (Fee Act) (63 P.S. § 1401-203). From FY 1985-86 to FY 1995-96, the Board's revenues were in sufficient balance to meet expenditures. At the end of FY 1995-96, the balance in the Board's operating account was \$160.85. In FY 1996-97, the Board incurred a deficit of \$110,401.62. The fee increases will recapture the \$110,401.62 deficit carried forward from the 1995-97 biennial renewal period and prevent continuing deficits in future cycles.

D. Description of Amendments

Section 1.41 incorporates all fees and is conveniently located. Existing fees for the examination, auction license, auction company license and special auction license are relocated from §§ 1.23 and 1.26 and 63 P.S. § 1401-203(8), and reestablished in § 1.41.

The following chart compares the new and existing fees:

Category	Proposed	Current
Examination	\$ 87	\$87 (Moved from 49 Pa. Code § 1.23)
License—Auctioneer	\$ 50	\$50 63 P.S. § 1401.203(4)

Category	Proposed	Current
Biennial Renewal	\$200	\$50 63 P.S. § 1401.203(6)
License—Apprentice Auctioneer	\$ 30	\$30
Biennial Renewal	\$100	\$30 63 P.S. § 1401.203(7)
License—Auction House and Auction Company	\$ 50	\$50 (Moved from 49 Pa. Code § 1.26)
Biennial Renewal	\$200	\$50
Special License	\$200	\$200 63 P.S. § 1401.203(8)

E. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 28 Pa.B. 1559 (March 28, 1998). Based on current fees, the Board is projected to have a deficit of \$235,191.62 on June 30, 1998, \$263,611.62 on June 30, 1999, and \$409,211.62 on June 30, 2000. Renewal fees have not been raised since 1978.

Biennial revenues for the Board have remained relatively constant. In contrast, expenditures over the past 4 fiscal years have increased by an average of 12.41% per year and are expected to increase by at least 3% per year in continuing years. Because revenues were insufficient, expenditures accumulated in any fiscal year were transferred (or rolled) to the next fiscal year, beginning in FY 1994-95. Expenditures continued to accumulate and produce an increasing deficit in successive years. A fee increase was required to cover the deficit and produce sufficient revenue to support the Board's expenses.

The Board received comments from the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC) requesting a breakdown of the individual expense categories and how they are projected to increase. In response to this request, the Board is providing a breakdown on cost center expenses and projected increases as an attachment to the Regulatory Analysis Form.

The Board anticipates that with the implementation of the increase it will not be necessary to increase renewal fees again for at least three biennial renewal periods. Increased revenues will result in the Board having a closing balance of \$86,208.48 on June 30, 1999, and a deficit of \$59,391.52 on June 30, 2000. The Board's closing balance will rise to \$252,008.48 on June 30, 2001, and \$96,408.48 on June 30, 2002.

IRRC recommended that §§ 1.23(b) and 1.26(a)(2) and (b), which refer to the "required fee," be amended to include cross references to the schedule of fees in § 1.41. The Board has considered this recommendation, but believes that cross references in this instance are unnecessary due to the visibility of an entire section devoted to fees alone, entitled, schedule of fees.

F. 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 and suggestions from the regulated community by providing drafts to organizations and entities which represent auction professionals.

G. Fiscal Impact

The amendments will increase the biennial renewal fees for apprentice auctioneers, auctioneers, auction houses and auction companies in this Commonwealth. The cost per license is \$75 annually. The increase in renewal fees should have no other fiscal impact on the private sector, the general public or political subdivisions.

H. Paperwork Requirements

The amendments will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, it should not create additional paperwork for the private sector.

I. Sunset Date

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

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 1998, the Board submitted a copy of the notice of proposed rulemaking, published at 28 Pa.B. 1559 to IRRC and the Chairpersons of the House Professional Licensure Committee and Senate Committee on Consumer Protection and Professional Licensure 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.

These final-form regulations were deemed approved by the House and Senate Committees on October 26, 1998. IRRC met on November 5, 1998, and approved the final-form regulations in accordance with section 5(e) of the Regulatory Review Act.

K. Public Information

Interested persons may obtain information concerning the amendments by writing to Linda Dinger, Administrator, State Board of Auctioneer Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649.

L. 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, 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 28 Pa.B. 1559.

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

M. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 1, are amended by §§ 1.23 and 1.26 and by adding § 1.41 to read as set forth at 28 Pa.B. 1559.

(b) The Board shall submit this order and 28 Pa.B. 1559 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 28 Pa.B. 1559 and deposit them with the Legislative Reference Bureau as required by law.

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

KENNETH A. GEYER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 5818 (November 21, 1998).)

Fiscal Note: Fiscal Note 16A-642 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 98-1942. Filed for public inspection November 27, 1998, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Professional Conduct

The State Board of Veterinary Medicine (Board) adopts an amendment to § 31.21 (relating to rules of professional conduct for veterinarians) to read as set forth in Annex A.

The amendment revises Principle 7, "Veterinarian Client Relationships," by deleting subsection (h), which requires veterinarians to give at least 30 days written notice to the owner of an animal of the veterinarians' intention to withdraw services. Subsection (h) was adopted in 1994. This deletion is in response to the complaints of numerous veterinarians that the requirement is burdensome and unnecessary.

The Board concluded that veterinarians' complaints had merit and proposed modifications to Principle 7(h). The proposed revision authorized veterinarians to withdraw services after giving adequate notice to allow the client to obtain the services of another veterinarian, or 48 hours after documented oral notice, whichever occurs first. Notice of proposed rulemaking was published at 26 Pa.B. 4765 (October 5, 1996).

The Board received comments from the Independent Regulatory Review Commission (IRRC) as well as from the Pennsylvania Veterinary Medical Association (PVMA). The PVMA criticized the notice required in Principle 7(h) and the proposed revision as unnecessary. IRRC also criticized Principle 7(h) as both excessive and burdensome, pointing to other practice standards previously codified by the Board. IRRC also questioned the Board's practical concern related to a client's obtaining the services of another veterinarian, observing, that no shortage has been demonstrated of licensed veterinarians in any part of this Commonwealth. IRRC recommended that the Board delete Principle 7(h) in its entirety.

In response to these suggestions, the Board undertook a review of existing law and regulations to determine whether adequate regulatory authority can be identified with respect to veterinarians who inappropriately abandon an animal. The Board's rules of Professional Conduct, Principles 1—7, establish broad and specific standards governing veterinarians' conduct in holding themselves out to the public. These rules require veterinarians to

preserve life and relieve suffering. They further identify additional duties such as the conservation of livestock resources. Principle 7(a) specifies that a veterinarian may not neglect an animal after undertaking its care, while Principle 7(d) makes a veterinarian fully responsible for any action relating to an animal until it is released from the veterinarian's care.

