

RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF PRIVATE LICENSED SCHOOLS

[22 PA. CODE CH. 73]

Definitions; Fees

The State Board of Private Licensed Schools (Board), under the authority granted by the Private Licensed Schools Act (act) (24 P.S. §§ 6501—6518), amends §§ 73.1 and 73.151 (relating to definitions; and fees) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 31 Pa.B. 2017 (April 14, 2001) with an invitation to submit written comments. No public comments were received.

No changes have been made subsequent to proposed rulemaking.

Description of Final-Form Amendments

Section 73.1 adds a new definition for “seminars” and revises the definition of “nonresident.”

Section 73.151(a) prescribes a new fee for initial licensure of schools that only present seminars, and revises fees for biennial licensure or registration of all schools, and licensure of admissions representatives.

Section 73.151(b) increases the user fees for other services provided by the Board, which services are in addition to the processing and issuance of original or renewal school licenses, registration and admissions representative licenses.

Purpose

The Board's current fees are fixed by § 73.151. Section 10 of the act (24 P.S. § 6510) authorizes the Board to increase its fees by regulation if the Board's revenues from fees, fines and civil penalties are not sufficient to meet Board expenditures over a 2-year period.

The Board recently reviewed its fees and determined that current fees are inadequate to meet anticipated revenue needs. The Board estimates that its expenditures for the biennial period covering Fiscal Years (FY) 2000-01 and 2001-02 will be \$1,172,033. In contrast, the estimated revenues under the existing fee structure are \$1,044,500.

The new fees in § 73.151 should raise sufficient revenue to offset the Board's projected expenditures for FY 2000-01 and 2001-02 while maintaining a surplus, projected to be about \$259,080 by June 30, 2002, as a cushion against unanticipated expenditures or additional revenue shortfalls.

The Board last increased its fees on July 1, 1991. At that time, the Board's projections assumed substantial

growth in the number of original and renewal licenses, registrations and program applications submitted. The numbers of license, registration, admission representatives and new program applications have decreased since that time and the Board has operated at a deficit in 5 of the 9 preceding fiscal years under the current fee structure. Although the Board has covered previous deficits by drawing on the year-to-year carryover of unused funds, the carryover will be depleted in FY 2001-02, resulting in a negative balance in the Board's budget. At the same time, estimated expenditures will exceed revenue projections. The current staffing level will need to be maintained for the foreseeable future.

In regard to the inclusion of seminars, an unlicensed school, business or entity that meets the definition of a seminar will be required to submit an original application for licensure or registration and will pay the \$750 initial application fee. Licensure will discourage a business or entity from bait and switch advertising or solicitation under the term “seminar.” It also will provide protection for the consumer in the areas of advertisements and representation, curriculum standards and qualified instructional staff. The reduced original application fee will benefit smaller schools and businesses presenting only seminars. It will not create an onerous burden for schools seeking initial licensure to offer short-term training courses. This type of school will not be required to submit a lengthy application for initial licensure and will be permitted to offer courses in various locations across this Commonwealth under the revised definition of “nonresident.” After 1 year of operation, biennial renewal fees are on an assessed graduated scale based upon gross tuition revenue. The lower end of the graduated scale will benefit smaller schools when their gross tuition revenue collected is less in comparison to already established private licensed schools.

The fees will meet the anticipated need for additional revenue.

Fiscal Impact

There is no fiscal impact from the new or modified definitions. If the existing fee structure is not revised, total revenue, combined with current carry-over for FY 1999-00, is expected to be \$1,086,293 for the biennial period ending FY 2001-02. The increased fees, together with fees which will not be increased, and the amount carried over from the FY 1999-00 are expected to generate revenues totaling \$1,389,320 for the Board for the period ending FY 2001-02. The following table shows how much of the Board's total revenue each fee is expected to generate:

Estimated Number of Fee Payers Biennially Times Amount of Fee

<i>Board Activity</i>	<i>FY 2000-01</i>	<i>FY 2001-02</i>	<i>Est. Revenue</i>
1. Original School License or Registration	40 × \$1,500a	40 × \$1,500b	\$ 60,000
2. Biennial School Licensure or Registration			\$ 60,000
\$0	6 × \$1,200a	9 × \$1,200b	\$ 7,200
\$150—9,999	8 × \$1,400a	10 × \$1,400b	\$ 10,800
			\$ 11,200
			\$ 14,000

<i>Board Activity</i>	<i>FY 2000-01</i>	<i>FY 2001-02</i>	<i>Est. Revenue</i>
\$10,000—49,999	24 × \$1,500a		\$ 36,000
\$50,000—99,999	25 × \$1,600a	20 × \$2,200b	\$ 44,000
\$100,000—199,999	28 × \$1,800a	26 × \$2,300b	\$ 40,000
\$200,000—499,999	25 × \$2,100a	18 × \$2,600b	\$ 59,800
\$500,000—999,999	17 × \$2,400a	24 × \$3,000b	\$ 90,720
\$1,000,000—1,999,999	18 × \$2,800a	24 × \$3,500b	\$ 46,800
\$2,000,000 and over	12 × \$3,000a	29 × \$4,100b	\$ 52,500
3. Admission Representative License	240 × \$150a	21 × \$4,400b	\$ 72,000
4. New Program Application	150 × \$350a	240 × \$300b	\$ 36,000
5. Change of Ownership	10 × \$600a	150 × \$700b	\$ 72,000
6. New School Orientation Seminar	50 × \$100a	10 × \$1,200b	\$ 52,500
7. School Site Inspection	40 × \$250a	50 × \$200b	\$ 105,000
		40 × \$500b	\$ 6,000
			\$ 12,000
			\$ 5,000
			\$ 10,000
			\$ 10,000
			\$ 20,000.
a—For fees collected July 1, 2000—June 30, 2001.			
b—For fee collected under fee increase July 1, 2001—June 30, 2002.			
8. Estimated Revenue from New Fees			\$ 824,200
9. Estimated Revenue from Fees not Increase			\$ 565,120
Total Estimated Revenue			\$1,389,320
Total Estimate Expenditure			\$1,172,033
Rollover Amount from FY 1999-00			\$ 41,793
Surplus for Unanticipated Expenditures or Revenue Shortfall			\$ 259,080

Paperwork Requirements

The final-form amendments require the Board to alter some of its forms to reflect the new fees. The final-form amendments will create no additional paperwork for the private sector.

Effective Date

The final-form amendments take effect upon publication in the *Pennsylvania Bulletin*.

Sunset Date

The act requires that the Board monitor its revenues and costs on a biennial basis, and revise its regulations as necessary. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 5, 2001, the Department of Education submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 2017 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with other documentation when requested. In preparing the final-form rulemaking, the Board considered the comments received by IRRC. IRRC requested for a breakdown of the Board staff time, salaries, associated costs and administrative overhead costs for each fee. A copy of this response is available upon request to the office of the Board. IRRC also requested an explanation of how seminars fit into the

definition of “private licensed school” in section 2 of the act (24 P. S. § 6502). In preparing this final-form rulemaking, the Board has considered the comments received from IRRC.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on February 13, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 21, 2002, and approved the final-form rulemaking.

Contact Person

The official responsible for information on the final-form amendments is Patricia Landis, Coordinating Secretary, State Board of Private Licensed Schools, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-4645 or TDD (717) 787-7367.

Findings

The Board finds that:

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

(2) A public comment period was provided as required by law and no public comments were received.

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

Order

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

(a) The regulations of the Board, 22 Pa. Code Chapter 73, are amended by amending §§ 73.1 and 73.151 to read as set forth in Annex A.

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

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

(d) This order is effective upon final-form publication in the *Pennsylvania Bulletin*.

