

PROPOSED RULEMAKING

COMMISSION ON CRIME AND DELINQUENCY

[37 PA. CODE CH. 421]

Deputy Sheriff's Education and Training Board

The Commission on Crime and Delinquency (Commission) and its Deputy Sheriffs' Education and Training Board (Board) are publishing this proposed rulemaking that would amend Chapter 421 (relating to Deputy Sheriffs' Education and Training Board). The proposal is made under the authority of sections 5—7 of the Deputy Sheriffs' Education and Training Act (act) (71 P. S. §§ 2105—2107). The most significant aspect of the proposal is an expansion of the curriculum of basic training that a deputy sheriff is required to undergo within 1 year of the deputy's hiring. The proposed regulation is set forth in Annex A.

A. Effective Date

The proposed regulation will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

B. Statutory Authority

The regulations are proposed under the authority of sections 5 and 6 of the act.

C. Background and Purpose

Legislation enacted in 1984 established the Board as an advisory board to the Commission. See section 3(a) of the act (71 P. S. § 2103(a)). Among other things, the act directed that a deputy sheriff may not receive compensation for the performance of duties as a deputy sheriff unless the officer is certified by the Board as having completed an initial basic training course of up to 160 hours and biennial continuing education of up to 20 hours. See section 7 of the act. During its 16-year history, the Board has trained and certified approximately 3,000 deputy sheriffs.

Deputy sheriffs perform a variety of duties, the extent of which varies among the 67 counties. These duties include serving complaints, summons, subpoenas, Protection from Abuse (PFA) orders and other legal documents in civil matters, levying on goods and performing other duties related to execution proceedings, providing courtroom security and transporting prisoners, executing arrest warrants and performing other duties in criminal matters, conduct of background checks and issuance of licenses and permits in connection with State and Federal firearms acts, patrol, participating in multi-agency DUI and drug task forces, and community service efforts such as crime prevention initiatives, Drug Abuse Resistance Education (DARE) for youth and Pennsylvania Weed and Seed.

In 1994, the Pennsylvania Supreme Court issued the decision of *Commonwealth v. Leet*, 641 A2d 299 (Pa. 1994), which involved a deputy sheriff who had arrested a motorist after witnessing a moving violation. The motorist challenged the legality of the arrest on the grounds that the deputy sheriff was not a "police officer" as defined by the Vehicle Code. The county court and the Superior Court on appeal agreed that the arrest was illegal. The Supreme Court disagreed, declaring that

English common law traceable to the 11th Century bestows on modern Pennsylvania sheriffs and their deputies the power "to make arrests without warrant for felonies and for breaches of the peace committed in [their] presence." 641 A2d at 303. The Court stressed that no statute has ever taken away this common law power. *Id.*

The Court, however, attached a significant condition to the exercise by a deputy sheriff of this power of arrest. It acknowledged the argument "that to protect public safety, anyone who enforces the motor vehicle laws should be required to undergo training appropriate to the duties." *Id.* Noting that "[p]olicemen are required to undergo training appropriate to the duties," *id.* (citing the Municipal Police Officers' Education and Training Act, known as "Act 120"), the Court then stated:

We deem this requirement to apply equally to sheriffs who enforce motor vehicle laws. Thus a sheriff or deputy sheriff would be required to complete *the same type of training* that is required of police officers throughout the Commonwealth.

Id. (emphasis added).

In 1998, the General Assembly passed legislation that would enable the Board to expand its training program. Act 10 of 1998 provided the Board with substantially increased revenue by raising the surcharge rate that is assessed by the judicial system when a sheriff's office serves legal papers.

Act 10 of 1998 also amended the language relating to hours of basic training. Previously, the language directed the Board to conduct a basic training course of "up to 160 hours." Based on the 1998 amendment changing this language to "no less than 160 hours," the Board undertook extensive curriculum planning and solicited voluminous input from the regulated community as to the appropriate number of hours and substantive content of the Board's basic training course. As of 1998-1999, the curriculum for the course consisted of 160 hours' instruction in the topics set forth in § 421.11 (relating to operating procedures) of the Board regulations. These topics trained new deputies for their traditional roles of serving civil process, providing security in court facilities and transporting prisoners. In recent years, the Board sought to expand the number of hours allocated to these traditional topics, so as to better prepare new deputies for their traditional rules. Moreover, based largely on the input received from sheriffs and deputy sheriffs in 1999, the Board adopted a goal of augmenting the traditional curriculum with certain law enforcement topics, such as motor vehicle code enforcement, patrol procedures and investigative techniques.

The Board's introduction of law enforcement topics into its basic training curriculum would provide deputies who successfully complete the course with training similar to the training provided in those topics to municipal police officers under Act 120. In the view of the Board, and of many in the Board's regulated community, deputies who are trained in a basic training curriculum that is in parity with that of the Municipal Police Officers Education and Training Commission (MPOETC) will possess the capability of, among other things, making lawful arrests during vehicle stops. The Board's legal rationale derives from two decisions of the Pennsylvania Supreme Court: *Commonwealth v. Leet*, 641 A2d 299 (Pa. 1994), and *Commonwealth v. Kline*, 741 A2d 1281 (Pa. 1999). In *Kline*, the Court upheld the legality of an arrest made by

a deputy sheriff on a vehicle code charge. The Court held that, because the deputy had received training similar to that given by MPOETC, he was legally empowered to make an arrest.

In designing the expanded curriculum, the Board recognizes that training covering all topics considered important for law enforcement, in addition to those topics traditionally taught to new deputies, is needed to adequately prepare deputies for all of their potential roles. The initial development report of the Board's training development contractor, Temple University Department of Criminal Justice, identified a list of topics with a potential total length that approximated 760 hours. The Board in ensuing discussions chose to develop curriculum expansion in an incremental manner. An incremental approach would allow for a focused use of curriculum development resources, would provide the training resources needed to continue certification of deputies as the curriculum is developed, and would ultimately meet the judicial requirements for training parity in law enforcement functions.

The first step was to create a core curriculum of approximately 560 hours of entry-level topics. A 560-hour pilot course was conducted from July through October 2000 at Pennsylvania State University's Institute for Continuing Justice Education and Research, in State College. A second 560-hour course is currently underway.

Following pilot testing and production of final curriculum documentation of the 560-hour course, the development effort will focus on the remaining estimated 200 hours of law enforcement-related topics. Development of the additional 200 hours is projected to begin in early 2001, with implementation of the expanded curriculum upon final approval of a regulation in accordance with this rulemaking.

D. Description of Proposed Regulation.

§ 421.1. Definitions

New definitions are added for the terms "basic training," "Commission," "continuing education" and "waiver." The definition of "school" is amended.

§ 421.3. Training required.

The change in subsection (a) would eliminate citation to a specific portion of the act, replacing it with a generic reference that would remain valid even if the act were to be restructured. Language is proposed to clarify that the regulation itself, in addition to the act, dictates the substance of basic training, and that the Board will establish the number of hours of basic training within the requirements of the act.

Language is deleted in subsection (b) pertaining to special provisions needed when the Board was created in 1984 and that are now anachronistic. Language is proposed for continuing education requirements parallel to the basic training requirements in subparagraph (a).

A provision is added that sets forth that a deputy sheriff must pass each written test and demonstrate proficiency in all practical skills in order to successfully complete basic training or continuing education.

§ 421.4. Waiver of training.

This provision currently consists of one sentence stating that a training waiver request shall be made on a form supplied by the Board. This sentence is proposed for deletion, because it sets forth a simple procedural requirement that does not need to be set forth in a regulation. Language is proposed that would describe the

two kinds of waivers of training granted by the Board: (a) the grant of additional time to complete a training requirement, given for cause; and (b) a reduction in the number of hours required generally, given in recognition of prior education, training or experience.

§ 421.5. Code of conduct.

This new provision would authorize the Board or school to establish and enforce attendance and conduct rules.

§ 421.11. Basic training.

The proposed amendment would replace nine listed basic training topics with 24 topics. The nine original topics are either incorporated verbatim into the new list ("Firearms" and "Related Social Sciences"), are renamed or are subsumed into new topics. Included in the new topics are law enforcement-related topics such as criminal investigation, motor vehicle code and enforcement and patrol procedures and operations. The amended paragraph will allow the Board to make future adjustments to the curriculum topics without having to amend the regulation.

§ 421.12. Continuing education.

This new provision on continuing education curriculum is designed to complement the provision in § 421.11 for basic training. However, it is much simpler than the basic training's listing of 24 topics, to accommodate the Board's frequent changing of continuing education topics to keep the training varied and innovative.

§ 421.31. Reimbursement to counties.

The proposed language would amend subsections (a) and (b) to clarify the reimbursement procedures currently practiced by the Commission. Specifically, counties may apply to the Commission for reimbursement of various items that the counties have paid to their deputies who attend training. Counties need not apply to the Commission for the tuition costs or room and board for those deputies who stay overnight during basic training sessions, as the Board provides these items directly to the deputies free of charge.

Minor language changes are proposed to subsections (c) and (d).

Subsections (e) and (g) are proposed for deletion because they address routine administrative matters that need not be part of an agency's regulations.

In subsection (f), language is proposed for deletion that covers routine administrative matters.

§ 421.32. Restrictions on reimbursement.

In subsection (c), reference to reimbursement "for up to 20 hours of training" for continuing education would be deleted to reflect the 1998 statutory change authorizing the Board to set the hourly requirement for continuing education at "not less than 20 hours."

E. Affected Persons.

Those directly affected by the proposed rulemaking are the newly-hired deputy sheriffs who are required to undergo mandated training. As of November 1, 2000, approximately 3,000 deputies had been trained and certified by the Board. During the years 1995—2000, deputies seeking certification ranged from 150 to 210 each year. Also affected are the sheriffs' offices and county governments in each of the 67 counties, which send new deputies to Board training and which, under the act, shall be responsible for half of the salary of the applicable participants.

Those indirectly affected are participants in the Commonwealth's judicial system, including judges or other employees, those charged with criminal offenses, litigants in civil matters or witnesses in any judicial matter.

F. *Compliance with Executive Order 1996-1.*

In designing the upgraded basic training program, the Commission staff on behalf of the Board conducted extensive public outreach to those likely to be affected. Approximately 1,700 job/task analysis surveys were distributed to sheriffs and deputy sheriffs, resulting in 680 responses from 57 of the State's 67 sheriffs' offices. The total of 680 responses were broken down as follows: 29 sheriffs (43.2% of all sheriffs), 41 chief deputies (61.2% of all chief deputies), and 610 deputy sheriffs (42.6% of all deputies). Subsequent to the initial analysis of survey responses, the Board and Temple University, the Board's training consultant, convened a series of focus group meetings to elicit input. All 67 sheriffs were invited to attend the meetings and send their chief deputies. In addition, each office was invited to send two deputy sheriffs to the meeting. A total of six groups met in August 1999, two each in Allentown, Harrisburg and Pittsburgh. A total of 25 departments participated in the focus groups, including 16 sheriffs, 18 chief deputies and 30 deputy sheriffs. Members of the Board and Commission staff attended all of the sessions. In addition, the Commission distributed deputy sheriffs training bulletins to sheriffs' offices, county governments and other interested parties. Quarterly Board meetings during the time the upgrade was being considered were synchronized with the meetings of the Pennsylvania Sheriffs' Association and the Deputy Sheriffs' Association of Pennsylvania, to maximize participation at the Board meetings.

Subsequent to the initial development of the programs, the Board has communicated extensively with its regulated community. Training bulletins are disseminated periodically to update sheriffs, deputy sheriffs, county and municipal officials, on any operational or curriculum changes. The Board conducts quarterly meetings, and it has been its custom to hold at least two of its four meetings a year in a location removed from Harrisburg. For example, the September 1999 meeting was held in Pittsburgh and the meetings of July 2000 and October 2000 were held in State College.

It should be noted that the composition of the 10-person Board as mandated by the act promotes effective development of public input and advocacy. Specifically, three members of the Board are required to be a current or former deputy sheriff, two are sheriffs, two are common pleas judges, one is an educator and one a county commissioner. Each of these members is appointed by the Governor. The tenth member is the Attorney General or designee. The Board currently includes the Executive Director of the Deputy Sheriffs' Association of Pennsylvania and the President of the Pennsylvania Sheriffs' Association.

G. *Fiscal Impact and Paperwork Requirements*

The proposed amendments will have no added paperwork requirements and minimal fiscal impact on the Commonwealth. Section 8 of the act (71 P.S. § 2108), provides that the various training programs shall be funded by a special restricted account within the General Fund known as the Deputy Sheriffs' Training Account. The fund accumulates through surcharges assessed on all sheriffs' fees for service of legal papers. Using proceeds from the account, the Board is able to provide training that is free of charge to deputy sheriffs. Despite added

costs to the Training Account from an expanded curriculum, the Board anticipates that revenues will continue to exceed expenses into the near future due to increased surcharge rates ordered by the General Assembly in 1998. The Board anticipates added fiscal impact for the 67 counties that will send their deputy sheriffs to expanded basic training. Because the curriculum as proposed will require deputies to attend school longer, counties may experience increased overtime expenses to cover for the officers who are away at school. The act requires counties to pay the full salary of a deputy sheriff while attending school, the Commission reimbursing the county for 50% of the salary costs.

H. *Sunset Date*

The Board will review the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 25, 2001, the Commission submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Judiciary Committee and the Senate Judiciary Committee. In addition to submitting this proposed rulemaking, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion.

The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by IRRC, the General Assembly and the Governor of objections raised.

J. *Public Comment and Questions*

Interested persons are invited to submit written questions or comments regarding the proposed rulemaking to Gerard M. Mackarevich, Chief Counsel, Commission on Crime and Delinquency, P. O. Box 1167, Harrisburg, PA 17108-1167, within 30 days of publication of this proposed rulemaking. Questions and comments may also be sent via electronic mail to gmackarevi@state.pa.us, or by facsimile to Gerard Mackarevich's attention at PCCD's Civil and Criminal Training Division (717) 783-7139.

THOMAS W. CORBETT, Jr., Esq.,
Chairperson
Pennsylvania Commission on
Crime and Delinquency

COMMANDER CARMEN DELUCA,
Chairperson
Deputy Sheriffs' Education and
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Fiscal Note: 35-28. (1) General Fund; (2) Implementing Year 2000-01 is \$0; (3) 1st Succeeding Year 2001-02 is \$552,622; 2nd Succeeding Year 2002-03 is \$642,622; 3rd Succeeding Year 2003-04 is \$642,622; 4th Succeeding Year 2004-05 is \$733,622; 5th Succeeding Year 2005-06 is \$750,000; (4) Fiscal Year 1999-00 \$1,176,836; Fiscal Year 1998-99 \$624,979; Fiscal Year 1997-98 \$640,366; (7) Deputy Sheriffs' Education and Training Account; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART VI. COMMISSION ON CRIME AND DELINQUENCY

CHAPTER 421. DEPUTY SHERIFFS' EDUCATION AND TRAINING BOARD

GENERAL PROVISIONS

§ 421.1. Definitions.

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

* * * * *

Basic training—A course of training administered by the Deputy Sheriffs' Education and Training Board that the act requires for newly-hired deputy sheriffs.

* * * * *

Continuing education—A course of training administered by the Board that the act requires previously-certified deputy sheriffs to complete periodically to maintain certification.

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School—A [school operated] facility approved by the Board to [teach basic or inservice deputy sheriff training courses] conduct training on the Board's behalf pursuant to a contract between the facility and the Commission.

Waiver—The Board's grant of approval for a deputy sheriff for reduced training hours in recognition of the deputy sheriff's prior education, training or experience or for additional time to complete a training requirement.

§ 421.3. Training required.

(a) A newly-hired deputy sheriff is required to undergo basic training as [set forth in sections 5—7 of the act (71 P. S. §§ 2105—2107)] required by the act and by this chapter in the amount of hours established by the Board.

(b) [A deputy with less than 5 years of experience shall complete 160 hours of basic training, as established by the Board, by August 9, 1986. A deputy hired after July 1, 1985 shall complete the 160 hours of basic training within 1 year of the date-of-hire.] A deputy sheriff holding Board certification is required to undergo continuing education as required by the act and by this chapter in the amount of hours established by the Board.

(c) To successfully complete basic training or continuing education, a deputy sheriff shall attain at least a minimum score established by the Board on each written test and shall demonstrate proficiency in all practical skills.

§ 421.4. Waiver of training.

[When a deputy sheriff requests a waiver of training under section 7(b) of the act (71 P. S. § 2107(b)), the request shall be made on a form supplied by the Board.]

(a) The Board upon request and for cause shown may grant additional time for a newly-hired deputy sheriff to fulfill the basic training requirements of the act.

(b) The Board upon request may grant a deputy sheriff a reduction in the hours of training generally required. The waiver determination will be based upon the Board's evaluation of the prior education, training or experience of the deputy sheriff pursuant to criteria set forth by the Board.

§ 421.5. Code of conduct.

(a) The Board or school may establish reasonable rules governing attendance and conduct expected of a deputy sheriff who is attending training required under the act.

(b) Violations of attendance policy or departures from the expected standards of conduct may result in the Board's imposition of disciplinary sanctions, which may include expulsion from the training or denying or withdrawing certification.

CURRICULUM

§ 421.11. Basic training [course].

[The Deputy Sheriffs' Basic Training Course shall be presented as established by the Board and shall consist of] The Board will determine the curriculum for basic training, which will include at least the following topics:

- (1) [Introduction to the powers and duties of sheriffs and deputy sheriffs.
- (2) Firearms.
- (3) Prisoner control.
- (4) Emergencies and civil disorders.
- (5) Courtroom security.
- (6) Emergency medical care.
- (7) Civil process and law.
- (8) Criminal law.
- (9) Related social sciences.]
- Civil law and procedure.
- (2) Communications.
- (3) Control and defensive tactics.
- (4) Courtroom security.
- (5) Crimes Code and criminal procedure.
- (6) Criminal investigation.
- (7) Criminal justice system and law enforcement.
- (8) Crisis intervention.
- (9) Cultural diversity and ethnic intimidation.
- (10) Emergency management.
- (11) Emergency vehicle operation.
- (12) Ethics and professional development.
- (13) Families in crisis and domestic violence.
- (14) Firearms.
- (15) First aid and cardio-pulmonary resuscitation.
- (16) Motor vehicle code and enforcement.
- (17) Patrol procedures and operations.
- (18) Physical conditioning.

- (19) Physical and judicial security.
- (20) Prisoner transportation.
- (21) Related social sciences.
- (22) Related legal issues.
- (23) Special needs groups.
- (24) Unified court system.

§ 421.12. Continuing education.

Continuing education will consist of topics to be determined periodically by the Board.

REIMBURSEMENT OF EXPENSES

§ 421.31. Reimbursement to counties.