The abandonment of animals, generally, is addressed in section 601(c)(2) of the Dog Law (act) (3 P. S. § 459-601(c)(2)), which sets forth procedures which a veterinarian must follow when an animal in the veterinarian's custody is abandoned by its owner. A veterinarian may transfer any animal in his custody for treatment, boarding or other care, which has been abandoned by its owner for more than 10 days, into the custody of the nearest humane society, association for the prevention of cruelty to animals or dog pound in the area.

Transfer may occur after the veterinarian gives written notice of his intentions to the animal's owner by personal service or registered mail, and receives the return receipt. The veterinarian shall retain the return receipt for 12 days. After 48 hours have elapsed from the transfer of custody, the custodian may humanely kill the animal or place it for adoption.

Section 601(c)(3) of the act provides that when the veterinarian has given proper notice to the owner of the animal and retains the return receipt, the veterinarian and custodian may not be found liable for disposal of the animal. The disposal may not constitute grounds for disciplinary procedure under the act, as enforced by the Department of Agriculture.

The Board has concluded that a specific standard governing abandonment of animals is not necessary in its Code of Conduct. The current provisions of Principle 7(h) could create confusion among the public and licensees because of conflicting standards. The Board's current rules of professional conduct generally establish standards for veterinarians' behavior, while provisions of the act set forth specific protection from liability and have been in existence for many years.

Annex A therefore deletes Principle 7(h) as recommended by IRRC and the PVMA. The Board considers its general ethical principles adequate to impose discipline on a veterinarian who may neglect an animal, while section 601(c) of the act provides guidance when a veterinarian must deal with an abandoned animal.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed the provisions and history of this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final-form regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1991-1.

Fiscal Impact

The amendment should have no negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

Paperwork Requirements

The amendment will not result in additional paperwork requirements.

Statutory Authority

The amendment is adopted under the dual authority of section 5(1) and (2) of the Veterinary Medicine Practice

Act (63 P. S. § 485.5(1) and (2)). Section 5(1) of the Veterinary Medicine Practice Act empowers the Board to adopt reasonable rules and regulations governing the practice of veterinary medicine as are necessary to enable it to carry out and make effective the purpose and intent of the Veterinary Medicine Practice Act. Section 5(2) of the Veterinary Medicine Practice Act empowers the Board to adopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 4765, 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 the comments received, as well as other documentation.

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

This final-form regulation was deemed approved by the House Committee on October 7, 1998, and approved by the Senate Committee on September 29, 1998. IRRC met on October 22, 1998, and approved the final-form regulation in accordance with section 5(e) of the Regulatory Review Act.

Contact Person

Further information may be obtained by contacting Robert Kline, Administrator, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7134.

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, 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 26 Pa.B. 4765.

(4) This amendment is necessary and appropriate for administration and enforcement of the Board's authorizing statute.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending § 31.21, Principle 7, to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Board shall submit this order 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 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication.

JEFFREY M. OTT, V.M.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. 5636 (November 7, 1998).)

Fiscal Note: Fiscal Note 16A-575 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

PROFESSIONAL CONDUCT

§ 31.21. Rules of Professional Conduct for Veterinarians.

* * * * *

Principle 7. Veterinarian/client relationships.

(a) Veterinarians may choose whom they will serve. Once they have undertaken the care of an animal, however, they may not neglect the animal.

(b) In their relations with clients, veterinarians should consider first the welfare of the animal for the purpose of relieving suffering and disability while causing a minimum of pain or fright. Benefit to the animal should transcend personal advantage or monetary gain in decisions concerning therapy.

(c) Veterinarians and their staffs shall protect the personal privacy of clients, unless the veterinarians are required by law to reveal the confidences or it becomes necessary to reveal the confidences to protect the health and welfare of an individual, the animal or others whose health and welfare may be endangered.

(d) Veterinarians shall be fully responsible for their actions with respect to an animal from the time they accept the case until the animal is released from their care.

(e) In the choice of drugs, biologics or other treatments, veterinarians should use their professional judgment in the interests of the animal, based upon their knowledge of the condition, the probable effects of the treatment and the available scientific evidence which may affect these decisions.

(f) If a client desires to consult with another veterinarian about the same case, the first veterinarian shall readily withdraw from the case, indicating the circumstances on the veterinary medical record of the animal, and shall forward copies of the animal's veterinary medical records to other veterinarians who request them.

(g) If a client requests referral to another veterinarian or veterinary hospital, the attending veterinarian shall honor the request and facilitate the necessary arrange-

ments, which shall include forwarding copies of the veterinary medical records of the animal to the other veterinarian or veterinary hospital.

[Pa.B. Doc. No. 98-1943. Filed for public inspection November 27, 1998, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 43]

Temporary Registration Cards and Plates

The Department of Transportation (Department), Bureau of Motor Vehicles (Bureau), by this order, amends Chapter 43 (relating to temporary registration cards and plates) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 26 Pa.B. 3839 (August 10, 1996) with an invitation to submit written comments within 30 days of publication.

The Department received comments from the Pennsylvania Association of Notaries (PAN), the Pennsylvania Automotive Recycling Trade Society (PARTS) and the Independent Regulatory Review Commission (IRRC). The Department carefully reviewed and considered these comments and the following is a summary of these comments and the manner in which the Department responded:

(1) PARTS correctly noted that § 43.6 (relating to issuance of temporary registration plates) limits the issuance of temporary registration plates on reconstructed and specially constructed vehicles to the Bureau itself while issuing agents would be prohibited from issuing this particular type of temporary plate. An issuing agent is a dealer or agent who has been authorized by the Department to issue temporary plates and cards. PARTS believes that this provision adds unnecessary time and expense to the reconstructed and specially constructed registration process. The Department responded that current policy is that issuing agents are not permitted to issue temporary registration plates for specially constructed or reconstructed vehicles. This procedure has proven to be in the best interest of public safety since a reconstructed vehicle is a vehicle that has been rebuilt. This vehicle must be inspected by an inspection mechanic, and the individual who did the actual reconstruction, whether a dealer or an individual, must submit all the required documentation to the Department for review to ascertain that the reconstruction was done in a manner that makes the vehicle roadworthy. The Department, after reviewing and approving the reconstruction, will issue a title to the vehicle which includes a notation or a "brand" on the title itself advising any purchaser that the vehicle is reconstructed.

(2) PARTS asked the Department to allow issuing agents to issue temporary registration plates after the initial reconstructed inspection process is completed and the branded title is issued. The Department responded that decentralized messengers may issue this registration under the authority in Chapter 255 (relating to messenger service). This process is confined to decentralized messengers since it is necessary for them to telephone the Bureau to ensure there are no suspensions on the record prior to issuing the temporary registration.