PATRICIA LANDIS,
Coordinating Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 1362 (March 9, 2002).)

Fiscal Note: Fiscal Note 6-272 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 22. EDUCATION****PART III. STATE BOARD OF PRIVATE LICENSED SCHOOLS****CHAPTER 73. GENERAL PROVISIONS****DEFINITIONS****§ 73.1. Definitions.**

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

Act—The Private Licensed Schools Act (24 P. S. §§ 6501—6518).

Acting director—The individual responsible for assuming the director's duties in the temporary absence of the director.

Board—The State Board of Private Licensed Schools.

Branch facility—A school facility whether or not located at the administrative headquarters of a school. A school with one school facility has one branch facility.

Certificate—A document awarded by a school subject to this chapter upon the successful completion of a particular course.

Chief executive officer—The person ultimately responsible for all phases of the school operation, plant and program, including the method of instruction, the employment of instructors, the organization of classes, the equipment, the advertising used, the maintenance of proper administrative records and other matters related to the administration of the school. The chief executive officer and the director may be the same person.

Clock hour—A minimum of 50 minutes of instruction.

Closure—The situation which results when a school ceases to operate.

Complaint—A matter that has been reported to the review and recommendation panel under § 73.184 (relating to reporting of potential violations), has been investigated by Board staff and has been found to constitute a violation of the act or this chapter.

Correspondence—A systematic course or program of nonresident instruction.

Course—A unit of learning covering specific subject matter.

Credit hour—A unit of curricular material which normally can be taught in a minimum of 14 clock hours of instruction. For laboratory instruction, a credit hour represents a minimum of 28 clock hours. For shop instruction and practicum experiences, including externship/internship experiences, a credit hour represents a minimum of 42 clock hours.

Degree—A specialized associate degree awarded by a school with the approval of the Secretary under Chapter 42 (relating to program approval).

Department—The Department of Education of the Commonwealth.

Diploma—A document awarded by the school subject to this chapter upon the successful completion of an approved program.

Director—The person designated by a school directly responsible for the day-to-day operation of a school. The director and the chief executive officer may be the same person.

Educational supervisor—An individual who reports to the director and supervises all or part of the instructional program in his curricular area.

Hearing panel—Three Board members, one of whom shall be a public member as defined by section 3(a) of the act (24 P. S. § 6503(a)), who preside over hearings requested by schools to contest enforcement actions and who submit proposed findings and recommendations to the full Board for its adjudication.

Internship or externship—A structured, supervised learning experience which takes place outside of the school and involves the practical application of competencies acquired during school-based instruction.

Licensee—A person or entity holding a license issued by the Board in accordance with the act.

Mail—Ordinary first class mail, United States Postal Service, ICC approved mail carrier or personal delivery, unless otherwise specified.

Nonresident—A student who is receiving instruction by correspondence, telecommunication or similar means including seminar.

Notice—A written statement issued by the Board to a licensee or registrant or by a licensee or registrant to the Board.

Prepaid tuition—A sum of money received by a school from a student, or on behalf of a student, for which the period of the student's enrollment has not yet begun.

Private licensed school sales office—A permanent or temporary facility away from school premises to which an admissions representative reports or from which an admissions representative solicits or procures student enrollments.

Program—An approved series of organized courses.

Registered school sales office—A permanent or temporary facility in this Commonwealth of a registered school to which an admissions representative reports or from which an admissions representative solicits or procures student enrollments.

Remote laboratory—A detached facility for teaching practical application of theoretical instruction, such as a firing range for a security or private investigator program or kitchen facilities for a food service program.

Reportable event—A circumstance or occurrence as defined in § 73.201 (relating to reportable events) which takes place at a school or which pertains to the school, within the knowledge of the school's owner, director or chief executive officer.

Resident—A student who is regularly scheduled to be present at a school facility for the purposes of instruction, including attendance at approved externships, internships or field experience.

Review and recommendation panel—Three Board members, one of whom shall be a public member as defined by section 3(a) of the act, whose role is to perform or direct Board staff in the performance of the prosecutorial functions involved in an enforcement action against a school.

School—A private licensed school or registered school as defined in the act. An entity requiring a license or registration under the act. The term includes an instructional facility requiring a license when the facility has a different ownership of more than 25% or has a different director or is a separate and distinct legal entity from a licensee.

Secretary—The Secretary of the Department.

Seminar—Training or instruction that is one of the following:

(i) Noncumulative short-term training of no more than 15 hours duration, not scheduled in a regular calendar format and offered as an introduction or orientation to an occupation.

(ii) Instruction for an entry-level occupation offered at a total contract price, of less than \$300, which includes all costs charged to students, including, tuition, fees, books and supplies, provided that the total contract price for all courses to any enrolled student is less than \$300 in any one calendar year.

Student—A person enrolled in a school for the purpose of instruction.

Teachout—The continuation of instruction to complete the program or course, whenever the school's license has been suspended or revoked or a school has advised the Board that it intends to discontinue operations.

Telecommunications—Nonresident, systematic instruction by electronic or electromagnetic means.

Unearned tuition—The portion of tuition charges billed to students of a school but not yet earned by the school. These amounts represent future educational services to be rendered to presently enrolled students.

§ 73.151. Fees.

(a) *License fees.* The fees for school and admissions representative licenses shall accompany both original and renewal license and registration applications. The fee schedule is:

- (1) For an original school license or registration—\$1,500.
- (2) For an original school license or registration of a school that only presents seminars—\$750.
- (3) For a renewal school license or registration—biennial fee based on gross tuition revenue:

<i>Gross Tuition Revenue</i>	<i>Fee</i>
\$0—2,499	\$ 500
\$2,500—4,999	\$1,000
\$5,000—9,999	\$2,000
\$10,000—49,999	\$2,200
\$50,000—99,999	\$2,300
\$100,000—199,999	\$2,600
\$200,000—499,999	\$3,000
\$500,000—999,999	\$3,500
\$1,000,000—1,999,999	\$4,100
\$2,000,000 and over	\$4,400

(4) For an admission representative license—\$300 annually.

(b) *User fees.* Fees will also be assessed for other services provided by the Board, which services are in addition to the processing and issuance of original or renewal school licenses or registration and admissions representative licenses. These user fees are as follows:

(1) A \$700 fee shall accompany each application for approval of a new program.

(2) A \$1,200 fee shall accompany notification to the Board of a change in ownership of the school.

(3) A \$200 fee per participant will be charged for participation in new school orientation seminars.

(4) A \$500 fee will be charged for each site inspection of the following types: new school, change in location, expansion of instructional space, temporary relocation, branch facility and remote training facility. This fee shall be paid before commencement of the visit.

(5) The fee for a Board-directed visit is \$500 per day if the visit is conducted by staff; \$800 per day plus team member expenses for a visit conducted by a team with nonstaff members. The fee for a Board-directed visit shall be paid before commencement of the visit.

[Pa.B. Doc. No. 02-566. Filed for public inspection April 12, 2002, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 89]

Requirements for All Policies and Forms; Preparation of Forms

The Insurance Department (Department) amends § 89.14 (relating to dismemberment, death or surgical benefits) to read as set forth in Annex A. Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) provide the Commissioner with the authority and duty to promulgate regulations governing the enforcement of the laws relating to insurance.

Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). In accordance with section 204(3) of the CDL, notice of proposed rulemaking may be omitted when the agency for good cause finds that public notice of its intention to amend an administrative regulation is, under the circumstances, impracticable and unnecessary.

Purpose

The final-omitted regulation will bring the Department's regulation into compliance with the Supreme Court's ruling on time period limitations on recovery of accidental death benefits.