(a) [A] Except for those items that the Board provides directly to a deputy sheriff, a county shall initially pay the deputy sheriff's ordinary and necessary living and travel expenses [of a deputy sheriff while the deputy is attending a school operated by the Board] in connection with training.

(b) [The] Upon application by a county, the Commission will provide reimbursement as set forth in section 9 of the act (71 P. S. § 2109) for items paid by the county.

(c) Reimbursement will be given only for attendance at a school as defined in [§ 421.1 (relating to definitions)] this chapter.

(d) The county may apply to the Commission for reimbursement, on a form to be supplied by the Commission, at the conclusion of the required [basic] training [or continuing education course,] for each deputy sheriff who has attended the course.

(e) [Requests shall be submitted by the county to the Commission within 30 days after the training is completed. A separate form shall be submitted for each deputy sheriff who attends the training course under the act.

(f)] Reimbursement will be limited to the following:

* * * * *

[(g) If the Commission determines that the applicant and request for reimbursement meet the requirements of the act and this part, the Executive Director will issue written approval.

(h)] (f) If the Commission determines that the application and request for reimbursement do not meet the requirements of the act and this part, the Executive Director will [specify in writing and forward to the applicant, by certified mail, return receipt requested,] notify the county and specify the reasons upon which the adverse determination is based.

§ 421.32. Restrictions on reimbursement.

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(c) A county will be reimbursed once, [for up to 20 hours of training,] for each deputy sheriff attending a certified continuing education course within a 2-year period.

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[Pa.B. Doc. No. 01-217. Filed for public inspection February 9, 2001. 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 221, 227 AND 228]

Radiological Health

The Environmental Quality Board (Board) proposes to amend Chapters 221, 227 and 228 (relating to X-rays in the healing arts; radiation safety requirements for analytical X-ray equipment, X-ray gauging equipment and electron microscopes; and radiation safety requirements for particle accelerators). The proposed amendments update the standards for protection against radiation.

This proposal was adopted by the Board at its meeting on October 17, 2000.

A. Effective Date

These proposed amendments will become effective immediately upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, the contact persons are William Kirk, Chief, Radiation Control Division, Bureau of Radiation Protection, 13th Floor, Rachel Carson State Office Building, P. O. Box 8469, Harrisburg, PA 17105-8469, (717) 787-2480; and Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, RCSOB, 9th Floor, 400 Market Street, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

C. Statutory Authority

These amendments are proposed under the authority of the following statutes:

Sections 301 and 302 of the Radiation Protection Act (act) (35 P. S. §§ 7110.301 and 7110.302) which, respectively, direct the Department to develop and conduct comprehensive programs for the registration, licensing, control, regulation and inspection of radiation sources and radiation source users, and delegates to the Board the power to adopt the regulations of the Department to implement the act.

Section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes and directs the Board to adopt regulations necessary for the proper performance of the work of the Department.

D. Background and Purpose

The proposed amendments, for the most part, correct printing errors, clarify existing wording or modify existing wording to accommodate changes in equipment since the last amendments.

The only major change is the addition of four new sections in Chapter 227 for the purpose of specifically extending X-ray protection requirements to X-ray calibration systems. Accompanying changes in the chapter title, contents, general provisions and definitions are also recommended. These sections were originally proposed and approved by the Radiation Protection Advisory Committee (RPAC) in 1998 as part of Chapter 225 (relating to radiation safety requirements for industrial radiographic operations) which pertains to industrial radiography. The Department decided, however, that these regulations would be more appropriately placed in Chapter 227, which deals with miscellaneous X-ray equipment.

As required by section 301(c)(14) of the act, the Department provided the RPAC with an opportunity to review the proposed amendments and to advise the Department prior to submittal to the Board. On May 10, 2000, the RPAC met and reviewed the proposed amendments. The Chairperson announced by letter dated May 17, 2000, the committee's concurrence to forward the proposed regulations to the Board.

E. Summary of Regulatory Requirements

A description of the proposed amendments is provided as follows:

Chapter 221, X-Rays in the Healing Arts

§ 221.11. Registrant responsibilities.

Subsection (h)(4) is being deleted. Similar language exists in § 221.56, which is being relocated to this section and renumbered as subsections (m)—(p). This consolidation of requirements was inadvertently omitted in the previous revisions to this chapter.

Subsection (k) is being modified to provide some regulatory flexibility. The proposal changes "shall" to "should" to make using spectrally compatible film and screen system a recommendation rather than a mandatory requirement. This change is necessary due to the wide range of spectral characteristics of X-ray films on the market today, which makes it difficult for practitioners to maintain an exact match.

Subsection (l) is being modified to allow the Department to establish guidelines for quality assurance programs rather than adopting guidelines from specified "accredited" organizations. This change will make it easier for the Department to add and change guidelines as needed without specifically acknowledging each new quality assurance guideline issued by medical specialty organizations.

§ 221.13. Information to be submitted by persons proposing to conduct healing arts screening.

Paragraph (14) is being modified to clarify that mammography facilities must comply with 21 CFR Part 900 (relating to mammography).

§ 221.29. Kilovoltage accuracy.

Section 221.29 is being modified to clarify that the 10% variation permitted under the existing language applies only to the range of technique factors used.

§ 221.32a. Beam limitation.

Subsection (d)(1) is being modified to state that the requirement for an indicator only applies to machines having a variable angle between the X-ray beam axis and the image receptor plane and to exempt portable and mobile X-ray units from the requirement. Typically, these units do not have this type of indicator.

§ 221.33a. Radiation from capacitor energy storage equipment in standby status.

Section 221.33a is being modified to correct a typographical error in the published text. The unit should be 0.516 $\mu\text{C}/\text{kg}$ rather than 0.516 $\mu\text{mC}/\text{kg}$. The unit as currently published is a factor of 1,000 lower than intended.

§ 221.36a. Limitation of useful beam of fluoroscopic equipment.

Subsection (d) is being modified to adopt the wording used by the Food and Drug Administration in 21 CFR 1020.32(b) (relating to fluoroscopic equipment). This eliminates confusion regarding the permissible size and shape of the useful beam.

§ 221.56. Administrative controls.

This section is deleted and moved to § 221.11 as new subsections (m)—(p). No changes in the text are proposed.

§ 221.202. Equipment requirements.

Subsection (c) is being modified to delete paragraph (2), relating to an audible signal indicating termination of exposure. This change is recommended because many units do not have such a feature which is not required by the Food and Drug Administration.

Chapter 227. Radiation Safety Requirements for Analytical X-ray Equipment, X-ray Gauging Equipment and Electron Microscopes.

This chapter is being modified to add four new sections under the heading titled X-ray Calibration Systems. These sections were originally proposed and approved by the RPAC in 1998 as part of Chapter 225 which pertains to industrial radiography. The Department decided, however, that the content would be more appropriately placed in Chapter 227, which deals with miscellaneous X-ray equipment. These sections are needed to specifically extend X-ray protection requirements to this type of operation, which is becoming more common. The chapter title, contents, general provisions and definitions were also changed to reflect the new sections.

Chapter 228. Radiation Safety Requirements for Particle Accelerators.

Changes to §§ 228.22a and 228.36 are being recommended for purposes of clarification.

§ 228.22a. Issuance of specific licenses.

Section 228.22a contains a minor revision recommended by the RPAC. The RPAC felt that, by definition, if an application met the requirements of the act and article, the operation would not be "inimical to the safety of the public" as indicated in subsection (a). As such, it recommended that the phrase be removed from subsection (a).

§ 228.36. Radiation monitoring requirements.

This section is modified to provide that: (1) an independent radiation monitoring system be provided so that the individuals entering or present become aware of the existence of the hazard; and (2) that the system be tested for response, rather than calibrated, at least annually and after servicing or repair. The Department and the RPAC

agree that calibration, which implies that the response be accurate within a specified limit, is not necessary for this function.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

As set forth in this proposal, users of X-ray machines and particle accelerators will benefit from the regulations being clarified to conform better to present equipment and installations and elimination of a 1,000-fold error in units in § 221.33a. The additions to Chapter 227 specifically extend the safety requirements set forth for other types of X-ray installation to X-ray calibration systems.

Compliance Costs

The compliance costs under the proposed amendments should not differ appreciably from the costs presently incurred.

Compliance Assistance Plan

Compliance assistance requirements are expected to be negligible. Outreach and assistance will be provided by regional inspectors and technical staff in the Radiation Control Division.

Paperwork Requirements

No additional paperwork will be required under these proposals.

G. *Sunset Review*

These regulation 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.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendments on January 29, 2001, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committee's review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor, and the General Assembly before final publication of the regulation.

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by March 12, 2001 (within 30 days following publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to

the Board. The summary may not exceed one page in length and must be received by Marcy 12, 2001 (within 30 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us and must also be received by the Board by March 12, 2001. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-360. No fiscal impact; (8) recommends adoption.

Annex A

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

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE V. RADIOLOGICAL HEALTH

CHAPTER 221. X-RAYS IN THE HEALING ARTS

ADMINISTRATIVE CONTROLS

§ 221.11. Registrant responsibilities.

* * * * *

(h) If a patient or film requires auxiliary support during a radiation exposure the following apply:

* * * * *

[(4) For intraoral dental radiography, neither the tube housing nor the cone shall be held during an exposure.]

* * * * *

(k) The screen and film system used **[shall] should** be spectrally compatible and evaluated with respect to screen condition to assure proper system speed. Film cassettes without intensifying screens may not be used for any routine diagnostic radiological imaging, with the exception of standard dental radiography film packets.

(l) The registrant shall have a quality assurance program. This quality assurance program shall be in accordance with guidelines **[promulgated by the ACR, the AAPM or another accredited organization] established by the department.**

(m) A dentist or an assistant may not hold patients or film during exposures.

(n) Only the patient shall be in the useful beam.

(o) Neither the tube housing nor the cone may be hand-held during the exposure.

(p) Intraoral fluoroscopy may not be used in dental examinations.

§ 221.13. Information to be submitted by persons proposing to conduct healing arts screening.

A person requesting that the Department approve a healing arts screening program shall submit in writing

the following information and evaluation. If information submitted to the Department becomes invalid or outdated, the registrant shall immediately notify the Department.

* * * * *

(14) [This section does not apply to operations conducted by registrants under] mammography facilities shall comply with 21 CFR Part 900 (relating to mammography).

DIAGNOSTIC INSTALLATIONS GENERAL REQUIREMENTS

§ 221.29. Kilovoltage (kV) accuracy.

The kV output may not vary from the set-indicated value by more than 10% over the range of technique factors normally used. Discrepancies of more than 10% between set-indicated [-] and measured kV values shall be investigated by a qualified expert or service engineer and appropriate action taken.

§ 221.32a. Beam limitation.

* * * * *

(d) A means shall be provided to:

(1) Indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor if the angle between the axis of the X-ray beam and the plane of the image receptor is variable. This paragraph does not apply to portable and mobile units.

* * * * *

§ 221.33a. Radiation from capacitor energy storage equipment in standby status.

Radiation emitted from an X-ray tube when the exposure switch or timer is not activated may not exceed a rate of 2 milliroentgens (0.516 μ [m]C/kg) per hour at 5 centimeters from an accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

§ 221.36a. Limitation of useful beam of fluoroscopic equipment.

* * * * *

(d) The minimum field size at the greatest source to image receptor distance shall be [equal to or less than 25 square centimeters] containable in a square of 5 centimeters by 5 centimeters unless otherwise provided in 21 CFR 1020.32(b) (relating to fluoroscopic equipment).

* * * * *

§ 221.56. [Administrative controls] (Reserved).

[(a) A dentist or an assistant may not hold patients or film during exposures.

(b) Only the patient shall be in the useful beam.

(c) Neither the tube housing nor the cone may be hand-held during the exposure.

(d) Intraoral fluoroscopy may not be used in dental examinations.]

§ 221.202. Equipment requirements.

* * * * *

(c) Status indicators and control switches.

* * * * *

(2) [A signal, audible to the operator, shall indicate that the exposure has terminated.

(3)](2) * * *

[(4)](3) * * *

* * * * *

CHAPTER 227. RADIATION SAFETY REQUIREMENTS FOR ANALYTICAL X-RAY EQUIPMENT, X-RAY GAUGING EQUIPMENT [AND], ELECTRON MICROSCOPES AND X-RAY CALIBRATION SYSTEMS

GENERAL PROVISIONS

§ 227.1. Purpose and scope.

This chapter establishes the requirements for the use of analytical X-ray equipment, X-ray gauging equipment [and], electron microscopes and X-ray calibration systems. Registrants who use analytical X-ray equipment, X-ray gauging equipment [or], electron microscopes or X-ray calibration systems shall comply with this chapter. The requirements of this chapter are in addition to, and not in substitution for, other applicable provisions of this article.

§ 227.2. Definitions.

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

* * * * *

X-ray calibration systems—Radiation-producing machines and equipment used to calibrate radiation detection or measuring devices.

* * * * *

X-RAY CALIBRATION SYSTEMS

§ 227.101. Scope.

This section and §§ 227.102—227.104 apply to registrants who calibrate equipment used to measure the output of radiation for medical diagnosis and therapy, or for radiation survey meters and similar instrumentation.

§ 227.102. Area Requirements.

A room or enclosure used for calibration shall be shielded so that every location on the exterior meets conditions for an unrestricted area, and the only access to the room or enclosure is through openings which are interlocked so that the radiation source will not operate unless all openings are securely closed and meet the requirements of 10 CFR 20.1601 (relating to control of access to high radiation areas).

§ 227.103. Operating requirements.

(a) The operator shall conduct a physical radiation survey to determine that the radiation machine X-ray tube is de-energized prior to each entry of any body part into the radiographic exposure area.

(b) As an alternative to subsection (a), the registrant may use an independent radiation monitoring system that displays the radiation intensity or displays when radiation levels have returned to their pre-irradiation levels.

§ 227.104. Personnel Requirements.

A registrant may not permit an individual to operate or conduct maintenance on any X-ray calibration system until the individual has received a copy of, instruction in, and demonstrated an understanding of, the operating procedures necessary to ensure radiation safety.

**CHAPTER 228. RADIATION SAFETY
REQUIREMENTS FOR PARTICLE ACCELERATORS
NOTIFICATION AND LICENSING PROCEDURES**

§ 228.22a. Issuance of specific licenses.

(a) Upon determination that an application meets the requirements of the act [,] and this article, [and the operation of the facility will not be inimical to the safety of the public,] the Department will issue a specific license authorizing the proposed activity and containing conditions and limitations as it deems appropriate or necessary.

* * * * *

§ 228.36. Radiation monitoring requirements.

[(a) In addition to the requirements of §§ 219.91 and 219.154 (relating to control of access to high radiation areas; and posting of high radiation areas) an] LAN independent radiation monitoring system shall be provided so that the individuals entering or present become aware of the existence of the hazard. Independent radiation monitors shall be [calibrated] tested for response at least annually and after each servicing or repair.

[(b) The calibration of the independent radiation monitoring system described in subsection (b) shall verify the response of the instrument to radiation fields of different intensity, and does not require complete accuracy with respect to radiation energy if the accelerator produces radiations greater than 3.0 MeV.]

[Pa.B. Doc. No. 01-218. Filed for public inspection February 9, 2001, 9:00 a.m.]

**[25 PA. CODE CHS. 261a, 271 AND 272]
Household Hazardous Waste**

The Environmental Quality Board (Board) proposes to amend Chapters 261a, 271 and 272 (relating to identification and listing of hazardous waste; municipal waste management—general provisions; and municipal waste planning, recycling and waste reduction).

These proposed amendments include regulations governing household hazardous waste collection events, grants, and transportation and management. The proposed changes clarify the regulations to make them consistent with the Small Business and Household Pollution Prevention Program Act (act) (35 P. S. §§ 6029.201—6029.209) (Act 190), which was passed after most of the existing household hazardous waste regulations were written. The proposed changes to Article VII (relating to hazardous waste management) correct the inadvertent 1999 incorporation by reference in Article VII of Environmental Protection Agency's (EPAs) regulatory exemption of household hazardous waste from regulation as hazardous waste. The proposed changes to Article VIII (relating

to municipal waste) are designed to ensure that waste collected as part of an organized household hazardous waste collection continues to be properly transported and managed as hazardous waste rather than as part of the municipal waste stream. This is true for household hazardous waste collected as part of an organized household hazardous waste collection in another state, once the waste enters this Commonwealth, if the waste is to be managed in this Commonwealth, and for household hazardous waste collected as part of a collection event in this Commonwealth. Household hazardous waste not collected as part of an organized collection will continue to be managed as municipal waste in this Commonwealth.

These proposed amendments are intended to supplement, not duplicate, the act.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Tom Hyatt, Division of Waste Minimization and Planning, P. O. Box 8472, Rachel Carson State Office Building, Harrisburg, PA 17105-8472, (717) 787-7382; or Kristen Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's website (<http://www.dep.state.pa.us>).

C. Statutory Authority

The proposed rulemaking is being made under the authority of the following:

Act 190 which in section 207(a) (35 P. S. § 6029.207(a)) grants the Board the authority to promulgate regulations as needed to implement the act.

The Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.101—6018.1003) which in section 105(a) of the SWMA (35 P. S. § 6018.105(a)) grants the Board the power and the duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA.

The Household Hazardous Waste Funding Act (HHWFA) (35 P. S. §§ 6025.1—6025.5), as amended, which in section 4(a) of the HHWFA (35 P. S. § 6025.4(a)) created a restricted revenue account in the Recycling Fund to be used to fund household hazardous waste collection programs.

The Clean Streams Law (CSL) (35 P. S. §§ 691.1—691.1001), which in section 5(b) of the CSL (35 P. S. § 691.5(b)) grants the Board the authority to formulate, adopt, promulgate and repeal the rules and regulations as are necessary to implement the provisions of the act, which in section 304 of the CSL (35 P. S. § 691.304) grants the Board the authority to adopt, prescribe and enforce rules and regulations not consistent with the act as may be deemed necessary for the protection of the purity of the waters of this Commonwealth, or parts thereof, and to purify those now polluted and which in section 402 of the CSL (35 P. S. § 691.402) grants the Board the authority to adopt rules and regulations establishing conditions under which an activity shall be conducted for any activity that creates a danger of pollution of the waters of this Commonwealth or that regulation of the activity is necessary to avoid this pollution.

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) (53 P. S. §§ 4000.101—4000.1904), which in section 302 of Act 101 (53 P. S. § 4000.302) gives the Board the power and duty to adopt the regulations of the Department to accomplish the purposes and carry out the provisions of Act 101.

