

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 129]

Solvent Cleaning Operations

The Environmental Quality Board (Board) amends §§ 121.1 and 129.63 (relating to definitions; and VOC cleaning operations) to read as set forth in Annex A.

The final-form rulemaking adds and revises definitions for terms in Chapter 121 (relating to general provisions) that are used in the substantive sections of Chapter 129 (relating to standards for sources). A new § 129.63 replaces the current § 129.63 to update equipment requirements for solvent cleaning machines to make the requirements consistent with current technology. In addition, the operating requirements in § 129.63 are revised to specify improved operating practices. The final-form rulemaking also specifies volatility limits for solvents used in cold cleaning machines.

This order was adopted by the Board at its meetings of September 18, 2001, and October 16, 2001.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

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C. *Statutory Authority*

This action is being taken under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005) which grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background of the Amendments*

The purpose of this final-form rulemaking is to reduce volatile organic compounds (VOCs) emitted from solvent cleaning operations. This final-form rulemaking is a part of the Commonwealth's plan to achieve and maintain the National Ambient Air Quality Standard (NAAQS) for ozone in this Commonwealth. These recommendations were supported by the Reading-Lehigh Valley and Southcentral Ozone Stakeholder Groups, which met subsequent to the proposed rulemaking. The final-form rulemaking is based on the recommendations of the Southwest and Southeast Pennsylvania Ozone Stakeholders Working Groups, which recommended that the Department of Environmental Protection (Department) revise the requirements relating to use of solvents for cleaning of parts in order to reduce emissions of ozone precursors.

The final-form rulemaking revises requirements for the operation of solvent cleaning machines. In general, indus-

try uses two types of solvent cleaning machines—vapor and cold cleaning. Based on available inventory data and information, the Department estimates that there are fewer than 100 vapor machines and over 71,000 cold cleaning machines in this Commonwealth. Solvent cleaning machines are used in a variety of settings including auto repair facilities, manufacturing operations and maintenance shops at commercial, industrial and institutional facilities. These requirements only apply to those operations that use solvents containing greater than 5% VOC content by weight for the cleaning of metal parts. In addition, the final-form rulemaking exempts solvent cleaning machines that are subject to the Federal Maximum Achievable Control Technology (MACT).

The final-form rulemaking provides operators of solvent cleaning machines a choice of compliance options for meeting the requirements of this final-form rulemaking. In general, owners and operators of affected solvent cleaning machines can either implement a program using low volatility solvents or they can assure that the affected units meet specific hardware requirements. These compliance options will reduce the evaporative loss of solvents, which will improve air quality and reduce operating costs.

The final-form rulemaking is based, in part, on the recommendations of a separate, technical workgroup formed to consider the recommendations of the Southeast and Southwest Ozone Stakeholder Working Groups. These groups consisted of representatives of the major equipment and solvent suppliers, the automotive service industry, environmental groups and regulatory agencies. The final-form rulemaking was developed taking into account technology, environmental, economic and enforcement considerations. These groups also believe that the best way to implement the amendments is through an outreach and education program to the users of solvent cleaning equipment, particularly small businesses.

Some of the VOC control requirements in the final-form rulemaking are more stringent than the control requirements in the Federal Control Techniques Guidelines issued in November 1977. Both the technical workgroup and the stakeholders determined that these revised control requirements were necessary for solvent cleaning operations to enable the Commonwealth to attain and maintain the ozone NAAQS.

Specifically, the final-form rulemaking includes requirements adopted in the Federal MACT standard for solvent cleaning operations utilizing nonhazardous air pollutant VOC solvents, as well as hazardous air pollutant (HAP) VOC solvents. The final-form rulemaking will discourage operators from converting to non-HAP VOC solvents to avoid the more stringent MACT requirements, which could adversely affect air quality.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of the final-form rulemaking. At its May 24, 2001, meeting, AQTAC discussed certain provisions related to mandatory operating requirements for cold cleaners. These provisions related to the specified minimum requirements for draining of parts, location of work area fans and the operation of pump agitators in solvent baths. AQTAC concluded that these provisions were too subjective to be included as enforceable regulations. Therefore, these provisions were

deleted from the final-form rulemaking, but will be included in outreach information as suggestions for operators to minimize emissions.

E. Summary of Regulatory Revisions

The final-form rulemaking amends Chapter 121 by adding and revising definitions of the terms used in the substantive provisions of Chapter 129. The new definitions include: "airless cleaning system," "airtight cleaning system," "batch vapor cleaning machine," "carbon adsorber," "cold cleaning machine," "dwell," "dwell time," "extreme cleaning service," "freeboard refrigeration device," "idling mode," "immersion cold cleaning machine," "in-line vapor cleaning machine," "reduced room draft," "remote reservoir cold cleaning machine," "solvent/air interface," "solvent cleaning machine," "solvent cleaning machine automated parts handling system," "solvent cleaning machine down time," "solvent vapor zone," "superheated vapor system," "vapor cleaning machine," "vapor cleaning machine primary condenser," "vapor pressure," "vapor up control switch" and "working mode cover." The amended definition includes "freeboard ratio." The definition of "solvent cleaning machine idle time" is deleted. Proposed revisions to the definition of "hand-wipe cleaning operation" are deleted in the final-form rulemaking.

Except for those machines subject to the Federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for halogenated solvent cleaners under 40 CFR Part 63, the changes to § 129.63(a)—(c) and the addition of § 129.63(d) apply to cold cleaning machines, batch vapor cleaning machines, in-line vapor cleaning machines, airless cleaning machines and airtight cleaning machines that use solvents containing greater than 5% VOC content by weight to process metal parts. The final-form rulemaking updates equipment requirements for these solvent cleaning machines to make the equipment requirements consistent with current technology. These equipment specifications are consistent with the Federal MACT requirements for solvent cleaning machines. However, as described in Section D of this Preamble, the final-form rulemaking is, in part, more stringent than the control requirements in the Federal Control Techniques Guidelines. Finally, § 129.63(e) specifies volatility limits for solvents in certain cleaning machines. There are no Federal volatility limits for solvents.

Specifically, § 129.63(a) applies to cold cleaning machines. However, certain types of operations are exempt from some of the amendments, like cold cleaning machines used in extreme cleaning service and when compliance would result in unsafe operating conditions.

Section 129.63(b) applies to batch vapor cleaning machines.

Section 129.63(c) applies to in-line vapor cleaning machines.

Section 129.63(d) applies to airless cleaning machines and airtight cleaning machines.

Section 129.63(e) provides alternative provisions for solvent cleaning machines and requires operators to maintain compliance records.

The final-form rulemaking will be submitted to the Environmental Protection Agency (EPA) as an amendment to the State Implementation Plan (SIP).

F. Comments and Responses

Following publication of proposed rulemaking at 29 Pa.B. 4661 (August 28, 1999), the Board received com-

ments from 21 commentators including the Independent Regulatory Review Commission (IRRC). A summary of the comments and responses follows.

One commentator thought that it may be difficult for operators to find suitable, low volatility, replacement solvents, and if they are available, they may be costly and result in production inefficiencies and quality problems.

The Board understands this concern, and the final-form rulemaking provides operators a choice of compliance options for cold cleaners. Operators of affected cold cleaners can either implement a program using low volatility solvents or they can assure that the affected unit meets specific hardware requirements. For most, if not all applications, however, low volatility solvents and aqueous cleaning systems can provide acceptable cleaning at an acceptable or reasonable cost, which will alleviate cost, production and quality problems. In addition, the final-form rulemaking exempts machines that are subject to the Federal MACT.

Several commentators believed that the proposed rulemaking was too broad since it extends the Federal MACT standard to all solvent cleaning operations, including those using non-HAP VOC solvents and non-VOC solvents. In addition, the commentators noted that the Board has not demonstrated that these provisions, which are more restrictive than the Federal requirements, are necessary to attain the NAAQS. This is contrary to Executive Order 1996-1 and section 4.2 of the APCA (35 P. S. § 4004.2).

The Board, in part, agrees. The final-form rulemaking applies only to those solvent cleaning machines using VOCs in the cleaning solvent. The final-form rulemaking does not apply to aqueous cleaning systems or to other cleaning systems using compounds listed by the EPA as exempt by the Administrator of the EPA. However, the Board believes that it is necessary to have essentially the same level of control requirements for vapor cleaning machines using non-HAP VOC solvents as for HAP VOC solvents. Lower levels of control requirements for non-HAP VOC machines could result in switching from non-VOC HAP solvents to non-HAP VOCs with the resulting potential for increased ozone formation. While the final-form rulemaking is, in part, more stringent than Federal requirements, the emission reductions that will result from this final-form rulemaking are a significant part of the Commonwealth's efforts to continue toward attainment and maintenance of the health-based NAAQS for ozone throughout this Commonwealth. As a result, this final-form rulemaking is neither contrary to Executive Order 1996-1 nor to section 4.2 of the APCA.

One commentator felt there was no supporting information to justify extending the requirements of the revised solvent cleaning limits beyond areas designated as moderate or severe ozone nonattainment with the 1-hour NAAQS. This final-form rulemaking has been designed not only to achieve but to maintain the ozone standard throughout this Commonwealth. In addition, with over 75,000 solvent cleaning machines throughout this Commonwealth, the Board has determined that to limit the final-form rulemaking to the Southeastern and Southwestern regions only would be inequitable since it would leave businesses in those regions at a competitive disadvantage.

One commentator thought that the definition of "solvent" was too broad and should not include non-VOC compounds that are exempted under the EPA's definition of VOC. Since this proposed rulemaking is to address

ozone air quality issues, it did not seem reasonable to impose additional control requirements on materials that do not contribute to the ozone problem. Non-VOC cleaners should be exempt from the requirements.

The Board agrees. The final-form rulemaking has been revised to apply only to solvent cleaning machines using cleaning solvents that contain VOCs. As a result, the definition of "solvent cleaning machine" does not include non-VOC compounds.

One commentator believed the requirements of the provisions for cold cleaners should be limited to machines used for the removal of grease or contaminants, and should not extend to the removal of coatings and materials, such as photoresist, used in the electronics industry.

The Board agrees. The definition of "solvent cleaning machine" has been revised in the final-form rulemaking by removing the reference to removal of coatings. Removal of coatings, such as photoresist, is not considered solvent cleaning for purposes of this final-form rulemaking.

Another commentator felt the provisions related to cold cleaning should be limited to the cleaning of metal parts. The Board agrees. The final-form rulemaking has been revised to apply only to the cleaning of metal parts.

One commentator believed that there should be a de minimis threshold for solvent cleaning machines. The Board agrees. The final-form rulemaking establishes a de minimis threshold for cold cleaning operations that contain 2 gallons or more of VOC solvents.

Another commentator believed the 10 square foot de minimis applicability criteria in the existing regulation should be retained because these machines do not generate significant emissions. The Board disagrees. The sheer number of small cold cleaning solvent units and the aggregate mass of emissions from these machines, based on emission factor estimates, indicates a need for measures to reduce emissions from smaller sources. In addition, the emission reductions techniques for cold cleaners, in many cases, have been implemented. The operators of small vapor cleaning machines may implement one of several compliance options or they may demonstrate that emissions meet an alternative emission limit as set forth in the regulation.

One commentator believed that the proposed rulemaking should be no more stringent than the MACT for cold cleaners and allow the use of the six halogenated solvents covered by the MACT. The Board agrees. The final-form rulemaking allows the use of solvents that exceed the 1.0 mm Hg volatility limit, if the cold cleaning machine has a freeboard ratio of 0.75 or greater.

One commentator felt the final-form rulemaking should exempt cold cleaning machines that are covered by the MACT. In addition, MACT requirements should not be mandated for machines using non-HAP VOC solvents.

The Board, in part, agrees. Cold cleaning machines that use non-VOC solvents are not covered by the final-form rulemaking. However, machines using HAP or non-HAP solvents that are also VOCs are subject to the final-form rulemaking. The Board believes that it is necessary to have essentially the same level of control requirements for vapor cleaning machines using non-HAP VOC solvents as for HAP VOC solvents. Lower levels of control requirements for non-HAP VOC solvent machines could result in switching from non-VOC HAP solvents to VOC solvents, with the resulting potential for increased ozone formation. In addition, the final-form rulemaking has been

revised to specify that cold cleaning machines subject to the MACT are exempt from § 129.63.

Another commentator thought the requirement to dispose of hand-wipe cleaning rags into closed containers will prohibit air-drying of rags and increase disposal costs, particularly for small businesses.