Explanation of Regulatory Requirements

The Supreme Court decision in *Burne v. Franklin Life Insurance Company*, 301 A.2d 799 (Pa. 1973), Attorney General's opinion No. 22, issued April 26, 1974, published at 4 Pa.B. 962 (May 11, 1974) and the Department's notice published at 4 Pa.B. 1933 (September 7, 1974) prohibited the sale of certain life insurance policies. Specifically, the Supreme Court stated that accidental death benefit policies may not be sold or issued in this Commonwealth if death must occur during a specific time period limitation. This applies regardless of the line of insurance with which it is sold.

The Department has not permitted any policies sold or marketed in this Commonwealth to contain the provision found in § 89.14(b). This final-omitted rulemaking is to reconcile § 89.14 with the decision that was made by the Supreme Court in 1973 and the Attorney General's opinion in 1974.

In addition, § 89.14(b) is in direct conflict with § 89.43 (relating to accidental death benefit).

Fiscal Impact

The insurance industry will likely not incur additional costs for complying with the requirement. Insurance companies have not been permitted to use this provision since 1974; therefore, there is no fiscal impact on the insurance industry.

Effectiveness/Sunset Date

This final-omitted regulation is effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

Paperwork

Adoption of this final-omitted regulation should not require significant paperwork for insurance carriers.

Persons Regulated

This final-omitted regulation applies to all insurance companies who issue insurance products in this Commonwealth.

Contact Person

Questions regarding the final-omitted rulemaking may be addressed to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. Questions may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on February 21, 2002, the Department submitted copies of this final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. On the same date, the final-omitted rulemaking was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, on March 13, 2002, this final-omitted rulemaking was

deemed approved by the House and Senate Committees. The Attorney General approved the amendment on March 18, 2002. Under section 5.1(e) of the Regulatory Review Act, on March 21, 2002, IRRC met and approved this final-omitted rulemaking.

Findings

The Commissioner finds that:

(1) There is good cause to amend Chapter 89, effective upon publication with the proposed rulemaking omitted. Deferral of the effective date of these regulations would be impractical and not serve the public interest. Under section 204(3) of the CDL, there is no purpose to be served by deferring the effective date.

(2) There is good cause to forego public notice of the intention to amend Chapter 89, because notice of the amendment under the circumstances is unnecessary and impractical for the following reasons:

(i) The changes mandated by the Supreme Court ruling have been in effect since 1974.

(ii) Public comment cannot change the fact that this requirement has been required by the Supreme Court ruling.

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 89, are amended by amending § 89.14 to read as set forth in Annex A.

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

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

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

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 1780 (April 6, 2002).)

Fiscal Note: 11-213. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 31. INSURANCE****PART IV. LIFE INSURANCE****CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE****Subchapter A. REQUIREMENTS FOR ALL POLICIES AND FORMS****PREPARATION OF FORMS****§ 89.14. Dismemberment, death or surgical benefits.**

In contracts providing specified benefits for dismemberment, death or surgical operations, if the insurer limits its liability to one such loss as a result of a single

accident, the contract shall provide that the insured is entitled to receive the largest amount applicable.

[Pa.B. Doc. No. 02-567. Filed for public inspection April 12, 2002, 9:00 a.m.]

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 401]

Uniform Construction Code; Training and Certification of Code Administrators

The Department of Labor and Industry (Department), Bureau of Occupational and Industrial Safety (BOIS), by this order adopts these final-form regulations to provide detailed requirements for the training and certification of code administrators under the Pennsylvania Construction Code Act (35 P. S. §§ 7210.701—7210.1103) (act), to read as set forth in Annex A.

In response to comments received and meetings with affected parties, the Department made some changes to the proposed rulemaking that was published at 31 Pa.B. 3543 (July 7, 2001).

This notice includes the Department's interpretation of the act of November 10, 1999 (P. L. 491, No. 45) (Act 45) adopting the *1999 BOCA National Building Code, Fourteenth Edition* or its successor codes as the Uniform Construction Code (UCC).

Statutory Authority

These final-form regulations are adopted under the authority provided in section 701(a) of the act (35 P. S. § 7210.701(a)), which provides that the Department, in consultation with the Accessibility Advisory Board (Board), Building Officials and Code Administrators International, Inc. (BOCA), National Conference of State Building Code Standards (NCSBCS) and other interested parties, adopt regulations providing for a program of required training and certification for all categories of code administrators.

Section 701(e)(1) of the act also requires that the Department adopt regulations setting forth the time period in which current code administrators shall meet the training and certification requirements of the act. Section 701(f) of the act mandates that the Department adopt and implement a continuing education program. The Department is empowered to establish a procedure providing for the notification and hearing process for decertification for just cause under section 701(h) of the act. Authority to adopt and promulgate fees for educational programs, testing and certification of code administrators is contained in section 701(j) of the act. Section 701(k) of the act provides that the Department set minimum levels of liability insurance applicable to third-party agencies.

Background

The purpose of the act is to establish a Statewide building code, the UCC. This provides uniform standards for builders, and greater protection for building owners and occupants, and the general public. All municipalities in this Commonwealth will utilize the UCC to assure that this Commonwealth has a uniform, modern construction

code that will insure safety, health and sanitary construction, promote state-of-the art techniques and encourage cost-effectiveness. An important facet of the act is "to assure that officials charged with the administration and enforcement of the technical provisions of [the] act are adequately trained and supervised." See section 102(b)(6) of the act (35 P. S. § 7210.102(b)(6)). These officials will be certified in categories appropriate to the work performed. The Department will regulate these officials as code administrators and mandate continuing education.

The UCC takes effect 90 days after the publication of final-form regulations by the Department adopting the required National standards for buildings and energy conservation, and setting forth the administrative provisions under the code. Under section 701 of the act, the Department is required to adopt a program of training and certification for code administrators. Code administrators are municipal code officials, construction code officials, third-party agencies or the Department. Code administrators are generally responsible for plan review of construction documents, inspection of construction or administration and enforcement of codes and regulations under the act or related acts.

Section 701 of the act took effect on November 10, 1999. Since the passage of the act, the Department received numerous requests for guidance on training and certification from current code administrators, municipalities and third-party agencies. Municipalities, current code administrators and third-party agencies need ample time to plan and prepare for the effective date of the UCC and to complete certification. Accordingly, the Department determined it was necessary to promulgate these regulations on training and certification before the regulations establishing the UCC's administrative and enforcement provisions.

At 31 Pa.B. 3543, the Department published the notice of proposed rulemaking, inviting all interested parties to provide written comments. As a result, the Department received comments from the following groups and individuals: Gmerek & Hayden; Joe Pirozzi; Robert E. Duncan, Pennsylvania Association of Code Officials (PACO); Michael A. Perrone, Borough of West Chester; John E. Buzard and J. Thomas Traister, Supervisors, Madison Township; Randy Souders, Director, Community Develop and Code Enforcement, Upper Allen Township; William Hartz, Manager of Certification, BOCA; Cindy L. Davis; Middle Department Inspection Agency, Inc. (MDIA); Dingman Township Board of Supervisors; and Senator Mike Waugh and Senator Charlie Dent. The Department also received written comments from the Independent Regulatory Review Commission (IRRC), in a letter dated September 7, 2001, and met with analysts from IRRC.

The Department submitted a request, under 45 Pa.C.S. § 727(9) (relating to matter not required to be published) for designation of the *International Building Code 2000 and the International Residential Code for One- and Two-Family Dwellings* as a generally available publication approved by the Legislative Reference Bureau. The Department was granted this request on December 28, 2001.

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

Since the passage of the act, extensive outreach and communication efforts have been undertaken to gain input from the various affected parties including representatives from BOCA, three regional Pennsylvania

Chapters of BOCA, Pennsylvania Code Training Consortium (CTC), Pennsylvania Housing Research Center, Building Codes Assistance Project, United States Department of Energy and the Department of Health of the Commonwealth. Department representatives met almost weekly with interested persons to answer questions and solicit comment.