The Administrative Code of 1929 (Administrative Code) (71 P. S. §§ 510-17 and 510-20) which in section 1917-A of the Administrative Code (71 P. S. § 510-17) authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances and in section 1920-A of the Administrative Code (71 P. S. § 510-20) grants the Board the power and the duty to formulate, adopt and promulgate the rules and regulations as may be determined by the Board for the proper performance of the work of the Department.

D. Background and Purpose

The Commonwealth has operated a household hazardous waste program since 1992. Under this program, grants have been and continue to be available to eligible municipalities and other legal entities that register to conduct a household hazardous waste collection event. While household hazardous waste generated by an individual household and sent directly to a processing or disposal facility along with the household's municipal waste has not been regulated as hazardous waste, household hazardous waste collected at household hazardous waste collection events has been and continues to be managed as hazardous waste once it is collected. This ensures the proper level of environmental protection and is consistent with EPA recommendations. Until 1996, this Commonwealth's program was operated largely under the authority of section 1512 of Act 101 and the HHWFA; relevant regulations were found in the hazardous and municipal waste regulations. However, in 1996, Act 190 repealed section 1512 and portions of the HHWFA and replaced them with newer provisions jointly addressing small business and household hazardous waste collection events. This proposed rulemaking is designed to update the hazardous and municipal waste regulations according to Act 190 as it applies to household hazardous waste collections.

The proposed regulatory amendments cover the registration, review and approval of collection programs, the operation of collection programs and the requirements of collection contractors and transporters of household hazardous waste. The regulations specify entities that are eligible to bring waste to collection events. The regulations also cover grant requirements that apply to eligible collection sponsors.

The proposed regulatory amendments serve a number of purposes. They will make it easier for collection sponsors, collection contractors and transporters to understand the requirements that apply to their activities, without making major changes to the existing regulations. The amendments also make the language in the regulations consistent with Act 190 and the way the household hazardous waste program is currently implemented. The amendments correct the inadvertent incorporation by reference of EPA's regulatory exemption of household hazardous waste from regulation as hazardous waste. The Federal regulations exempt hazardous waste derived from households from being regulated as hazardous waste, even when collected as part of a household hazardous waste collection. The 1999 amendments to the hazardous waste regulations inadvertently incorporated this provision by reference in § 261a.1 (relating to incorporation by reference, purpose and scope). The proposed

changes clarify that once household hazardous waste is collected as part of a household hazardous waste collection, it must be managed as a hazardous waste. Finally, the amendments are intended to dispel confusion expressed by some contractors as to how household hazardous waste is to be managed after it is collected. The amendments will ensure that all household hazardous waste that is collected as part of a household hazardous waste collection, no matter in which state the waste originates, is to be managed as hazardous waste if managed in this Commonwealth.

E. Summary of Regulatory Requirements

Chapter 261a

IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Chapter 261a contains the provisions for the identification and listing of hazardous waste.

Section 261a.4. Exclusions.

The Board proposes to revise § 261a.4 (relating to exclusions) by removing the exclusion for hazardous waste that is derived from households. The Federal regulations contain an exclusion for hazardous waste derived from households, including household waste that is "collected, transported, stored, treated, disposed, recovered (for example, refuse-derived fuel) or reused" in 40 CFR 261.4(b)(1).

The Federal provision was inadvertently incorporated by reference in § 261a.4 in 1999. The proposed revisions are intended to correct this error. Furthermore, the statutory requirements of Act 190 override this regulatory provision. In accordance with statutory requirements of Act 190, the changes to the regulation will ensure that when household hazardous waste has been collected as part of a household hazardous waste collection program, it will continue to be managed and transported as a hazardous waste rather than as part of the municipal waste stream. This includes all household hazardous waste collected as part of an in-State household hazardous waste collection and waste collected as part of an out-of-State household hazardous waste collection and brought into this Commonwealth for management. The revision will ensure that the environment and the public health and safety will continue to be adequately protected.

The proposed revisions to § 261a.4 will be more stringent than the Federal regulation, but the proposed revision will make the State regulation consistent with Pennsylvania's Act 190 of 1996, which currently governs State procedures.

There should be no economic impact as a result of this regulatory revision because it simply reflects a continuation of the program as it is currently being operated. This Commonwealth has always regulated household hazardous waste that is collected as part of a household hazardous waste collection program as hazardous waste.

Chapter 271

MUNICIPAL WASTE MANAGEMENT—GENERAL PROVISIONS

Subchapter A. GENERAL

Chapter 271 contains the general provisions for the municipal waste program, including definitions for Article VIII (relating to municipal waste).

Section 271.1. Definitions.

The Board proposes to revise § 271.1 (relating to definitions) by deleting the definition of "collection con-

tractor" and modifying the definition of "household hazardous waste." The term "collection contractor" is deleted because the term is now defined by Act 190. The term "household hazardous waste" is modified to explain more clearly that household hazardous waste is to be managed as hazardous waste if it is collected as part of an organized household hazardous waste collection. The term treats waste collected within or outside this Commonwealth the same once it is within this Commonwealth's borders for disposal or other management. The definition also lists locations that are considered "households" for the purpose of this definition.

Chapter 272

MUNICIPAL WASTE PLANNING, RECYCLING AND WASTE REDUCTION

Chapter 272 contains the municipal waste planning, recycling and waste reduction requirements, including regulations governing grants and household hazardous waste collections.

Subchapter D. GRANTS

Section 272.301. Scope.

The Board proposes to revise § 272.301 (relating to scope) to indicate that persons other than municipalities are eligible to apply for grants under Act 190 and must comply with this subchapter when doing so.

GENERAL PROVISIONS FOR AWARDING GRANTS

Section 272.313. General requirements for grant applications. Section 272.314. Limits on Department's authority to award grants. Section 272.317. Grant review.

The Board proposes to revise §§ 272.313 (relating to general requirements for grant applications), 272.314 (relating to limits on Department's authority to award grant) and 272.317 (relating to grant review) to indicate that grants are available under Act 190.

GRANTS FOR HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENTS

Section 272.381. Scope of grant.

The Board proposes to revise § 272.381 (relating to scope of grant) to be consistent with Act 190 by using the term "collection event," by indicating that persons other than municipalities can apply for grant funding and to reflect the title change of Subchapter F (relating to household hazardous waste collection, transportation and management). Subsection (b) is deleted because the funding sources for household hazardous waste program grants are set forth in Act 190.

§ 272.382. Eligible costs.

The Board proposes to delete subsection (a) because grant amounts will now be addressed in subsection (b). A new subsection (a) lists costs that are considered to be eligible costs for a household hazardous waste collection event grant. This list includes the costs which the Department has considered to be eligible costs in this program over the last several years.

Existing subsection (b) has been deleted because grant restrictions based on past violations are adequately covered elsewhere. Subsection (c) has been deleted because it is no longer accurate, since Act 190 authorizes Recycling Fund monies to be used.

A new subsection (b) has been added to describe the grant limitations for a household hazardous waste collection event grant. It is based on section 209 of Act 190 (35 P. S. § 6029.209), which authorizes the Department to

reimburse sponsors for eligible costs for the operation of collection events but limits the grant amount to an amount that is matched dollar for dollar by the grant applicant. Section 209 of Act 190 also prohibits the Department from expending more than \$100,000 per year for collection events in any one county. These rules are embodied in paragraphs (1) and (3) of proposed subsection (b). Paragraph (2) is designed to prevent the Department from awarding a grant for costs which the sponsor has already covered by charging fees for the event. Paragraph (2) would apply if a sponsor collected more than 50% of its eligible costs through fees.

Section 272.383. Grant applications.

The Board proposes to delete the text of § 272.383 (relating to grant application) because the information is repetitive of the registration submitted by a sponsor and included in the sponsor's grant application package. In its place, proposed subsection (a) requires a grant applicant to submit its application on a form provided by the Department and to include all supporting documentation. Proposed subsection (b) requires a record of operations from a collection event to be sent to the Department. The record of operations form was developed by the Department to enable sponsors to easily meet the reporting requirements of subsection 205(k) of Act 190 while still providing the Department with useful collection information.

Section 272.384. Education grants.

The Board proposes to add § 272.384 (relating to education grants) so that counties are aware that Act 190 makes household hazardous waste education grant funding available through section 901 of Act 101 (53 P. S. § 4000.901).

Subchapter F. HOUSEHOLD HAZARDOUS WASTE COLLECTION, TRANSPORTATION AND MANAGEMENT

Section 272.501. Scope.

The Board proposes to change the title of Subchapter F and the text of § 272.501 (relating to scope) to clarify that this subchapter covers collection, transportation and management of household hazardous waste.

REGISTRATION AND APPROVAL OF PROGRAMS

Section 272.512. General application requirements.

The Board proposes to modify subsection (a) (relating to general application requirements) to give the Department adequate time to review applications and provide applicants adequate time to make necessary modifications to applications in accordance with the Department's review of the initial application. Subsection (b)(1) is revised to make the regulations consistent with Act 190 which allows persons other than municipalities to sponsor a household hazardous waste collection event.

Section 272.513. Contract.

The Board proposes to modify § 272.513 (relating to contract) by requiring an applicant to submit a signed contract to the Department before the collection event so that the Department can ensure that the final contract meets the requirements of this section. Paragraph (2) is modified to be consistent with Act 190 which allows persons other than municipalities to sponsor a collection. The change to paragraph (3) corrects a typographical error.

Section 272.514. Contingency plan.

The Board proposes to revise § 272.514 (relating to contingency plan) by requiring contingency plans to in-

clude provisions for inclement weather because provisions for inclement weather are important but often overlooked in applicants' safety plans.

REGISTRATION REVIEW

Section 272.523. Public notice.

The Board proposes to delete § 272.523 (relating to public notice) because giving public notice in the *Pennsylvania Bulletin* has not proven the most effective means by which to notify the public of a household hazardous waste collection event. Local notice is far more effective. The public learns of an upcoming collection event through local notice in newspapers or on the radio, provided by the sponsor of the event. Collection contractors who may wish to compete for the project learn of the event through whatever means the sponsor deems appropriate. Furthermore, to obtain approval, the sponsor sometimes must work with the Department until several days before the collection event, at which point it is too late to publish notice in the *Pennsylvania Bulletin*. When it seems likely that a collection event will be approved, the Department will, as it currently does, publish notice of the collection event on its website. Public notice is not required by statute.

OPERATION OF PROGRAMS

Section 272.531. Basic operational requirements.

The Board proposes to modify § 272.531 (relating to basic operational requirements) to update the statutory reference to Act 190, to restructure the section for ease of reading and to emphasize that household hazardous waste collected as part of a collection event is to be managed as hazardous waste.

Section 272.532. Limitations on acceptable waste.

Limitations on acceptable waste at collection events in the existing regulations were modeled on section 1512 of Act 101 (53 P. S. § 4000.1512), which was repealed by Act 190. The limitations on acceptable waste were replaced by sections 205(d) and 206(a) of Act 190. Modifications to § 272.532 are proposed to be consistent with the restrictions of Act 190 while still providing for proper and safe limitations on acceptable waste.

Wastes allowed to be collected as a result of proposed changes to this section do not have to be collected at collection events. Collection sponsors will still have the authority to limit the types and quantities of waste they will accept at collections and collection contractors will be required to demonstrate that they have the proper permits to manage the new types of waste that are proposed to be allowed to be collected.

The Board has amended § 272.532(a)(1) from "radioactive waste" to "radioactive material" because "radioactive material" better describes the types of materials more likely to be found in a household.

The Board proposes to modify subsection (a)(2) by deleting the term "biologically active waste" because the term is not defined in this Commonwealth's waste regulations. The new term "Infectious waste" is added because it is defined in this Commonwealth's waste regulations. Sharps, although considered to be infectious waste, will be allowed to be collected if the collection contractor has an approved infectious and chemotherapeutic waste transporter license as required by § 284.602(a) (relating to license requirement). Sharps are a common type of infectious waste that present little contamination potential at a collection event while their removal from the

municipal waste stream would provide a much larger benefit to municipal waste haulers.

The Board proposes to delete subsection (a)(3) because removal of gas cylinders and aerosol cans from the municipal waste stream will encourage recovery of their BTU value.

The Board proposes to modify subsection (a)(4), which is renumbered as subsection (a)(3), by removing ordinance material from the list of unacceptable items. Collection of ordinance material at collection events poses little risk and removes a potentially dangerous item from the municipal waste stream.

The Board proposes to modify subsection (b) to be consistent with the weight restrictions of section 205(d) of Act 190.

Section 272.533. Fees.

The Board proposes to modify § 272.533 (relating to fees) to be consistent with Act 190 which authorizes a sponsor to establish and assess reasonable fees from eligible entities for services provided in connection with a collection event.

Section 272.535. Cleanup of site.

The Board proposes to modify § 272.535 (relating to cleanup of site) to be consistent with Act 190 of 1996 which allows persons other than municipalities to sponsor a household hazardous waste collection event.

Section 272.537. Sponsor recordkeeping.

The Board proposes to modify § 272.537 (relating to municipal recordkeeping). The modifications are to make the regulations consistent with Act 190 which allows persons other than municipalities to sponsor a household hazardous waste collection event, and the hazardous waste regulations which require the generator of waste to keep the generator copy of a manifest.

COLLECTION CONTRACTORS

Section 272.541. Collection contractor.

The Board proposes to modify § 272.541 (relating to basic requirements). The title is changed to better reflect who is covered by the section. The remaining changes are to clarify and organize existing requirements of collection contractors. In addition, a provision is added to subsection (a)(2) to address a situation that arises on occasion, namely, the collection contractor being a different entity from the transporter. Under this paragraph, the collection contractor must demonstrate to the Department that the transporter has a valid transporter's license. A requirement has also been added to subsection (c)(3), requiring the collection contractor to provide a copy of the record of operations to the sponsor. This was added so the sponsor would know what the collection contractor reported to the Commonwealth and to enable the sponsor to refine future waste collection estimates. Subsection (d) is revised to leave no doubt that the collection contractor has the responsibility to ensure that the household hazardous waste is treated, stored or disposed at an appropriate facility.

Section 272.542. Reporting.

The Board proposes to modify § 272.542 (relating to reporting). The modification requires the collection contractor to provide a copy of the record of operations to the Department and sponsor.

Section 272.543. Recycling or reuse of collected materials. [Reserved.]

The Board proposes to delete § 272.543 (relating to recycling or reuse of collected materials) because this provision has been moved into § 272.541(c)(4).

TRANSPORTERS OF HOUSEHOLD HAZARDOUS WASTE

Section 272.551. Household hazardous waste transportation, storage and disposal.

The Board proposes to add § 272.551 (relating to household hazardous waste transportation, storage and disposal). This section explains the requirements applicable to a transporter of household hazardous waste from a collection event in this Commonwealth and from an out-of-State household hazardous waste collection if the waste is to be managed in this Commonwealth. The purpose of the section is to clarify that household hazardous waste originating from a collection in this Commonwealth or coming from a collection outside of this Commonwealth to be managed in this Commonwealth is to be regulated under Article VII, including manifesting and transportation requirements.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the final regulations.

Benefits

The proposed amendments will clarify the registration and operational requirements of conducting a household hazardous waste program. The proposed amendments will also clarify that household hazardous waste collected as part of a household hazardous waste collection is to be managed under Article VII. No new requirements for household hazardous waste collection sponsors, collection contractors or transporters are added to the regulations.

Compliance Cost

Household hazardous waste program sponsors and collection sponsors will be required to comply with the regulations. The Commonwealth has always regulated household hazardous waste that is collected as part of a household hazardous waste collection program as hazardous waste. However, because the regulations are intended to clarify existing regulations, they should not have any impact on direct or indirect costs.

Compliance Assistance Plan

The regulations should not require any educational, technical or compliance assistance efforts. The Department has and will continue to provide manuals, instructions, forms and website information consistent with the proposed amendments. In the event that assistance is required, the Department's central office will provide it.

Paperwork Requirements

The proposed amendments do not create any new paperwork requirements. All paperwork requirements are presently consistent with the proposed amendments.

G. Pollution Prevention

No pollution prevention efforts will be required by the Department as a result of this regulatory change. The Department already provides pollution prevention educational material as part of its household hazardous waste program. In addition, the act upon which that the regulations are based on (Act 190) requires collection events to include an education program as part of the collection event and requires that waste materials col-

lected from households as part of a household hazardous waste collection event be reclaimed to the greatest extent possible.

H. Sunset Review

These regulations 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 January 1, 2001, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

J. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by March 12, 2001 (within 30 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by March 12, 2001 (within 30 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us and must also be received by the Board by March 12, 2001. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-361. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 261a.4. Exclusions.

In addition to the requirements incorporated by reference [,]:

(1) The exclusion of 40 CFR 261.4(b)(1) (relating to exclusions) does not apply to household hazardous waste as defined in § 271.1 (relating to definitions) collected as part of a collection event or collected at an out-of-State household hazardous waste collection which is brought into this Commonwealth for processing, treatment, storage or disposal.

(2) [a] A copy of the written state agreement required by 40 CFR 261.4(b)(11)(ii) [(relating to exclusions)] that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed for free phase hydrocarbon recovery operations shall be submitted to: Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, Post Office Box 8471, Harrisburg, Pennsylvania 17105-8471.

ARTICLE VIII. MUNICIPAL WASTE

CHAPTER 271. MUNICIPAL WASTE MANAGEMENT—GENERAL PROVISIONS

Subchapter A. GENERAL

§ 271.1. Definitions.

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

* * * * *

[Collection contractor—A person licensed as a hazardous waste transporter and approved by the Department and retained by a municipality to operate a household hazardous waste collection program.]

* * * * *

Household hazardous waste—[A waste that would be considered hazardous under the act, but for the fact that it is produced in quantities smaller than those regulated as hazardous waste under the act and is generated by persons not otherwise covered as hazardous waste generators by that act.] Waste generated by a household that could be chemically or physically classified as a hazardous waste under the standards of Article VII (relating to hazardous waste management).

(i) If the household hazardous waste is collected as part of a collection event or originates at an out-of-State household hazardous waste collection and is brought into this Commonwealth for processing, treatment, storage or disposal, it shall be regulated under Article VII.

(ii) If the waste is not collected at a collection event or does not originate at an out-of-State household hazardous waste collection, it is solid waste which is excluded as hazardous waste under 40 CFR 261.4(b)(1) (relating to exclusions), as incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose, and scope).

(iii) For the purpose of this definition, the term "household" includes those places described as "households" in 40 CFR 261.4(b)(1).

* * * * *

CHAPTER 272. MUNICIPAL WASTE PLANNING, RECYCLING AND WASTE REDUCTION

Subchapter D. GRANTS

SCOPE

§ 272.301. Scope.

A person or municipality that seeks or receives a grant from the Department under the Municipal Waste Planning, Recycling and Waste Reduction Act or the Small Business and Household Pollution Prevention Program Act shall comply with this subchapter.