The Board agrees. While the Board is concerned that the practice of "air drying" of solvent cleaning rags will result in the emissions of HAPs and VOCs, the Board also does not believe that imposing regulatory requirements to prohibit this practice is the best approach to the issue, and has deleted the requirement from the final-form rulemaking, except for aerospace operations. Hand-wipe cleaning rags in aerospace operations have been subject to requirements to store solvent-laden rags in closed containers under existing requirements, and these will be retained. For other hand-wipe activities, the Board encourages, but will not require, operators to implement pollution prevention programs, including use of non-VOC and non-HAP solvents for hand-wipe cleaning.

Several commentators believed that the Board's calculation of the VOC reductions and program implementation costs are flawed. The majority of the VOC losses from cold cleaners are from drag-out and not from standing losses. Reducing the volatility of the solvent will not significantly reduce the drag-out of solvents on parts. It will only increase the parts drying time and may reduce production efficiency.

The Board disagrees. Based on information developed by Maryland and incorporated into an SIP revision approved by the EPA, the Board believes that the emission reductions predicted are accurate and applicable to this Commonwealth. Costs of compliance for cold cleaning machines may, in fact, be overstated. Suppliers of solvents and machines have indicated that a significant segment of the industry has already changed solvent blends and that much of the solvent in use meets the 1 mm Hg volatility limit. These amendments were made to facilitate compliance with other requirements, including those related to hazardous material transport. Therefore, the costs that were predicted for changing to low volatility solvents have in many cases already been imposed and would continue regardless of the 1 mm Hg volatility limit.

One commentator thought the requirement for a freeboard ratio of 0.75 or greater for immersion cold cleaners will result in the replacement of a large number of serviceable cold cleaning machines at great cost to industry. The final-form rulemaking should adopt a size limitation for the applicability of the 0.75 freeboard ratio. Alternatively, the final-form rulemaking should specify a freeboard ratio of 0.50 for all immersion cold cleaning machines.

The Board disagrees. The final-form rulemaking allows operators of cold cleaning machines the option of using low volatility (1 mm Hg) solvents in a machine with a freeboard ratio of 0.5 or greater. A freeboard ratio of 0.75 or greater is required only if the solvent volatility is greater than 1 mm Hg. As a result, there will not be high costs for replacement since operators have compliance options.

Several commentators believed the provisions should provide an exemption for certain electronics manufacturing operations because low solvents are not available to meet the cleaning needs for production of silicon wafers used for semiconductors.

The Board agrees. The final-form rulemaking applies only to the cleaning of contaminants from metal parts. Therefore, removal of contaminants such as photoresist, during the production of silicon wafers, is not subject to the final-form rulemaking.

One commentator felt the use of low vapor pressure solvents created a substantial risk if residual solvents are exposed to reactive atmospheres. An exception should be made to the volatility requirements in the regulation if there are compelling health and safety reasons.

The Board agrees. The final-form rulemaking specifies safety related exemptions. Cold cleaning machines used in extreme cleaning service, such as highly reactive or corrosive atmospheres, are exempt from the solvent volatility requirements. In addition, if the owner or operator of the cold cleaning machine demonstrates that compliance with the volatility requirements will result in unsafe operating conditions, an exemption can be granted by the Department.

One commentator felt the final-form rulemaking should exempt halogenated solvent cleaning machines provided the solvent cleaning machine is subject to the Federal NESHAP, under 40 CFR Part 63.

The Board agrees. The final-form rulemaking has been revised to provide this exemption for all cleaning machines subject to the Federal NESHAP.

One commentator felt the proposed rulemaking did not discuss the impacts of the final-form rulemaking and applicability levels of the Department's plan approval and permitting process. Major sources will be subject to reasonably available control technologies (RACT), Title V and perhaps the NESHAP.

The current regulations exempt certain sources and classes of sources from plan approval and permitting requirements for a number of reasons, including insignificant levels of emissions. The final-form rulemaking will not alter those determinations already made under § 127.14(a)(8) (relating to exemptions). If an existing source is large enough to be considered a major source, the source could be affected by other programs such as RACT, Title V and the NESHAP. The final-form rulemaking will affect those determinations.

A commentator indicated that the final-form rulemaking will become Federally enforceable as part of the SIP and that the requirements must be included in the Title V permit. That would pose compliance certification problems because of the sweeping nature of the requirements.

The Board disagrees. Whether or not the regulations are part of the SIP, the requirements will be included in the Title V permit, and the operator will be required to certify compliance. However, the final-form rulemaking contains a number of revisions that should minimize the compliance certification concerns. Among these are the establishment of a de minimis level of 2 gallons for cold cleaners and limiting the final-form rulemaking's applicability to the cleaning of metal parts.

One commentator believed the Board has not explained the implications of the final-form rulemaking for permitted sources.

The establishment of these requirements will impact only those sources with Title V permits that have more than 3 years remaining in the life of the permit. The Department will develop a program to minimize the impact on the facilities that are affected. The revisions do not specifically require permitting activities.

One commentator felt the Board has not identified any nonregulatory alternatives to this final-form rulemaking or explained why it disagrees with the EPA's conclusion that existing regulations are adequate to protect the public health.

The Board has determined that the emission reductions that will result from this final-form rulemaking are a significant component of the Commonwealth's strategy to continue toward attainment and maintenance of the health-based NAAQS for ozone throughout this Commonwealth. Although certain of the requirements in the final-form rulemaking may be met through voluntary measures, for the emission reductions to be creditable in the SIP, there must be an enforceable program to assure that they are permanent.

One commentator felt the Board has not described a compelling public interest that demanded stronger regulation than the current Federal standards.

The Board disagrees. Much of this Commonwealth is in nonattainment with the health-related NAAQS for ozone. Reductions of the precursors of ozone formation, VOC and oxides of nitrogen are necessary to move the Commonwealth toward attainment and maintenance of the health-related standard. Attaining and maintaining the ambient ozone standard will reduce the incidence of respiratory problems in susceptible individuals, the young, asthmatics, the elderly and those with preexisting respiratory problems. In addition, the emission reductions that will result from this final-form rulemaking are a significant component of the Commonwealth's strategy to continue toward attainment and maintenance of the health-based NAAQS for ozone throughout this Commonwealth.

One commentator felt the proposed language of § 129.63 varied from the comparable Federal provisions in 40 CFR 63.463 (relating to batch vapor and in-line cleaning standards). The Department should either conform its requirements to the Federal requirements or adopt the Federal NESHAP by reference.

The Board agrees. The final-form rulemaking exempts from the requirements of § 129.63 those machines subject to the Federal MACT. Therefore, there are no inconsistent provisions applicable to solvent cleaning machines.

One commentator thought the Board had not identified the outreach efforts it will use to assist in the implementation of the requirements.

The Board has found that because most of the affected solvent cleaning machines are located at small businesses such as automotive repair facilities, the Department will work closely with the Small Business Compliance Assistance Program to alert these operators. In addition, because many of these machines are installed and operated under contract with service providers, the Department will coordinate its outreach efforts closely with these businesses.

One commentator felt the Board had not identified the emission reductions that will result from the implementation of the final-form rulemaking.

The EPA emission factor estimates indicate that unregulated emissions from cold cleaning activities from facilities such as automobile repair facilities, where small cold cleaning units predominate, and from manufacturing cold cleaning are approximately 3.6 pounds per person per year. Based on an estimated population of 12.1 million and this emission factor, unregulated emissions are estimated to be 21,780 tons per year Statewide. Based on determinations of emission reduction benefits of approximately 66% resulting from reduced solvent volatility

for the Maryland SIP approved by the EPA, the Board estimates that the requirements will result in enforceable emission reductions of approximately 14,375 tons per year Statewide.

One commentator believed the Board had not explained why the proposed rulemaking requirements deviated from the Federal MACT.

The Board did not intend for the requirements in the proposed rulemaking to deviate from or conflict with the Federal MACT. The final-form rulemaking has been revised to exempt from the requirements in § 129.63 any solvent cleaning units subject to the Federal MACT.

One commentator felt the Board should assure that the final-form rulemaking addressed situations when low volatility solvents or the specified compliance options are not viable options for solvent cleaning machines.

The Board agrees. The final-form rulemaking provides operators of affected cold cleaning machines the option of using low volatility solvent, or increasing the freeboard ratio for the machine to 0.75 or greater. In addition, affected facilities have the option of demonstrating that an alternative program is as effective as the regulation under the equivalency provisions in § 129.51 (relating to general). Operators of cold cleaning machines subject to the Federal MACT are not affected by the requirements of § 129.63.

One commentator provided cost data related to development of alternative solvent programs for a number of the company's facilities. These facilities are involved in printing and surface coating operations. The company estimated total development costs of approximately \$500,000 with an estimated \$220,000 in annual operating costs if the company's facilities are affected by the requirements.

The Board has determined that several changes made in the final-form rulemaking will minimize the potential cost impact to the regulated community, including the operations at the commentator's facilities. The final-form rulemaking has been revised to apply only to the removal of oils, waxes, greases and soils from metal parts where VOCs are used. It does not apply to the removal of coatings and inks. In addition, the final-form rulemaking exempts operations that are subject to the Federal NESHAP for solvent cleaning. The provisions of § 129.51 allow an operator the option of developing an alternative compliance plan. The final-form rulemaking also provides exemptions based on safety considerations.

One commentator believed the requirements for recordkeeping regarding the volatility of cold cleaning solvents are redundant and should be eliminated.

The Board disagrees. The requirements for maintenance of the documentation regarding solvent volatility are retained in the final-form rulemaking. If the operator can retain the Material Safety Data Sheet on file for the solvent in use, that will be satisfactory for demonstration of compliance.

One commentator thought the Board should revise the definition of "remote reservoir cold cleaning machine" to include certain machines that drain solvent into a covered container.

The Board agrees. The definition of "remote reservoir cold cleaning machine" has been revised in the final-form rulemaking to include the phrase suggested by the commentator.

One commentator thinks the Board should consider changing the title of the requirements to more accurately describe the section of the regulations.

The Board disagrees. The title of the section has been retained in the final-form rulemaking because the provisions could potentially relate to both VOC and non-VOC materials, especially as they relate to HAPs.

One commentator felt the definition of "freeboard ratio" should be changed to be consistent with the definition in the MACT.

The Board agrees. The definition of "freeboard ratio" has been revised in the final-form rulemaking to be consistent with the MACT definition.

One commentator thought that the phrase "or that heats the solvent" in the definition of the term "vapor cleaning machine" is inconsistent with the Federal definition.

The Board agrees. The technical stakeholders who worked to formulate the rulemaking suggested the proposed definition. In the final-form rulemaking, the definition is revised to be consistent with the Federal MACT definition.

Another commentator indicated that the definitions of "dwell" and "dwell time" are inconsistent and should be clarified in the final-form rulemaking.

The Board agrees. These terms have been clarified in the final-form rulemaking.

G. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost benefit analysis of the final-form rulemaking.

Benefits

Overall, the citizens of this Commonwealth will benefit from the final-form rulemaking because it will result in improved air quality by reducing ozone precursor emissions, recognize and encourage pollution prevention practices and encourage new technologies and practices which reduce emissions. Moreover, it is estimated that the final-form rulemaking will save industry approximately \$7.3 million the first year and \$14.6 million annually thereafter Statewide.

Compliance Costs

The final-form rulemaking will slightly increase the operating costs of industry. However, the cost increase will be offset by the reduced evaporative loss of solvent which will result from the lower volatility, thereby reducing the need to purchase additional solvent.

Compliance Assistance Plan

The Department plans to educate and assist the public and the regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

Paperwork Requirements

The final-form rulemaking will not increase the paperwork that is already generated during the normal course of business operations.

H. Sunset Review

The final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 17, 1999, the Department submitted a copy of the notice of proposed rulemaking published at 29 Pa.B. 4661 to IRRC and to the Chairper-

sons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered the 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)), on November 8, 2001, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 15, 2001, and approved the final-form rulemaking.

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. §§ 1202 and 1202) and regulations promulgated thereunder in 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 final-form regulations do not enlarge the purpose of the proposal published at 29 Pa.B. 4661.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble and are reasonably necessary to achieve and maintain the NAAQS for ozone.

K. Order

The Board orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 129, are amended by amending §§ 121.1 and 129.63 to read as set forth in Annex A, with ellipses referring to the existing text of regulations.

(b) The Chairperson of the Board shall 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 Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

(e) These final-form regulations are effective upon publication in the *Pennsylvania Bulletin*.

DAVID E. HESS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 6587 (December 1, 2001).)

Fiscal Note: Fiscal Note 7-346 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Airless cleaning system—A solvent cleaning machine that is automatically operated and seals at a differential pressure of 0.50 pounds per square inch gauge (psig) or less, prior to the introduction of solvent or solvent vapor into the cleaning chamber and maintains differential pressure under vacuum during all cleaning and drying cycles.

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Airtight cleaning system—A solvent cleaning machine that is automatically operated and seals at a differential pressure no greater than 0.50 psig, prior to the introduction of solvent or solvent vapor into the cleaning chamber and during all cleaning and drying cycles.