(3) IRRC noted in § 43.4(d) (relating to authorization to issue temporary registration plates), that the Depart-

ment revised the conditions under which it may deny an application of a person wishing to issue temporary registration plates by adding influence by a person who is ineligible for authorization and by extending this influence to corporate officers or shareholders. Although IRRC understands that the Department is attempting to prevent prior offenders from circumventing their suspensions through establishment of a new corporation, it stated that the term influence is too vague to be enforceable. IRRC recommended that the Department revise the prohibition to include any applicants business which is operated, managed, controlled or affiliated with a person ineligible for authorization. The Department agrees with this recommendation.

(4) IRRC noted that § 43.5(d) (relating to issuance of temporary registration cards) was revised to add the requirement that documents or forms in the application be verified. Existing regulations require the application to be properly executed and notarized while the proposed amendments required the application be properly and completely executed and verified or notarized. PAN has also expressed concern with the addition of the term "verified." It stated that 75 Pa.C.S. (relating to the Vehicle Code) requires the services of a notary public to process certain motor vehicle transactions and forms, while 75 Pa.C.S. § 1103.1(b) (relating to certificate of title required) states: "The application shall be signed and verified by oath or affirmation by the applicant if a natural person." The Department agrees and has removed the word "verified."

(5) IRRC expressed concerns regarding the addition of language in § 43.11(c) (relating to sanctions for violation by issuing agents). IRRC recommended that the Department remove the language "multiple violations" and establish a new subsection titled "Dual violations." The Department agrees and has added subsection (i) titled "dual violations" and moved the language pertaining to the same violations under both chapters to the new subsection. IRRC also expressed concern with § 43.11(c) in its citation to Chapter 53 (relating to manufacturers, dealers and miscellaneous motor vehicle business registration plates) since the new language has not yet been incorporated into Chapter 53. IRRC recommended the reference be changed to 75 Pa.C.S. § 1374 (relating to suspension or revocation of vehicle business registration plates). The Department agrees with this recommendation and has cited 75 Pa.C.S. § 1374(d) as opposed to Chapter 53 in § 43.11(i).

(6) IRRC was concerned with the sanctions heading in § 43.11(a). Category I in the existing regulations contains a heading in the offense category which reads: "Reason for suspension of agents." The proposed amendments revised the heading to read: "Reason for sanction of agent." The heading of the offense categories in existing regulation, "Duration of suspension" is revised to "type of sanction" in the proposed rulemaking. While these headings are consistent with the changed language for offenses rewritten in the proposed rulemaking, the offenses in the existing regulation which were not revised will be inconsistent with the proposed headings. Therefore, IRRC believed the term "suspension" must be added to the existing penalty language for the following categories and offenses:

- Category I (1), 1st and 2nd Offense
- Category I (2), 1st, 2nd and 3rd Offense
- Category I (3) and (5), 1st, 2nd and 3rd Offense
- Category I (7), 1st and 2nd Offense

- Category I (9), (10) and (14), 1st, 2nd and 3rd Offense
- Category I (16) and (17), 2nd and 3rd Offense
- Category I (18) and (21), 1st, 2nd and 3rd Offense
- Category II (1) and (2), 2nd, 3rd and 4th Offense
- Category II (3), 1st, 2nd, 3rd and 4th Offense
- Category II (4) and (12), 2nd, 3rd and 4th Offense

The Department agrees with this recommendation and has revised the penalty description for the previous offenses.

(7) IRRC expressed two concerns with the language in § 43.11(a) Category II (5) which states: "The agent has issued temporary plates up but has not timely delivered proper documents, fees or taxes to the Department within the time prescribed by law or regulation." IRRC correctly believed that the word "up" is a typographical error. The Department agrees and has made this correction. IRRC also noted that the phrases "has not timely delivered" and "within the time prescribed by law or regulation" are vague. The Department has amended § 43.11(a) Category II (5) and § 43.11(h)(1)(i)—(iii) and (v) and (2)(ii) in which the term "timely" appears, to include the phrase "as prescribed by § 43.5(f)(1)."

(8) IRRC noted that § 43.11(h)(1)(iii) referred to the lienholder's failure to promptly forward the titles and has recommended that the Department provide clarification of what constitutes "prompt" action. The Department agrees and has eliminated the use of the word "promptly." The Department changed the regulation to reflect that 75 Pa.C.S. § 1135(a)(1) (relating to satisfaction of security interest) which indicates that the certificate of title shall be immediately mailed or delivered to the owner with proper evidence of satisfaction and release. The Department changed the regulation to clarify that "immediately" means that prudent business practices would allow 3 days for the internal processing by the lienholder.

(9) IRRC expressed concern with § 43.11(h)(1)(v) which provided that an agent has the burden of "presenting evidence acceptable to the Department" that it submitted the documents, taxes and fees to the authorized messenger. IRRC recommended that this phrase be deleted. The better phrasing for describing the agents task in presenting a defense in a proceeding to determine a violation is "burden of proof" and not "burden to present evidence." Also, the phrase "evidence acceptable to the Department" is not an appropriate legal standard. The finder of fact is responsible for weighing the evidence presented and determining, based on the evidence, whether the evidence is sufficient to prove that the agent submitted the documents. Therefore, IRRC recommended that subparagraph (v) be amended to the following:

"The agent has the burden of proving that it submitted the documents, taxes and fees to the authorized messenger within 15 days of the date of purchase of the vehicle, transfer of registration, or issuance of a temporary registration plate or card, whichever occurred first."

The Department agrees with this recommendation and has amended subparagraph (v) as suggested.

(10) IRRC believed that the subsection titled "Suspension without hearing" in § 43.11(h)(3)(i) did not belong as a subparagraph under § 43.11(h)(3). Since it deals with material unrelated to preclusion from mitigation, IRRC believed it should more appropriately be added to § 43.11(h)(4). The Department agrees that it is unrelated to § 43.11(h)(3) and has moved this to § 43.11(j).

The final text of these amendments contains minor modifications, additions, deletions and additional changes,

none of which enlarges the scope of these regulations as originally proposed, and thus, may be published as a final rulemaking. The following represent a summary of the changes:

Section 43.4(d) has been amended to provide that an application to be an issuing agent may be denied if the "applicant's" business is operated, managed or otherwise controlled or affiliated with a corporate officer or shareholder who is ineligible for authorization. The Department had initially proposed denying an application for a certificate of authorization if the applicant is "influenced" by a person who is not eligible for authorization. IRRC recommended that the Department consider changing "influenced" to "affiliated" because of the vagueness of the term "influenced." The Department agrees.