The Department attended the CTC's inaugural meeting in October 1999 and has attended its subsequent quarterly meetings. On December 16, 1999, the Department held a general stakeholders' meeting to discuss the act and identify stakeholders. On June 16, 2000, the Department posted a draft of this training and certification regulation on its website www.dli.state.pa.us and solicited comments from stakeholders.

The Department received, reviewed and answered numerous e-mails and faxes from stakeholders, construction code officials, trade associations and local governments concerning certification and other aspects of the UCC. On July 19, 2000, the Department held a second stakeholders' meeting on its draft training and certification regulations. On July 26, 2000, the Department posted some proposed changes to its draft regulations on its Internet site. On October 18, 2000, Department representatives met with members of Pennsylvania Building Officials Conference at their annual conference to discuss training and certification requirements. The rulemaking was also discussed with the Department's Board. The Department published the notice of proposed rulemaking at 31 Pa.B. 3543. This notice contained an invitation for all interested parties to provide written comments. It also posted the proposed rulemaking on its website.

Purpose

The act's purpose is to insure safe, uniform, cost-efficient, modern construction standards throughout this Commonwealth by adopting a Statewide building code governing the construction, alteration, repair and new occupancy of all structures in this Commonwealth. See section 102(b) of the act. Officials charged with the administration and enforcement of the technical provisions of the act shall be adequately trained and supervised. These regulations provide a certification program, based upon consultation with BOCA, and establishes minimum continuing education requirements for code administrators for the specific work that is to be performed. They also contain procedures for decertification of code administrators for just cause. They also provide the insurance requirements for third-party agencies that may be contracted with to act as a construction code official for residential property owners, local governments and the Department. The regulations also set the time period for current code administrators to meet the certification requirements of Act 45, and provide for the registration of current code officials until these requirements are met. The regulations set forth fees for initial certification and registration, certification renewal, third-party agency certification and renewal and identification replacement.

Affected Persons

Current and prospective code administrators including employees of the Department, municipalities, political subdivisions and third-party agencies are affected by this regulation. These persons are required to meet the certification requirements of Act 45, including the specific category testing to perform their duties. Code administrators will have to complete mandatory continuing education hours to renew certifications. Employers will insure that code administrators meet this chapter's require-

ments. Third-party agencies will have to obtain appropriate insurance coverage. The Department will have to provide staffing requirements to provide the certification and renewal of code administrators. The general public is also affected in that the use of trained and certified building code administrators to perform building inspections will increase public safety.

Fiscal Impact

The Commonwealth will incur ongoing costs related to the administration of the new certification provisions. These costs will be greater at the onset of the certification program and will decrease over the course of 5 years. These administrative costs are the result of the act's requirements.

The Department will be required to augment its existing staff to review, process and evaluate applications for certification of code administrators. The Department, an employer of code administrators, will be required to train and certify its existing employees. Further, the Department will also incur costs in providing continuing education for its employees.

Local governments will only incur costs if they decide to administer and enforce the UCC. Local governments that conduct building code programs, and third-party agencies which hire code administrators, will incur costs associated with training, certification and continuing education of their employees. To offset these costs, local governments will be able to charge plan review and building permit fees to owners or builders. Third-party agencies will have to pay the costs to obtain appropriate insurance coverage.

Responses to Comments

The following addresses the common areas of concerns found in the comments received from the public and IRRC:

Some of the definitions in § 401.1 (relating to definitions) were changed in response to a number of comments. Two commentators, Gmerek & Hayden and Joe Pirozzi, objected to the number of occupation certifications for elevator and lifting device inspection found in the proposed rulemaking in §§ 401.6 and 401.7 (relating to certification categories and testing; and certification category specifications). The Department changed §§ 401.6 and 401.7 by deleting the categories for conveyer system inspector, belt manlift inspector and auto lift inspector in response. The changes to these sections also necessitated a change in the definitions found in § 401.1.

IRRC commented that the definitions for "code administrator" and "construction code official" differ from the definitions found in the act and suggested that these definitions contain cross references similar to definitions in the act. IRRC also questioned whether the term "current code administrator" pertains to only employees of third-party agencies. The term current "code administrator" applies to persons currently performing code administration. The Department revised these terms to reflect the act. Upon further review of this rulemaking, the Department determined that the definitions for "code administrator," "current code administrator" and "construction code official" did not include elevator and passenger ropeway inspectors. The Department rewrote the definitions for "code administrator" and "construction code official" to reflect and incorporate the act's definitions. It also rewrote the definitions for "code administrator," "current code administrator" and "construction code official" to include elevator and passenger ropeway inspectors by containing a reference to equipment in the definitions.

Four commentators, IRRC, Robert Duncan, Michael A. Perrone and Cindy L. Davis stated the Department should provide a certification category for BOCA Certified Building Code Official (CBO). The Department addressed this concern in § 401.5(a)(3) (relating to waivers) by adding the CBO category. The changes to that section necessitated the addition of a definition for "certified building code official" in § 401.1

IRRC and the MDIA stated the definition of "third-party agency" should be added to the regulations. The Department added the definition of "third-party agency" from the act as suggested by the MDIA. The MDIA also stated that the Department must determine when an individual who is employed by more than one municipality must be licensed as a third-party agency. The definition of "third-party agency" clearly applies to individuals as well as firms and corporations. Whether an individual is a third-party agency or a municipal employee will be determined on the basis of that individual's contractual or employment relationship with the municipality.

Section 401.2 (relating to Department fees) was changed to clarify how fees will be charged. The final-form regulations state that the Department will charge one fee per application, and an applicant may apply for multiple categories on a single application. The Department has also deleted the requirement for a photo identification card. The Department planned to contract with the Department of Transportation for photo identification cards to make the cards readily available throughout this Commonwealth and to decrease costs. The Department subsequently learned that a separate card would have to be issued for each certification category or the cost of the cards would rise significantly. To reduce costs for construction code officials and the Department, the Department will issue a certification identification card without a photograph.

IRRC questioned how the Department's fees were determined under § 401.2. The Department established its fees based on the actual costs for its asbestos and lead-based paint occupation certification programs. The Department will use the same personnel and procedures for certifying construction code officials.

The Department changed § 401.3 (relating to certification required) to reflect changes made to other sections of this rulemaking. Section 401.3(a) was amended to allow a registered construction code official to perform plan review, inspection and administration and enforcement of the UCC to reflect current code administrators who must register under § 401.15 (relating to registration of current code administrators). Additionally, § 401.3(b) was amended to reflect certification category changes in §§ 401.6 and 401.7. The term "accessibility specialist" was changed to "accessibility inspector/plans examiner" because of BOCA's revisions to its certification categories. Additionally, this section was changed to reflect the certification requirement relating to inspection and plan review of equipment such as elevators.

Section 401.4 (relating to application and identification) was changed to reflect the deletion of photo identification cards. This section now refers to identification cards and not to photo identification cards.

The certification waiver provisions of § 401.5 were changed in response to comments received by the Department. Commentators, Randy Souders and the MDIA objected to the certification requirements for current code administrators. Randy Souders suggested that current code administrators receive credit for actual work experi-

ence. BOCA suggested revising the term "continued employment" in § 401.5(a)(2)(i) to "continuous employment." IRRC and the MDIA questioned whether continued employment in a related field referred to just employment as an inspector or included employment in construction or installation as well.

The Department decided that experience alone was insufficient to waive the testing requirement and will provide some waivers for testing for current code administrators in the final-form regulations. The Department modified § 401.5 to clarify this issue for current code administrators. The Department added the term current code administrator to § 401.5(a)(2)(i). This allows for waiver of the testing requirements for applicants who have passed substantially similar tests at any time as long as they can provide evidence of employment as a current code administrator or 30 hours of continuing education or a college degree program in associated fields.