* * * * *

Batch vapor cleaning machine—

(i) A vapor cleaning machine in which individual parts or a set of parts move through the entire cleaning cycle before new parts are introduced into the cleaning machine.

(ii) The term includes solvent cleaning machines, such as ferris wheel cleaners or cross rod machines, that clean multiple loads simultaneously and are manually loaded.

(iii) The term does not include machines which do not have a solvent/air interface, such as airless and airtight cleaning systems.

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Carbon adsorber—A bed of activated carbon into which an air/solvent gas-vapor stream is routed and which absorbs the solvent on the carbon.

* * * * *

Cold cleaning machine—

(i) A device or piece of equipment, containing or using nonboiling liquid which contains greater than 5% VOC or hazardous air pollutant (HAP) by weight, into which parts are placed to remove dirt, grease or oil from the surfaces of the parts or to dry the parts.

(ii) The term does not include machines which do not have a solvent/air interface, such as airless and airtight cleaning systems.

* * * * *

Dwell—The holding of metal parts within the freeboard area of a solvent cleaning machine above the solvent vapor zone to allow solvent to drain from the parts or parts baskets back into the solvent cleaning machine.

Dwell time—The period of time between when a parts basket is placed in the solvent vapor zone of a batch vapor or in-line vapor cleaning machine and when solvent dripping ceases.

* * * * *

Extreme cleaning service—The use of a cold cleaning machine to clean parts used in the manufacture of the following gases or to clean parts exposed to these gases in manufacturing, production, research and development, analytical work, or other similar operations:

- (i) Oxygen in concentrations greater than 23%.
- (ii) Ozone
- (iii) Nitrous oxide.
- (iv) Fluorine.
- (v) Chlorine.
- (vi) Bromine.
- (vii) Halogenated compounds.

* * * * *

Freeboard ratio—

(i) For a cold cleaning machine or batch vapor cleaning machine, the distance from the liquid solvent in the idling mode to the top edge of the cleaning machine divided by the smaller dimension of the cleaning machine.

(ii) For an operating in-line vapor cleaning machine, the distance from the solvent/air interface to the bottom of the entrance or exit opening, whichever is lower, as measured during the idling mode.

Freeboard refrigeration device—A set of secondary coils mounted in the freeboard area of a solvent cleaning machine that carries a refrigerant or other chilled substance to provide a chilled air blanket above the solvent vapor. A solvent cleaning machine primary condenser which is capable of maintaining a temperature in the center of the chilled air blanket at not more than 30% of the solvent boiling point is both a primary condenser and a freeboard refrigeration device.

* * * * *

Idling mode—The time period when a solvent cleaning machine is not actively cleaning metal parts and the sump heating coils, if present, are turned off.

Immersion cold cleaning machine—An open top cold cleaning machine in which the parts are immersed in the solvent when being cleaned.

* * * * *

In-line vapor cleaning machine—A vapor cleaning machine that uses an automated parts handling system, typically a conveyor, to automatically provide a supply of parts to be cleaned. In-line vapor cleaning machines are fully enclosed except for the conveyor inlet and exit portals.

* * * * *

Reduced room draft—Decreasing the flow or movement of air across the top of the freeboard area of a solvent cleaning machine to less than 50 feet per second (15.2 meters per second) by methods including:

- (i) Redirecting fans or air vents, or both.
- (ii) Moving a machine to a corner where there is less room draft.
- (iii) Constructing a partial or complete enclosure.

* * * * *

Remote reservoir cold cleaning machine—A machine in which liquid solvent is pumped to a sink-like work area that immediately drains solvent back into an enclosed container or beneath a solvent cover while parts are being cleaned, allowing no solvent to pool in the work area.

* * * * *

Solvent/air interface—For a vapor cleaning machine, the location of contact between the concentrated solvent layer and the air. This location of contact is the midline height of the primary condenser coils. For a cold cleaning machine, the location of contact between the liquid solvent and the air.

Solvent cleaning machine—

(i) A device or piece of equipment that uses solvent liquid or vapor to remove contaminants, such as dirt, grease and oil from the surfaces of materials.

(ii) Types of solvent cleaning machines include:

- (A) Batch vapor cleaning machines.
- (B) In-line vapor cleaning machines.
- (C) Immersion cold cleaning machines.
- (D) Remote reservoir cold cleaning machines.
- (E) Airless cleaning systems.
- (F) Air-tight cleaning systems.

Solvent cleaning machine automated parts handling system—A mechanical device that carries all parts and parts baskets at a controlled speed from the initial loading of soiled or wet parts through the removal of the cleaned or dried parts.

Solvent cleaning machine down time—The period when a solvent cleaning machine is not cleaning parts and the sump heating coils, if present, are turned off.

Solvent vapor zone—For a vapor cleaning machine, the area that extends from the liquid solvent surface to the level that solvent vapor is condensed. This level is defined as the midline height of the primary condenser coils.

* * * * *

Superheated vapor system—A system that heats the solvent vapor to a temperature 10° F above the solvent's boiling point. Parts are held in the superheated vapor before exiting the machine to evaporate the liquid solvent on the parts.

* * * * *

Vapor cleaning machine—

(i) A solvent cleaning machine that boils liquid solvent, generating a vapor that is used as part of the cleaning or drying cycle.

(ii) The term does not include machines which do not have a solvent/air interface, such as airless and air-tight cleaning systems.

Vapor cleaning machine primary condenser—A series of circumferential cooling coils on a vapor cleaning machine through which a chilled substance is circulated or recirculated to provide continuous condensation of rising solvent vapors, thereby creating a concentrated vapor zone.

* * * * *

Vapor pressure—The pressure exerted by a vapor in equilibrium with its solid or liquid phase.

* * * * *

Vapor up control switch—A thermostatically controlled switch which shuts off or prevents condensate from being sprayed when there is no vapor. On in-line vapor cleaning machines, the switch also prevents the conveyor from operating when there is no vapor.

* * * * *

Working mode cover—A cover or solvent cleaning machine design that allows the cover to shield the cleaning machine openings from outside air disturbances while parts are being cleaned in the cleaning machine. A cover that is used during the working mode is opened only during parts entry and removal.

* * * * *

CHAPTER 129. STANDARDS FOR SOURCES

SOURCES OF VOCs

§ 129.63. VOC cleaning operations.

(a) *Cold cleaning machines.* Except for those subject to the Federal National emissions standards for hazardous air pollutants (NESHAP) for halogenated solvent cleaners under 40 CFR Part 63 (relating to National emission standards for hazardous air pollutants for source categories), this subsection applies to cold cleaning machines that use 2 gallons or more of solvents containing greater than 5% VOC content by weight for the cleaning of metal parts.

(1) Immersion cold cleaning machines shall have a freeboard ratio of 0.50 or greater.

(2) Immersion cold cleaning machines and remote reservoir cold cleaning machines shall:

(i) Have a permanent, conspicuous label summarizing the operating requirements in paragraph (3). In addition, the label shall include the following discretionary good operating practices:

(A) Cleaned parts should be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts should be positioned so that solvent drains directly back to the cold cleaning machine.

(B) When a pump-agitated solvent bath is used, the agitator should be operated to produce a rolling motion of the solvent with no observable splashing of the solvent against the tank walls or the parts being cleaned.

(C) Work area fans should be located and positioned so that they do not blow across the opening of the degreaser unit.

(ii) Be equipped with a cover that shall be closed at all times except during cleaning of parts or the addition or removal of solvent. For remote reservoir cold cleaning machines which drain directly into the solvent storage reservoir, a perforated drain with a diameter of not more than 6 inches shall constitute an acceptable cover.

(3) Cold cleaning machines shall be operated in accordance with the following procedures:

(i) Waste solvent shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

(ii) Flushing of parts using a flexible hose or other flushing device shall be performed only within the cold cleaning machine. The solvent spray shall be a solid fluid stream, not an atomized or shower spray.

(iii) Sponges, fabric, wood, leather, paper products and other absorbent materials may not be cleaned in the cold cleaning machine.

(iv) Air agitated solvent baths may not be used.

(v) Spills during solvent transfer and use of the cold cleaning machine shall be cleaned up immediately.

(4) After December 22, 2002, a person may not use, sell or offer for sale for use in a cold cleaning machine any solvent with a vapor pressure of 1.0 millimeter of mercury (mm Hg) or greater and containing greater than 5% VOC by weight, measured at 20°C (68°F) containing VOCs.

(5) On and after December 22, 2002, a person who sells or offers for sale any solvent containing VOCs for use in a cold cleaning machine shall provide, to the purchaser, the following written information:

(i) The name and address of the solvent supplier.

(ii) The type of solvent including the product or vendor identification number.

(iii) The vapor pressure of the solvent measured in mm hg at 20°C (68°F).

(6) A person who operates a cold cleaning machine shall maintain for at least 2 years and shall provide to the Department, on request, the information specified in paragraph (5). An invoice, bill of sale, certificate that corresponds to a number of sales, Material Safety Data Sheet (MSDS), or other appropriate documentation acceptable to the Department may be used to comply with this section.

(7) Paragraph (4) does not apply:

(i) To cold cleaning machines used in extreme cleaning service.

(ii) If the owner or operator of the cold cleaning machine demonstrates, and the Department approves in writing, that compliance with paragraph (4) will result in unsafe operating conditions.

(iii) To immersion cold cleaning machines with a freeboard ratio equal to or greater than 0.75.

(b) *Batch vapor cleaning machines.* Except for those subject to the Federal NESHAP for halogenated solvent cleaners under 40 CFR Part 63, this subsection applies to batch vapor cleaning machines that use solvent containing greater than 5% VOC by weight for the cleaning of metal parts.

(1) Batch vapor cleaning machines shall be equipped with:

(i) Either a fully enclosed design or a working and downtime mode cover that completely covers the cleaning machine openings when in place, is free of cracks, holes and other defects, and can be readily opened or closed without disturbing the vapor zone. If the solvent cleaning machine opening is greater than 10 square feet, the cover shall be powered. If a lip exhaust is used, the closed cover shall be below the level of the lip exhaust.

(ii) Sides which result in a freeboard ratio greater than or equal to 0.75.

(iii) A safety switch (thermostat and condenser flow switch) which shuts off the sump heat if the coolant is not circulating.

(iv) A vapor up control switch which shuts off the spray pump if vapor is not present. A vapor up control switch is not required if the vapor cleaning machine is not equipped with a spray pump.

(v) An automated parts handling system which moves the parts or parts baskets at a speed of 11 feet (3.4 meters) per minute or less when the parts or parts are entering or exiting the vapor zone. If the parts basket being cleaned occupy more than 50% of the solvent/air interface area, the speed of the parts or parts basket may not exceed 3 feet per minute.

(vi) A device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils.

(vii) A vapor level control device that shuts off the sump heat if the vapor level in the vapor cleaning machine rises above the height of the primary condenser.

(viii) A permanent, conspicuous label summarizing the operating requirements in paragraph (4).

(2) In addition to the requirements of paragraph (1), the operator of a batch vapor cleaning machine with a solvent/air interface area of 13 square feet or less shall implement one of the following options:

(i) A working mode cover, freeboard ratio of 1.0, and superheated vapor.

(ii) A freeboard refrigeration device and superheated vapor.

(iii) A working mode cover and a freeboard refrigeration device.

(iv) Reduced room draft, freeboard ratio of 1.0 and superheated vapor.

(v) A freeboard refrigeration device and reduced room draft.

(vi) A freeboard refrigeration device and a freeboard ratio of 1.0.

(vii) A freeboard refrigeration device and dwell.

(viii) Reduced room draft, dwell and a freeboard ratio of 1.0.

(ix) A freeboard refrigeration device and a carbon adsorber which reduces solvent emissions in the exhaust to a level not to exceed 100 ppm at any time.

(x) A freeboard ratio of 1.0, superheated vapor and a carbon adsorber.

(3) In addition to the requirements of paragraph (1), the operator of a batch vapor cleaning machine with a solvent/air interface area of greater than 13 square feet shall use one of the following devices or strategies:

(i) A freeboard refrigeration device, a freeboard ratio of 1.0 and superheated vapor.

(ii) Dwell, a freeboard refrigeration device and reduced room draft.

(iii) A working mode cover, a freeboard refrigeration device and superheated vapor.

(iv) Reduced room draft, freeboard ratio of 1.0 and superheated vapor.

(v) A freeboard refrigeration device, reduced room draft and superheated vapor.

(vi) A freeboard refrigeration device, reduced room draft and a freeboard ratio of 1.0.

(vii) A freeboard refrigeration device, superheated vapor and a carbon adsorber which reduces solvent emissions in the exhaust to a level not to exceed 100 ppm at any time.