Section 43.5(d) has been further amended to delete the requirement that issuing agents verify the application before issuing the temporary registration card. The Department deleted this requirement because, upon further review, it believes that it was creating an equivocation of the term between its use in the Vehicle Code and the regulations.

IRRC indicated that the meaning of the term "verified" was unclear. The Department agrees.

Section 43.7(d) (relating to inventory of temporary registration cards and plates), has been amended for the purpose of clarification of the phrase "authorized Commonwealth employees." The present language in this section provides for temporary registration plates and related documents to be available for inspection, with or without notice, by authorized Commonwealth employees. For the purpose of clarification, this section has been amended to clarify that this does include the State Police. This section was amended to avoid any possible confusion as to who was an authorized Commonwealth employee. The Department works closely with the State Police in the enforcement of Commonwealth law and regulations promulgated under authority of the Vehicle Code.

Section 43.11(a) contains a schedule which outlines the violations by issuing agents. The heading in the existing regulations reads: "Reason for suspension of agent," which the Department changed to "Reason for sanction of agent" in the proposed regulations. Also, the other heading in the existing regulations reads: "Duration of Suspension" which was changed to "Type of Sanction." While these proposed headings are consistent with the language contained in the rewritten schedule of offenses, they are inconsistent with the schedule contained in the existing regulations which have not been rewritten. Therefore, the Department has amended the schedule to add the term "suspension" in:

- Category I (1), 1st and 2nd Offense
- Category I (2), 1st, 2nd and 3rd Offense
- Category I (3) and (5), 1st, 2nd and 3rd Offense
- Category I (7), 1st and 2nd Offense
- Category I (9), (10) and (14), 1st, 2nd and 3rd Offense
- Category I (16) and (17), 2nd and 3rd Offense
- Category I (18) and (21), 1st, 2nd and 3rd Offense
- Category II (1) and (2), 2nd, 3rd and 4th Offense
- Category II (3), 1st, 2nd, 3rd and 4th Offense
- Category II (4), (6)—(12), 2nd, 3rd and 4th Offense

Section 43.11(a) Category I (3) and (19) are redundant, and accordingly, this section has been amended by delet-

ing Category I (19). This duplicity is not required as the only difference is the penalty. The penalty at Category I (3) is more appropriate than the listed penalty in Category I (19). This deletion results in the renumbering of Category I (20) and (21) to Category I (19) and (20) respectively.

Section 43.11(a), Category II (5) contains the phrases "has not timely delivered" and "within the time prescribed by law or regulation." To avoid the perception of vagueness, the Department has added as prescribed by § 43.5(f)(1) to the referenced subsection.

Section 43.11(a), Category II (5) contains a typographical error by inclusion of the word "up" early on in the sanction. The Department has deleted the word "up" in accordance with the IRRC recommendation.

Section 43.11(c) has been amended to delete the language which added a provision that an agent, who is also a dealer and who has been sanctioned with a monetary penalty for a violation that constitutes an offense of Chapters 43 and 53, will only have to pay the monetary penalty prescribed in Chapter 53. This provision has been moved to § 43.11(i) as recommended by IRRC. Further, the substance of the proposed § 43.11(i), relating to suspension without hearing, has been moved to a new subsection (j).

Section 43.11(h)(1)(i)—(iii) and (v) and previously (2)(ii) contains the phrase "timely submit" which IRRC believed to be vague. To avoid vagueness, the Department has added "as prescribed by § 43.5(f)(1)" to each of the referenced subparagraphs. Section 43.5(f)(1) provides that the agent shall submit to the Bureau the original copy of the registration card, related documents and the required fees within 20 days of the issuance of the temporary registration.

Section 43.11(h)(1)(iii) concerns the lienholder's failure to "promptly" forward the titles to the vehicle owners upon satisfaction of the encumbrance. IRRC questioned the clarity of the word "promptly" and the Department agreed. Therefore, the Department has changed the regulation to clarify that by "immediately" means that prudent business practices would allow 3 days for the internal processing by the lienholder. The Department also changed the word "agent" to the word "owner," since "owner" is the term used in 75 Pa.C.S. § 1135(a)(1), and the Department believes that the word "owner" would maintain consistency.

Section 43.11(h)(1)(v) provides that an agent has the burden of presenting evidence acceptable to the Department that it submitted the documents, taxes and fees to the authorized messenger. In response to a recommendation from IRRC, the Department has deleted the phrase "presenting evidence acceptable to the Department" and replaced it with the term "proving."

Section 43.11(i) has been amended by removing the substance of the same to a new § 43.11(j). This change was made at the suggestion of IRRC.

Section 43.11(i) adds a new subsection which provides that an agent, who is also a dealer and who has been sanctioned with a monetary penalty for a violation that constitutes an offense of 75 Pa.C.S. § 1374(d) and Chapter 43, will only have to pay the monetary penalty of 75 Pa.C.S. § 1374(d). This provision, in the proposed rulemaking previously appeared within § 43.11(c), multiple violations, however, it is more appropriate to present this rule within its own subsection.

Persons and Entities Affected

These final-form regulations affect all persons who apply for or who are currently authorized to issue temporary registration cards or plates, vehicle owners who request issuance of a temporary card or plate, the State Police and local law enforcement agencies.

Fiscal Impact

These amendments will not require the expenditure of additional funds by the Commonwealth or local governments. The Department, however, at the request of dealerships and tag agents has incorporated a provision to replace suspensions for second and third offenses for failing to timely deliver documents, taxes and fees to the Department, with a monetary penalty of \$50 to \$100 for a second offense and \$100 to \$200 for a third offense. These penalties, however, will only be imposed upon those agents who fail to comply with timely submission as prescribed in the Vehicle Code.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 15, 1996, the Department submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 3839, to IRRC and the Chairpersons of the House and Senate Committees on Transportation for review and comment.

These final-form regulations were deemed approved by the Committees on September 28, 1998, and were approved by IRRC on October 6, 1998, in accordance with section 5(c) of the Regulatory Review Act.

Sunset Provisions

The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under the Vehicle Code. The Department, however, will continue to monitor these regulations for their effectiveness.

Contact Persons

The contact person is Randy Swartz, Acting Manager, Customer Service Division, Bureau of Motor Vehicles, 1101 S. Front Street, Harrisburg, PA (717) 787-2780.

Authority

The final-form regulations are amended under the authority contained in 75 Pa.C.S. §§ 1310, 1331 and 6103 (relating to temporary registration cards; registration card to be signed and exhibited on demand; and promulgation of rules and regulations by the department).

Findings

The Department finds that:

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

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

Order

The Department acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 43, are amended by amending §§ 43.4—43.7, 43.9, 43.11 and 43.12 to read as set forth in Annex A,

with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A, to the Office of Attorney General and the Office of General Counsel for approval as to the 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*.