GENERAL PROVISIONS FOR AWARDED GRANTS

§ 272.313. General requirements for grant applications.

(a) A grant application under this subchapter shall be submitted on a form prepared and furnished by the Department. The application shall contain information the Department deems necessary to carry out the Municipal Waste Planning, Recycling and Waste Reduction Act and the Small Business and Household Pollution Prevention Program Act, as applicable.

(b) A grant application shall be submitted by a municipality or, for a household hazardous waste collection event grant application, a sponsor. [A] For grant applications submitted under the Municipal Waste Planning, Recycling and Waste Reduction Act, a municipal authority may not submit a grant application. A municipality that receives a grant may pass funds from the grant to a municipal authority.

* * * * *

§ 272.314. Limits on Department's authority to award grants.

* * * * *

(b) The Department will not award a grant under this subchapter to a person or municipality unless the applicant demonstrates to the Department's satisfaction that it has complied with the following:

* * * * *

(3) If the application is for a household hazardous waste collection event grant, the applicant has complied with the Small Business and Household Pollution Prevention Program Act.

(4) * * *

* * * * *

§ 272.317. Grant review.

The Department will deny a grant application, in whole or in part, unless the applicant demonstrates the following to the Department's satisfaction:

* * * * *

(2) Awarding the grant is likely to accomplish the purposes of the Municipal Waste Planning, Recycling and Waste Reduction Act or the Small Business and Household Pollution Prevention Program Act, as applicable.

GRANTS FOR HOUSEHOLD HAZARDOUS WASTE
COLLECTION [AND DISPOSAL] EVENTS

§ 272.381. Scope of grant.

[(a)] The Department will award grants for the establishment and operation of household hazardous waste collection [and disposal programs,] events upon application of [a municipality] an eligible collection event sponsor. The grants may be awarded only to programs that have been registered with and approved by the Department under Subchapter F (relating to household hazardous waste collection, transportation and management).

[(b) Grants for the operation of household hazardous waste collection and disposal programs shall be made from specially appropriated funds for the purpose.]

§ 272.382. Eligible costs.

(a) [The grant shall be 50% of the approved cost of establishing and operating a household hazardous waste collection and disposal program.] Eligible costs incurred by the sponsor for a household hazardous waste collection event include the following:

(1) Labor costs, including wages, salaries, costs for Social Security, Workers' Compensation and Unemployment Compensation.

(2) Travel and related costs associated with attending training courses and related meetings, if reimbursement is approved in advance of the training course or meeting by the Department.

(3) Legal fees for preparing and reviewing collection contractor proposals and contracts in the development stage.

(4) Facility siting studies.

(5) Printing and distribution of public education material.

(6) Collection contractor mobilization fees and waste management fees for collected materials.

(7) Onsite sanitary facilities.

(b) [Costs not approved for a grant include, but are not limited to:

(1) Costs associated with a program that has violated the act, the environmental protection acts, the Municipal Waste, Planning, Recycling and Waste Reduction Act or regulations thereunder.

(2) Costs associated with a program that has operated in a manner that is contrary to the terms and conditions of the Department's registration and approval of the program.

The Department may not award money from the Recycling Fund for this grant.] A Household Hazardous Waste Collection Event Grant shall be limited to the lowest of the following:

(1) Fifty percent of the eligible costs incurred by the sponsor in establishing and operating a collection event.

(2) Eligible costs incurred in establishing and operating a collection event, less fees collected by the sponsor under § 272.533 (relating to fees).

(3) One hundred thousand dollars.

§ 272.383. Grant application.

[The application shall contain:

(1) A copy of the Department's registration and approval for the program.

(2) A summary of program cost, including the funding match for the program grant.

(3) The name, mailing address, telephone number and Pennsylvania hazardous waste transporter's license number of the contractor.

(4) The name and location of the treatment or disposal facilities which will be used for the waste.]

(a) A grant applicant shall submit its application on a form provided by the Department. An application shall be accompanied by appropriate supporting documentation.

(b) A grant applicant shall ascertain that a record of operations has been sent to the Department prior to or with the grant application.

§ 272.384. Education Grants.

A county may apply for a household hazardous waste education program grant under § 272.321 (relating to scope of grant).

Subchapter F. HOUSEHOLD HAZARDOUS WASTE
COLLECTION, TRANSPORTATION AND
MANAGEMENT
SCOPE

§ 272.501. Scope.

This subchapter sets forth provisions for the registration, approval and operation of household hazardous waste collection programs and for the management and transportation of household hazardous waste collected as part of an organized collection for the purpose of separating the hazardous waste component from the nonhazardous waste component.

REGISTRATION AND APPROVAL OF PROGRAMS

§ 272.512. General application requirements.

(a) Registration applications shall be submitted to the Department on a form provided by the Department, and shall contain information the Department deems necessary to properly develop and implement a household hazardous waste collection program. The application shall be submitted by the [person or municipality that will] potential sponsor [the collection program]. An application shall be submitted to the Department at least 60 days before the collection event.

(b) A registration application shall contain the following information:

(1) The location of the proposed site for the collection event. The site may be on public or private property, including, but not limited to, property owned, leased or controlled by the Commonwealth, its agencies or political subdivisions. If the [municipality that sponsors]

sponsor of the collection program is not the owner of the site, the [person or municipality] sponsor shall include as part of the registration application, written permission from the owner of the site to use the property for the collection event.

[(33)] (3) * * *
* * * * *

§ 272.513. Contract.

The application shall include a negotiated contract between the [person or municipality] sponsor and the collection contractor. A signed contract shall be submitted to the Department prior to the collection event. The contract shall meet the following requirements:

* * * * *

(2) The contract shall require that the collection contractor will provide the [person or municipality] sponsor with a statement that lists the names and qualifications of personnel accepting waste at the collection event.

[(33)] (3) * * *
* * * * *

§ 272.514. Contingency plan.

The application shall also include a contingency plan that meets the following requirements. The plan shall:

* * * * *

(5) Describe provisions for the safe management of waste in the event of inclement weather.

(6) Describe provisions for cancellation or re-scheduling of the collection event due to inclement weather.

REGISTRATION REVIEW

§ 272.523. [Public notice] (Reserved).

[The Department will publish notice in the Pennsylvania Bulletin of the following:

(1) Receipt of an application for a registration approval under this subchapter.

(2) Approval or denial of an application for registration approval under this subchapter.]

OPERATION OF PROGRAMS

§ 272.531. Basic operational requirements.

(a) A program for the collection and management of household hazardous waste shall be operated in accordance with [the registration submitted by the municipality sponsoring the program and with conditions for approval the Department may attach to the registration, the requirements of Article VII (relating to hazardous waste management) and with guidelines issued by the Department under the Municipal Waste Planning, Recycling and Waste Reduction Act] the following:

(1) The approved registration, including any conditions the Department attaches to approval.

(2) The Small Business and Household Pollution Prevention Program Act.

(3) The requirements of Article VII (relating to hazardous waste management as made applicable by this subchapter.

* * * * *

§ 272.532. Limitations on acceptable waste.

(a) The following wastes may not be accepted at a collection event:

- (1) Radioactive [waste] material.
- (2) [Biologically active waste] Infectious waste, except sharps.
- (3) [Gas cylinders or aerosol cans.
- (4)] Explosives [or ordinance material].

(b) An eligible entity may not deposit more than [100 kilograms (220 lbs.)] 1,000 kilograms (2,200 lbs.) of waste at an individual collection event. The collection contractor shall weigh waste received at a collection event to ensure that no entity deposits more than [100 kilograms] 1,000 kilograms of waste at an individual collection event. A sponsor may lower the maximum amount of waste that may be deposited by an eligible entity.

§ 272.533. Fees.

[(a) The sponsoring municipality shall require a minimum fee of small businesses other than non-profit entities in the following amounts:

- (1) Two dollars per pound for poisons, including pesticides, insecticides, herbicides and fungicides.
- (2) One dollar per pound for other household hazardous wastes.

(b) The sponsoring municipality may require a fee of other eligible persons to help defray the costs of operating the collection program.]

To help defray the costs of operating a collection program, a sponsor may require eligible entities to pay a reasonable fee to deposit waste with the collection program. If fees are collected and exceed 50% of the eligible costs under § 272.382 (relating to eligible costs), the Department will limit reimbursement as described in that section.

§ 272.535. Cleanup of site.

At the end of the collection event, the [municipality] sponsor and the collection contractor shall return the collection site to its original condition. Collected waste shall be removed from the site within 48 hours after completion of the collection event, unless a longer time has been authorized by the Department. Cleanup of the site shall be certified by the [municipality] sponsor and the collection contractor in a manner approved by the Department.

§ 272.537. [Municipal] Sponsor recordkeeping.

[Municipalities sponsoring collection programs shall be responsible for maintaining the generator manifest records in accordance with 40 CFR 262.40 (relating to recordkeeping), incorporated in § 262a.10 (relating to incorporation by reference, purpose, scope and applicability) and for the generator reporting requirements under § 262a.42 (relating to exception reporting) and 40 CFR 262.42 (relating to exception reporting), incorporated in § 262a.10.] A sponsor shall keep a copy of the manifests provided to it by the collection contractor under § 272.541 (relating to collection contractor) for 3 years and shall make them available to the Department upon request.

COLLECTION CONTRACTORS

§ 272.541. [Basic requirements] Collection contractor.

(a) [A collection contractor may not operate a household hazardous waste program or site, or transport household hazardous waste unless the contractor has prior Departmental approval and an identification number and transporter license as required under Chapter 263a (relating to transporters of hazardous waste) and 40 CFR 263.11 (relating to EPA identification number), incorporated in § 263a.10 (relating to incorporation by reference and scope).] A collection contractor shall comply with the following requirements:

(1) The collection contractor shall have an EPA hazardous waste identification number under 40 CFR 262.12 (relating to EPA identification numbers), incorporated by reference at § 262a.10 (relating to incorporation by reference purpose, scope and applicability) and modified at § 262.a12 (relating to EPA identification numbers).

(2) The collection contractor shall have a hazardous waste transporter's license under § 263a.13 (relating to licensing). In the event that the collection contractor will not transport the household hazardous waste, the collection contractor shall demonstrate to the Department that the person or municipality that will transport the household hazardous waste has a valid hazardous waste transporter's license under § 263a.13.

(b) The collection contractor shall be deemed to be the generator of hazardous waste for household hazardous wastes accepted during the collection program and shall manage, transport and dispose of the waste in accordance with this chapter[,] and the applicable provisions of Article VII (relating to hazardous waste management) except Chapter 262a, Subchapter I (relating to source reduction strategy). [and conditions the Department may attach to the registration of the collection program. Disposal of household hazardous waste collected under this subchapter shall be at a facility having a permit or interim status under the Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901—6986).]

(c) The collection contractor shall comply with [40 CFR Part 262 (relating to standards applicable to generators of hazardous waste), to the extent that Part 262 is incorporated by reference in Chapter 262a (relating to standards applicable to generators of hazardous waste), except Chapter 262a, Subchapters D and I (relating to recordkeeping and reporting; and source reduction strategy).] the following requirements:

(1) The collection contractor shall manage, transport and dispose of the waste in accordance with conditions the Department may attach to the approval of the collection event.

(2) The collection contractor shall deliver a copy of the generator copy of the manifests to the sponsor to maintain in accordance with § 272.537 (relating to sponsor recordkeeping).

(3) The collection contractor shall provide a copy of the record of operations to the sponsor.

(4) The collection contractor shall provide for the recycling, reuse or use of the collected materials to the greatest extent feasible.

(d) [At the end of the collection event, the collection contractor shall deliver the generator copy of the manifests to the sponsoring municipality to maintain in accordance with 40 CFR 262.40 (relating to recordkeeping), incorporated in § 262a.10 (relating to incorporation by reference, purpose, scope and applicability).] The collection contractor shall ensure that the household hazardous waste is treated, stored or disposed at a facility having a permit or interim status under the Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901—6992k).

§ 272.542. Reporting.

The collection contractor shall make and maintain a record of [collection activities] operations and submit a copy of the record to the Department and sponsor within 30 days of the end of each collection event. The record shall be on a form provided by the Department, and shall include:

* * * * *

§ 272.543. [Recycling or reuse of collected materials.] (Reserved).

[The collection contractor shall, to the greatest extent feasible, provide for the recycling, reuse or use of the collected materials.]

TRANSPORTERS OF HOUSEHOLD HAZARDOUS WASTE

§ 272.551. Household hazardous waste transportation, storage and disposal.

(a) A transporter of household hazardous waste collected as part of a collection event shall meet the requirements of this section.

(b) A transporter of household hazardous waste shall meet the requirements of this section if the waste is collected at an out-of-State household hazardous waste collection and brought into this Commonwealth for processing, treatment, storage or disposal.

(c) A transporter of household hazardous waste described in subsection (a) or (b) is subject to Article VII (relating to hazardous waste management), including the following:

(1) The waste shall be manifested as required under Chapter 262a (relating to standards applicable to generators of hazardous waste) to a facility having a permit or interim status under the Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901—6992k).

(2) The transporter shall comply with the hazardous waste transportation requirements in Chapter 263a (relating to transporters of hazardous waste).

[Pa.B. Doc. No. 01-219. Filed for public inspection February 9, 2001, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 59]

[L-00000151]

Natural Gas Emergency Plans and Emergency Actions

The Pennsylvania Public Utility Commission (Commission) on July 20, 2000, adopted a proposed rulemaking order setting forth the procedures the Commission intends to follow in managing natural gas emergencies in order to maintain gas service and minimize service disruptions. The contact persons are Ahmed Kaloko, Bureau of Conservation, Economics and Energy Planning, (717) 787-2139 and David Screven, Law Bureau, (717) 787-2126.

Executive Summary

For many years, natural gas emergency planning has been a staple of this Commonwealth's natural gas distribution companies' (NGDCs) operational considerations. Given the necessity for 100% reliability on all natural gas distribution systems, NGDCs have long planned for force majeure or other unexpected events that threatened system integrity.

On June 22, 1999, Governor Tom Ridge signed into law the Natural Gas Choice and Competition Act (act). The act revised 66 Pa.C.S. (relating to the Public Utility Code) (code) by inter alia, adding Chapter 22, relating to the restructuring of the natural gas utility industry. Nevertheless, the act is clear that even with the restructuring of the natural gas industry, the requirement for 100% reliability of all NGDC systems remains constant.

The Natural Gas Emergency Regulations are designed to address the management of natural gas emergencies in this new environment in order to maintain (or restore as quickly as possible) gas service to essential human needs customers while minimizing service disruption. The proposed regulations address a number of matters that are critical to gas emergency and gas curtailment, including: (1) emergency load shedding, (2) a call for voluntary usage reduction, (3) a call for mandatory load and usage reduction, (4) issuance of periodic reports to the media on emergency situations, (5) notice of affected customers and natural gas suppliers (NGSs), (6) customer and NGS delivery requirements that apply to emergency actions, (7) a procedure for focusing emergency measures to confined geographic areas, and (8) procedures for establishing communications. On all of these issues, the regulations provide a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 31, 2001, the Commission submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; and Terrance J. Fitzpatrick

Public Meeting held
July 20, 2000

Proposed Rulemaking Order

By the Commission:

On June 22, 1999, Governor Tom Ridge signed into law the Natural Gas Choice and Competition Act (act). The act revised the code, by inter alia, adding Chapter 22, relating to the restructuring of the natural gas utility industry. The Pennsylvania Public Utility Commission (Commission) is the agency charged with implementing the act.

This Order sets forth the procedures the Commission intends to follow in executing its responsibilities under the Natural Gas Choice and Competition Act, as codified in 66 Pa.C.S. §§ 2201—2212.

Background

For many years, natural gas emergency planning has been a staple of this Commonwealth's NGDCs operational considerations. Given the necessity for 100% reliability on all natural gas distribution systems, NGDCs have long planned for force majeure or other unexpected events that threatened system integrity. Most plans called for orderly ways to immediately drop gas load in the threatened parts of the NGDC system. During the 1970s, when anticipated gas supply shortages appeared to become endemic and also threatened the viable operation of every local distribution company (LDC), gas supply curtailment plans were incorporated into all NGDC tariffs at the direction of the Commission. To this day, there is a requirement that curtailment plans be incorporated in the tariffs.

After the issuance of FERC Order 636 in 1992, which removed pipelines from the merchant function and made them transporters of natural gas, and the passage of the Commonwealth's Natural Gas Choice and Competition Act in 1999, the importance of revising these requirements became apparent. In this context, NGSs are responsible for bringing increased volumes of gas to NGDCs to satisfy the requirements of their customers. Nevertheless, the requirement for 100% reliability of all NGDC systems remains.

The Commission approved the Interim Safety and Reliability Guidelines (Interim Guidelines) at its public meeting on October 15, 1999, at Docket No. L-00990144 for both NGDCs and NGSs to consider their respective roles in this emerging competitive environment. On April 24, 2000, at Docket No. M-00001351, the Commission adopted a proposed policy statement incorporating the Interim Guidelines into Chapter 69 (relating to general orders, policy statements and guidelines on fixed utilities) of its regulations. Likewise, natural gas emergency plan-

ning should also reflect the various roles of the participants in this new environment. The Natural Gas Emergency Regulations set forth below are designed to address the management of natural gas emergencies in this new environment in order to maintain (or restore as quickly as possible) gas service to essential needs customers while minimizing service disruption.

These proposed regulations are intended to address emergencies, which by definition, are limited to situations where available firm supply or capacity is not sufficient to meet firm service requirements. Accordingly, the interruption of interruptible services, and their subsequent restoration, are not addressed. The treatment of interruptible services raises valid issues, however, and the Commission expects NGDCs to address these issues, including electric generation facilities that use interruptible service, in the reliability plans that NGDCs are required to file with the Commission annually under 66 Pa.C.S. § 1317(c).

Discussion

Commission staff established a Collaborative Working Group as the appropriate vehicle to proceed with the implementation of gas emergency plans and curtailment under the Natural Gas Choice and Competition Act, 66 Pa.C.S. § 2201, et seq. On February 29, 2000, Commission staff convened the first meeting of the Gas Safety and Reliability Working Group addressing gas emergency plans and curtailment issues.

At the initial meeting of the working group, Commission staff identified statutory directives that applied to the working group, framed a tentative list of issues that should be addressed by the working group and established a date for the submission of informal comments. Several meetings of the working group were held between February and April 2000.

Commission staff urged the parties to identify those common issues that would be addressed in the meetings. The Office of the Consumer Advocate, the Office of Trial Staff, the Pennsylvania Gas Association, Texas Eastern Corporation, CNG Retail Services Corporation and TXU Energy Services (filed jointly with Statoil Energy) submitted informal comments on February 29, 2000.