The MDIA also suggested that the Department modify § 401.5(a)(2)(ii) to include current certification by a National professional association of inspectors as a condition for waiver in addition to certification by a model code organization. The Department did not make this suggested change. Model code organizations have specific training, testing and continuing education requirements for certification. Professional associations generally do not have these requirements.

IRRC questioned what would constitute evidence of substantial education in associated fields under § 401.5(a)(2)(iii) and suggested that the Department clarify this language. The Department modified this subsection to require evidence of completion of 30 hours of continuing education or a college degree program in associated fields.

Four commentators, IRRC, PACO, Michael A. Perrone and Cindy L. Davis objected to the absence of a certification category for BOCA CBO. The Department added § 401.5(a)(3) to allow individuals who passed the CBO examination to waive the examination requirements for the residential building inspector, building inspector and building plans examiner categories.

IRRC sought information on the required application fee for waiver under § 401.5(b). The Department amended this section to cross reference the application fee under § 401.2.

Sections 401.6 and 401.7 were changed in response to the comments received by the Department. The Department changed all the certification category references from one and two family dwellings to residential to conform to the administrative and enforcement provisions of the UCC that the Department is currently drafting. BOCA suggested the revision of the fire prevention inspector category to fire inspector I and the revision of the accessibility specialist to accessibility inspector/plans examiner because of the changes BOCA made to its certification categories. The Department made the suggested changes. However, the Department will use the designation fire inspector without the "I" because the Department will recognize only one certification in this category. The certified building code official category was also added to this section as discussed previously.

Commentators, IRRC, Gmerek & Hayden and Joe Pirozzi, objected to the number of occupation certifications for elevator and lifting device inspection found in the proposed rulemaking in §§ 401.6 and 401.7. The proposed rulemaking contained certification test requirements and specifications for elevator inspector, belt

manlift inspector, conveying system inspector and passenger ropeway inspector. Gmerick & Hayden stated that the Department currently maintains jurisdiction over these types of devices with only one inspector category and that other jurisdictions do not require multiple licenses for lifting device inspection. In addition, Joe Pirozzi commented that categories for elevator inspector and ski-lift/tram inspector would be adequate. In response to these comments, the Department deleted the auto lift, belt manlift and conveying system inspector categories.

IRRC and Robert Duncan questioned the large number of certification categories. Robert Duncan provided the example of a sole inspector in a small municipality requiring 18 certifications. Michael Perrone suggested that a person who is certified as a commercial inspector would be qualified to perform the corresponding inspections for residential structures without additional certification. The Department agrees and redrafted the certification specifications in § 401.7 to allow building, electrical, mechanical, plumbing and energy inspectors certified to perform inspections on commercial buildings to perform these same inspections on residential buildings without obtaining the equivalent residential certification. This may greatly reduce the number of required certifications.

Robert Duncan also objected to the testing requirements for the energy inspector classifications. PACO was concerned over the three separate tests for various energy certification categories. The proposed rulemaking required separate tests for residential, commercial and plan approval. In response to this comment, the Department redrafted the certification specifications in § 401.7 to allow building energy inspectors certified to perform inspections on commercial buildings to perform energy inspections on residential buildings without obtaining the equivalent residential energy inspector certification.

Section 401.8 (relating to certification renewal) was changed in response to IRRC's comments. IRRC asked how the Department would make renewal information and forms available to the public. The Department amended § 401.8(b) to state that the Department will post renewal forms on its website and that it will also provide the form upon request. The Department will also make the forms available through municipal and professional associations, municipalities and the Department of Community and Economic Development (DCED). IRRC also questioned the required renewal fee. The Department amended § 401.8(b) to reference the fees for renewal applications stated in § 401.2. Certificationholders are responsible for monitoring the expiration date of their certification. However, the expiration date will be posted on every certification identification card.

The Department also changed § 401.8(a) to clarify that if a certificationholder receives a certification in an additional category, the expiration date of the existing certification will be the date of expiration for the additional certification category. The Department made this change to avoid redundant renewals and unnecessary expenses and inconvenience to certificationholders. Obtaining additional certification requires the completion of additional examinations and preparation. A certificationholder still must complete required continuing education under this amendment.

BOCA recommended deleting § 401.8(e)(5) which requires a training provider to state the subject matter of a course on the certificate of attendance. BOCA stated that it does not provide this information. However, § 401.9(a) (relating to continuing education) requires at least 1/3 of

an applicant's continuing education credits be in approved courses related to the applicant's certifications. Without having information on course subject matter, the Department would be unable to verify this requirement. Accordingly, the Department did not make this suggested change. The Department will work with BOCA so that this information is available for certification purposes.

Section 401.9 was changed in response to comments received by the Department. BOCA recommended that the Department specify the credit hours that will be awarded for a certification examination and for attendance at code change hearings. The Department revised § 401.9(b) to specify the number of credits awarded in these areas:

1. *General courses*: One credit hour for each 60 minutes actually spent at one course except as otherwise listed in this subsection.
2. *Self-study course*: One credit hour for each 60 minutes of completion time calculated by the sponsor.
3. *Certification examination*: Five credit hours for an examination in an additional certification category.
4. *Model code organization code change hearing*: One credit hour for each 60 minutes actually spent in attendance.

Section 401.10 (relating to Department-approved providers) was changed in response to IRRC's comments. IRRC asked how the Department would notify code administrators and construction code officials of approved training providers. The Department added the provision that it will make approved provider information available on its website and that it will also provide this information upon request in subsection (b). The Department will also make this information available through DCED and CTC.

Section 401.11 (relating to certification of third-party agency) was changed to clarify the process for certification renewal for third-party agencies. The Department added § 401.11(f) which will require a third-party agency to meet all of the following requirements for certification renewal: 1) submission of a completed renewal form; 2) payment of the required fee under § 401.2; 3) submission of proof of liability insurance coverage under § 401.12 (relating to liability insurance); and 4) that it is not decertified under § 401.14 (relating to decertification or refusal to certify).

The MDIA objected to the type of insurance coverage required by proposed § 401.12. The MDIA agreed with the Department's adoption of a minimum of \$1 million of errors and omissions insurance as required in § 401.12(a). However, it suggested that the Department also require an additional \$1 million in general liability insurance coverage.

The Department, under section 701(k) of the act, is requiring professional errors and omissions insurance. It determined that this requirement is more appropriate than compelling general liability insurance coverage. An errors and omissions policy covers plan review and inspection. A general liability policy covers general casualty. Requiring insurance under both policies would be an expense that is not necessary to comply with the act's purpose and actual language.

The Department also amended § 401.13 (relating to list of code administrators) based on IRRC's comment. IRRC stated that the final-form regulations should state how the public and municipalities could access the Department's list of certified code administrators. Section 401.13

was amended and will provide that the Department will maintain a list of code administrators and their certification categories on its website and that the Department will also provide this information upon request.

The Department revised § 401.14(a)(8) to provide for reciprocal action or certification denial based upon certification actions undertaken by the proper authority in Canada in addition to state and Federal jurisdictions.

The Department amended § 401.14(c)(4) in response to IRRC's comments. IRRC commented that this subsection, requiring a presiding officer to promptly transmit a proposed report in a decertification proceeding to the Secretary, is vague. It suggested the insertion of a specific time period. The Department added that the proposed report would be transmitted to the Secretary within 15 days after issuance.