BRADLEY L. MALLORY,
Secretary

(Editor's Note: The amendment of § 43.7 was not included in the proposal at 26 Pa.B. 3839).

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 5439 (October 24, 1998).)

Fiscal Note: Fiscal Note 18-337 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE III. REGISTRATION

CHAPTER 43. TEMPORARY REGISTRATION CARDS AND PLATES

§ 43.4. Authorization to issue temporary registration plates.

* * * * *

(d) *Denial of application.* The Department may deny an application for a certificate of authorization on the basis of information revealed in an investigation, or if the applicant fails to disclose material information required or if the applicant has made a materially false statement on the application, or if the applicant's business is operated, managed or otherwise controlled or affiliated with a person who is ineligible for authorization, including a relative, family member, corporate officer or shareholder.

* * * * *

§ 43.5. Issuance of temporary registration cards.

* * * * *

(d) *Duty to examine documents.* The duty to examine documents includes the following:

* * * * *

(2) A temporary registration card may not be issued unless the following items are found to be in order:

* * * * *

(ii) *Application.* The application shall be properly and completely executed and notarized, as required, accompanied by the correct fees, taxes and other required forms or documents.

(f) *Copies of temporary registration card.* Copies of the temporary registration card shall be handled as follows:

* * * * *

(3) The agent's copy of the temporary registration card, copies of related documents including bills of sale when the agent is also the dealer and a copy of the document used for identification and copies of the documents used

for insurance verification shall be retained at the place of business of the issuing agent for at least 3 years and shall be made available for inspection only by police and authorized representatives of the Department. Cards issued in conjunction with the transfer of registration plates shall be kept separate from cards issued in conjunction with temporary registration plates. Cards shall be kept in chronological order according to the date of issuance.

* * * * *

§ 43.6. Issuance of temporary registration plates.

(a) *Limits on issuance.* Temporary registration plates will be issued in the following manner:

(1) Temporary registration plates other than those specified in paragraph (4) will be issued only by the Bureau, approved governmental agencies, dealers, manufacturers and full agents authorized by the Bureau.

(2) Temporary registration plates shall be issued only in conjunction with an application for title and registration of a vehicle within this Commonwealth or for the purpose of driving or otherwise moving a vehicle purchased in this Commonwealth to another state or country for titling, registration, use or resale there.

(3) Notwithstanding paragraphs (1) and (2), a full agent who is also an authorized messenger service under Chapter 255 (relating to messenger services), may issue a temporary registration plate in one of the following circumstances after receiving authorization from the Department indicating the vehicle record is clear of a suspension or other impediment to issuance of the registration plate:

(i) For a vehicle for which the applicant already has a Pennsylvania certificate of title.

(ii) To a person who is applying for replacement of a lost, stolen or defaced registration plate.

(iii) For a vehicle for which the applicant has an out-of-State title and registration, but is also required to be registered, but not titled, in this Commonwealth.

(4) Temporary registration plates for reconstructed and specially constructed vehicles will be issued only by the Bureau.

(b) *Issuance at other locations.* The Department may provide written authorization for individual dealers, manufacturers or full agents to issue temporary registration plates at a location other than the places of business of the dealer, manufacturer or full agent for a period not to exceed 1 year. The privilege to issue temporary registration plates from a location other than the designated dealer, manufacturer or full agent's place of business is revocable if the Department finds that the dealer, manufacturer or full agent has violated this chapter or the terms of the written authorization.

(c) *Obtaining temporary registration plates.* Temporary registration plates shall be obtained by submitting the appropriate form and paying the applicable fee to the Bureau.

(d) *Issuance of temporary registration card in conjunction with issuance of temporary registration plates.* Upon the issuance of a temporary registration plate, the authorized dealer, full agent or manufacturer shall issue a temporary registration card, in the manner prescribed on forms provided by the Department and in § 43.5 (relating to issuance of temporary registration cards).

(1) The number of the temporary registration plate shall be indicated on the temporary registration card.

(2) If the vehicle is not to be titled in this Commonwealth, it shall be noted on the temporary registration card.

(e) *Issuance of temporary registration plates.* Temporary registration plates shall be issued in consecutive order, beginning with the lowest number in each series.

(f) *Issuance of cardboard temporary registration plates.* Upon issuance of a cardboard temporary registration plate, the authorized dealer, manufacturer or full agent shall punch out the month, day and year of expiration at the space provided and shall record the following information clearly and indelibly on the face of the temporary plate:

(1) The date of issuance.

(2) The year, make and model of vehicle.

(3) The vehicle identification number.

(4) The identification number of the authorized dealer, manufacturer or full agent.

(g) *Fee charged.* The fee charged for providing an applicant with a temporary plate may not exceed:

(1) Ten dollars if the plate was obtained from the Department for a fee of \$5.

(2) Five dollars if the plate was obtained from the Department for a fee of \$1.

§ 43.7. Inventory of temporary registration cards and plates.

(a) *Inventory report.* Every dealer, manufacturer and full agent is responsible for providing the Bureau with a report on the temporary registration plates which it has in inventory, within 30 days of the Bureau's request for the information.

(b) *Security.* Temporary registration cards and plates shall be kept in a secure place, which shall meet the approval of the Bureau. Issuing agents shall be responsible for security of temporary registration cards and plates obtained by them until they are issued to applicants.

(c) *Report on lost or stolen plates.* If plates are lost or stolen, the dealer, manufacturer or full agent shall notify the Department of the loss or theft within 48 hours of the occurrence. This notice shall be in the form of a notarized statement and shall give complete details of the loss or theft of the plates. In the event of theft, a police report shall be submitted to the Department within 10 days of the theft.

(d) *Available for inspection.* Temporary registration plates and related documents shall be available for inspection, with or without notice, by authorized Commonwealth employees which includes the State Police. Records required by the Department to be maintained by the issuing agent in carrying out its duties under this chapter shall be subject to periodic inspection by authorized representatives of the Commonwealth or its designated agents under the following conditions:

(1) *Place.* The inspection will be conducted at the issuing agent's established place of business.

(2) *Time.* The inspection will be conducted during regular and usual business hours.

(3) *Scope.* The inspection will be limited to examination of the records and plate inventory which are subject to the recordkeeping requirements of this chapter and which are on the premises.

§ 43.9. Bond.

(a) *Authorized dealers, manufacturers and full agents to be bonded.* Every authorized dealer, manufacturer and full agent shall file and maintain with the Bureau a bond executed by a surety company authorized to transact business in this Commonwealth. The bond shall be for the use and benefit of the Commonwealth and a person who has sustained a monetary loss within the limitations of the bond as specified in subsection (d).