The working group agreed that the requirements for gas emergency plans should be more than guidelines. As a result, the working group designated selected members to draft suggested regulations and this draft was delivered to the full group and considered at the meeting on May 23, 2000. Since the proposed regulations were designed to replace the Commission Gas Curtailment Guidelines (Guidelines) at §§ 69.21—69.27, the working group placed the proposed regulations in Chapter 59 (relating to gas service) on Gas Service rather than in Chapter 69. The working group agreed that the proposed regulations should be presented at public meeting for the Commission's consideration.

The Commission intends that these regulations be incorporated into its regulations at Chapter 59. The Guidelines at §§ 69.21—69.27 are to be eliminated. Additionally, since § 59.63 refers to the Guidelines at §§ 69.21—69.27, § 59.63 will also be modified to reflect the proposed changes.

The proposed regulations address a number of matters that are critical to gas emergency and gas curtailment, including: (1) emergency load shedding, (2) a call for voluntary usage reduction, (3) a call for mandatory load and usage reduction, (4) issuance of periodic reports to the media on emergency situations, (5) notice of affected customers and NGSs, (6) customer and NGS delivery

requirements that apply to emergency actions, (7) a procedure for focusing emergency measures to confined geographic areas, and (8) procedures for establishing communications. On all of these issues, the regulations provide a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures.

During discussions in the working group sessions, a suggestion was made to include a section in the proposed regulations indicating that the Commission would issue Emergency Orders that might include substantial penalties for any customer continuing to take gas in violation of the rules found in this subchapter. The members agreed not to include this in the proposed rulemaking, but rather to solicit additional comments on the issue.

The Commission already has adequate authority to issue Emergency Orders and to impose such penalties as are appropriate for violations. In order to continue the collaborative process, however, the Commission will consider comments concerning the use of Emergency Orders to address issues raised by a customer's continued consumption of gas in violation of the proposed rules, particularly in situations where the NGDC is unable to discontinue service. To the extent that comments demonstrate a need for further Commission directives on these issues, we will initiate a separate proceeding at the appropriate time.

To ensure the continued safety and reliability of natural gas service in this Commonwealth, the Commission proposes to amend Chapter 59 by amending § 59.63, adding §§ 59.71—59.75, which establishes regulations for natural gas emergency plans and curtailment safety and reliability, and eliminating §§ 69.21—69.27 of the Commission's regulations. Accordingly, under section 501 of the code, and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, the Commission amends the regulations as noted to read as set forth in Annex A;

Therefore, It Is Ordered That:

(1) A rulemaking docket shall be opened to promulgate regulations for gas emergency plans as set forth in Annex A.

(2) The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.

(3) The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.

(4) The Secretary shall submit this order and Annex A for review and comments by the designated standing committees of both houses of the General Assembly, and for review and comments by IRRC.

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

(6) Within 30 days of this order's publication in the *Pennsylvania Bulletin*, any interested person may submit an original and 15 copies of written comments to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA, 17105-3265. One copy of a diskette containing the comments in electronic format should also be submitted. A copy of written comments shall be served upon the Commission's Bureau of Conservation, Economics and Energy Planning. Reply comments will be due 15 days from the last date of the 30-day comment period.

(7) A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional natural gas distribution companies and all licensed natural gas suppliers, and provided to all interested persons.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-218. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

Chapter 59. GAS SERVICE

REPORTING AND CURTAILMENT OF SERVICE

§ 59.63. [Curtailed tariffs] Natural gas emergency plans.

As part of its officially filed tariff, each jurisdictional gas utility shall have on file with the Commission [detailed procedures for the curtailment of service] natural gas emergency plans. The [curtailment tariffs] plans shall be under Commission [guidelines] requirements [contained at] §§ [69.21–69.27 (relating to gas curtailment)] 59.71–59.75 (relating to gas emergency plans).

GAS EMERGENCY PLANS

(Editor's Note: Sections 59.71–59.75 are new. The text has been presented in regular type to enhance readability.)

§ 59.71. Definitions.

The following words and terms, when used in this section and in §§ 59.72–59.75, have the following meanings, unless the text clearly indicates otherwise:

Alternate fuel—Any fuel other than natural gas.

Alternate fuel capability—The installed and operable ability to use any fuel other than natural gas on a time sensitive basis.

Commercial use—Gas usage by customers engaged primarily in the sale of goods and services including consumption by office buildings, institutions and government agencies.

Essential human needs use—Gas usage in any building where persons normally dwell including residences, apartment houses, dormitories, hotels, hospitals and nursing homes.

Firm service—Natural gas service offered to consumers under tariffs or contracts that anticipate no interruption.

Industrial use—Gas usage by customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product including the generation of electric power.

Interruptible service—Natural gas services that can be temporarily discontinued under terms and conditions specified by tariff or contract.

NGDC—Natural gas distribution company.

NGS—Natural gas supplier.

Plant protection use—Minimum usage of natural gas required to prevent physical harm to an industrial or commercial consumer's facility, or danger to personnel at the facility, when the protection cannot be afforded through the use of an alternate fuel. Plant protection use includes usage necessary for the protection of the material in process as would otherwise be destroyed, but does not include deliveries required to maintain production.

Residential use—Gas usage in a residential dwelling or unit for space heating, air conditioning, cooking, water heating or other domestic purpose.

§ 59.72. Natural gas emergency planning.

(a) By _____ (*Editor's Note:* The blank refers to a date 90 days from the effective date of adoption of this proposal.) or a later date as may be determined by the Commission, each NGDC shall file with the Commission a natural gas emergency plan reflecting its unique operational characteristics and design criteria. Each plan shall contain simplified and understandable rules and regulations so that all of the NGDC's customers and all NGSs licensed to provide services to their customers can have a responsive action plan in place to protect themselves and their property in the event of a crisis. NGDCs shall file revisions to their plans when and as appropriate, or as directed by the Commission.

(b) As part of their emergency planning, NGDCs are encouraged to make contractual or informal arrangements with their transportation customers, sales customers and others to obtain supplies or, as an alternative, to implement usage reductions, so that resorting to firm service reductions under § 59.73 (relating to emergency action) can be avoided, or the severity of supply or capacity disruption can be mitigated. The purpose of these arrangements is to provide a means to minimize the potential of supply shortfalls that threaten public health and safety, and not to make up for inadequate performance by individual parties.

(c) Each natural gas emergency plan shall include provisions addressing:

(1) Emergency load shedding.

(2) Voluntary usage reductions, for example, reducing space or water heating temperatures to levels specified by the NGDC.

(3) Mandatory usage reductions for certain customers consistent with § 59.73(c).

(4) Issuance of periodic reports to the media concerning the existing natural gas emergency.

(5) Notice to affected customers and NGSs of the expected initiation of emergency actions under § 59.73.

(6) Customer and NGS delivery requirements that apply during the term of emergency action under § 59.73, regardless of customer-specific usage reductions that arise or may arise from end-use curtailments.

(7) A procedure for focusing emergency measures to confined geographic or operational portions, segments or zones of the NGDC system where a natural gas emergency exists.

(8) Procedures for establishing communications with electric system control area operators, if the NGDC provides gas service to electric generation stations.

(d) Each natural gas emergency plan should specify the procedures the NGDC shall use to provide notices to affected customers, their NGSs and NGDCs. Notice to the

public concerning usage reductions should be designed to avoid confusion in geographical areas served by more than one NGDC.

§ 59.73. Emergency action.

(a) An emergency exists whenever the aggregate demand of firm service customers on an NGDC's system or confined segment of the system exceeds or threatens to exceed the gas supply or capacity that is actually and lawfully available to the NGDC to meet the demands, and the actual or threatened excess creates an immediate threat to the NGDC's system operating integrity with respect to Priority 1 customers as defined in subsection (j).

(b) If, in the sole judgement of the NGDC, there is sufficient time, the NGDC will use reasonable business and operational efforts to: interrupt all interruptible services, issue operational flow orders, and call for voluntary usage reductions by all customers before taking any action under subsection (c). The NGDC shall take these three actions sequentially to the extent feasible.

(c) In the event of an emergency under subsection (a), the NGDC may require each commercial and industrial retail and transportation customer that is not a Priority 1 customer under subsection (i) to reduce its consumption of gas.

(1) The reduction required shall be determined by the utility without regard to priorities of use, as necessary to minimize the potential threat to public health and safety.

(2) The minimum authorized usage may not be lower than the minimum usage of firm service necessary for plant protection use.

(3) When all other service has been curtailed except for Priority 1 service and the NGDC continues to be unable to meet Priority 1 requirements, the NGDC will exercise its judgment as to any further curtailment that may be necessary and will utilize measures designed to minimize harm to customers if curtailments to plant protection use are found to be necessary.

(4) Consistent with its responsibility to maintain system integrity at all times, the NGDC shall restore service as soon as practicable to any gas-fired electric generation facility that is deemed critical to electric system reliability by the electrical system's control area operator.

(d) Mandatory reductions under subsection (c) shall be for a period specified by the NGDC until further notice. The NGDC may change a customer's authorized usage, upon notice, at any time during an emergency.

(e) Mandatory reductions under subsection (c) shall be for a maximum duration of 5 business days unless extended by Commission order. As an alternative to extending mandatory reductions under subsection (c), the Commission may order the NGDC to initiate priority-based curtailments under subsection (f).

(f) In determining whether to order the NGDC to initiate priority-based curtailments, the Commission will examine whether the NGDC did the following:

- (1) Interrupted all interruptible services.
- (2) Issued operational flow orders.
- (3) Called for voluntary usage reductions by all customers.

(g) Upon issuance of an order to initiate priority-based curtailments, the NGDC shall provide all affected customers the maximum notice possible, via telephone, fax or electronic data interchange, specifying the curtailment

percentage of the customer's firm gas service and resulting allowance as may be the case.

(h) Upon issuance of an order to initiate priority-based curtailments, the available gas supplies to the NGDC should be prorated among its customers in accordance with the following priorities of use:

(1) Customers in a higher priority will not be curtailed until all customers falling into a lower category have been restricted to plant protection use levels, unless operational circumstances or physical limitations warrant a different result.

(2) Where only a partial restriction of a classification is required, implementation should be pro rata.

(3) The pro rata rationing, to the extent practical under the circumstances, will be based on a method set forth in the NGDC's tariff.

(i) Following are the priority categories, listed in descending order, pertaining to the curtailment of firm services:

(1) *Priority 1.* Service for essential human needs use.

(2) *Priority 2.* Firm services not included in essential human needs use.

(j) As part of its natural gas emergency plan, an NGDC may divide any or all of the priority of use categories in subsection (i) into subcategories.

§ 59.74. Utility liability.

(a) Each NGDC may restrict or discontinue service in accordance with this section and §§ 59.71—59.73 and 59.75 without thereby incurring any penalty or liability for any loss, injury or expense that may be sustained by the customer except when the restriction or discontinuation of service is as a result of the NGDC's willful or wanton misconduct.

(b) NGDC liability for actions taken under § 59.73 (relating to emergency action), or to a regulation, policy statement, directive or order issued by the Commission or an emergency order issued by the Governor shall be governed by the following principles:

(1) If an NGDC appropriates natural gas during an emergency action, the NGDC will compensate the applicable entity, whether the customer or the customer's NGS, for the cost of lost, firm gas service. The compensation, in the aggregate, shall equal but not exceed the greater of: the city gate cost of the appropriated natural gas, including transportation charges up to the NGDC's city gate, or the reasonable cost actually paid by the customer for delivered substitute energy, as documented to the NGDC. NGDCs may provide compensation in kind only at the discretion of the affected customer or NGS.

(2) The NGDC will have the right to discontinue service, for the duration of an emergency, to a customer that continues to take gas in violation of the rules found in this subchapter.

§ 59.75. Penalties for unauthorized takes.

The tariff, operating practices, and billing periods of the NGDCs and their suppliers differ significantly. Therefore, each NGDC is permitted to utilize its own appropriate billing periods for calculating pipeline transportation, storage service, and balancing or other penalties and its own tariffed procedure for imposing those penalties on customers who take gas service and NGSs who operate in a manner that is contrary to the rules and regulations of this chapter.

**CHAPTER 69. GENERAL ORDERS, POLICY
STATEMENTS AND GUIDELINES ON FIXED
UTILITIES**

[GAS CURTAILMENT]

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the text of §§ 69.21—69.27 (relating to gas curtailment), which currently appears in 52 Pa. Code pages 69-16.2—69.21, serial pages (271646)—(271650), (201989), (201990), (263695), (263696) and (201993).)

§§ 69.21—69.27. (Reserved).

[Pa.B. Doc. No. 01-220. Filed for public inspection February 9, 2001, 9:00 a.m.]

[52 PA. CODE CH. 63]

**Rulemaking Re Generic Competitive Safeguards;
Doc. No. L-00990141**

By Order entered November 30, 1999, this Commission initiated a proposed rulemaking proceeding to establish competitive safeguards in furtherance of the provisions of Chapter 30 of the Public Utility Code, 66 Pa.C.S. §§ 3001-3009. The proposed rulemaking order required that comments be filed within 30 days of publication in the *Pennsylvania Bulletin*, which occurred on January 29, 2000. Comments were, therefore, originally due February 28, 2000.

On two separate occasions, this Commission granted extensions for the filing of comments in the above-captioned matter after receiving requests for a stay because of the uncertainty surrounding the pending Global appeals and the relevance their resolution may bear on this rulemaking proceeding. Specifically, the November 30, 1999 Order proposed a Code of Conduct that is modeled closely after the Code of Conduct adopted for Verizon Pennsylvania Inc. (formerly Bell Atlantic-Pennsylvania, Inc.) in the Global Order entered September 30, 1999, at Docket Nos. P-00991648 and P-00991649. The second extension granted by this Commission by secretarial letter dated April 26, 2000, stayed, until further notice, the comment period in the above-referenced matter.

On October 25, 2000, the Commonwealth Court unanimously upheld the Commission's Global Order, including the aforementioned Code of Conduct. On November 22, 2000, Verizon filed a petition for allowance of appeal with the Pennsylvania Supreme Court without further challenging the Commonwealth Court's decision relating to the Code of Conduct. Given this changed circumstance removing the prior uncertainty, we believe it is now appropriate to re-establish a comment period for the proposed rulemaking. We, therefore, direct that comments be filed on or before Friday, February 23, 2001, and that a copy of this letter be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 01-221. Filed for public inspection February 9, 2001, 9:00 a.m.]

**STATE BOARD OF
NURSING**

[49 PA. CODE CH. 21]

**General Revisions of the Professional Nursing
Provisions**

The State Board of Nursing (Board) proposes general revisions to its regulations governing professional nurses (RNs) in Chapter 21 (relating to State Board of Nursing) to read as set forth in Annex A.

A. Effective Date

The amendments will be effective upon publication of final-form regulations in the *Pennsylvania Bulletin*.

B. Statutory Authority

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 2.1(k) of the Professional Nursing Law (law) (63 P. S. § 212.1(k)). Section 6.1 of the law (63 P. S. § 216.1) requires the Board to establish standards for the operation and approval of nursing education programs for the preparation of registered professional nurses.

C. Background and Purpose

The proposed amendments represent the results of the Board's systematic review of its professional nursing regulations. The Board began the review in 1993. The Board held a public hearing in that year to receive public comments from the profession on an early draft of these proposed amendments. The Board continued its review in accordance with the principles and requirements of Executive Order 1996-1 of February 6, 1996. The Executive Order directs executive agencies to evaluate existing regulations and amend and delete regulations as necessary to comply with the order. In accordance with the Executive Order, a draft of this proposal was sent on August 10, 1998, to 27 agencies, associations, health care entities and individuals who have been identified as interested parties or who have expressed an interest in this proposed rulemaking. The Board reviewed these comments at its meeting of November 17, 1998.

The Board seeks in these revisions to eliminate outdated provisions, to standardize and simplify language in provisions that maintain their validity, and to reflect educational, testing and practice developments.

D. Description of Amendments

These revisions would make editorial changes to 31 sections, eliminate 20 sections, and add five new sections. These revisions would also consolidate separate provisions pertaining to baccalaureate, associate degree and diploma programs into one category, nursing education programs, the term used in section 6.1 of the law. Seven new definitions are proposed for § 21.1 (relating to definitions). The content of § 21.26 (relating to failing rate of a school in examination) would be moved to § 21.34(b) (relating to removal from approved list). A new standard for removing nursing education programs based on the failure rate of first-time examinees is proposed. Major substantive changes are also proposed for faculty and staff requirements for a nursing education program.

Major Changes

§ 21.34. Removal from approved list; percentage failure rate in examination.

The Board proposes to reserve § 21.26, move its contents to § 21.34, clarify the procedure for removing a

nursing education program from the approved list, and establish a new standard for removal of a program based on the failure rate for the licensure examination.

One of the criteria used by the Board, as well as many other state boards of nursing, in approving a nursing education program is the passing rate of graduates of the program who take the licensure examination (NCLEX) for the first time. Under the current § 21.26, a nursing education program's status will be downgraded from fully approved to provisionally approved if less than 60% of its graduates pass the NCLEX when they take it the first time.

The amendments would reserve the current § 21.26 and move the criteria for establishing minimum pass rates to § 21.34, which deals with removal of a nursing education program from the Board's approved list. The amendments would cause a nursing education program, beginning 1 year after final rulemaking is implemented, to be downgraded from fully approved to provisionally approved if less than 80% of its graduates pass the NCLEX when they take it the first time. The Board proposes this change for the following reasons.

The Commonwealth's minimum passing rate is the least stringent standard in the Nation when compared with other states that use the NCLEX passing rate as a criterion for approving a nursing education program. Under current standards, a nursing education program will maintain full approval status if more than 60% of its graduates pass the NCLEX on their first attempt. Seven states have established 75% as the minimum passing rate, 13 states have established 80% as the minimum, and six states have established 85% as the minimum. (National Council of State Boards of Nursing, Inc., Profiles of Member Boards-1996)

For the examination year October 1, 1997, to September 30, 1998, only 10 of 56 jurisdictions had NCLEX performance rates below that of this Commonwealth. The 10 jurisdictions are American Samoa (four candidates), Delaware, District of Columbia, Guam, Illinois, New York, Northern Mariana Islands (10 candidates), Puerto Rico and Virgin Islands. The overall pass rate for first time examinees applying for licensure in this Commonwealth who were educated in programs in this Commonwealth during the examination year October 1, 1997, to September 30, 1998, was 80.6%. The overall pass rate for the United States in the same period was 85.3%. When this Commonwealth's pass rate is broken down according to type of program, the pass rate for graduates of associate degree programs was 79% (1,075 of 1,355 examinees), baccalaureate degree programs, 80% (1,157 of 1,452), and diploma programs, 84% (717 of 853).