(4) Batch vapor cleaning machines shall be operated in accordance with the following procedures:

(i) Waste solvent, still bottoms and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

(ii) Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. A superheated vapor system shall be an acceptable alternate technology.

(iii) Parts or parts baskets may not be removed from the batch vapor cleaning machine until dripping has ceased.

(iv) Flushing or spraying of parts using a flexible hose or other flushing device shall be performed within the vapor zone of the batch vapor cleaning machine or within a section of the machine that is not exposed to the ambient air. The solvent spray shall be a solid fluid stream, not an atomized or shower spray.

(v) Sponges, fabric, wood, leather, paper products and other absorbent materials may not be cleaned in the batch vapor cleaning machine.

(vi) Spills during solvent transfer and use of the batch vapor cleaning machine shall be cleaned up immediately.

(vii) Work area fans shall be located and positioned so that they do not blow across the opening of the batch vapor cleaning machine.

(viii) During startup of the batch vapor cleaning machine, the primary condenser shall be turned on before the sump heater.

(ix) During shutdown of the batch vapor cleaning machine, the sump heater shall be turned off and the solvent vapor layer allowed to collapse before the primary condenser is turned off.

(x) When solvent is added to or drained from the batch vapor cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the end of the pipe in the solvent sump shall be located beneath the liquid solvent surface.

(xi) The working and downtime covers shall be closed at all times except during parts entry and exit from the machine, during maintenance of the machine when the solvent has been removed and during addition of solvent to the machine.

(c) *In-line vapor cleaning machines.* Except for those subject to the Federal NESHAP for halogenated solvent cleaners under 40 CFR Part 63, this section applies to in-line vapor cleaning machines that use solvent containing greater than 5% VOC by weight for the cleaning of metal parts.

(1) In-line vapor cleaning machines shall be equipped with:

(i) Either a fully enclosed design or a working and downtime mode cover that completely covers the cleaning machine openings when in place, is free of cracks, holes

and other defects, and can be readily opened or closed without disturbing the vapor zone.

(ii) A switch (thermostat and condenser flow switch) which shuts off the sump heat if the coolant is not circulating.

(iii) Sides which result in a freeboard ratio greater than or equal to 0.75.

(iv) A vapor up control switch.

(v) An automated parts handling system which moves the parts or parts baskets at a speed of 11 feet (3.4 meters) per minute or less when the parts are entering or exiting the vapor zone. If the parts or parts basket being cleaned occupy more than 50% of the solvent/air interface area, the speed of the parts or parts basket may not exceed 3 feet per minute.

(vi) A device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils.

(vii) A vapor level control device that shuts off the sump heat if the vapor level in the vapor cleaning machine rises above the height of the primary condenser.

(viii) A permanent, conspicuous label summarizing the operating requirements in paragraph (3).

(2) In addition to the requirements of paragraph (1), the operator of an in-line vapor cleaning machine shall use one of the following devices or strategies:

(i) A freeboard ratio of 1.0 and superheated vapor.

(ii) A freeboard refrigeration device and a freeboard ratio of 1.0.

(iii) Dwell and a freeboard refrigeration device.

(iv) Dwell and a carbon adsorber which reduces solvent emissions in the exhaust to a level not to exceed 100 ppm at any time.

(3) In-line vapor cleaning machines shall be operated in accordance with the following procedures:

(i) Waste solvent, still bottoms and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

(ii) Parts shall be oriented so that the solvent drains freely from the parts. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining.

(iii) Parts or parts baskets may not be removed from the in-line vapor cleaning machine until dripping has ceased.

(iv) Flushing or spraying of parts using a flexible hose or other flushing device shall be performed within the vapor zone of the in-line vapor cleaning machine or within a section of the machine that is not exposed to the ambient air. The solvent spray shall be a solid fluid stream, not an atomized or shower spray.

(v) Sponges, fabric, wood, leather, paper products and other absorbent materials may not be cleaned in the in-line vapor cleaning machine.

(vi) Spills during solvent transfer and use of the in-line vapor cleaning machine shall be cleaned up immediately.

(vii) Work area fans shall be located and positioned so that they do not blow across the in-line vapor cleaning machine.

(viii) During startup of the in-line vapor cleaning machine, the primary condenser shall be turned on before the sump heater.

(ix) During shutdown of the in-line vapor cleaning machine, the sump heater shall be turned off and the solvent vapor layer allowed to collapse before the primary condenser is turned off.

(x) Spraying operations shall be done in the vapor zone or within a section of the machine that is not exposed to the ambient air.

(xi) When solvent is added to or drained from the in-line vapor cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the end of the pipe in the solvent sump shall be located beneath the liquid solvent surface.

(d) *Airless cleaning machines and airtight cleaning machines.* Except for those subject to the Federal NESHAP for halogenated solvent cleaners under 40 CFR Part 63, this section applies to airless cleaning machines and airtight cleaning machines that use solvent containing greater than 5% VOC by weight for the cleaning of metal parts.

(1) The operator of each machine shall maintain a log of solvent additions and deletions for each machine including the weight of solvent contained in activated carbon or other sorbent material used to control emissions from the cleaning machine.

(2) The operator of each machine shall demonstrate that the emissions from each machine, on a 3-month rolling average, are equal to or less than the allowable limit determined by the use of the following equation:

$$EL = 330 (\text{vol})^{0.6}$$

where:

EL = the 3-month rolling average monthly emission limit (kilograms/month).

vol = the cleaning capacity of machine (cubic meters)

(3) The operator of each machine equipped with a solvent adsorber shall measure and record the concentration of solvent in the exhaust of the carbon adsorber weekly with a colorimetric detector tube designed to measure a concentration of 100 ppm by volume of solvent to air at an accuracy of ± 25 ppm by volume. This test shall be conducted while the solvent cleaning machine is in the working mode and is venting to the adsorber.

(4) The operator of each machine equipped with a solvent adsorber shall maintain and operate the machine and adsorber system so that emissions from the adsorber exhaust do not exceed 100 ppm by volume measured while the solvent cleaning machine is in the working mode and is venting to the adsorber.

(5) The machine shall be equipped with a permanent, conspicuous label summarizing the operating requirements in paragraph (6).

(6) Airless cleaning machines and airtight cleaning machines shall be operated in accordance with the following procedures:

(i) Waste solvent, still bottoms and sump bottoms shall be collected and stored in closed containers. The closed

containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

(ii) Parts shall be oriented so that the solvent drains freely from the parts. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining.

(iii) Parts or parts baskets may not be removed from the in-line vapor cleaning machine until dripping has ceased.

(iv) Sponges, fabric, wood, leather, paper products and other absorbent materials may not be cleaned in the airless cleaning machines and airtight cleaning machines.

(v) Spills during solvent transfer and use of the airless cleaning machines and airtight cleaning machines shall be cleaned up immediately.

(vi) Work area fans shall be located and positioned so that they do not blow across the airless cleaning machine and airtight cleaning machine.

(vii) Spraying operations shall be done in the vapor zone or within a section of the machine that is not exposed to the ambient air.

(viii) When solvent is added to or drained from the airless cleaning machine and airtight cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the end of the pipe in the solvent sump shall be located beneath the liquid solvent surface.

(e) *Alternative provisions for solvent cleaning machines.* This section applies to all solvent cleaning machines used to process metal parts that use solvents containing greater than 5% VOC by weight. As an alternative to complying with subsections (b)—(d), the operator of a solvent cleaning machine may demonstrate compliance with paragraph (1) or (2). The operator shall maintain records sufficient to demonstrate compliance. The records shall include, at a minimum, the quantity of solvent added to and removed from the solvent cleaning machine, the dates of the addition and removal and shall be maintained for at least 2 years.

(1) If the solvent cleaning machine has a solvent/air interface, the owner or operator shall:

(i) Maintain a log of solvent additions and deletions for each solvent cleaning machine.

(ii) Ensure that the emissions from each solvent cleaning machine are equal to or less than the applicable emission limit presented in Table 1:

Table 1
Emission Limits for Solvent Cleaning Machines with a Solvent/Air Interface

<i>Solvent cleaning machine</i>	<i>3-month rolling average monthly emission limit (kg/m²/month) lb/ft²/month</i>	
Batch vapor solvent cleaning machines	150	30.7
Existing in-line solvent cleaning machines	153	31.3
In-line solvent cleaning machines installed after the effective date of the regulation	99	20.2

(2) If the solvent cleaning machine is a batch vapor cleaning machine and does not have a solvent/air interface, the owner or operator shall:

(i) Maintain a log of solvent additions and deletions for each solvent cleaning machine.

(ii) Ensure that the emissions from each solvent cleaning machine are equal to or less than the appropriate limits as described in paragraphs (3) and (4).

(3) For solvent cleaning machines without a solvent/air interface with a cleaning capacity that is less than or equal to 2.95 cubic meters, the emission limit shall be determined using Table 2 or the equation in paragraph (4). If the table is used, and the cleaning capacity of the cleaning machine falls between two cleaning capacity sizes, the lower of the two emission limits applies.

(4) For cleaning machines without a solvent/air interface with a cleaning capacity that is greater than 2.95 cubic meters, the emission limit shall be determined using the following equation.

$$EL = 330 (\text{vol})^{0.6}$$

where:

EL = the 3-month rolling average monthly emission limit (kilograms/month)

vol = the cleaning capacity of machine (cubic meters)

(5) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with this subsection shall demonstrate compliance with the applicable 3-month rolling average monthly emission limit on a monthly basis. If the applicable 3-month rolling average emission limit is not met, an exceedance has occurred. Exceedances shall be reported to the Department within 30 days of the determination of the exceedance.

Table 2. Emission Limits for Solvent Cleaning Machines Without a Solvent/Air Interface

<i>Cleaning capacity (cubic meters)</i>	<i>3-month rolling average monthly emission limit (kilograms/month)</i>	<i>Cleaning capacity (cubic meters)</i>	<i>3-month rolling average monthly emission limit (kilograms/month)</i>	<i>Cleaning capacity (cubic meters)</i>	<i>3-month rolling average monthly emission limit (kilograms/month)</i>
0.00	0	1.00	330	2.00	500
0.05	55	1.05	340	2.05	508
0.10	83	1.10	349	2.10	515
0.15	106	1.15	359	2.15	522
0.20	126	1.20	368	2.20	530
0.25	144	1.25	377	2.25	537
0.30	160	1.30	386	2.30	544

<i>Cleaning capacity (cubic meters)</i>	<i>3-month rolling average monthly emission limit (kilograms/month)</i>	<i>Cleaning capacity (cubic meters)</i>	<i>3-month rolling average monthly emission limit (kilograms/month)</i>	<i>Cleaning capacity (cubic meters)</i>	<i>3-month rolling average monthly emission limit (kilograms/month)</i>
0.35	176	1.35	395	2.35	551
0.40	190	1.40	404	2.40	558
0.45	204	1.45	412	2.45	565
0.50	218	1.50	421	2.50	572
0.55	231	1.55	429	2.55	579
0.60	243	1.60	438	2.60	585
0.65	255	1.65	446	2.65	592
0.70	266	1.70	454	2.70	599
0.75	278	1.75	462	2.75	605
0.80	289	1.80	470	2.80	612
0.85	299	1.85	477	2.85	619
0.90	310	1.90	485	2.90	625
0.95	320	1.95	493	2.95	632

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Title 37—LAW

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CHS. 91, 93 AND 94]

Administration, State Correctional Institutions and Facilities, and Release and Prerelease Programs

The Department of Corrections (Department) hereby amends Chapters 91, 93 and 94 (relating to administration; State correctional institutions and facilities; and release and prerelease programs) to read as set forth in Annex A. The Department is acting under the authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186). The final-form amendments revise outdated material and delete regulations that do not affect the public.

Purpose

Chapter 91 is amended to update the sections on definitions, reception of inmates and catchment areas.

Chapter 93 is amended to revise the section on inmate correspondence to provide for additional security. The section on inmate visiting privileges is amended to delete and replace terms that are technically inconsistent with newly defined terms. The section on purchases for inmates by family and friends is updated. The section on incoming publications is merged into the section on inmate correspondence. The section on religious activities is updated. The section on telephone calls is updated to refer to the monitoring of calls. The sections on inmate complaints and inmate discipline are amended to consistently refer to the Department. The section on housing is updated. The section on the boot camp is amended to delete and replace terms that are technically inconsistent with newly defined terms.

Chapter 94 is amended to delete and replace terms that are technically inconsistent with newly defined terms.

Explanation of Regulatory Requirements

The final-form regulations substantially mirror existing Department practices with the exception of the increased

security requirements for incoming mail. The new section requires mail from an attorney to be sealed in the presence of the attorney or their staff and delivered to an inmate in the sealed envelope.