(b) *Amount of bond.* Issuing agents, other than card agents, shall be bonded in the amount of \$20,000, except full agents who purchase fewer than 200 temporary plates in any 12-month period shall be bonded in the amount of \$10,000. The amount of the bond shall be raised to \$20,000 before a full agent may purchase 200 or more temporary plates in any 12-month period.

(c) *Decrease in amount of bond.* If the amount of the bond is decreased, or if there is a final judgment outstanding against the bond, the right of the authorized dealer, manufacturer or full agent to issue temporary registration cards and plates will be suspended until steps are taken, satisfactory to the Bureau, to restore the original amount of the bond, provide additional bond or satisfy the judgment.

(d) *Limitations of bond.* The bond required under this section shall cover transactions in which the Commonwealth or a person specified in subsection (a), has sustained a monetary loss due to the agent, dealer or manufacturer submitting a dishonored or uncollectible check to the Commonwealth (including protest and uncollectible check fees), or failing to remit to the Commonwealth a fee or tax when the monetary loss is incurred in connection with the business of the dealer or manufacturer. A check which is dishonored upon presentment, or an application for title or registration which is received without a required fee or tax, shall constitute a monetary loss. Failure to pay a monetary penalty within 45 days of assessment shall also constitute a monetary loss. The bond required under this section may not cover a loss for a transaction which is not mentioned in this subsection relating to the issuance of temporary registration cards or plates in connection with the business of the dealer, manufacturer or full agent. If the dealer, manufacturer or full agent has one or more branch offices, the amount of the bond shall be increased by the amount specified in subsection (b) for each branch office, except that the total amount of the bond will not be required to exceed \$200,000.

(d) *Limitations of bond.* The bond required under this section shall cover transactions relating to the issuance of temporary registration cards or plates that are entered into in connection with the business of the dealer, manufacturer or full agent. If the dealer, manufacturer or full agent has one or more branch offices, the amount of the bond shall be increased by the amount specified in subsection (b) for each branch office, except that the total amount of the bond shall be limited to \$200,000.

(e) *Bond already on file.* An authorized dealer, manufacturer or full agent who has filed a bond with the Commonwealth will not be required to file a separate bond under this section, if the bond already on file with the Commonwealth is in the name of the Commonwealth and at least equal to the amount and coverage of the bond required under this section.

(f) *Acceptance.* The surety and terms of bonds or riders shall be subject to review and acceptance by the Bureau.

(g) *Change of address.* When a change of address occurs, a stipulation or rider to the original bond shall be submitted for the new address.

(h) *Authorized claims.* The Bureau has the right to make and settle claims upon the bond with the surety company on behalf of the Commonwealth and a person who has incurred a monetary loss as specified in subsection (a). The Bureau will, upon written request, assign this right to a person for that person's claim; however, in this event, the Commonwealth is released from any duty to the person towards obtaining satisfaction of that person's claim. The Commonwealth will have priority, to the exclusion of all others, in receiving payment from the surety. If the aggregate amount of valid claims exceeds the amount of the bond, priority for the payment of claims shall be as follows:

- (1) Claims made by the Commonwealth.
- (2) Claims made by the Commonwealth for persons.
- (3) Claims made by persons who obtained assignment from the Bureau.

§ 43.11. Sanctions for violations by issuing agents.

(a) *Schedule.* After providing an opportunity for a hearing, the Department will impose the suspensions or sanctions on an issuing agent according to the schedule of Category I violations and may impose suspensions or sanctions on an issuing agent according to the schedule of Category II violations, when the Department finds upon sufficient evidence that:

<i>Reason for Sanction of Agent</i>	<i>Type of Sanction</i>			
	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>	<i>Fourth and Subsequent Offense</i>
<i>Category I</i>				
(1) The agent has committed a fraudulent act including the fraudulent keeping of records, or the fraudulent completion of an application submitted to the Department or the failure to submit to the Department, completed applications and fees and taxes due the Commonwealth in connection with the issuance of the temporary cards or plates.	6-months suspension	1-year suspension	Revocation	

<i>Reason for Sanction of Agent</i>	<i>Type of Sanction</i>			
	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>	<i>Fourth and Subsequent Offense</i>
(2) The agent has failed to allow inspection of documents or plates in the possession of the issuing agent by authorized Commonwealth employees.	Suspension until the documents, plates, or both, are made available, plus 1 month	Suspension until the documents, plates, or both, are made available, plus 3 months	Suspension until the documents, plates or both are made available, plus 6 months	Revocation
(3) The agent has consigned or transferred plates to other issuing agents, notaries or persons.	1 month suspension	3 months suspension	6 months suspension	Revocation
(4) The agent has issued temporary plates but has failed to deliver proper documents, fees or taxes to the Department.	Suspension until the documents, fees or taxes are delivered plus a written warning	Suspension until the documents, fees or taxes are delivered, plus 1 month	Suspension until the documents, fees or taxes are delivered, plus 6 months	Revocation
(5) The agent has issued a temporary registration card or plate containing a misstatement of fact or other false information, which the agent knew or should have known to be incorrect or false.	1-month suspension	3-months suspension	6-months suspension	Revocation
	* * *	* *		
(7) The manufacturer, dealer or full agent has failed to maintain in the amount required by 75 Pa.C.S. § 1335(a) and § 43.9 (relating to registration plates for manufacturers and dealers; and bond).	Suspension until the satisfactory bond is furnished to the Department	Suspension until the satisfactory bond is furnished to the Department plus 1 month	Revocation	
(8) The agent has submitted a document to the Department for processing which has been accompanied by an uncollectible or dishonored check drawn on an account used by the agent.	Suspension until the uncollectible checks, protest fees and collection charges under the act are paid, plus a written warning	Suspension until the uncollectible checks, protest fees and collection charges under the act are paid, plus 1 month	Suspension until the uncollectible checks, protest fees and collection charges under the act are paid, plus 6 months	Revocation
(9) The manufacturer dealer or full agent has failed to provide the Bureau with an inventory report within 30 days, as required by § 43.7(a) (relating to inventory of temporary registration cards and plates).	Suspension until the report is provided	Suspension until the report is provided, plus 1 month	Suspension until the report is provided, plus 3 months	Revocation
(10) The agent has charged a fee in excess of the fee allowed for providing an applicant with a temporary plate under § 43.6(g) (relating to issuance of temporary registration plates).	1-month suspension	3-months suspension	6-months suspension	Revocation
	* * *	* *		
(12) The agent has issued temporary registration plates at a location not approved by the Department.	Written warning	1-month suspension	3-months suspension	6-months suspension
(13) The agent has operated a branch office without notifying the Department.	Suspension until the branch office is approved by the Department or closed by the agent.			