Under the current standards, the nursing education programs in this Commonwealth can maintain full approval status. If the amendments were in effect, 11 of 22 associate degree programs, 17 of 32 baccalaureate degree programs and six of 26 diploma programs would be on provisional status. These programs would have to improve the performance of their graduates on the NCLEX to return to full approval status.

The Board believes that the minimum passing rate for this Commonwealth's programs should be consistent with the rest of the Nation. Programs will be motivated to improve if the minimum passing rate required for maintaining full approval is increased. The Board believes that a number of programs are not providing sufficient support services for students which results in lower pass rates for their graduates. It is the Board's understanding

that programs with higher pass rates do not have more resources available to them than programs with lower pass rates.

The proposed amendments to § 21.34(a) also clarify the procedure for removing a nursing education program from the approved list. Under the current § 21.34, the Board gives "sufficient" notice of its intent to remove a program. The proposed amendment will provide 90 days notice to the program.

§ 21.71. Faculty and staff requirements for baccalaureate and associate degree programs.

The current § 21.71(b)(1) requires the director of a baccalaureate degree program to hold a master's degree in nursing and either an earned doctorate or a specific plan for completing the doctorate, and to have experience in nursing practice, nursing education within an institution of higher education and educational administration. The amendment to § 21.71(b) would require the nurse administrator of a baccalaureate nursing education program who is employed for the first time 1 year after the implementation of final rulemaking to hold an earned doctorate with a nursing major at either the master's or doctoral level. The nurse administrator will also be required to have experience in the areas of administration (not necessarily educational administration), nursing practice and nursing education within an institution of higher education.

The proposed requirement that the nurse administrator of a baccalaureate nurse education program have a doctorate reflects the current standard in nursing education. The nurse administrators of 30 of this Commonwealth's 32 baccalaureate degree programs hold doctorates. The remaining two programs would not be required to comply with the doctoral standard until there is a change of nurse administrator. When the current regulation went into effect in 1983, few nurses held doctorates. Today nurses holding doctorates are available.

The current §§ 21.71(b)(2) and 21.74 (relating to faculty and staff requirements for diploma programs) require the director of an associate degree program or a diploma program to hold a master's degree in nursing and have experience in the areas of nursing practice, nursing education and educational administration. Additionally, a candidate without a master's degree who has made outstanding contributions to nursing education may, at the discretion of the Board, serve as the director of a diploma program.

Under the proposed amendments, the nurse administrator of an associate degree or diploma program will still be required to hold a master's degree in nursing and have experience in the areas of nursing practice, nursing education and administration (although not necessarily educational administration). The Board will no longer require that a candidate for the position of nurse administrator of any educational program have administrative experience in the field of education. The Board is of the opinion that such a requirement is unnecessarily restrictive and that administrative experience gained outside of education is acceptable. Under the proposed amendments, a diploma program will no longer have the option of seeking Board approval for a candidate who lacks the required master's degree but who has made outstanding contributions to nursing education.

The current §§ 21.71(a)(5) and 21.74(a)(3) require that the faculty members of all types of program have a master's degree in nursing with graduate preparation relevant to their clinical areas of responsibility. Under the

proposed amendments in § 21.71(a)(6), every faculty member will be required to have a master's degree in nursing or an earned doctoral degree in nursing with graduate preparation and clinical experience relevant to their clinical areas of responsibility. Under both the current regulations and the proposed amendments, nursing education programs may apply to the Board for permission to employ a faculty member without a master's degree in nursing for up to 5 years if qualified candidates are not available.

Section 21.71(b)(9) is being added to authorize clinical preceptors to guide nursing students in clinical activities. Under current regulations, only a faculty member could guide students in clinical activities. The Board believes the current regulation is unnecessarily restrictive.

§§ 21.61—21.126. Reorganization and consolidation of provisions pertaining to nursing education programs.

These amendments would consolidate the separate and sometimes repetitive provisions pertaining to baccalaureate, associate degree and diploma programs into one category under the statutory phrase, "nursing education programs." This consolidation simplifies the organization of the regulations and makes clear that the Board's approval of any program, whether a baccalaureate, associate degree or diploma, assures that the program provides the minimal education necessary for licensure. Section 21.61 will contain the organizational requirements for all three types of programs. Section 21.71 will contain the faculty and staff requirements for all three types of programs.

The proposed rulemaking makes clear that the nursing education program faculty will be on the same footing as other faculty in the institution (§ 21.61(b)), that the administrative responsibility for the program must be in the nurse administrator (§ 21.61(f)), that the nurse administrator and the faculty will be required to conduct periodic evaluations of the program (§ 21.61(g)), and that the faculty must formulate all policies that relate to the operation of the nursing education program (§ 21.61(k)).

Under the heading "Student Services" the Board proposes to delete §§ 21.112, 21.113 and 21.115 (relating to student employment; student housing; and financial aid). The Board has had a minimal role in these areas; these regulations are obsolete. The Board does not believe that it can lawfully regulate student employment. Most diploma programs do not provide student housing. Housing for baccalaureate and associate degree programs is established and regulated on an institution-wide basis and regulated by the colleges themselves. Financial aid programs are regulated by other state and Federal agencies.

As a result, of this reorganization it will be possible to delete §§ 21.62, 21.63, 21.74—21.76 and 21.81—21.89. New §§ 21.90, 21.90a—21.90c and 21.131 will be added to cover curriculum, educational and program evaluation criteria for all three types of programs. Additionally §§ 21.61, 21.71—21.73, 21.91, 21.101—21.103, 21.114, 21.118, 21.121—21.122 and 21.124—21.125 will be revised either for editorial improvement or to reflect current terminology appropriate to all nursing education programs and current practice.

Other Changes

§§ 21.21—21.23. Applications for examination.

The conversion of NCLEX from a "pencil and paper" examination to computer adaptive testing (CAT) on April 1, 1994, requires changes to §§ 21.21 and 21.23 and allows the deletion of § 21.22. Prior to CAT, the examina-

tion was scheduled a few times a year. The current § 21.21(a) (relating to application for examination) authorizes the applicant to submit an application during the last term of the nursing program to be scheduled to take the next examination, as long as the applicant completed the program before taking the examination. Under CAT, the examination can be administered on 6 days of the week on a date and at a location chosen by the applicant. It is no longer necessary for the Board to receive applications before the applicant actually completes the program because under CAT, after the applicant completes the nursing education program, the applicant may submit the application and take the test when the applicant wishes.

Section 21.22 (relating to date and location of examinations) may be deleted because under CAT it is no longer relevant. Section 21.23(a) is modified to remove the potential implication that the examination must be handwritten.

§ 21.27. Temporary Practice Permits.

The current § 21.27 (relating to unlicensed candidate) is based on earlier law which provided for a graduate of a nursing education program to practice as a graduate nurse for 1 year. The proposed amendments to § 21.27 reflects the addition of section 4.1 of the law which requires that graduates obtain a temporary practice permit during the 1-year period from completion of the person's nursing education program or from the date a licensee of another jurisdiction of the United States or Canada files an application for a license from the Commonwealth.

§ 21.28. Licensure By Endorsement.

Section 7(a) of the law authorizes the Board to issue a license without examination to an applicant who has completed a course of study equivalent to that required in this Commonwealth and who is licensed by examination in another jurisdiction of the United States or Canada. The proposed amendment to § 21.28 (relating to licensure by endorsement) brings the Board's regulation pertaining to endorsement into harmony with the law. The proposed amendment identifies those who are licensed by examination in Canada as among those who would be eligible for licensure by endorsement. The proposed amendment also recognizes that the licensure examination in Canada is not NCLEX. The current regulation in § 21.28(a) would authorize licensure by endorsement to a Canadian educated nurse only if the nurse passed NCLEX. NCLEX, however, is not employed as a licensing examination in Canada. The proposed amendment makes it clear that the Canadian examination will support licensure by endorsement for nurses who have been educated and obtained licensure in Canada.

§ 21.29. Expiration and renewal of license.

The recitation of the schedule for renewing licenses in subsection (a), published in 1985, and now in effect for over a decade, is eliminated in this proposed rulemaking and replaced with the simple statement that licenses shall be renewed biennially. Nurses have actual knowledge of the expiration and renewal date of their licenses because the expiration date is printed on their licenses and wallet cards. Renewal applications are sent to nurses 2 months before their licenses expire.

§ 21.30. Registered nurses licensed outside of the United States, its territories or Canada.

Section 21.30(b) may be eliminated because it is obsolete. This provision authorized a graduate nurse licensed in another country to participate in an approved

exchange-visitor program or in an accredited graduate program in nursing for 2 years without a license and compensation. These programs have not been available for a decade. Moreover, the Board is not aware of any barrier that would prevent a credentialed graduate nurse licensed in another country from either obtaining licensure in this Commonwealth or participating in a nursing education program.

The current § 21.30(c) requires an applicant from a nondegree granting institution outside of the United States or Canada to obtain a certificate of preliminary education through the Department of Education. This provision may be deleted as obsolete. Since January 1, 1995, the Department of Education ceased evaluating foreign credentials for professional licensing boards. The Board itself under the authority of section 6 of the law makes the determination that an applicant has completed work equal to a standard high school course.

§ 21.31. Compliance Reviews of Nursing Education Programs.

The amendment to § 21.31 would replace “survey visits” of nursing education programs with “compliance reviews” and announce that a compliance review of every basic nursing education program will be conducted at least once every 3 years.

Section 6.1 of the law requires an approved nursing education program to submit an annual report to the Board and that a site visit of the program be made at least once every 3 years to assure that the program maintains acceptable standards. Since 1995, the Board has been accepting the accreditation reviews of the National League of Nursing Accreditation Association (NLN), which include site visits, in place of site visits made by Board personnel. The onsite evaluations conducted by the NLN are in accordance with standards acceptable to the Board. The Board still conducts site visits every 3 years to nursing education programs which do not have NLN accreditation. Every nursing education program continues to submit an annual report to the Board and a compliance review every 3 years. A recognized National accreditation survey assures that an approved nursing education program continues to meet Board standards. This change is reflected in the amendments to § 21.31.

Section 6.2 of the law requires the Board to annually prepare and make available a list of all approved programs. The new § 21.31(b) tracks this provision.

§ 21.33. Types of approval.

The Board grants initial approval to a new program, full approval to a program that maintains acceptable standards and provisional approval to a program that does not meet acceptable standards. Under the current § 21.33(c), a program not meeting acceptable standards could remain on provisional status for up to 2 years. This provision also provides for removing a nursing education program from the list of approved programs if it does not meet acceptable standards. The amendment would allow for more flexibility in both restricting and correcting programs not meeting acceptable standards. The amendment would eliminate the 2-year maximum time period and enable the Board to set a specific time for a program to comply with Board requirements. The amendment also provides notice that a nursing education program downgraded to provisional status may be restricted from establishing new satellite campuses or offering alternative scheduling plans.

§ 21.51. Establishment of a nursing education program.

Most of the proposed changes to this section attempt to clarify the process under which a new program obtains approval from the Board. Under both the current and proposed rulemaking, the program first submits a feasibility study (§ 21.51(b)(1)—(4) of the current regulations, § 21.51(b)(1)—(2) of the proposed rulemaking). After the feasibility study is approved by the Board, the program submits an educational plan (§ 21.51(b)(5) of the current regulations, § 21.51(b)(3) of the proposed rulemaking). The distinction between the feasibility study and the educational plan is clarified in the amendment (proposed § 21.51(b)(3)).

Aspects of the current regulation which appeared subjective and not subject to enforcement, § 21.51(b) (relating to compatibility of the philosophy of the parent institution) will be deleted. Similarly, provisions which appear to place restraints on the establishment of a new program based on the “need” for a program, assurances of an “adequate supply and flow of interested candidates” and impact on other nursing programs are also deleted. (See, § 21.51(b)(1)(i)—(iii).) The amendments require the feasibility study for the establishment of a new nursing education program to demonstrate that the program has an appropriate curriculum, the necessary hours of instruction, adequate academic and clinical resources and reasonably committed financial resources.

After the Board approves a feasibility study, a new nursing education program will be required to submit a report at least 8 months before students are admitted. The report must include an outline of the administrative structure of the new program, a job description for each faculty position, a statement of philosophy and objectives, admissions policies, a 4-year budget projection and information about various agencies which will provide supervised clinical experience for the nursing students.

Under the current regulations the new education program must employ the faculty at least 1 semester before they start teaching. (See § 21.51(b)(6).) The proposed amendment deletes this costly requirement and implicitly authorizes a new program to employ the faculty when it becomes necessary.

The current regulations treat the change of ownership of a nursing education program as the establishment of a new program, requiring a new feasibility study. (See § 21.51(c).) The proposed § 21.51(d) recognizes that a change in ownership may not result in any change to a program and, in such a situation, only requires the administrator of the program to inform the Board of a change in ownership.

§ 21.72. Faculty policies.

A proposed amendment to § 21.72(f) will require faculty members to maintain a record of participation in continuing education, self-development and other activities which promote the maintenance of expertise in their teaching area. While many professionals maintain the records as part of their resume, this proposed rulemaking makes the recordkeeping mandatory.

§§ 21.90—21.90b. Curriculum, philosophy, purposes and objectives; core curriculum requirements; and general education criteria.

These provisions require types of nursing education programs to formulate a statement of philosophy and purpose, to have a curriculum which addresses the areas of entry level nursing practice identified in the job analysis of the National Council of State Boards of

Nursing and to stress critical thinking. These provisions replace the current §§ 21.81, 21.82 and 21.84—21.89.

§ 21.90c. Changes requiring Board approval.

This section would replace the current § 21.83. The proposal makes clear that major changes to curriculum require Board approval and simplifies the procedure for obtaining Board approval.

§ 21.91. Facility and resource requirements.

The proposal simplifies this provision, eliminating requirements that are subjective (such as, the “facilities shall be attractive”) and not subject to the Board’s enforcement jurisdiction or expertise (such as, “effective lighting, adequate heating and ventilation”), but rather are under the jurisdiction of other agencies.

§ 21.114. Counseling and guidance.

Current regulations encourage student counseling programs to include personal, professional and academic counseling and referral of students to appropriate counselors. Under the proposed amendments, these services will be required.

§ 21.122. Record maintenance.

The current regulations require a nursing education program to keep student records “ad infinitum.” The proposed amendment reduces this time to 50 years. The proposed amendment will require that minutes of organizational and faculty meetings, annual reports and program evaluations be retained for 10 years and budgets for 3 years. The current regulations do not specify how long these records should be kept.

§ 21.124. Records to be filed with the Board.

The proposed § 21.124(b) is simplified because the only information that a nursing education program need provide the Board consists of a list of those who completed the program and are eligible for a temporary practice permit. The student submits the application.

§ 21.131. Evaluation.

The proposed amendment requires each nursing education program to perform self-evaluations which examine the program’s administration, faculty, curriculum, facilities and student policies.

E. Fiscal Impact and Paperwork Requirements.

Some of the provisions of this proposed rulemaking are likely to have a fiscal impact. It is not possible to estimate the impact with any likelihood of precision. The proposal in § 21.34 to downgrade the status of a nursing education program from full approval to provisional approval based on the performance of graduates on the licensure examination may increase costs for those programs which may have to increase student support services to raise the passing rate of its graduates. An increase in the passing rate will have a beneficial fiscal impact on students, possibly offsetting school costs.

The change proposed in § 21.31 from routine site visits of nursing education programs performed by Board staff to compliance reviews based on NLN accreditation site reviews every 3 years will result in savings to both the Commonwealth and to the nursing education programs. The Commonwealth benefits from saving staff time because staff no longer have to visit sites. The programs benefit by not having to prepare for two similar onsite surveys.

The change proposed in § 21.51(b)(6), which no longer requires a new nursing education program to hire the

faculty 1 semester before they start teaching, will result in savings to the private sector and public institutions.

The change proposed in § 21.51(c), which will no longer consider a change of ownership of a nursing education program as the establishment of a new program, will result in savings to the private sector. Under the proposal, the program will only have to inform the Board and not prepare a new feasibility study.

F. Sunset Date

The Board continuously monitors 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 January 25, 2001, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the House Committee on Professional Licensure and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided the Committees and IRRC with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, “Regulatory Review and Promulgation.” A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees’ review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of the objections prior to final publication of the regulations by the Board, the General Assembly and the Governor.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Martha Brown, Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, Pennsylvania 17105-2649 within 60 days following publication for the proposed rulemaking in the *Pennsylvania Bulletin*. Please reference (16A-516) General Revisions when submitting comments.

M. CHRISTINE ALICHNIE, PhD, RN,
Chairperson

Fiscal Note: 16A-516. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

GENERAL PROVISIONS

§ 21.1 Definitions.

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

Accredited program—A nursing education program which has been approved by an accrediting agency in nursing recognized by the United States Department of Education.

* * * * *

Agency data form—A form provided by the Board which is used to collect demographic and other necessary information relevant to the clinical experience of nursing students at a cooperating clinical agency.

* * * * *

Clinical preceptor—A professional nurse associated with a cooperating clinical agency who guides a nursing student in designated clinical learning activities after the student has received appropriate didactic and clinical instruction.

Compliance review—A process of self-evaluation by the nursing education program pursuant to guidelines of the Board, which may also include a site visit by professional Board staff for the purpose of determining compliance with Board regulations.

Cooperating clinical agency—A facility which enters into a written agreement with a nursing education program or controlling institution to provide nursing students with supervised clinical experience.

* * * * *

NCSBN—National Council of State Boards of Nursing.

* * * * *

Satellite or branch campus—A dependent part of a nursing education program established at a location other than that of the originally approved site. The satellite or branch campus offers a majority of the courses of the originally approved program.

* * * * *

§ 21.2 Scope.

(a) The Board administers the act by providing rules and regulations on standards for nursing [schools and the conduct of the] education programs.

(b) The Board provides for licensure of graduate nurses from approved [schools] nursing education programs by examination[,] . The Board also provides for licensure of nurses by endorsement and by renewal of licenses.

(c) The Board has the [right] authority to establish rules and regulations for the practice of nursing.

(d) The Board may suspend or revoke licenses for cause as well as impose civil penalties.

(e) The Board will approve [basic] nursing education programs conducted in hospitals, colleges[,] and universities[; approve foreign exchange visitor programs; and promulgate] and compile a list of approved programs.

(f) The Board will [approve applications] provide for inactive status under section 11(b) of the act (63 P. S. § 221).

* * * * *

§ 21.3 Purposes of the Board.

[The Board will insure safe nursing services for the citizens of this Commonwealth.] The purpose of the Board is to assure the public health, safety

and welfare of the residents of this Commonwealth. Embodied in this purpose are the following responsibilities:

(1) To establish safe minimum standards for the preparation of registered and practical nurses in approved [educational] nursing education programs.