Comment and Response Summary

The following responses are made to the comments of the Independent Regulatory Review Commission (IRRC). Only one public comment was received. That comment, from the Pennsylvania Prison Wardens Association, is addressed in the response to comment in section 5.

1. *Comment:* The term "Department" is not used consistently in Chapter 93. For example, § 93.6(a) (relating to religions activities) contains three references and § 93.9(a) (relating inmate complaints) contains two references to the "Department of Corrections." Sections 93.10(a) and 93.11(b) (relating to inmate discipline; and housing) refer to the "Department of Corrections." These references should be replaced with the defined term "Department."

Response: References to "Department of Corrections" have been changed to "Department." Response to this comment has required changes to sections that were not previously being amended by the Department in the proposed rulemaking published at 31 Pa.B. 2476 (May 12, 2001).

2. *Comment:* The distinction between "facility" and "institution" was not clear from the definitions. The Department should determine which term will be retained and delete the other term from § 91.1 (relating to definitions).

Further, the retained term should be used consistently throughout Chapters 91 and 93. For example, in the proposed rulemaking, § 93.2(c)(1)(i)(B) (relating to inmate correspondence) refers to "State correctional institution." This reference should be changed to the defined term of "institution" or "facility." Also, § 93.2(c)(1)(i)(D) and (ii) should refer to "facility" (the defined term) rather than "State correctional facility."

Response: The broader term "facility" will be used. The definition of "institution" is deleted. The definitions of "facility" and "facility manager" are revised. Response to

this comment has required changes to sections that were not previously being amended by the Department in the proposed rulemaking.

3. *Comment:* “Facility manager” was also not used consistently in Chapter 93. For example, § 93.3(a), (d) and (h)(7) (relating to inmate visiting privileges) and § 93.6(b)(1) all refer to “superintendent” instead of the defined term “facility manager.” This should be corrected in the final-form rulemaking.

Response: References to “superintendent” have been changed to “facility manager.” Response to this comment has required changes to sections that were not previously being amended by the Department in the proposed rulemaking.

4. *Comment:* The definition of “regional director” used the term “corrections centers” rather than the defined term “community corrections centers.” This should be corrected in the final-form rulemaking.

Response: The *Pennsylvania Bulletin* staff made this change. The final-form regulation will correct this.

5. *Comment:* The last sentence of § 91.3 (relating to reception and discharge of inmates) stated, “To ensure compliance with State and Federal laws, it is expected that the discharge process can be completed within 2 business days.” The Pennsylvania Prison Wardens had two concerns.

First, it was unclear which State and Federal laws must be complied with. Specific citations should be added.

Second, is compliance with these laws required, rather than expected? If compliance was required, then it would be appropriate to state “. . . the discharge process shall be completed within 2 business days.”

Response: There was no law that requires the discharge process to be completed in 2 days. The reference here was to various legal issues that can arise prior to a release such as DNA collection or detainers from other states. This language has been deleted, as those laws do not need to be referenced in the Department’s regulations. A comment was also received from Vincent A. Guarini, Chairperson of the Legislative Committee of the Pennsylvania Prison Wardens Association. He suggested the term “sufficient” be deleted and replaced with a reference to Act 84 of 1998, which sets forth what specific information shall be provided. This change has been made.

6. *Comment:* In § 91.4(a) and (b) (relating to catchment areas), how will a person know what facilities are specifically designated? Does the Department publish a list?

In § 91.4(c), the words “of the Department” should be deleted since the defined term is “Secretary.”

Response: The Department will notify counties of any change in its current practice. The Department has a Deputy Secretary for Intergovernmental Relations who will coordinate any changes with the counties. The words “of the Department” have been deleted from § 91.4(c).

7. *Comment:* Section 93.2(c) was unclear. IRRC had four concerns.

First, the opening paragraph discusses a both “all incoming mail” and “sealed documents.” Since the standards for opening these documents differ, their respective requirements should be placed in separate subsections or paragraphs.

Second, the order of the sentences was confusing. A sentence in the middle of the subsection referenced the

requirements listed in § 93.2(c)(1)–(3). Whereas, the concluding sentence refers to § 93.2(e) relating to “scrutiny of correspondence.”

Third, the last sentence stated “They may be read only as set forth in subsection (e).” Does “they” refer to “sealed” or “retained” documents?

Fourth, the last sentence did not specify who is reading the documents. This could be interpreted to also require the inmate readers of documents to comply with § 93.2(e) rather than just the institution as specified in § 93.2(e). Also, who in the institution is authorized to read the inmates’ mail? This should be clarified in the regulation.

Response: Section 93.2(c) has been rewritten to clarify that there is a distinction between mail sent to a facility and mail sealed under the requirements of this section. The cross-reference to § 93.2(e) has been deleted as it relates to reading rather than opening of mail.

8. *Comment:* Section 93.2(c)(2) defined “contraband” by stating “Coins, currency or other negotiable instruments concealed in correspondence are contraband. . . .” This language should be removed from this section and the term “contraband” should be defined in § 91.1.

Response: The term contraband has been defined in § 91.1.

9. *Comment:* Section 93.2(c)(3) stated “Other contraband will be returned to the sender, destroyed or transferred. . . .” What qualifies as “other contraband”? Further, it was not clear under what circumstances the contraband will be returned, destroyed or transferred.

Response: Section 93.2(c)(2) has been revised to clarify what will be done with contraband. It is not possible to further clarify under what circumstances contraband will be returned, destroyed or transferred because of the multitude of types of contraband that are received. The Department believes that the regulation provides the public adequate notice of what items constitute contraband and that it is possible that any contraband that they send to a facility may be destroyed or transferred to a criminal justice agency.

10. *Comment:* Section 93.2(e)(1) and (2) was vague. IRRC had three questions.

First, under what circumstances “may” the institution read the mail in § 93.2(e)(1)?

Second, and similar to the comment on § 93.2(c), who in the institution does the Department permit to read the inmates’ mail?

Third, do these subsections refer to outgoing or incoming correspondence or mail, or both?

Response: Section 93.2(e) has been revised to state who may read mail, to elaborate under what circumstances mail may be read and to clarify that this subsection applies to both incoming and outgoing mail.

11. *Comment:* Section 93.2(f)(1) defined “publications.” This term should be defined in § 91.1.

Section 93.2(f)(2) provided that “all publications must be received from the original source.” Since a magazine is included in the definition of “publications,” the sentence in § 93.2(f)(3) that stated that “magazines shall be mailed directly from the original source” is redundant and should be deleted.

Section 93.2(f)(5) stated publications “sent directly . . . will usually be deemed to have come from the original source.” IRRC had two questions. First, who is respon-

sible when this section states "will usually be deemed"? Deemed by whom? Second, under what circumstances would be publication not "be deemed" to be from the original source?

Section 93.2(f)(6) stated that newsletters "shall be delivered to the inmate even if mailed at less than [sic] first or second-class mail rates." The phrase in § 93.2(f)(6) is redundant and should be deleted because § 93.2(f)(1) provides for newsletters "regardless of the postal rate. . . ."

IRRC had two questions relating to § 93.2(f)(7). First, the paragraph stated "publications containing potentially prohibited material or questionable content. . . ." The language in this sentence is vague as it is not clear what is meant by "potentially prohibited material" or "questionable content." Second, § 93.2(f)(7) referred to an "incoming publication review committee (IPRC)." Who are the members of this committee and to whom does it report?

For clarity, § 93.2(f)(12) should be merged with § 93.2(f)(9).

Section 93.2(f)(13) allowed for appeal of an IPRC decision. It appeared the right to appeal applied to IPRC decisions regarding all inmate correspondence. Therefore, this provision should be a separate subsection and a specific reference to Department policy or regulations relating to grievances should be included.

Response: Section 93.2(f) has been rewritten for clarity. The definition of "publication" has been deleted. The reference to original source has been removed. The language regarding the postal rate has been deleted. The membership and authority of the IPRC has been clarified. The reference to an appeal in former § 93.2(f)(13) has been removed as it is redundant to § 93.9. It was also confusing because it does not apply to all complaints about inmate correspondence as suggested in the Commission's comment.

12. *Comment:* IRRC had three concerns relating to § 93.2(g). First, as printed in the proposed rulemaking, § 93.2(g) did not have a heading.

Second, how did the Department determine that it is reasonable to retain a rejected letter for "at least 7 days" as opposed to 10 days or 30 days? Is it 7 business or calendar days?

Third, how soon must a protest be filed?

Response: This language has been moved to § 93.2(f) and a heading has been added. The operative language is in the current regulation and is not being changed.

13. *Comment:* Section 93.7 (relating to telephone calls) contained the phrase "in accordance with applicable law." What is the applicable law? If there are none, this phrase should be deleted. Otherwise, to facilitate compliance and improve clarity, this phrase should be replaced with a specific reference to the applicable laws and regulations.

Response: A cite to the applicable statute has been added to § 93.7.

Cost and Paperwork Requirements

Since the Department currently operates the State prison system in accordance with the final-form amendments, it does not expect this final-form rulemaking to have a substantial fiscal impact on, or to create substantially new paperwork requirements for the Commonwealth, its political subdivisions or the private sector.

Effective Date

The final-form amendments shall be effective upon final-form publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person is John S. Shaffer, Ph.D., Deputy Secretary for Administration, 2520 Lisburn Road, P. O. Box 598, Camp Hill, PA 17001-0598.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 1, 2001, the Department submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 2476 to IRRC and to the Chairpersons of the House and Senate Judiciary Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered the 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)), on November 12, 2001, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 15, 2001, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Notice of proposed rulemaking was published at 31 Pa.B. 2476 as required by 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) A public comment period was provided as required by law and the Department received only one public comment.

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

Order

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

(a) The regulations of the Department, 37 Pa. Code Chapters 91, 93 and 94, are amended by amending §§ 91.1—91.4, 93.1—93.4, 93.6, 93.7, 93.9—93.11, 93.301, 93.303, 93.304, 94.1—94.6 and by deleting § 93.5 to read as set forth in Annex A.

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

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* as required by law.

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

JEFFREY A. BEARD, Ph.D.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 6587 (December 1, 2001).)

Fiscal Note: Fiscal Note 19-5 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 91. ADMINISTRATION

§ 91.1. Definitions.

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

Board—Pennsylvania Board of Probation and Parole.

Community corrections center—A minimum security community-oriented facility operated by the Department for the purpose of facilitating special programs.

Contraband—Material listed as contraband in 18 Pa.C.S. §§ 5122 and 5123 (relating to weapons or implements for escape; and contraband), the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook, or any Department document that is disseminated to inmates, such as material that an inmate is prohibited from possessing or material that an inmate is permitted to possess that has been altered or is being used for something other than its intended purpose.

Department—The Department of Corrections.

Diagnostic and classification center—Facilities designated to receive and classify persons who have been committed to the custody of the Department.

Facility—An institution, motivational boot camp or community corrections center operated by the Department.

Facility manager—The chief administrator of a facility, that is, the superintendent of an institution, the commander of a motivational boot camp or the director of a community corrections center.

Inmate—A person committed to the custody of or confined by the Department.

Resident—An inmate assigned to a community corrections center.

Secretary—The Secretary of the Department.

§ 91.2. Agency purpose.

It is the goal of the Department to operate its institutions and programs to provide protection to the community, a safe and humane environment and opportunities for rehabilitation for the inmates.

§ 91.3. Reception and discharge of inmates.

The Department will accept and confine those persons committed to it under lawful court orders which conform to 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement) when information has been provided to the Department as required by 42 Pa.C.S. § 9764 (relating to information required upon commitment and subsequent disposition). The Department will also accept persons for whom transfer from other correctional facilities has been approved in advance by the Secretary or a designee, under section 1 of the act of July 11, 1923 (P. L. 1044, No. 425) (61 P. S. § 72). Commitments and transfers will be accepted only during the

facility's normal business hours, except upon prior approval of the facility manager or a designee.

§ 91.4. Catchment areas.

Male inmates committed to the custody of the Department will be received at male diagnostic and classification centers and female inmates will be received at female diagnostic and classification centers unless granted other permission in advance by the Secretary or a designee.

CHAPTER 93. STATE CORRECTIONAL INSTITUTIONS AND FACILITIES

Subchapter A. RIGHTS AND PRIVILEGES

§ 93.1. General.

Those portions of some Department directives and policy statements which concern the interaction of Department inmates and employees with the community at large are published. The full text of the directives and other policy statements are maintained in all Department facilities.

§ 93.2. Inmate correspondence.

(a) *Permitted correspondence.* Inmates are permitted to correspond with friends, family members, attorneys, news media, legitimate business contacts and public officials. There may be no limit to the number of correspondents.

(b) *Restrictions.* The following restrictions apply:

(1) Correspondence with inmates of other facilities, former inmates, probationers or victims of the criminal acts of the inmate will not be permitted except upon special approval of the facility manager.