IRRC questioned the requirement in § 401.14(e)(2) which stated that a code administrator who has been convicted of a felony or crime related to code enforcement must demonstrate that he is fully rehabilitated before the Department will reinstate his certification. IRRC stated the regulation had no criteria to determine full rehabilitation and suggested the Department add criteria to the final-form regulations. The Department deleted any references to rehabilitation and replaced it with the requirement that recertification may not be detrimental to public health and safety. This should alleviate the ambiguity noted by IRRC and still provide for public protection.

IRRC and Robert Duncan questioned the time period for registration of current code administrators found in § 401.15. The proposed rulemaking allowed current code administrators engaged in plan review or inspection of residential structures to continue to perform these activities without meeting the training and certification requirements of this regulation for 3 years from the effective date of adoption of this rulemaking. It allowed current code administrators engaged in plan review or inspection of commercial structures to continue to perform these activities without meeting the training and certification requirements of these regulations for 5 years from effective date of adoption of this rulemaking. These current code administrators are required to meet the certification requirements of these regulation at the end of the 3- or 5-year period.

The Department slightly modified § 401.15 from the proposed rulemaking to, in part, reflect IRRC and Robert Duncan's comments. These final-form regulations will allow current code administrators to engage in activities for residential construction for 3 years and 5 years for commercial construction. However, the time period will commence from the effective date of the final-form rulemaking for the administrative and enforcement provisions of the UCC that the Department will submit. This should provide even more time for the training and certification of code administrators. Additionally, this effective date is more reasonable because it reflects a time period when the UCC will be in effect. The UCC also has to be in effect so that the Department may provide testing for the building code official and passenger rope inspector categories.

The Department also promulgated the training and certification regulation before the administrative and enforcement provisions of the UCC. The Department posted its draft training and certification regulation on its website on June 16, 2000, to give municipalities and current code official notice of the anticipated requirements. The 3- and 5- year time periods, in addition to this

previous posting, provide municipalities and current code officials with sufficient time to plan and train for certification. This need for ample notification is balanced against the desire to implement a UCC as soon as possible and within the discretionary time that the General Assembly provided to the Department in section 701(e) of act (Residential: 3-7 years/Commercial: 5-10 years).

IRRC and Robert Duncan questioned whether current code administrators would lose registration and the ability to conduct plan review or inspections during the 3- or 5-year registration period for changing employers during that time period. A current code administrator would not lose registration for a change of employers because the registration is issued to the code administrator and not to the employer. However, the Department added § 401.15(g), which states that a current code administrator is not required to obtain a new registration for a change of employer. The Department also added subsection (h) to clarify that a current code administrator may not perform reviews or inspections relating to accessibility requirements.

BOCA suggested that an additional subsection be added to § 401.15 to clarify that the 5-year registration period for current code administrators does not apply to the accessibility inspector/plans examiner certification category. The Department considered and ultimately rejected this suggestion. Section 701(e)(2) of the act clearly provides that the Department will retain jurisdiction over the accessibility provisions of the UCC until municipal code administrators meet the requirements for certification.

Cindy L. Davis stated that the terms "code administrator," "construction code official" and "building code official" appear to be used interchangeably. A code administrator is the category that covers all persons who perform plan review of construction documents, or administer and enforce regulations. The term includes a municipal code official, construction code official, a third-party agency and the Department. A construction code official is an individual certified by the Department in any category established under section 701(b) of the act. A construction code official will perform plan review of construction documents, inspect construction or enforce and administer codes and regulations. Separate proposed rulemaking for the administrative and enforcement provisions of the UCC will contain a specific definition for building code official. A building code official will be the construction code official that supervises, manages and enforces building enforcement activities. However, the Department reviewed this entire chapter and made changes in the terminology to insure that these terms were used consistently and clearly. Additionally, future rulemaking on the administration and enforcement portion of the UCC will further explain the distinctions between these terms.

Senator Mike Waugh and Senator Charlie Dent wrote to the Department to inform it of issues relating to rehabilitation of existing structures. The letter was informative. However, no change in the regulations was required.

The Dingman Township Board of Supervisors commented that there may a serious shortage of trained and qualified construction code officials during the UCC's initial implementation period. The Dingman Township Board of Supervisors suggested that the Department take adequate steps to insure that there are an adequate number of qualified individuals in all geographic areas of this Commonwealth. The Department is aware of this

potential problem and is attempting to plan for and adequately staff Department personnel to cover any need for qualified personnel.

The Department received a comment on the Board of Appeals requirement under the administrative and enforcement provisions of the UCC from the Dingman Township Board of Supervisors. This is not a matter addressed by this rulemaking. The Department will address this comment in its proposed rulemaking for administration and enforcement.

The Department also received a letter from the Madison Township Supervisors expressing concern over the new building code inspection requirements and stating that rural municipalities cannot afford the hiring of inspectors with all of the required certifications and that implementation of this chapter will significantly impact the township's income and bring challenges from their constituents if they opt out. However, the Department is required by the act to adopt the IBC 2000 and require certification of the building code officials.

IRRC commented that the required number of certifications and related training would place a financial burden on small municipalities that maintain a qualified code administrator. IRRC suggested that the regulations specifically allow municipalities to share code administrators. However, these regulations focus specifically on training and certification requirements. This chapter does not address the manner in which municipalities may administer the UCC program. The Department's future rulemaking for administration and enforcement will address UCC enforcement. The Department will allow joint enforcement by municipalities and sharing of building code officials under section 501(b) of act (35 P. S. § 7210.501(b)).

Effective Date

This final-form rulemaking takes effect July 12, 2002.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 26, 2001, the Department submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 3543, to IRRC and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee for review and comment.

The Department also provided the Committees and IRRC with copies of the comments received as well as other documentation in accordance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)). In preparing these final-form regulations, the Department considered the comments from IRRC, stakeholders and the public. The Department did not receive comments from the Senate or House Committees.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on February 27, 2002. IRRC met on March 7, 2002, and approved these final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Contact Person

The contact person is Charles J. Sludden, Director of the Bureau of Occupational and Industrial Safety, Department of Labor and Industry, Room 1613, Labor and Industry Bldg., 7th and Forster Streets, Harrisburg, PA, 17120, csludden@state.pa.us.

Findings

The Department finds that:

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

(2) The final-form regulations adopted by this order are necessary and appropriate for the administration of the act.

Order

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

(a) The regulations of the Department, 34 Pa. Code, are amended by adding §§ 401.1—401.16 to read as set forth in Annex A.

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

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

(d) This order shall take effect July 12, 2002.

JOHNNY J. BUTLER,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 1590 (March 23, 2002).)

Fiscal Note: Fiscal Note 12-57 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART XIV. UNIFORM CONSTRUCTION CODE

CHAPTER 401. UNIFORM CONSTRUCTION CODE TRAINING AND CERTIFICATION OF CODE ADMINISTRATORS

Sec.	
401.1.	Definitions.
401.2.	Department fees.
401.3.	Certification required.
401.4.	Application and identification.
401.5.	Waivers.
401.6.	Certification categories and testing.
401.7.	Certification category specifications.
401.8.	Certification renewal.
401.9.	Continuing education.
401.10.	Department-approved providers.
401.11.	Certification of third-party agency.
401.12.	Liability insurance.
401.13.	List of code administrators.
401.14.	Decertification or refusal to certify.
401.15.	Registration of current code administrators.
401.16.	Change of address or employer.

§ 401.1. Definitions.

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

ALI—The Automatic Lift Institute, P. O. Box 33116, Indialantic, Florida, 32903-3116.

ASME—The American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016-5990.

Accredited academic institution—A high school, technical or vocational school, private school licensed or regis-

tered with the Department of Education, junior college, community college or university.

Act—The Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

Certified building official—A classification administered by the International Code Council or its predecessor organization.