Reason for Sanction of Agent

Type of Sanction

	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>	<i>Fourth and Subsequent Offense</i>
(14) The agent does not comply with the notary requirement of § 43.4(a)(9) (relating to authorization to issue temporary registration plates).	Suspension until the notary is employed * * *	Suspension until the notary is employed, plus 1 month * *	Suspension until the notary is employed, plus 3 months	Revocation
(16) The agent has not listed or obtained proper insurance information as required by 75 Pa.C.S. § 1318(b) and § 43.5(d)(2)(i) (relating to duties of agents; and issuance of temporary registration cards).	Written warning	3-months suspension	6-months suspension	Revocation
(17) The agent has reissued a temporary registration card without written authorization from the Department.	Written warning	1-month suspension	3-months suspension	Revocation
(18) The agent has charged a fee for the issuance of a temporary registration card in violation of 75 Pa.C.S. § 1310(c) and § 43.5(g)	1-month suspension	3-months suspension	6-months suspension	Revocation
(19) The agent has failed to maintain an established place of business.	Suspension until an established place of business is approved by the Department			
(20) The agent has failed to report a transaction involving the sale or transfer of a vehicle as required by statute, regulation or rule administered or enforced by the Internal Revenue Service.	3-months suspension	6-months suspension	1-year suspension	Revocation
<i>Category II</i>				
(1) The agent has not issued temporary registration plates in consecutive order, beginning with the lowest number in each series.	Written warning	1-month suspension	3-months suspension	6-months suspension
(2) The agent has not listed the date of the issuance of the temporary cards or plates.	Written warning	1-month suspension	3-months suspension	6-months suspension
(3) The manufacturer, dealer or full agent has failed to notify the Department of a change in office location before or within 10 days of the change.	Suspension until the application related to the change has been approved	Suspension until the application related to the change has been approved, plus 1 month	Suspension until the application related to the change has been approved, plus 3 months	Suspension until the application related to the change has been approved, plus 6 months
(4) The agent has failed to keep the temporary registration card and documents related to the application for title or registration, or both, in strict confidentiality, as required by § 43.5.	Written warning	1-month suspension	3-months suspension	6-months suspension

*Reason for Sanction of Agent**Type of Sanction*

	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>	<i>Fourth and Subsequent Offense</i>
(5) The agent has issued temporary plates but has not timely delivered proper documents, fees or taxes to the Department within the time as prescribed by § 43.5(f)(1).	Written warning	Monetary penalty of \$50 to \$100 per violation; and suspension for failure to pay the penalty or deliver the documents, fees or taxes within 45 days after the date that the notice was sent, or a greater time period as specified by the Department, until the penalty is paid or documents, fees or taxes are delivered to the Department	Monetary penalty of \$100 to \$200 per violation; and suspension for failure to pay the penalty or deliver the documents, fees or taxes within 45 days after the date that the notice was sent, or a greater time period as specified by the Department, until the penalty is paid or documents, fees or taxes are delivered to the Department	3-month suspension to revocation
(6) The agent has issued temporary plates for a vehicle for which a title has already been issued, unless permitted under § 43.6(a)(3).	Written warning	1-month suspension	3-months suspension	6-months suspension
(7) The agent has issued a metal plate for transporting a vehicle out-of-State.	Written warning	1-month suspension	3-months suspension	6-months suspension
(8) The manufacturer, dealer or full agent has repeatedly not listed its name and identification number, as required, on applications and checks submitted to the Department.	Written warning	1-month suspension	3-months suspension	6-months suspension
(9) The agent has issued the incorrect type of plate for a particular vehicle.	Written warning	1-month suspension	3-months suspension	6-months suspension
(10) The manufacturer, dealer or full agent has failed to post in a conspicuous manner at place of business:				
(i) Schedule of motor vehicles fees.	Written warning	1-month suspension	3-months suspension	6-months suspension
(ii) Schedule of the manufacturer's, dealer's or full agent's fees.	Written warning	1-month suspension	3-months suspension	6-months suspension
(iii) Hours of operation.	Written warning	1-month suspension	3-months suspension	6-months suspension
(iv) Certificate of authorization.	Written warning	1-month suspension	3-months suspension	6-months suspension
(11) The manufacturer, dealer or full agent has failed on two or more occasions to open during posted business hours.	Written warning	1-month suspension	3-months suspension	6-months suspension
(12) The agent has refused to accept a separate check or money order made payable to the Commonwealth for fees and taxes due to the Commonwealth.	Written warning	1-month suspension	3-months suspension	6-months suspension
(13) The agent has failed to provide proper security for temporary registration cards and plates.	Written warning	1-month suspension	3-months suspension	6-months suspension
(14) The agent has refused to issue, upon request, a temporary registration card to an owner or lessee of a vehicle who possesses proper documentation.	Written warning	1-month suspension	3-months suspension	6-months suspension
(15) The agent has failed to maintain an adequate schedule of business hours.	Written warning	1-month suspension	3-months suspension	6-months suspension

Reason for Sanction of Agent

Type of Sanction

	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>	<i>Fourth and Subsequent Offense</i>
(16) The agent has issued a cardboard temporary tag without verification that the vehicle will be transported to another state for registration as for registration as required by § 43.5(d)(2)(i)(C).	Written warning	1-month suspension	3-months suspension	6-months suspension
(17) The agent has:				
(i) Failed to furnish receipts as required.	Written warning	1-month suspension	3-months suspension	6-months suspension
(ii) Failed to retain duplicate copies of receipts for 3 years.	Written warning	1-month suspension	3-months suspension	6-months suspension
(18) The agent has issued a temporary registration to an applicant without proper documentation.	Written warning	1-month suspension	3-months suspension	6-months suspension
(19) The manufacturer, dealer or full agent has failed to notify the Department of a change in ownership or other changes affecting the business of the issuing agent before or within 10 days of the change.	Suspension until an application related to the change has been submitted to the Department.			
(20) The agent has failed to retain proper records under § 43.5(f).	Written warning	1-month suspension	6-months suspension	Revocation
(21) The agent has on two or more occasions violated, or failed to comply with, a provision of 75 Pa.C.S. Chapter 11, 13, 21, 23 or 71, or Departmental regulations promulgated under these chapters, except for untimely submissions as provided in paragraph (5).	1-month suspension	3-months suspension	6-months suspension	Revocation
(22) The agent has been convicted of a summary offense, relating to the titling, registration or payment of sales tax for a vehicle which was committed in connection with the business of the agent, except for untimely submissions as provided at paragraph (5).	Written warning	1-month suspension	3-months suspension	Revocation

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(c) *Multiple violations.* In the case of multiple violations considered at one time, the Department may impose separate sanctions for each violation under the schedule in subsection (a). The Department may direct that a suspension or revocation imposed be served concurrently or consecutively.