(2) Correspondence containing threatening or obscene material, as well as correspondence containing criminal solicitation or furthering a criminal plan or institution misconduct is prohibited.

(3) An inmate shall refrain from writing to persons who have stated in writing that they do not wish to receive mail from the inmate. This will not be interpreted to restrict the right of inmates to correspond with public officials with respect to the official duties of the latter.

(4) Correspondence with prohibited parties through a third party is also prohibited.

(5) Mail addressed to an inmate organization will not be accepted unless the facility manager has approved the organization and it is addressed to the staff coordinator of the organization.

(c) *Incoming mail.* All mail sent to a facility will be opened and examined for contraband in the facility's mailroom or designated area except when permitted under paragraph (1).

(1) The Department may permit sealed mail to be opened in the presence of an inmate under the following conditions:

(i) An attorney or authorized representative/designee may hand-deliver a sealed confidential client communication to an inmate if the attorney is unable to communicate through alternative means, if the following conditions are met:

(A) The person making the delivery does so during normal business hours unless granted permission in advance by the Secretary or a designee.

(B) The person making the delivery shall provide valid identification and information sufficient to verify that the person is the inmate's attorney or authorized representative of the attorney.

(C) The person making delivery shall present the documents for inspection for contraband, unsealed and unbound.

(D) Upon inspection, the documents will be sealed and delivered to the inmate where they will be unsealed and searched again for contraband.

(ii) A court may direct delivery of court documents sealed from public disclosure to an inmate by specific order. The court's representative shall deliver the sealed documents and the specific court order to the facility. Under no circumstances will documents filed in a court of public record be delivered sealed to an inmate.

(2) Contraband in the form of money orders, certified checks, cash or other negotiable instruments will be recorded indicating the nature of the receipt, the sender, the amount received and the date. Personal checks, unless certified, will be returned to the sender. The facility is not responsible for cash sent through the mails. Confiscated coins and currency will be deposited in the Inmate General Welfare Fund. Contraband not specifically addressed in this section will be returned to the sender or destroyed at the inmate's option unless it is transferred to appropriate criminal justice agencies at the discretion of the mailroom or security staff.

(d) *Outgoing mail.* Sealed outgoing mail from an inmate will not be examined except as set forth in subsection (e).

(e) *Scrutiny of correspondence.*

(1) The facility manager or a designee may read incoming or outgoing mail, except mail sealed in accordance with subsection (c)(1), when there is reason to believe that it may reveal or discuss illegal or unauthorized activity or for reasons set forth in any Department document that is disseminated to inmates.

(2) The facility manager or a designee may read mail sealed in accordance with subsection (c)(1), only upon the written order of the facility manager with the written approval of the Secretary when there is reason to believe that there is a threat to facility security or criminal activity.

(f) *Rejection of correspondence.* An item of correspondence which appears to violate subsection (b) may be rejected by facility mailroom staff. The inmate and the sender, in cases when the inmate is not the sender, will be notified when the letter is rejected. The letter may be held for at least 7 days after mailing of the notification to permit reasonable opportunity to protest the decision. If the letter is rejected, it will be returned to the sender.

(g) *Incoming publications.*

(1) An incoming publication review committee (IPRC) consisting of staff designated by and reporting to the facility manager or a designee shall determine whether an inmate may receive a publication.

(2) All publications shall be received directly from a publisher, bookstore, book club, distributor or department store. Newspapers shall be mailed directly from the publisher.

(3) Publications may not be received by an inmate if they:

(i) Contain information regarding the manufacture of explosives, incendiaries, weapons, escape devices, poisons, drugs or intoxicating beverages or other contraband.

(ii) Advocate, assist or are evidence of criminal activity, inmate misconduct, violence, insurrection or guerrilla warfare against the government.

(iii) Threaten the security of a facility.

(iv) Contain obscene material as defined in 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances).

(v) Constitute a bulk mailing specifically intended for the purpose of advertising or selling merchandise.

(4) An inmate under 18 years of age may not receive explicit sexual materials as defined in 18 Pa.C.S. § 5903.

(5) A publication will not be prohibited solely on the basis that the publication is critical of penal institutions in general, of a particular facility, staff member, or official of the Department, or of a correctional or penological practice in this or any other jurisdiction.

(6) An inmate may receive only one copy of any publication unless granted permission by the IPRC.

(7) Small letter sized pamphlets may be received in regular correspondence.

(8) Covers of hardbound publications may be damaged or removed during inspection in the discretion of mailroom staff.

§ 93.3. Inmate visiting privileges.

(a) *Approved list of visitors.* A list of approved visitors may contain up to 20 names. Inmates who can show that they have more than 20 regular visitors may be permitted to add additional names to their approved lists. Members of a family living at the same address may be counted as one name. Except for members of an inmate's immediate family, a minor's name may be placed on the approved list only with permission of the minor's parents or guardian. Children under 12 years of age may visit only when accompanied by an adult and need not be placed separately on the official list. A person may not be on more than one inmate's visiting list except in cases when the person is part of the immediate family of more than one inmate, unless special permission is granted by the facility manager. Changes or additions to the approved list may be made in accordance with established procedures. The name of a visitor may be removed for good cause upon authorization by the facility manager.

(b) *Religious advisor.* Designation by an inmate of a religious advisor as defined in § 93.6 (relating to religious activities) may be made at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total of 20.

(c) *Attorneys.* An inmate may designate attorneys for whom the inmate desires visiting privileges at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total of 20.

(1) The confidentiality of the attorney-client relationship will be honored. Personnel will not be stationed in a manner as to be able to overhear normal conversation.

(2) An attorney who has been designated by an inmate as the inmate's legal advisor may permit persons, such as law students or investigators to visit the inmate to act as the attorney's agents. Each person shall present to the facility at the time of the visit a written statement signed by the attorney on the letterhead of the firm of the attorney identifying each person as the attorney's agent and attesting that the visit is for the purpose of a legal consultation.

(3) Attorneys and their agents are subject to the same rules and regulations as other visitors.

(d) *Former inmates.* A former inmate may visit only with special permission of the facility manager.

(e) *Prerelease inmates.* Inmates in prerelease status may visit other inmates only with the approval of the Secretary or a designee. Application for permission to visit shall be made by both inmates through their respective facility managers.

(f) *Registering of visitors.* Visitors shall register in and out of the facility.

(g) *Initial visits.* The inmate's first visit after admission should be scheduled following the medical quarantine period and may be held in the presence of a staff caseworker.

(h) *Number, time and place of visits.* Inmates shall be permitted to have visits as often as the situation at the facility will allow.

(1) *Visiting days.* Visits may be permitted every day of the year.

(2) *Visiting hours.* Morning and afternoon visiting hours will be maintained. Evening visits may be maintained.

(3) *Length of visits.* Visits should be at least 1 hour in duration. The length of a visit depends on the inmate's program status and available space.

(4) *Frequency of visits.* One visit per inmate per week will be permitted. Additional visits may be permitted.

(5) *Number of visitors at one time.* The number of visitors an inmate may have at any one time may be limited depending upon the available space.

(6) *Place.* Inmates in the general population will be permitted contact visits in a relaxed setting, under official supervision.

(7) *Special visit.* Provisions will be made for the approval of a special visit by persons who may not be on the approved list who have come a substantial distance and of a family visit to a seriously ill or injured inmate. Special visits will be approved only by the facility manager or a designee. Absent this approval, only those persons on the approved visiting list may visit.

(i) *Restriction of visitation privileges.*

(1) If a visit is a threat to the security and order of the facility, the visit may be terminated or disallowed.

(2) Outside visitors are subject to search before and after visiting.

(3) A visitor who cannot produce identification or who falsifies identifying information will not be allowed in the facility.

(4) Visitation may be restricted or suspended or special security precautions imposed for violation of visiting rules or as warranted by the temperament of the inmate involved.

(5) Restriction of visiting privileges will not be used as a disciplinary measure for an unrelated facility rule infraction. However, visiting privileges may be restricted as a result of changes in housing or program status made as a result of unrelated infractions.

(6) Normal visitation will be suspended during a state of emergency.

(j) *Media representatives.* Media representatives will have the same visiting privileges as visitors on an inmate's approved list of visitors as described in Department policy concerning inmate visitation. A media representative will not be in addition to the names on the approved list and will be counted against the total of 20.

(1) Upon request, media representatives will be provided with a copy of the Department's policy regarding inmate visitation.

(2) Media representatives and inmates will abide by all applicable rules, regulations and policies of the Department while on facility property. Violations of any rules, regulations or policies of the Department may result in the visit being denied, termination of the visit, suspension of visiting privileges or revocation of visiting privileges.

(3) Visits with a media representative shall be subject to the frequency of visit limitations contained in subsection (h)(4).

(4) For inmates under a sentence of death and prior to the Governor's warrant being issued, media representatives will only be permitted to have noncontact visits with the inmate. After the Governor's warrant has been issued, noncontact visits will only be entertained if the media representative has obtained an order of court of competent jurisdiction granting the relief and has properly served the Department with the court documents seeking or requesting the relief prior to obtaining the order.

(5) Media representatives for the purpose of this section include: representatives of general circulation newspapers; magazines of general circulation sold through newsstands or mail subscriptions to the general public; and National/international news services or radio/television stations holding a Federal Communications Commission license.

§ 93.4. Purchase for inmates by family and friends.

(a) Family and friends, who are on the inmate's approved visiting list, may purchase approved items for inmates under this section. The facility may disapprove and decline to accept any purchase which does not meet this section.

(b) Only those items listed on the current Approved Master Commissary List may be purchased from approved vendors. Copies of the list are provided to the inmates. Publications may be purchased by means of this procedure, but shall be subject to § 93.2 (relating to inmate correspondence).

(c) Purchases shall be approved prior to the time the item is received by the facility.

(d) Only those items shipped directly from the vendor to the facility will be accepted.

(e) Unauthorized or disapproved items will be returned to the sender at the expense of the inmate.

§ 93.5. (Reserved).

§ 93.6. Religious activities.

(a) *Policy.* It is the policy of the Department to permit each inmate to satisfy the needs of his religious life,

consistent with the security needs and orderly administration of the facility. The Department will provide chapel facilities at each facility. The Department will also permit inmates to possess approved religious items and make reasonable accommodation for dietary restrictions.

(b) *Religious advisors.*

(1) If the facility contains a sufficient number of inmates of the same faith, a qualified representative of that faith from the outside community will be appointed or approved by the facility manager and will be permitted to hold regular services in the facility. Qualified representative means a person from the outside community who has received endorsement from his faith group authority.

(2) Each inmate will be permitted to select a religious advisor from the outside community who has received endorsement from the faith group authority. This person will be permitted to visit the inmate on an individual basis in accordance with general rules governing visitation.

(c) *Accommodation of faiths.* Requests for accommodation of faiths will be handled as follows:

(1) Facility officials will secure written information from the outside faith group authority, including publications which describe the goals, beliefs and practices of the group.

(2) Information material will be forwarded to the Director of Chaplaincy Services for the Department for evaluation.

§ 93.7. Telephone calls.

(a) Inmates may make phone calls in accordance with 66 Pa.C.S. § 2907 (relating to state correctional institutions). Phone calls, except confidential communications between attorneys and inmates, shall be subject to monitoring in accordance with 18 Pa.C.S. Chapter 57 (relating to wiretapping and electronic surveillance).

(b) Phone calls to inmates will be permitted only if approved in advance by the facility manager or a designee.

§ 93.9. Inmate complaints.

(a) The Department will maintain an inmate grievance system which will permit any inmate to seek review of problems which the inmate experiences during the course of confinement. The system will provide for review and resolution of inmate grievances at the most decentralized level possible. It will also provide for review of the initial decisionmaking and for possible appeal to the Central Office of the Department. An inmate will not be disciplined for the good faith use of the grievance systems. However, an inmate who submits a grievance for review which is false or malicious may be subject to appropriate disciplinary procedures. Copies of the directive governing grievance procedures will be made available to the inmates.

(b) Inmates may also pursue available remedies in State and Federal court.

§ 93.10. Inmate discipline.

(a) Rules which define expectations and prohibitions for inmate behavior will be established by the Department and distributed to the inmate population. There shall be two classes of misconduct charges, Class I and Class II.

(1) Inmates found guilty of Class I misconduct charges may be subjected to one or more of the following sanctions:

(i) Reduction of the classification of the misconduct to a Class II and any sanction permitted for Class II misconducts.

(ii) A sanction permitted for Class II misconducts, without change in class of misconduct.

(iii) Change of cell assignment, including placement in the restricted housing unit or restrictive confinement in a general population cell for a period not to exceed 6 months for any one misconduct charge.

(iv) Change of program level.