Code administrator—A municipal code official, construction code official or third-party agency certified with the Department under the act or the Department under section 103 of the act (35 P. S. § 7210.103). The term includes an individual certified in a category established under this chapter to perform plan review of construction documents or administer and enforce codes and regulations in that category under the act or related acts.

Construction code official—An individual certified by the Department in an appropriate category established under section 701(b) of the act (35 P. S. § 7210.701(b)) to perform plan review of construction documents, inspect construction or administer and enforce codes and regulations in that category under the act or related acts under section 103 of the act.

Current code administrator—An individual who performed plan review of construction documents, inspections of one-family or two-family residential property or other buildings, structures and equipment or administered and enforced a construction code program, and who was employed by or under contract with the Commonwealth or a municipality prior to the effective date of adoption of the final-form regulations for the Uniform Construction Code. The term includes an individual who performed these duties as an employee, contractor or agent of a person employed by or under contract with the Commonwealth or a municipality of this Commonwealth prior to the effective date of the final-form regulations for the Uniform Construction Code.

Department—The Department of Labor and Industry of the Commonwealth.

Elevator—Hoisting and lowering devices governed by ASME standards adopted by the Department under the Uniform Construction Code and other lifting devices subject to the requirements of the Uniform Construction Code.

Passenger ropeway—An aerial tramway, aerial lift, surface lift, tow, conveyor or other lifting device which carries, pulls or pushes passengers along a level or inclined path by means of a haul rope or other flexible element which is driven by a power unit remaining essentially at a single location.

Secretary—The Secretary of the Department.

Third-party agency—A person, firm or corporation certified by the Department as a construction code official and contracted to perform plan review of construction documents, inspect construction or administer and enforce codes and regulations under the act.

Uniform Construction Code—The *International Building Code First Edition 2000*, the *International Residential Code for One- and Two- Family Dwellings 2000*, available from BOCA International, 4051 W. Flossmoor Rd., Country Club Hills, IL 60478-5795, 1 (800) 214-4231; and any standards adopted by the Department in this chapter under section 301 of the act (35 P. S. § 7210.301).

§ 401.2. Department fees.

The following fees apply to the certification of code officials. The Department will charge one fee per certifica-

tion application. An individual may apply for certification for multiple categories on a single application form. Fees are nonrefundable.

- (1) Initial certification and registration—\$50.
- (2) Certification renewal—\$50.
- (3) Third-party agency certification and renewal—\$250.
- (4) Identification card replacement—\$10.

§ 401.3. Certification required.

(a) A person may not perform a plan review of construction documents, inspect construction or equipment, or administer and enforce the Uniform Construction Code without being currently certified or registered by the Department in the category applicable to the work that is to be performed.

(b) A person may not approve plans or perform inspections relating to accessibility requirements without being certified by the Department as an accessibility inspector/plans examiner.

§ 401.4. Application and identification.

(a) An applicant for certification shall submit a Department-provided application, pay the required fee and submit verification of meeting the requirements of this chapter and passing all of the certification examinations for a specific certification category in § 401.5 (relating to waivers) within the 6 years prior to July 12, 2002.

(b) The Department will issue an identification card to an applicant who meets the certification requirements.

(c) A certification holder shall notify the Department in writing if the identification card is lost or destroyed. The Department will charge a required fee for issuance of a new identification card.

(d) Certification and certification renewal will not be valid until the Department receives the required fee.

(e) The period of certification shall be 3 years from the issuance date of a certification under § 401.8(a) (relating to certification renewal).

(f) The Department may refuse to issue certification for just cause in accordance with § 401.14 (relating to decertification or refusal). The Department will provide written notification of the reasons for the refusal to issue certification.

§ 401.5. Waivers.

(a) The Department may grant a request for waiver of the testing requirements of § 401.6 (relating to certification categories and testing) if the applicant meets any of the following criteria:

(1) Passed a test substantially similar to the testing categories in § 401.6 within the 6 years prior to July 12, 2002.

(2) Passed a test substantially similar to the testing categories in § 401.6 within the 6 years prior to July 12, 2002, so long as the applicant submits any of the following to the Department:

(i) Evidence of continued employment as a code administrator in the related field.

(ii) Current certification issued by a model code organization.

(iii) Evidence of completion of 30 hours of continuing education or a college degree program in associated fields.

(3) Passed a certified building official examination. An applicant who passed the examination may be eligible to receive certification in the following categories:

- (i) Residential building inspector.
- (ii) Building inspector.
- (iii) Building plans examiner.

(b) An applicant for waiver shall complete a Department-provided application form and pay the required initial certification fee under § 401.2 (relating to Department fees). If the Department approves the waiver, the applicant shall comply with § 401.4 (relating to application and identification).

§ 401.6. Certification categories and testing.

The Department will issue a certification for a specific category to an applicant who receives a passing grade in all of the examinations required for that category. The Department will accept the following category examinations or successor examinations administered by the Department, the National Certification Program for Construction Code Inspectors, Assessment Services, Incorporated, the National Association of Elevator Safety Authorities or other Nationally-recognized testing program approved by the Department. The Department will list the approved providers on its Internet website.

<i>Certification Categories</i>	<i>Examination Number and Name</i>
Residential building inspector	1A Building 1 & 2 family dwelling
Residential electrical inspector	2A Electrical 1 & 2 family dwelling
Residential mechanical inspector	4A Mechanical 1 & 2 family dwelling
Residential plumbing inspector	5A Plumbing 1 & 2 family dwelling
Residential energy inspector	E1 Residential energy plan review & inspection
Building inspector	1B Building general 3B Fire protection general
Fire inspector	F1 Fire prevention inspection general I
Electrical inspector	2B Electrical general
Mechanical inspector	4B Mechanical general
Plumbing inspector	5B Plumbing general
Energy inspector	E2 Commercial energy inspection
Accessibility inspector/plan examiner	A1 accessibility inspector/plan examiner
Building plans examiner	1B Building general 1C Building plan review 3B Fire protection general 3C Fire protection plan review
Electrical plans examiner	2B Electrical general 2C Electrical plan review
Mechanical plans examiner	4B Mechanical general 4C Mechanical plan review
Plumbing plans examiner	5B Plumbing general 5C Plumbing plan review

<i>Certification Categories</i>	<i>Examination Number and Name</i>
Energy plans examiner	E3 Commercial energy plan review
Building code official (code administrator)	Department-administered test on State law and application
Elevator inspector	Qualified elevator inspector test or its equivalent
Passenger ropeway inspector	Department administered test on ANSI B77.1-1999 edition

§ 401.7. Certification category specifications.

An individual certified by the Department in the following categories may perform the duties described in the specific category as a construction code official:

(1) *Residential building inspector.*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that these structures are free from hazardous structural conditions and comply with the Uniform Construction Code.

(ii) Duties include inspection of footings and foundations, concrete slabs, wood decay and termite protection, floor and ceiling framing, wall framing, roof framing, masonry walls, sheathing, roof covering, interior and exterior wall coverings, means of egress system and safety glazing.

(2) *Residential electrical inspector.*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that these structures are free from hazardous electrical installations and comply with the Uniform Construction Code.

(ii) Duties include determining compliance of electrical service, electrical distribution systems, wiring methods, panel boards, control devices, conductors and electrical fixture installation.

(3) *Residential mechanical inspector.*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that these structures are free from hazardous mechanical installations and comply with the Uniform Construction Code.

(ii) Duties include determining compliance of mechanical equipment, gas fuel supply systems, venting of appliances, air ducts, combustion air and comfort cooling.

(4) *Residential plumbing inspector.*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that these structures are free from hazardous plumbing installations and comply with the Uniform Construction Code.

(ii) Duties include determining compliance of water service, building sewer, water distribution, drainage, waste and vents and fixtures.