(2) To assure safe standards of nursing practice through examination and licensure of graduates of approved [educational] nursing education programs, through endorsement of registered and practical nurses from other jurisdictions, and through the regulation of the practice of nursing in this Commonwealth.

LICENSES

§ 21.21. Application for examination.

(a) An application for the licensing examination [without transcript] together with the required fee in the form of a check or money order may be submitted [during the last term] to the Board office upon completion of the nursing education program. [The applicant will be scheduled for the subsequent examination.]

* * * * *

(c) A copy of the transcript for out-of-State candidates validating program completion shall be filed [at least 2 weeks prior to the testing dates in the Board office] in the Board Office.

[(d) The Board will not proctor an applicant for another state board. The Board will not permit an applicant for Commonwealth licensure to be proctored by another state board.]

§ 21.22. [Date and location of examinations] (Reserved).

[(a) The Board conducts licensing examinations at least twice a year.

(b) A list of examination dates and locations are published annually.]

§ 21.23. Qualifications of applicant for examination.

(a) An applicant shall pass [a written] an examination as provided by the Board.

* * * * *

§ 21.24. Examination score requirements.

The candidate for licensure shall achieve a [minimum] passing score as mandated by the Board.

§ 21.25. Reexamination.

(a) [A candidate shall submit the required fee in the form of a check for reexamination.] An application for reexamination may be submitted together with the required fee in the form of a check or money order to the Board office.

(b) [(Reserved).

(c)]

* * * * *

[(d) A request to retake an examination for the purpose of elevating a passing score will not be granted.]

§ 21.26. [Failing rate of a school in examination] (Reserved).

[If 40% or more of the first-time examinees of a school of nursing writing the examination in this Commonwealth fail the examination, the school will be placed on provisional approval status. The Board may consider additional documented statistics concerning the examination scores received in other states by Commonwealth graduates in determining the status of the school.]

§ 21.27. [Unlicensed candidate] Candidates for licensure; temporary practice permits.

[The] A candidate for licensure as a professional nurse who has completed a nursing education program may practice as a graduate nurse [until the licensing examination is passed subject to the following:] upon the issuance of a temporary practice permit under section 4.1 of the act (63 P. S. § 214.1).

(1) [Unless licensed, the candidate may be employed as a graduate nurse for 1 year only from the date of completion of a nursing program except in the case where special permission is granted by the Board due to extenuating circumstances. In such a case the candidate shall present validating documentation.] A candidate for licensure as a professional nurse shall apply to the Board for admission to the examination and may apply for a temporary practice permit.

* * * * *

§ 21.28. Licensure by endorsement.

(a) [A registered nurse who has graduated from an approved nursing program in another state or territory of the United States or Canada and who is licensed by writing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth by endorsement of the original licensing board.] A registered nurse who has graduated from an approved nursing education program in another state or jurisdiction of the United States or the Dominion of Canada and obtained the license by passing the National Council of State Boards of Nursing Licensure Examination or the examination required for licensure in the Dominion of Canada may be granted licensure in this Commonwealth by endorsement of the license issued by the original jurisdiction.

* * * * *

§ 21.29. Expiration and renewal of license.

(a) [Registered nurses whose licenses expire on October 31, 1985 will thereafter be subject to the following license renewal schedule:

(1) Licenses of registered nurses whose license numbers end in the numbers 01 through 25 will expire on April 30, 1986 and, following renewal, will thereafter expire on April 30 in the even-numbered years. The license renewal fee for licenses that expire on April 30, 1986 will be 25% of the renewal fee for the usual 2-year renewal period. The renewal fee for licenses that expire on an anniversary of April 30, 1986 will be the renewal fee for the usual 2-year renewal period.

(2) Licenses of registered nurses whose license numbers end in the numbers 26 through 50 will expire on October 31, 1986 and, following renewal, will thereafter expire on October 31 in the even-numbered years. The license renewal fee for licenses that expire on October 31, 1986 will be 50% of the renewal fee for the usual 2-year renewal period. The renewal fee for licenses that expire on an anniversary of October 31, 1986 will be the renewal fee for the usual 2-year renewal period.

(3) Licenses of registered nurses whose license numbers end in the numbers 51 through 75 will expire on April 30, 1987 and, following renewal, will thereafter expire on April 30 in the odd-numbered years. The license renewal fee for licenses that expire on April 30, 1987 will be 75% of the renewal fee for the usual 2-year renewal period. The renewal fee for licenses that expire on an anniversary of April 30, 1987 will be the renewal fee for the usual 2-year renewal period.

(4) Licenses of registered nurses whose license numbers end in the numbers 76 through 00 will expire on October 31, 1987 and, following renewal, will thereafter expire on October 31 in the odd-numbered years. The license renewal fee for licenses that expire on October 31, 1987 will be the renewal fee for the usual 2-year renewal period. The renewal fee for licenses that expire on an anniversary of October 31, 1987 will be the renewal fee for the usual 2-year period.

(5) Registered nurses who obtain initial licensure on or after November 1, 1985 and registered nurses who reactivate their licenses on or after November 1, 1985 will be assigned to one of the following license expiration dates:

- (i) April 30 in the even-numbered years.
- (ii) October 31 in the even-numbered years.
- (iii) April 30 in the odd-numbered years.
- (iv) October 31 in the odd-numbered years.]

Licenses of registered nurses shall be renewed biennially.

* * * * *

§ 21.30. Registered nurses licensed outside of the United States, its territories or Canada.

[(a)] A nurse educated and licensed in another country other than Canada may not be employed as a nurse in this Commonwealth until the requirements for Commonwealth licensure have been met.

[(b) A graduate nurse licensed in another country may participate in an approved exchange-visitor program or in an accreditation graduate program in nursing for a period of 2 years without licensure and compensation in this Commonwealth.

(c) An applicant coming from a country outside of the United States or Canada who is from a nondegree granting institution shall obtain a Certificate of Preliminary Education through the Department of Education.]

APPROVAL OF [SCHOOLS OF] NURSING EDUCATION PROGRAMS

§ 21.31. [Surveys] Compliance reviews; list of approved schools.

(a) [**Survey visits are made**] A compliance review of every basic nursing [**programs conducted in hospitals, colleges or universities of exchange visitor programs and of cooperating agencies. In this section, "cooperating agency" means an educational institution or health care delivery system which cooperates with the controlling institution. The survey**] education program approved in this Commonwealth shall be conducted at least once every 3 years. A report is presented to the Board and a written report of recommendations or requirements, or both, is sent to the [**school, college or university**] nursing education program. A site compliance visit may be made at the discretion of the Board and will be made at least once every 3 years to a nursing education program which is not accredited.

(b) [**Classified lists of approved schools of nursing and of exchange visitor programs are compiled and published annually and are made available for distribution.**]

(c) A list of approved cooperating agencies that provide educational programs for schools of nursing is compiled and published annually and is made available for distribution.]

The Board will compile and publish annually a list of approved nursing education programs located in this Commonwealth.

§ 21.32. Objectives of the approval process.

[**Nursing schools in this Commonwealth are approved to effectuate the following**] The purpose of the Board's approval process for nursing education programs is to make certain that each approved nursing program meets the following objectives:

(1) Safeguard the [**preparation**] quality of [**nurses**] nursing education programs and assure safe minimum standards of nursing practice in this Commonwealth.

(2) Stimulate and maintain continued growth and improvement of professional nursing education in this Commonwealth.

(3) [**Guide prospective students in the selection of approved schools which offer adequate resources for sound basic nursing education.**]

(4)] Assure the graduates of professional nursing education programs of eligibility for admission to examination for licensure.

[(5)](4) Assist graduates of [**schools of**] nursing education programs in this Commonwealth to qualify for licensure by endorsement in other jurisdictions.

§ 21.33. Types of approval.

The Board will grant initial, provisional or full approval status to a nursing education program contingent upon compliance with this chapter, and may require progress reports or other information deemed necessary for the evaluation of the program.

[(a)] (1) *Initial.* The Board may grant initial approval to a new [**schools**] nursing education program, with evidence that acceptable standards are being met, for a period of time necessary to evaluate the results of the licensing examination taken by the first graduates.

Board action to grant initial approval authorizes a nursing education program to recruit students.

[(b)] (2) *Full.* The Board will place on full approval [**those schools**] a nursing education program which [**attain**] attains and [**maintain the**] maintains acceptable standards and [**adhere**] adheres to the policies and regulations of the Board [**considered essential for a sound program of nursing education.**]

[(c)] (3) *Provisional.* The Board may place on provisional approval a [**school**] nursing education program not meeting [**the**] acceptable standards. [**A period of 2 years will be the maximum time allowed for the correction of deficiencies resulting in provisional approval.**] If the standards are not met within [**this designated time**] the time designated by the Board, the [**school**] program will be removed from the approved list as provided in § 21.34 (relating to removal from approved list; percentage failure rate in examination). A nursing education program placed on provisional status may be restricted from establishing new satellite campuses or offering alternative scheduling plans until the program resumes full approval status.

§ 21.34. Removal from approved list; percentage failure rate in examination.

(a) *Notice of intent.* The Board will give [**sufficient notification of intent of removal from the approved list and provide an opportunity for school officials to show cause as to why approval should not be withdrawn**] 90 days notice of its intent to remove a nursing education program from the approved list and will provide an opportunity for the program to show cause why approval should not be withdrawn.

(b) Removal based on failure rate.

(1) Until _____ (*Editor's Note: The blank refers to a date 1 year after the effective date of adoption of this proposal.*), a nursing education program will be placed on provisional approval status if, in one examination year, 40% or more of its graduates taking the licensure examination for the first time fail the examination.

(2) Beginning _____ (*Editor's Note: The blank refers to a date 1 year after the effective date of adoption of this proposal.*), a nursing education program will be placed on provisional approval status if, in one examination year, 20% or more of its graduates taking the licensure examination for the first time fail the examination.

(3) An examination year is the period beginning October 1 of one year through September 30 of the following year.

(4) The Board may consider additional documented statistics concerning the examination scores received in other states by Commonwealth graduates in determining the approval status of the program.

DISCONTINUANCE OF A [**SCHOOL OF**] NURSING EDUCATION PROGRAM

§ 21.41. Notification: completion of program; records.

(a) Written notification of intent to discontinue a nursing education program [**of nursing**] shall be submit-

ted to the Board within a reasonable time, but not less than 6 months prior to discontinuance.

(b) When a class is not admitted in a given year, the nursing **education** program shall close unless approval has been granted by the Board based on the justification for continuation submitted to the Board.

(c) If a **nursing education** program is discontinued, it is the responsibility of the controlling institution to provide for the completion of the program for students currently enrolled, either by placing the students in an approved program or continuing the enrolled classes until completion. If the program is continued until completion, approved and qualified instruction shall be assured. A controlling institution is a university, college or hospital which conducts programs of education in nursing.

(d) The controlling institution has the legal responsibility to make provision for permanent retention of student and graduate records in conformity [of] with § 21.125 (relating to custody of records).

**[APPROVED PROGRAMS OF NURSING]
APPROVAL PROCESS: NURSING EDUCATION
PROGRAMS**

§ 21.51. Establishment.

(a) A nursing **education** program shall be developed under the authority of a regionally accredited university or college, or hospital [**approved**] **accredited** by the Joint Commission on Accreditation of [**Hospitals,] Health Care Organizations, and shall be administered** under the leadership of a registered nurse who meets the requirements of § 21.71(b)(2) (relating to faculty and staff requirements).

(b) A university or college **or hospital** may conduct [**programs of nursing**] a **nursing education program** if there [**is an**] are adequate faculty and [**adequate**] clinical facilities [**and the philosophy of the parent institution encompasses dual programs of education. A hospital or educational institution**]. A **university or college or hospital** desiring to establish a [**program of**] nursing [**is required to**] **education program shall complete the following steps to receive initial approval:**

(1) **Complete and submit to the Board for approval with the required fee under § 21.5(a) (relating to fees)** a feasibility study which shall include:

(i) [**Sufficient statistical data to support the need for a program within the community and to assure availability of an adequate supply and flow of interested candidates.**] A curriculum sequence which complies with § 21.90.a (relating to core curriculum requirements) and identifies an adequate number of theoretical and clinical contact hours of instruction.

(ii) Identification of available **academic and clinical practice** resources for program implementation based on the projected enrollment and faculty. [**In viewing the clinical resources, the study shall speak to other nursing programs that share the teaching facilities identified in the study.**]

* * * * *

(iv) [**Actual cost of the**] A 4-year budgetary projection of program costs, including [**faculty needed**] salaries, clinical teaching resources, educational sup-

plies, office supplies, and [**the like and sufficient**] evidence of [**stable**] financial support.

(v) **A program overview, including the anticipated number of students to be enrolled, projected faculty-student ratio for each proposed clinical course and anticipated contract requirements for cooperating clinical agencies.**

(vi) **A statement of the controlling institution's philosophy or mission statement.**

(vii) **A job description for a full-time program director who meets the qualifications of § 21.71.**

(2) [**Submit the feasibility study to the regional health planning agency if that agency is willing to participate in the approval process.**

(3) **Submit 15 copies of the feasibility study and the written decision of the health planning agency, if obtained, to the Board for approval.**

(4)] Employ the nurse administrator of the educational unit at least 12 months prior to the intended admission date of students. Board approval of the nurse administrator's credentials must be obtained prior to the appointment.

(3) **Complete and submit to the Board, upon approval of the feasibility study, a report documenting plans for the proposed nursing education program at least 8 months prior to the intended admission date of students.**

[(5) **Submit 15 copies of the tentative planned education program to the Board at least 8 months prior to the intended admission date of students.**

(6) **Employ the teaching faculty at least 1 semester before the initiation of their teaching responsibilities.**

(c) **Change of ownership shall be processed as the establishment of a new program.**

(d)] (4) The report on the planned [**educational**] nursing education program shall include:

[(1)] (i) * * *

[(2)] (ii) Administrative structure and functions of the nursing [**school**] education program.

[(3) **Educational preparation and nursing experience of faculty members employed.**]

(iii) **A job description for each nursing faculty position.**

[(4)] (iv) * * *

[(5)] (v) Proposed curriculum design [**based on sound educational concepts and**], including detailed course descriptions and identification of clinical practice.

[(6)] (vi) * * *

[(7)] (vii) * * *

[(8)] (viii) Copy of proposed budget projected for a minimum of [**5**] 4 years.

[(9) Copies of] (ix) **A completed Agency Data Form for each cooperating clinical agency to be used in the program and a sample** written [**agree-**

ments with cooperating agencies and facilities to be used in the program] agreement.

(x) A general description of facilities and resources under § 21.91 (relating to facility and resource requirements).

[(e)](c) Following the review of the planned nursing education program and before final Board action [is taken] to grant [permission to recruit students,] initial approval in accordance with § 21.33 (relating to types of approval), an initial facility survey will be made by a nursing education advisor of the Board.

(d) A change in the ownership of a nursing education program which does not result in changes to the program's administrative structure, budget, policies or curriculum does not require the submission of a feasibility study to the Board for review and approval. The controlling institution shall advise the Board of any change in the name of the nursing education program. The administrator of the program shall notify the Board of any ownership changes.

ORGANIZATION AND ADMINISTRATION OF NURSING EDUCATION PROGRAMS

§ 21.61. [Baccalaureate and associate degree programs: organizational] Organizational requirements.

* * * * *

(b) [Relationships with central administrative officers, interrelationships among other disciplines and services of the institution and] Nursing education program faculty shall be afforded the same opportunities for representation on institutional councils and committees [for faculty of the educational unit in nursing shall be consistent with the interaction and responsibilities accorded to] as other faculty members of the institution.

(c) Adequate funds shall be [allocated and properly] budgeted for the [sound and] effective operation of the program.

* * * * *

(f) The authority and the administrative responsibility for the nursing education program shall be delegated by the governing body to the nurse administrator.

(g) The nurse administrator and faculty of the nursing education program shall conduct planned periodic evaluations of the program organization and program administration.

(h) The resources, facilities and services of the controlling institution shall be available to and used by the [educational unit in nursing] nursing education program and shall be adequate to meet the needs of the faculty and the students.

(i) Cooperating clinical agencies shall be subject to the following provisions:

(1) [Agreements to utilize field agencies outside the structural control of the controlling institution shall be initiated by the educational unit in nursing.

(2)] Cooperating clinical agencies or services selected by the [school] nursing education program shall be licensed or approved by the appropriate [State and National] regulatory bodies, if [such exist] one exists.

[(3)] (2) The agreement between the [educational unit in nursing] nursing education program and the cooperating clinical agency shall be consistent with the standards of the nursing education program, developed jointly, recorded in writing, reviewed periodically by both parties, revised as occasion requires and consistently adhered to by those responsible for implementing the provisions.

[(4)] (3) * * *

[(5)] (4) The [field] agencies selected for use shall have the quality and variety of resources for planned learning experiences needed for the [program of the educational unit in nursing] nursing education program, and shall retain ultimate responsibility for client care and services.

[(6)] (5) Approval by the Board shall be obtained before the [educational unit in] nursing education program may utilize a new [field] cooperating clinical agency [for learning experiences. An Agency Data form, provided by the Board, shall be submitted for each new field agency used for the first time.

(h) The faculty of the educational unit in nursing shall conduct planned periodic evaluation of its organization and administration.]

(j) The organizational plan for the nursing education program shall describe relationships with the governing body, individuals and cooperating clinical agencies responsible for and participating in the program operation.

(k) The faculty shall formulate all policies that relate to the operation of the nursing education program.

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete §§ 21.62 and 21.63, which currently appear at 49 Pa. Code pages 21-24—21-25, serial pages (209962) and (209963).)

§ 21.62. (Reserved).

§ 21.63. (Reserved).

ADMINISTRATIVE AND INSTRUCTIONAL PERSONNEL

§ 21.71. Faculty and staff requirements [for baccalaureate and associate degree programs].

(a) [The minimum] Minimum faculty and staff requirements [for each program] are as follows:

(1) Full-time [director of the program] nurse administrator.

* * * * *

(4) A minimum of one full-time secretary and additional [secretarial assistance] staff support personnel as needed.

(5) A full-time librarian with at least a bachelor's degree in library science if the nursing education program is not within an institution of higher education.

(b) Faculty and nurse administrator qualifications are as follows:

(1) Board approval of the nurse administrator's credentials shall be obtained prior to appointment.

(2) The [director] nurse administrator of a baccalaureate degree nursing education program, employed for the first time [after January 1, 1986,] on or after _____ (Editor's Note: The blank refers to a date 1 year after the effective date of adoption of this proposal) shall hold [a master's degree in nursing and] an earned doctoral degree [or a specific plan for completing doctoral preparation] with a nursing major at the master's or doctoral level. The [director] nurse administrator shall have experience in the areas of administration, nursing practice[,] and nursing education within an institution of higher education [and educational administration. Candidates who have made outstanding contributions to nursing education shall be considered on an individual basis].