(2) Inmates found guilty of Class II misconducts may be subjected to one or more of the following sanctions:

(i) Reprimand.

(ii) Suspension of privileges for a specified period of time.

(iii) Payment of the fair value of property lost or destroyed or for expenses incurred as a result of the misconduct.

(iv) Change of cell assignment excluding placement in the restricted housing unit.

(v) Change, suspension or removal from job.

(b) Written procedures which conform to established principles of law for inmate discipline including the following will be maintained by the Department and distributed to the inmate population:

(1) Written notice of charges.

(2) Hearing before an impartial hearing body.

(3) Opportunity for the inmate to tell his story and to present relevant evidence.

(4) Assistance from an inmate or staff member at the hearing.

(5) Written statement of the decision and reasoning of the hearing body, based upon the preponderance of the evidence.

(6) Opportunities to appeal the decision of the hearing body.

§ 93.11. Housing.

(a) An inmate does not have a right to be housed in a particular facility or in a particular area within a facility.

(b) Confinement in a restricted housing unit (RHU), other than under procedures established for inmate discipline, will not be done for punitive purposes. The Department will maintain written procedures which describe the reasons for housing an inmate in the RHU and require due process in accordance and with established principles of law for an inmate who is housed in the RHU. Inmates confined in the RHU will be reviewed periodically by facility staff.

Subchapter C. MOTIVATIONAL BOOT CAMPS

§ 93.301. Definitions.

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

Act—The Motivational Boot Camp Act (61 P. S. §§ 1121—1129).

Secretary—The Secretary of the Department.

Three-tiered approach—A three-step disciplinary process in which an inmate first receives a demerit or demerits. Upon receiving ten or more demerits in a 7-day

period, the inmate shall appear before the deputy commander's review board and may receive restrictions or additional duties. The final step is the commander's committee at which point an inmate may be removed from the motivational boot camp.

Ventilation therapy—A group session led by a counselor during which inmates are encouraged to discuss problems, stressful matters or pressures they are currently experiencing. The objective of the discussion is to help inmates identify, explore and ultimately either resolve or better cope with the stressors.

§ 93.303. Selection committee.

(a) There shall be a motivational boot camp selection committee in each diagnostic and classification center operated by the Department.

(b) Each selection committee shall be composed of the following individuals:

(1) The diagnostic center director or a corrections counselor supervisor, or both.

(2) A lieutenant or corrections counselor, or both.

(c) The selection committee is only responsible for recommending inmates for participation in a motivational boot camp.

(d) The facility manager of a diagnostic and classification center shall make the final decision as to inmate participation in a motivational boot camp.

§ 93.304. Administration.

(a) The Department will administer motivational boot camps at sites to be determined by the Department.

(b) Each motivational boot camp will operate under the administrative supervision of the Secretary or a designee.

CHAPTER 94. RELEASE AND PRERELEASE PROGRAMS

§ 94.1. Purpose.

It is the goal of the Department to administer its facilities and design programs to provide protection to society through the control and rehabilitation of offenders. In furtherance of that objective and the authority granted to the Department by the act of July 16, 1968 (P. L. 351, No. 173) (61 P. S. §§ 1051—1054), prerelease programs have been established. These programs are designed to provide opportunities for qualified inmates to have access to community resources, to demonstrate self-control and individual responsibility and to begin reintegration into the community. Criteria for participation in prerelease programs are designed to insure that the inmates who are selected to participate are those who will present the least risk to the community, and benefit most from the program, and to offer the opportunities to as many inmates as possible.

§ 94.2. Prerelease programs.

(a) *Work/educational/vocational training release.*

(1) *Work release.* This is a program which enables an inmate to leave the facility and work in the community. The inmate is required to return to the facility at a designated time after the work day.

(2) *Educational/vocational training release.* This is a program which enables an inmate to leave the facility and participate in educational or vocational-technical training. The inmate is required to return to the facility at a designated time after completion of training for the day.

(b) *Temporary home furlough.* This is the authorized leave for an inmate from a facility for a period not to exceed 7-consecutive days for the purpose of furthering an inmate's rehabilitative programs. The inmate is required to return to the facility at a designated time after the furlough.

(c) *Community corrections.*

(1) *Community corrections center residency.* This is a program operated as a continuum of the rehabilitative services provided in the facilities. Community corrections centers are residences in the community with custodial structure and strong emphasis on guidance and counseling. These centers serve those inmates who qualify and who should benefit from a gradual reintegration into society.

(2) *Group home residency.* This is a program which complements community corrections center residency and consists of publicly or privately owned agencies approved by the Department for use by its residents. These residences provide specialized residential treatment, for example, drug and alcohol treatment, and include 24-hour supervision, living quarters and special services for selected residents, and provisions for continued jurisdiction by community corrections. An exception to this paragraph shall have prior approval by the Director, Community Corrections Division and final approval by the Secretary or a designee.

(3) *Community corrections furlough program.* This is a program which complements community corrections center residency and is permitted with the approval of the community corrections center staff. It is the authorized leave of an inmate from a community corrections center or group home for a period not to exceed 7-consecutive days for the purpose of furthering the inmate's reintegration into the community. The inmate is required to return to the center or group home at a designated time.

§ 94.3. Procedures for participation in prerelease programs.

(a) The criteria for eligibility for prerelease programs are as follows:

(1) Inmates who have been sentenced to death or life imprisonment are not eligible.

(2) Time-served requirements are as follows:

(i) To be time-eligible for placement in a community corrections center or group home, the inmate shall have completed at least one-half of the inmate's minimum sentence, be within 1 year of completing his minimum sentence, have no outstanding detainers, and have served at least 9 months in a facility. Exceptions may be made with written approval of the Secretary or a designee, when early transfer is necessary to assist in the inmate's access to medical or mental health care or to provide longer period of participation for an inmate who has been confined for an unusually long period of time. A contact may not be made with the court until the approval is obtained.

(ii) For other prerelease programs, the inmate is time-eligible after the inmate has completed one-half of the inmate's minimum sentence or one-half of the period ending with anticipated release date of an indeterminate sentence and has served at least 9 months in a facility. The inmate may have no detainers lodged against him for an untried offense or for a sentence with a maximum term in excess of 2 years. Inmates who are otherwise time-eligible who have detainers lodged against them for less than 2 years can be time-eligible for a prerelease

program except community corrections center or group home upon written approval of the Secretary or a designee. No contact may be made with the court until the approval is obtained.

(3) The inmate shall have favorable recommendation of the correctional facility staff—for example, counselor, work supervisor, housing officer, education/vocational supervisor and deputy facility managers for treatment and operations.

(4) The inmate may have had no Class I misconduct and no more than one Class II misconduct during the 9 months prior to application, and have sustained no Class I misconducts and no more than one Class II misconduct from the time of application to the time of transfer.

(5) The inmate shall obtain a medical clearance by the facility medical officer.

(6) The inmate's application shall be approved by the facility manager.

(7) If the inmate has not completed his minimum sentence, the notice process in § 94.5 (relating to notification process) shall be followed.

(8) Applications for transfer to community corrections require evaluation and concurrence by the staff of the appropriate region of community corrections and approval by the Director of Community Corrections.

(9) The inmate shall execute a written agreement which requires him to abide by the rules and regulations of the prerelease program. In the case of community corrections placement, the written agreement shall be signed prior to transfer.

(10) After transfer into a prerelease program, the inmate may continue to participate in the program only while adequate resources are available to provide care, custody and control for the inmate within the program to which he has been admitted. The inmate's privilege to participate in prerelease programs may be suspended or revoked for administrative or disciplinary reasons. The Department will establish procedures to govern the revocation of prerelease privileges.

(b) The process of obtaining prerelease transfer is initiated when an inmate submits an application to his counselor for participation in work/educational/vocational release, or for a temporary home furlough or for transfer to a community corrections placement. An inmate will not be granted prerelease transfer for any purpose unless the inmate satisfies all of the criteria in this section. Satisfying the eligibility criteria for prerelease transfer does not mean the inmate will automatically be permitted to participate in prerelease programs. Other considerations such as the staff's evaluation of the inmate's progress, the relevancy of the particular prerelease program to the inmate's reintegration, the safety of the community and the victim of the inmate's crime and the availability of space will be taken into consideration. Approval for participation in one prerelease program does not imply clearance for, or preclude application for participation in any other program. The application shall specify a particular prerelease program.

(c) Special exception to subsection (a) or (b), other than subsection (a)(1), (2)(ii) and (6)—(9), may be recommended in writing by a facility manager to the Secretary or a designee.

(d) Inmates serving Federal sentences in facilities shall be eligible for prerelease transfer under rules and regulations established by the United States Department of

Justice, Federal Bureau of Prisons, and subject to subsections (a) and (b), and the subsequent approval of Federal and State authorities.

(e) Inmates serving sentences from other jurisdictions under the Interstate Corrections Compact (61 P. S. §§ 1061—1063) are eligible subject to subsections (a) and (b) and the sending state's written approval.

§ 94.4. Application process.

Application for prerelease programming shall be initiated by the inmate to his counselor, or if necessary, on the inmate's behalf by the counselor. Criteria in § 94.3(a)(1), (3)—(5), (8) and (9) (relating to the procedures for participation in prerelease programs) shall be met prior to submission to the facility manager for his approval. The process may begin a reasonable time prior to the time the inmate becomes time-eligible.

§ 94.5. Notification process.

(a) If the facility manager approves an inmate's application for prerelease transfer, the facility manager shall notify the sentencing judge or if he is unavailable, the sentencing court, and the prosecuting district attorney's office by certified mail, of the inmate's proposed prerelease program. Comments will be considered.

(b) If the inmate has not finished his minimum sentence and an objection is received from the judge or court, if the judge is unavailable, within 30 days of his receipt of the proposed prerelease plan, representatives of the Department will contact the judge or court and if necessary arrange for a meeting to attempt to resolve the disagreement. If, within 20 days of the Department's receipt of the objections, the judge or court does not withdraw the objection and the Department does not withdraw its proposal for transfer, or the judge and the Department do not agree on an alternate proposal for transfer, the Department will refer the matter to the Board for arbitration.

§ 94.6. Staff responsibilities.

(a) It is the primary responsibility of the inmate's counselor to process the inmate's application for participation in prerelease programs.

(1) The inmate's counselor is responsible for obtaining, integrating and coordinating the information necessary to determine the inmate's eligibility or noneligibility for participation in a prerelease program.

(2) The inmate's counselor will accept and review the inmate's application. If necessary, the counselor may help the inmate initiate this process. The inmate's counselor will also be responsible for having the housing officer, work supervisor and other appropriate staff complete relevant portions of the application and make recommendations concerning prerelease programming.

(3) The inmate's counselor shall verify, with the record officer, the necessary information with respect to the inmate's sentence and detainer status.

(4) The inmate's counselor will review and verify available information relevant to eligibility—for example, presentence investigation report, judge's sentencing notes, classification and reclassification summary records and cumulative adjustment record.

(5) The inmate's counselor will request proper psychological and psychiatric evaluations for those applicants who have a history of mental or emotional disorders, violent crimes or other situations when deemed advisable. The inmate's counselor may contact other persons and agencies to acquire additional information.

(6) When the necessary information has been obtained, the inmate's counselor will refer the application to his supervisors for review.

(b) It is the primary responsibility of the classification and treatment manager to coordinate the staff evaluation and recommendation process.

(1) The classification and treatment manager will chair a meeting of designated facility staff who shall make recommendations regarding prerelease programs. The inmate shall be present at this staff meeting for input.

(2) The staff's findings, recommendations and rationale shall be forwarded to the facility manager through both the Office of the Deputy Superintendent for Treatment and the Deputy Superintendent for Operations, with comments by both.

(c) It is the responsibility of the facility manager to give final approval or disapproval of recommendations regarding prerelease programs. The inmate will be advised by the classification and treatment manager, in the presence of the inmate's counselor, of the final decision and its rationale. The decision and rationale will be documented in the cumulative adjustment record.

(d) Letters to judges and district attorneys shall be signed by the facility manager.

(e) The inmate's counselor shall discuss with the inmate prior to the commencement of the program, the objectives, rules and regulations of the program and obtain written agreement as provided for in § 94.3(a)(9) (relating to procedures for participation in prerelease programs). The counselor shall review the program objectives on the inmate's cumulative adjustment record.

[Pa.B. Doc. No. 01-2272. Filed for public inspection December 21, 2001, 9:00 a.m.]

through fees which are based on the cost of providing the service. The fee is charged to the person requesting the service.

A recent systems audit within the Bureau of Professional and Occupational Affairs determined that the application and service fees did not accurately reflect the actual cost of processing the applications and performing the services. A detailed explanation of the background of these fees as well as a description of the fees was published at 30 Pa.B. 2264 (May 6, 2000).