(d) *Suspension authority reserved.* The description of grounds for suspension will not be deemed to limit the authority of the Department to control the issuance of temporary registration cards and plates as granted by 75 Pa.C.S. §§ 1310 and 1331 (relating to temporary registration cards; and issuance of registration plates). The Department may suspend an issuing agent for offenses not described in subsection (a), such as any use of temporary registration plates or official documents, or conduct on the part of the issuing agent, that does not conform to the law of the Commonwealth. Sanctions imposed under this subsection shall be consistent with the sanctions imposed under subsection (a) according to the seriousness of the violation as evidenced by factors such as the number of persons or documents involved, the amount of money involved, and the like.

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(h) *Relevant mitigating events.* For a violation of subsection (a) Category II (5), second, third or subsequent offense, the Department will consider the following relevant mitigating events that serve to exonerate the agent of the offense or to reduce the monetary penalty that may be imposed. The agent has the burden of establishing the relevant mitigating event and that the relevant mitigating event was the cause of the violation.

(1) *Exoneration.* In determining whether the relevant mitigating events serve to exonerate the agent of the offense, the Department will consider evidence offered by the agent pertaining to the following:

(i) Whether the failure to timely submit, as prescribed by § 43.5(f)(1), the applications, taxes or fees was the result of an Act of God, such as fire, flood or other natural disaster.

(ii) Whether the failure to timely submit, as prescribed by § 43.5(f)(1), the applications, taxes or fees, was the result of criminal or fraudulent action by an employe or

licensed messenger of which the agent was not aware and could not have prevented and that the agent had in place customary business practices to effectuate the timely submission of taxes, fees and title applications to the Department.

(iii) Whether the failure to timely submit, as prescribed § 43.5(f)(1), the applications, taxes or fees, was the result of a lienholder's failure to immediately forward the titles to the owner, as prescribed by 75 Pa.C.S. § 1135(a)(1) (relating to satisfaction of security interest) and, in this case, whether the lienholder received prompt repayment of the debt from the vehicle owner or licensed dealer and immediately released its liens within 3-business days.

(iv) Whether the agent would have been exonerated of prior sanctions that were issued against the agent within the 3 years prior to November 28, 1998, had the Departmental regulations that were effective, November 28, 1998, been in effect.

(v) Whether the failure to timely submit the applications, as prescribed by § 43.5(f)(1), was the result of criminal, fraudulent or negligent action by an authorized messenger of the Department. This subparagraph does not apply when the same person controls the agent and the messenger. The agent has the burden of proving that it submitted the documents, taxes and fees to the authorized messenger within 15 days of the date of purchase of the vehicle, transfer of a registration or issuance of a temporary registration plate or card, whichever occurred first.

(2) *Reduction in monetary penalty.* In determining whether the events serve to reduce the monetary penalty that the Department may impose, but which will not exonerate the agent of the offense, the Department will consider evidence offered by the agent pertaining to the following:

(i) Whether subsequent to the applicable notice of hearing issued by the Department, the Department's records reflect that the agent has remedied the event which was the cause of the untimely submissions and that no additional late submissions have occurred.

(ii) Whether the applications, taxes or fees were submitted by more than 20 but less than 40 days after the date of purchase of the vehicle, if no consumer or vehicle purchaser was harmed by the agent's failure to timely submit, as prescribed by § 43.5(f)(1), the applications, taxes or fees and that the agent had in place customary business practices to effectuate the timely submission of taxes, fees and title applications to the Department. Failure of the consumer or vehicle purchaser to receive the annual registration documents prior to expiration of the temporary registration constitutes harm.

(3) *Preclusion from mitigation.* If the Department discovers that the agent, or an employe of the agent, altered the date of purchase of a vehicle upon an application, the Department will be precluded from exonerating the agent of the offense or reducing the monetary penalty and will impose the sanction prescribed by subsection (a).

(i) *Dual violations.* If an agent, which is also a dealer, has been sanctioned with a monetary penalty as a dealer under 75 Pa.C.S. § 1374(d) (relating to suspension or revocation of vehicle business registration plates) for a violation that involves the same violation for which a monetary penalty may be imposed under this chapter, only the monetary penalty prescribed in 75 Pa.C.S. § 1374(d) will be imposed upon the agent, which is also a

dealer, for the violations that constitute offenses of both. The offenses will be noted upon the record for both this chapter and Chapter 53 (relating to manufacturers, dealers and miscellaneous motor vehicle businesses registration plates).

(j) *Suspension without hearing.* The Department will suspend an issuing agent without a hearing when the agent refuses to allow inspection of records in accordance with § 43.7(d).

§ 43.12. Use of temporary registration plate.

(a) *Applicability.* This section pertains to the use of a temporary registration plate by the person to whom it was issued.

(b) *Temporary registration plate nontransferable.* Temporary registration plates may not be transferred from one vehicle to another. If a person purchases another vehicle before receiving the regular registration card from the Bureau, the person shall wait until receipt of the regular registration card and then transfer the registration plate in the usual manner.

(c) *Expiration of temporary registration plates.* Temporary registration plates shall expire as follows:

(1) *Rules pertaining to cardboard plates.*

(i) A cardboard temporary registration plate shall expire and become void upon the occurrence of one of the following:

(A) Issuance of registration from another state.

(B) Rescission of a contract to purchase a vehicle.

(C) Expiration of 30 days from the date of issuance.

(ii) Upon expiration of a cardboard temporary registration plate, the person to whom it was issued shall destroy it.

(2) *Rules pertaining to metal plates.* A metal temporary registration plate may not be used after the expiration of 60 days from the date of issuance of the temporary card and plate until the registrant receives a regular registration card from the Bureau.

(d) *Use of temporary registration plates on vehicles transporting a load.* Vehicles transporting a load shall comply with the following:

(1) Temporary metal registration plates may be used on a vehicle transporting a load if the vehicle has a gross vehicle weight rating of 26,000 pounds or less and the vehicle and load have a gross weight of 26,000 pounds or less.

(2) Temporary metal registration plates may not be used on a vehicle transporting a load, if the vehicle has a gross vehicle weight rating in excess of 26,000 pounds or the vehicle and load have a gross weight in excess of 26,000 pounds, unless the vehicle is operating only within this Commonwealth or through jurisdictions which are not members of the International Registration Plan.

(3) Temporary cardboard registration plates may not be used on a commercial vehicle transporting a load.

(e) *Prosecution.* A person who violates subsection (c) shall be subject to prosecution under 75 Pa.C.S. § 1301 (relating to driving unregistered vehicle prohibited).

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