[(2)] (3) The [director] nurse administrator of an associate degree or diploma program shall hold the minimum of a master's degree in nursing. The [director] nurse administrator shall have experience in the areas of nursing practice, nursing education and [educational] administration.

[(3)] (4) The length of appointment of a temporary [and] or acting [heads] nurse administrator of a nursing education [programs] program may not exceed 1 year.

[(4)] (5) [Nurse] The nurse administrator and every nurse faculty [members] member shall be currently licensed as professional nurses in this Commonwealth.

[(5) Faculty members] (6) Every faculty member shall have a master's [degrees] degree in nursing or earned doctoral degree in nursing, with graduate preparation and clinical experience relevant to their clinical areas of responsibility[;] and [they] shall give evidence of maintaining expertise in [their] clinical or functional areas of specialization.

[(6)] (7) Faculty members [with less than] without a master's degree in nursing may be employed if qualified candidates are not available; they shall function for a maximum of 5 years as assistants under the direct guidance of a faculty member fully qualified in the specific teaching area. These assistants shall have [a minimum of] a baccalaureate degree in nursing, and they shall give evidence of actively pursuing a master's degree in nursing or an earned doctoral degree in nursing. [The lack of availability of] In applying to employ a faculty member without a master's degree in nursing, the administrator of a nursing education program shall document efforts to recruit qualified faculty [shall be documented by, among other things] by submitting to the Board copies of advertisements placed in appropriate professional journals and newspapers, copies of recruitment letters to appropriate institutions of higher learning, and records of job interviews.

[(7)] (8) Faculty employed to teach nutrition [must] shall be registered dietitians (R.D.) and eligible for membership in the American Dietetic Association.

(9) A clinical preceptor may be utilized to guide selected clinical activities. Faculty retain responsibility for planning and evaluating student learning experiences and shall have input into selection of preceptors.

§ 21.72. Faculty policies.

* * * * *

(d) Teaching hours and additional duties of nurse faculty shall be consistent with the policies of the controlling institution. [Seminar, discussion and laboratory contact hours shall be equated. Where additional expectations in terms of research, counseling, committee work or other institutional responsibilities are present, the teaching load shall be decreased accordingly.]

(e) The nurse administrator and nursing faculty shall be afforded the time and opportunity to engage in leadership activities within their profession commensurate with [the responsibilities inherent in the role of institutions of higher education in our society] their responsibilities.

(f) There shall be a planned and active faculty development program designed to meet the [perceived] needs of the faculty. Faculty members shall maintain a record of participation in continuing education, professional self-development and other activities which promote the maintenance of expertise in their respective areas of teaching.

§ 21.73. Internal nursing faculty organizations.

(a) There shall be a nursing faculty organization. [appropriate to its size and in harmony with other educational units within the controlling institution.]

(b) Policies and rules of procedure governing the faculty organization shall be in written form and periodically reviewed by the faculty.

[(c) Members] (b) The members of the faculty shall participate in the activities of the faculty organization [in ways consistent with their rank and responsibilities].

[(d)] (c) * * *

[(e)] (d) Committee reports and faculty actions shall be recorded, filed [systematically] and kept available for reference.

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete §§ 21.74—21.76 and §§ 21.81—21.89, which currently appear at 49 Pa. Code pages 21-28—21-36, serial pages (209966)—(209974).)

§ 21.74. (Reserved).

§ 21.75. (Reserved).

§ 21.76. (Reserved).

§§ 21.81—21.89. (Reserved).

CURRICULUM

§ 21.90. Curriculum philosophy, purposes and objectives.

(a) A clear statement of philosophy and purposes of the nursing education program, consistent with the philosophy and purposes of the controlling

institution, shall be formulated, adopted and reviewed or revised at stated time intervals by faculty.

(b) The philosophy and purposes of the nursing education program shall be consistent with currently accepted educational and nursing standards.

(c) The program objectives shall identify outcomes that the students are expected to achieve.

§ 21.90a. Core curriculum requirements.

(a) The curriculum shall:

(1) Address representative areas of nursing practice identified as entry-level by the current job analysis conducted by the NCSBN.

(2) Be developed, implemented and evaluated by the faculty and shall include the knowledge, professional role development, skills and abilities necessary for the specific levels of student achievement.

(3) Include content from the areas of anatomy and physiology, chemistry, microbiology, physics, nutrition and pharmacology which may be integrated, combined or presented as separate courses. When the basic sciences are presented as distinct academic courses, students shall participate in related laboratory testing of scientific principles.

(4) Include courses in the humanities and social and behavioral sciences.

(b) Content related to nursing history, trends and professional responsibilities may be integrated, combined or taught as separate courses.

§ 21.90b. General education criteria.

(a) There shall be an educational rationale for the selection and distribution of courses and for the selection of theoretical and clinical laboratory content in nursing courses.

(b) The rationale for the allocation of credit for nursing courses shall be based on educational principles.

(c) Learning experiences and methods that promote critical thinking and synthesis of learning shall be utilized. Consideration shall be given to students' individual differences.

(d) General education courses for nursing students shall be taught according to the course description in the catalog of the college or university.

(e) Nursing courses and curriculum shall be organized to continue the development of knowledge, skills and behaviors needed in all aspects of basic professional nursing.

(f) The ratio of students to faculty shall assure optimal learning opportunities in all classroom and clinical laboratory sessions and shall be consistent with the objectives of the clinical nursing courses.

(g) The curriculum for nursing education programs shall give evidence of providing learning experiences which will prepare graduates for basic professional nursing practice.

§ 21.90c. Changes requiring Board approval.

(a) Prior Board approval is required for the following curriculum changes:

(1) Alteration of the program purposes and objectives; changes in didactic or clinical hours, credits, units; changes in course placement; addition or

deletion of courses; changes in the length of a course or program; and deletion of content areas.

(2) Changes in nursing education program options such as accelerated second degree programs, weekend and evening full time programs.

(b) When a curriculum change is contemplated, a plan which reflects the present program, the proposed change and the rationale for the change shall be presented to the Board. The plan should also reflect associated changes in clinical practice rotations.

(c) Curriculum changes which require Board action shall be filed with the Board at least 30 days prior to the Board meeting at which consideration of the proposed change is requested.

FACILITIES FOR ADMINISTRATION AND TEACHING

§ 21.91. Facility and resource requirements.

* * * * *

(b) Facilities and resources of the [school] nursing education program shall include the following:

(1) [Offices and administrative and instructional personnel provided with appropriate and adequate space and equipment essential for attainment of the objectives of the program.] Classrooms, conference rooms, science laboratories, nursing resource laboratories, clinical facilities and offices sufficient to meet the needs of students, faculty, administrators and staff.

(2) [Sufficient number and size of accessible classrooms, conference rooms and laboratories to meet the needs of the program, as follows:

(i) Such facilities shall be attractive, with effective lighting, adequate heating and ventilation.

(ii) The educational facilities shall be provided with] Adequate equipment and supplies to meet the [teaching and] learning requirements of [both] students [and teachers].

[(iii) The selection and maintenance of the kind and quality of facilities needed in the individual nursing program shall be determined by the]

(3) Adequate material resources to implement curriculum design and teaching [methods utilized by] methodology of the faculty.

[(3)] (4) Adequate storage space for general supplies and equipment [. Policies shall be in existence for the] and procedures to ensure the periodic replacement of equipment, furnishings and supplies.

[(4)] (5) Library facilities and resources [, which are planned and maintained to meet the specific needs of the student and the faculty,] as follows:

* * * * *

(iii) Library holdings shall include sufficient current reference titles, periodicals and other educational materials to achieve the objectives of the curriculum.

STUDENTS

§ 21.101. [Selection and admission] Admission and graduation standards.

(a) Policies and procedures related to [the selection and] admission and graduation of students are the

responsibility of each nursing education program. [the individual school. Consideration shall be given to scholastic aptitude, academic achievement, personal qualities and physical and emotional health necessary to fulfill the objectives of the program.]

(b) Students admitted to baccalaureate and associate degree programs shall meet the requirements for admission to the university or college and additional requirements that may be established for the nursing major.

(c) * * *

§ 21.102. Admission of classes.

[The Board recommends that only one class be admitted per year.] The number of [candidates] admissions for each class shall be determined by the educational and clinical resources which the [school] nursing education program can provide.

§ 21.103. Transfer of students or advanced standing.

The [school] nursing education program shall have a written policy consistent with its philosophy and objectives concerning criteria for granting advanced standing or accepting transfer students. [The policies of the baccalaureate and associate degree programs shall be consistent with those of the controlling institution. Diploma programs shall assume responsibility for formulating their own policies and submitting them for Board approval. The Board requires that transfer students complete, as a minimum, the senior or final level in the school granting the diploma or degree.]

STUDENT SERVICES

(Editors Note: As part of this proposed rulemaking, the Board is proposing to delete §§ 21.112 and 21.113, that currently appear at 49 Pa. Code pages 21-38 and 21-39, serial pages (214432) and (214433).)

§ 21.112. (Reserved).

§ 21.113. (Reserved).

§ 21.114. Counseling and guidance.

(a) The scope of the counseling program shall be clearly defined [in accordance with the objectives of the program.] and (b) A program should [shall] include personal, professional and academic counseling, initiated by either faculty or students.

(c) (b) Adequate provisions [should] shall be made for referral of students to appropriate counselors when [assistance is] needed [for solving problems of students].

§ 21.115. [Financial aid] (Reserved).

(a) Policies and procedures relating to scholarships, loans and grants shall be developed within the framework of the philosophy of the controlling institution and defined in writing.

(b) It is recommended that each school maintain a list of available resources for financial assistance and that applicants and students be informed of these resources.

(c) Students accepting financial aid should be made aware of the provisions and responsibilities incurred with such assistance.]

STUDENTS LICENSED IN OTHER JURISDICTIONS

§ 21.118. Post-basic nursing education programs.

(a) A registered nurse currently licensed in another jurisdiction of the United States or Canada who has graduated from an approved program of nursing and who is enrolled in an accredited graduate nursing program, a bachelor of science nursing program, or a refresher course in nursing may practice nursing in a clinical setting as required by the educational program of studies without obtaining a [Pennsylvania] license in this Commonwealth so long as the student does not receive compensation except in the form of stipends, scholarships and other awards related to the [training] nursing education program.

(b) A student who meets the description in subsection (a) and who also desires to practice as a registered nurse while participating in the [training] nursing education program shall submit an application for licensure by endorsement and obtain a temporary practice permit as provided by § 21.28 (relating to licensure by endorsement).

RECORDS

§ 21.121. Program records.

* * * * *

(b) Records shall be kept in locked [fireproof] files which assure their permanent safekeeping.

§ 21.122. Record maintenance.

[Each nursing faculty shall select record forms specifically for the nursing program and] Records to be maintained shall include the following:

(1) Student records, including [the following]:

(i) Permanent record, including both clinical and theoretical experience and achievement, shall be kept *ad infinitum*.] complete academic transcripts and a summary of clinical performance evaluations. These records shall be retained for 50 years.

[(ii)] (2) Health records[shall be kept], to be maintained throughout the time of attendance and for 5 years following completion of the program.

[(2)] (3) Faculty records[, including the following]which include:

(i) "Display portion" or duplicate of all current [nursing] Pennsylvania RN licenses.

(ii) Records of preparation and experience, including official college transcripts.

(iii) Current record of continuing education activities and professional leadership activities.

[(3)] (4) Administrative records[, including the following] which include:

(i) [Affiliation agreements with cooperating agencies] Cooperating clinical agency agreements and letters of agreement regarding clinical experience and student observations.

(ii) Minutes of **organizational and faculty** meetings, to be retained for at least 10 years.

(iii) Annual reports **required by the institution and documentation of periodic evaluations required under § 21.131 (relating to evaluation)**, to be retained for at least 10 years.

(iv) [**Follow-up studies of graduates.**

(v)] Budgets to be maintained for at least 3 years.

[(vi)] (v) Current [**written**] nursing education program policies.

[(4)] (5) School [**bulletin, as follows:**

(i) Shall] bulletins shall be accurate, comprehensive and current[, since it serves as a contract of agreement between the applicant or student and the school.];

[(ii) Shall] shall include clearly defined [**refund policies governing fees and tuition paid by the students.**] tuition, fees and refund policies; and

[(iii) Shall] shall include clearly defined [**policies relating to admission, promotion, retention, transfer, advanced placement and dismissal**] admission, progression, retention and graduation policies.

§ 21.123. [**Access and use of records**] (Reserved).

[(a) Students shall have access to personal records as defined by Federal and State legislation.

(b) No information may be released from a student's record without written permission of the student.]

§ 21.124. **Records to be filed with the Board.**

(a) An annual report of the [**school of**] nursing education program shall be sent to the Board using the form supplied by the Board.

(b) [**Upon completion of the entire program, a transcript or photocopy of the final record of the student shall be submitted along with the application for admission to the licensing examination. The transcript shall bear the impression of the school seal and signature of the director of the school or authorized representative.**] Each nursing education program shall submit a list of individuals who completed the program and qualify for a temporary practice permit.

§ 21.125. **Custody of records.**

(a) When a [**school**] nursing education program closes, the controlling institution shall be responsible for the safekeeping of the records of students [, and official] for at least 50 years after graduation. Official copies of the records shall be made available upon request.

(b) If the controlling institution also closes, advice should be obtained from the Board concerning the permanent safekeeping and availability of the records of the [**school of**] nursing education program.

* * * * *

PROGRAM EVALUATION

§ 21.131. **Evaluation.**

The program shall be evaluated according to a systematic plan developed by the faculty which shall include the following:

(1) **Organization and administration of the nursing education program.**

(2) **Administrative and instructional personnel.**

(3) **Curriculum.**

(i) **Review of the program based on its stated philosophy and objectives.**

(ii) **Evaluation of instructional procedures, learning experiences and student progress.**

(iii) **Performance of graduates on the licensing examination.**

(iv) **Evaluation by students and graduates of the quality of education and entry level nursing competencies of the program.**

(4) **Facilities and resources.**

(5) **Student policies and student services.**

[Pa.B. Doc. No. 01-222. Filed for public inspection February 9, 2001, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Consignment Sales

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend its regulations by adding a new section in § 19.19 (relating to consignment sales) to read as set forth in Annex A.

The proposed regulation would establish requirements for licensed vehicle dealers who wish to sell vehicles on a consignment basis without holding a vehicle auction license.

Effective Date

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

Statutory Authority

The amendment is authorized under section 4 of the Board of Vehicles Act (act) (63 P. S. § 818.4).

Background and Need for the Amendment

The proposed amendment effectuates the 1996 amendments to the act relevant to consignment sales and brokering. The 1996 amendments to the act changed the definition of vehicle brokering to permit licensed vehicle dealers to act as vehicle brokers, provided that vehicle dealers do not need to hold a vehicle auction license in order to sell a vehicle on a consignment basis. The proposed regulation would establish requirements for vehicle dealers who wish to sell vehicles on consignment.

The requirements to be established by the proposed regulation protect both vehicle dealers, consignors and buyers of vehicles on consignment. First, the proposed regulation requires a written agreement between the vehicle dealer and the consignor. The agreement must set forth crucial information including the identification of the vehicle, the terms of the sale and the terms of insurance coverage during the period of consignment. These requirements protect both the vehicle dealer and the consignor by assuring that both parties understand these important terms.

The agreement must also set forth any warranties extended by the consignor to the buyer, the names and addresses of any lien holders, and any material facts relative to the condition of the vehicle. These provisions protect the potential buyer, because, once aware of this information, the dealer is under an obligation to disclose the information to the buyer. In addition, the proposed regulation requires dealers to disclose to potential buyers that the vehicle is held on a consignment basis.

The agreement must contain a copy of the current registration card or title. This provision protects both the vehicle dealer and buyer by offering some assurance of legal ownership of the consignment vehicle. The proposed regulation establishes provisions relative to possession of the actual title to the consigned vehicle, assuring that the buyer can obtain title to the vehicle.

Finally, the proposed regulation directs vehicle dealers to assure their compliance with all applicable State and Federal law in the consignment sale of a vehicle.

Description of Proposed Amendments

The proposed regulation permits a licensed dealer to engage in consignment sales without being licensed as a vehicle auction, if the dealer meets certain requirements that insure consumers are protected from unscrupulous consignors and insure consignors are protected from unscrupulous dealers.

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

The Board sent this proposed regulation to dealer organizations as required under the directives of Executive Order 1996-1 "Regulatory Review and Promulgation." In addition, the Board considered the impact the regulation would have on the regulated community and on public safety and welfare. The Board finds that the proposed regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The regulation will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The regulation will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of this proposed regulation on January 31, 2001, to the Independent Regulatory Review Commission (IRRC) and the

Chairpersons of the House Professional Licensure Committee and Senate Consumer Protection and Professional Licensure Committee for review and comment. In addition to submitting the proposed regulation, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed regulation, it will notify the Board within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor of objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Board Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ROBERT G. PICKERILL,
Chairperson

Fiscal Note: 16A-601. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 19. STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

§ 19.19. Consignment sales.

(a) A licensed dealer shall be permitted to engage in consignment sales without being licensed as a vehicle auction, subject to the following requirements:

(1) The dealer shall maintain at the lot where the vehicle is displayed a copy of a written consignment agreement with the consignor, including:

- (i) The name and signature of the consignor.
- (ii) The make, model, year, vehicle identification number and license plate number of the vehicle.
- (iii) The terms of sale, including the minimum selling price (if any) and the amount of or formula for determining the dealer's commission.

(iv) The terms of insurance coverage during the period of consignment, including the name, address and telephone number of the consignor's insurance agent, if any.

(v) An express identification of any warranties extended by the consignor.

(vi) The name and address or telephone number of all current lien holders, together with the account number for each lien.

(vii) Any material facts relative to the vehicle, including accident history, vehicle condition and odometer disclosure.

(viii) A copy of the current registration card or title.

(2) The dealer need not possess the title while displaying the vehicle, but shall provide the executed title by the time of delivery of the vehicle to the buyer.

(3) The dealer shall have the title of the vehicle assigned from the consignor to the dealer prior to applying for title in the name of the buyer.

(4) Whenever a vehicle on consignment is shown to a potential buyer, the dealer shall disclose to that potential buyer that the vehicle is held on consignment and is not owned by the dealer.

(b) In all activities involving the consignment sale of a vehicle, the dealer shall comply with applicable Federal and State law.

[Pa.B. Doc. No. 01-223. Filed for public inspection February 9, 2001, 9:00 a.m.]