D. Comment and Regulatory Review of Proposed Rulemaking

Following publication of proposed rulemaking at 30 Pa.B. 2264, the Board did not receive comments from the general public. The House Professional Licensure Committee voted to take no action on the regulation until it was submitted in final-form. The Board received no comments from the Independent Regulatory Review Commission (IRRC) or the Senate Consumer Protection and Professional Licensure Committee.

E. Fiscal Impact and Paperwork Requirements

The amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a very modest fiscal impact on those members of the private sector who apply for services from the Board. The amendment will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

F. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 20, 2001, the Board submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 2264 to IRRC and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered the 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)), on October 26, 2001, this final-form rulemaking was deemed approved by the House and Senate Committees. The final-form rulemaking was deemed approved by IRRC under section 5(g) of the Regulatory Review Act, effective October 26, 2001.

H. Contact Person

Further information may be obtained by contacting Michelle DeMerice, Administrative Assistant, State Board of Auctioneer Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3397.

I. 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 in 1 Pa. Code §§ 7.1 and 7.2.

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

**STATE BOARD OF AUCTIONEER EXAMINERS
[49 PA. CODE CH. 1]
Application Fees**

The State Board of Auctioneer Examiners (Board) amends § 1.41 (relating to schedule of fees) to read as set forth in Annex A.

A. Effective date.

The amendment will take effect when published as final-form rulemaking in the *Pennsylvania Bulletin*.

B. Statutory Authority.

Section 6(a) of the Auctioneer and Auction Licensing Act (63 P. S. § 734.6(a)) requires the Board to establish fees by regulation. The same provision 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 match expenditures over a 2 year period.

C. Background and Purpose.

Expenses of the Board which are related to processing individual applications or providing certain services directly to individual licensees or applicants are funded

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

(3) The amendment does not enlarge the purpose of proposed rulemaking published at 30 Pa.B. 2264.

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

J. Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 1, are amended by amending § 1.41 to read as set forth in Annex A.

(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 on publication in the Pennsylvania Bulletin.

RALPH M. STEWART,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 6358 (November 17, 2001).)

Fiscal Note: Fiscal Note 16A-644 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 1. STATE BOARD OF AUCTIONEER EXAMINERS

FEEES

§ 1.41. Schedule of fees.

Applicants shall pay the following fees:

Table with 2 columns: Fee description and Amount. Includes Examination fee for auctioneer license (\$87), Application fee for auctioneer license (\$50), Biennial renewal fee for auctioneer license (\$200), etc.

[Pa.B. Doc. No. 01-2273. Filed for public inspection December 21, 2001, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE
[49 PA. CODE CH. 31]
Continuing Education

The State Board of Veterinary Medicine (Board) adopts an amendment to § 31.15 (relating to continuing education) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 30 Pa.B. 5969 (November 18, 2000). Publication was followed by a 30-day public comment period during which the Board received no comments from the general public. The House Professional Licensure Committee (HPLC) submitted comments on February 2, 2001. The Senate Consumer Protection and Professional Licensure Committee made no comments. The Independent Regulatory Review Commission (IRRC) submitted comments to the proposed rulemaking on March 2, 2001.

Summary of Comments and Responses to Proposed Rulemaking

The HPLC and IRRC made three comments to the proposed rulemaking.

The first comment related to a discrepancy between information provided in the Regulatory Analysis Form (RAF) and the proposed rulemaking language. Although the RAF indicated that the Board had considered, but rejected, using the term "2 credits" rather than "25%" to indicate the number of credits that could be earned from independent study courses to meet the biennial continuing education requirement, the proposed rulemaking inadvertently used the term "2 credits." Because the Board intends that no more than 1/4 of the total credits required be obtained through independent study courses even if the number of total credits required should change, the Board determined that it would be appropriate to use the term "25%" rather than "2 credits." The final-form rulemaking has been corrected to use the term "25%."

The second comment questioned whether licensees would receive sufficient notice of the regulatory change to allow them to complete the continuing education requirement during the 2000-2002 biennial period. The Board has determined that the regulation will create no hardship to veterinarians. First, to May 28, 2001, the Board has not approved programs offering independent study continuing education credits for the current biennial period. Some independent study courses may be approved for credit during this biennial period. However, during the prior biennial renewal period (1998-2000), only seven credits from independent study courses were approved. It is, therefore, unlikely that implementing this new regulation for the 2000-2002 renewal period will have an immediate, significant impact on a large number of licensees. In addition, it is both convenient and inexpensive for veterinarians to obtain nonindependent study continuing education credits through the Pennsylvania Veterinary Medical Association or regional veterinary medical associations.

Finally, the HPLC and IRRC recommended that the regulatory language be amended so that veterinarians be required to "complete" 8 clock hours of continuing education biennially instead of the current requirement that veterinarians "attend" 8 clock hours of continuing education biennially. The Board agrees with this proposal and the change is reflected in this final-form rulemaking language.

In addition, IRRC commented that "the terms 'individual study or correspondence courses' are unclear."

Individual study courses are courses in which the licensee worked independently. Correspondence courses are courses when the licensee corresponds with the course provider rather than attending a lecture or wet lab. The Board finds that the terms are self-explanatory and do not need to be defined in the regulation.

IRRC also commented that the last sentence of § 31.15, which provides that independent study or correspondence courses must meet the requirements of § 31.16 (relating to continuing education provider approval), because § 31.16 immediately follows § 31.15 and because the first sentence of § 31.15 already requires that continuing education courses be approved by the Board. The Board believes that the sections should contain cross references, and declines to delete the last sentence of § 31.15.

Statutory Authority

The final-form regulation is authorized under section 18 of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.18). Section 18 of the act requires the Board to set standards for continuing education programs and continuing education requirements for licensees to ensure that veterinarians maintain currency in their profession.

Fiscal Impact and Paperwork Requirements

The final-form regulation will have no fiscal impact on the Commonwealth or its political subdivisions. In addition, the final-form regulation will create no additional paperwork for the Board or the private sector.

Compliance with Executive Order 1996-1

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the final-form regulation, the Board sent the text of the proposed rulemaking to interested parties, including State and regional veterinary medical associations, associations of animal health technicians and veterinary schools. In addition, the Board considered the final-form regulation as required by law.

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 30 Pa.B. 5969, to IRRC and to the Chairpersons of the HPLC and the Senate Committee on Consumer Protection and Professional Licensure.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board received no written comments from the public. Subsequent to the close of the public comment period, the Board received and considered comments from the HPLC and from IRRC.

The final-form regulation was approved by the HPLC on October 19, 2001, and was deemed approved by the Senate Consumer Protection and Professional Licensure Committee on October 25, 2001. IRRC met on November 1, 2001, and approved the final-form regulation in accordance with section 5(e) of the Regulatory Review Act.

Additional Information

Individuals who would like information about the final-form regulation may contact Robert Kline, Administrative Assistant, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4848.

Findings

The Board finds that:

(1) Public notice of intention to adopt the final-form regulation 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 thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form regulation is necessary and appropriate for the administration of the act.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending § 3.15 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval 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) The amendment shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

BRIAN V. HARPSTER, VMD,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 6358 (November 17, 2001).)

Fiscal Note: Fiscal Note 16A-5711 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

LICENSURE

§ 31.15. Continuing education.

As a condition of licensure renewal under § 31.13 (relating to licensure renewal), a veterinarian shall complete 8 clock hours of continuing education courses approved by the Board during the 24 months preceding the renewal date. Continuing education credit will not be given for a course in office management or practice building. A maximum of 25% of the hours may be earned by taking individual study or correspondence courses for which third-party verification of satisfactory completion is provided. The courses shall meet the requirements of § 31.16 (relating to continuing education provider approval).

[Pa.B. Doc. No. 01-2274. Filed for public inspection December 21, 2001, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Corrective Amendment to 49 Pa. Code § 41.1

The State Board of Psychology has discovered a discrepancy between the agency text of 49 Pa. Code § 41.1 (relating to definitions), as deposited with the Legislative Reference Bureau, and the text published at 28 Pa.B. 2412, 2413 (May 23, 1998) and the official text codified in the August 1998 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 285), and as currently appearing in the *Pennsylvania Code*. The definition of "doctoral degree in a field related to psychology" was inadvertently dropped at the time a 1998 amendment to another term was codified.

Therefore, under 45 Pa.C.S. § 901: The State Board of Psychology has deposited with the Legislative Reference Bureau a corrective amendment to 49 Pa. Code § 41.1. The corrective amendment to 49 Pa. Code § 41.1 is effective as of August 1, 1998, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 49 Pa. Code § 41.1 appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 49. PROFESSIONAL AND
VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND
OCCUPATIONAL AFFAIRSCHAPTER 31. STATE BOARD OF PSYCHOLOGY
GENERAL

§ 41.1. Definitions.

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

* * * * *

Doctoral degree in a field related to psychology—A degree awarded upon successful completion of a program which meets the following criteria or which is approved by the Board under § 41.31(b)(3) (relating to qualifications for taking licensing examination):

- (i) Offers training in an accredited college or university.
- (ii) Wherever the program is administratively housed and regardless of what it is called or what other disciplines it encompasses, clearly demonstrates to the satisfaction of the Board, in pertinent institutional catalogs and brochures, that it provides education and training appropriate to the practice of psychology.
- (iii) Stands as a recognized sequence within the overall program or department.
- (iv) Comprises an integrated, organized sequence of study.
- (v) Provides in its core program required instruction in ethics as they relate to scientific methods and professional standards, research design and methodology, statistics and psychometrics. In addition, requires students to demonstrate competence in each of the following four substantive content areas (this criterion will typically be met by requiring a minimum of three graduate semester hours in each area): biological bases of behavior—for example, physiological psychology, comparative psychol-

ogy, neuropsychology, sensation and perception, psychopharmacology; cognitive-affective bases of behavior—for example, learning, thinking, motivation, emotion; social bases of behavior—for example, social psychology, group processes, organizational and systems theory; individual differences—for example, human development, personality theory, abnormal psychology.

(vi) Includes supervised practicum, internship, field or laboratory training.

(vii) Includes course requirements in specialty areas of psychology.

(viii) Ensures that instruction, supervision and training in the areas enumerated in subparagraphs (v)—(vii) are appropriate to the practice of psychology. Considerations pertinent to this requirement are the psychological content and focus of courses and training, irrespective of title, and the psychological qualifications of the instructor—for example, professional identification, membership in professional organizations, licensure status.

(ix) Requires degree candidates to complete a combined total of at least 60 graduate semester hours in the areas described in subparagraphs (v)—(vii).

(x) Has a residency requirement that each degree candidate complete a minimum of two consecutive academic semesters as a matriculated student physically present at the institution granting the degree.

Doctoral degree in psychology—A degree awarded upon successful completion of a program in psychology which is accredited by the American Psychological Association (APA) or which is designated by the Association of State and Provincial Psychology Boards (ASPPB) or by other designating groups acceptable to the Board; which is approved by the Board under § 41.31(b)(3); or which meets the following criteria:

- (i) Offers training in an accredited college or university.
- (ii) Is clearly identified and labeled as a psychology program, wherever it is administratively housed. Pertinent institutional catalogs and brochures shall specify the intent of the program to educate and train professional psychologists.
- (iii) Stands as a recognizable, coherent organizational entity within the institution.
- (iv) Clearly demonstrates authority and primary responsibility for the required core program (see subparagraph (viii)) and specialty areas (see subparagraph (x)), and for the admission, evaluation and recommendation of students for degrees, whether or not the degree program cuts across administrative lines.
- (v) Comprises an integrated, organized sequence of study.
- (vi) Has an identifiable psychology faculty who provide basic instruction in psychology and a psychologist who is responsible for the program.
- (vii) Has an identifiable body of students who are matriculated in the program for the purpose of qualifying for a degree.

(viii) Provides in its core program required instruction in ethics as they relate to scientific methods and professional standards, research design and methodology, statistics and psychometrics. In addition, requires students to demonstrate competence in each of the following four substantive content areas (this criterion will typically be met by requiring a minimum of three graduate semester hours in each area): biological bases of behavior—for

example, physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology; cognitive-affective bases of behavior—for example, learning, thinking, motivation, emotion; social bases of behavior—for example, social psychology, group processes, organizational and systems theory; individual differences—for example, human development, personality theory, abnormal psychology.

(ix) Includes supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

(x) Includes course requirements in specialty areas of psychology.

(xi) Requires degree candidates to complete a combined total of at least 60 graduate semester hours in the areas described in subparagraphs (viii)—(x).

(xii) Has a residency requirement that each degree candidate complete a minimum of two consecutive academic semesters as a matriculated student physically present at the institution granting the degree.

* * * * *

[Pa.B. Doc. No. 01-2275. Filed for public inspection December 21, 2001, 9:00 a.m.]