(5) *Residential energy inspector.*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that energy installations are made in the manner specified in the Uniform Construction Code.

(ii) Duties include determining compliance of conditioned or unconditioned spaces, R-values for roof/ceiling, floor and wall assemblies and insulation placement, installation of materials for the building envelope and its

components, moisture control methods such as caulking, sealing and weather-stripping, duct and dipping insulation and sealing criteria, thermostats for each heating and cooling system, electrical metering, lighting installation and controls and piping insulation, circulation pump controls, heat traps, shower heads and pool cover installations.

(6) *Building inspector:*

(i) Ensures that buildings and structures are constructed in accordance with the Uniform Construction Code.

(ii) Duties include inspection of construction site and building location, footings and foundations, wood and steel framing and connections, masonry construction, precast and cast-in-place concrete, exterior weather boarding, fire-stopping and draft-stopping, building components related to life safety and fire protection systems and building components related to size, installation and workmanship.

(iii) May perform residential inspector duties listed in paragraph (1).

(7) *Electrical inspector:*

(i) Ensures that electrical installations are made in accordance with the Uniform Construction Code regardless of the size or components used in the installation.

(ii) Duties include determining compliance of raceways (installations, size), cables, panel boards and boxes, conductors, control devices, motors and generators, electrical equipment and special occupancies.

(iii) May perform residential electrical inspector duties listed in paragraph (2).

(8) *Mechanical inspector:*

(i) Ensures that mechanical installations are made in the manner specified in the Uniform Construction Code.

(ii) Duties include determining compliance of fuel piping systems, heating, cooling and ventilation, fuel-fired equipment venting, steam and hot water heating systems and piping and energy conservation.

(iii) May perform residential mechanical inspector duties listed in paragraph (3).

(9) *Plumbing inspector:*

(i) Ensures that plumbing installations are made in accordance with the Uniform Construction Code.

(ii) Duties include determining compliance of underground piping installation, rough-in inspections, drain-waste-venting (DWV) systems, pressure testing, water distribution systems, observation and elimination of cross connections, system pumps, tanks and pressure vessels and fixtures, traps and valves and their connections.

(iii) May perform residential plumbing inspector duties listed in paragraph (4).

(10) *Energy inspector:*

(i) Ensures that the building envelope, mechanical systems, electrical power and lighting systems and building service systems and equipment comply with the approved construction documents and the Uniform Construction Code.

(ii) Duties include verifying that building envelope and components meet minimum requirements for installation of materials and that building envelope penetrations are

caulked, sealed and weather-stripped, determining compliance of moisture control methods, installation of and types of mechanical equipment and efficiencies, heating, ventilation and air conditioning (HVAC) equipment, ducts and piping, insulation and sealing, lighting installation and lighting controls for building interiors and exteriors, permanently wired poly-phase motors and their efficiencies, piping insulation, circulation pump controls, heat traps, point-of-use controls and pool cover installations.

(iii) May perform residential energy inspector duties listed in paragraph (5).

(11) *Accessibility inspector/plans examiner:*

(i) Ensures that buildings and structures are constructed in accordance with the accessibility provisions of the Uniform Construction Code and that construction documents submitted as part of a permit application comply with the accessibility provisions of the Uniform Construction Code.

(ii) Duties include inspection of building sites and all interior building components to verify compliance with the accessibility standards or review of construction documents to verify that the design of building sites and all interior components comply with the accessibility standards.

(12) *Building plans examiner:*

(i) Determines that the construction documents submitted as part of a permit application comply with the Uniform Construction Code.

(ii) Duties include determining the degree of compliance necessary for new construction projects, alterations or repairs, proper use group/type of construction classification, determining height and area requirements, minimum means of egress requirements, minimum light and ventilation requirements, minimum design structural loads, adequacy of soils investigations, adequacy of footing and foundation designs, minimum fire-resistance requirements, adequacy of barrier-free designs, minimum energy conservation requirements and adequacy of fire-protection systems.

(13) *Fire inspector:*

(i) Conducts basic fire prevention inspections and has a general knowledge of applicable codes and standards.

(ii) Duties include field inspections, preparation of correspondence and inspection reports, handling complaints, and maintaining files related to inspections that were conducted.

(14) *Electrical plans examiner:*

(i) Determines that the construction documents submitted as part of a permit application comply with the Uniform Construction Code.

(ii) Duties include determining proper number of services, proper location of services, adequacy of emergency systems, proper service size, proper over-current protection, special use applications and proper conductor size and application.

(15) *Mechanical plans examiner:*

(i) Determines that the construction documents submitted as part of a permit application comply with the Uniform Construction Code.

(ii) Duties include determining compliance of fuel piping systems, fuel-burning appliances, mechanical refrigeration

eration systems, incinerators, energy conservation equipment and controls, boilers and pressure vessels, venting systems, hydronic and steam-piping systems and ventilation air systems.

(16) *Plumbing plans examiner.*

(i) Determines that the construction documents submitted as part of a permit application comply with the Uniform Construction Code.

(ii) Duties include determining that water service, building sewer/storm sewer and other underground piping are properly sized and located, determining that proper drainage fixture units, fixture locations and clearances are used, determining the adequacy of drain-waste-venting (DWV) riser diagrams and water distribution systems and determining the proper number of fixtures and proper materials as proposed.

(17) *Energy plans examiner.*

(i) Ensures that the design criteria specified for a building are correct and in accordance with the Uniform Construction Code and that alterations, additions and change of use or occupancy are in compliance with the Uniform Construction Code.

(ii) Duties include determining compliance of the design conditions specified, conditioned or unconditioned spaces, R values for roof/ceiling, floor and wall assemblies and insulation placement, insulation of materials for the building envelope and its components, moisture control methods such as caulking, sealing and weather-stripping, duct and dipping insulation and sealing criteria, thermostats for each heating and cooling system, electrical metering, lighting installation and controls, piping insulation, circulation pump controls, heat raps, shower heads and pool cover installations.

(18) *Building code official.*

(i) Manages, supervises and administers building code enforcement activities. The Department, municipality or a third-party agency that operates an enforcement program under the act will employ at least one person certified or registered as a building code official.

(ii) Duties include management of building code enforcement activities, supervision of building inspectors or plans examiners, issuing building permits, occupancy permits, notice of violations and orders to vacate, and initiation of prosecutions.

(19) *Elevator inspector.*

(i) Inspects electric and hydraulic elevators, conveying systems and other lifting devices to ensure that these installations are free from conditions that would present a life safety or fire hazard to persons using the installations.

(ii) Duties include determining compliance with the Uniform Construction Code regarding door closers, interlocks, car safeties, over-speed governors, safety tests, reshackling, ropes, fireman's recall, brakes and other related elevator equipment and the investigation of accidents.

(20) *Passenger ropeway inspector.*

(i) Inspects passenger ropeways to ensure that the installation is free from conditions that would present a life safety or fire hazard to a person using the installation.

(ii) Duties include investigation of accidents and determining compliances of power units, auxiliary power units,

carriers, cabins, cars, location, vertical and horizontal clearances, haul rope sleeves, guides, haul rope condition and splice, structures and foundations, capacity, speed, acceleration/deceleration, loading and unloading areas, required stopping devices, brakes and rollback devices, tension systems, manual and automatic control devices, haul rope grips, operation and maintenance of equipment, electrical components, emergency shut down circuits, bypass circuits, speed regulating devices, and other related ropeway equipment with the Uniform Construction Code.

§ 401.8. Certification renewal.

(a) A certification holder shall renew a certification every 3 years from date of issuance to continue to act as a code administrator. If a certification holder receives certification in an additional category, the expiration date of all his certifications shall be the date of expiration of the certification that was last issued to the certification holder.

(b) To renew a certification, an applicant shall submit a completed Department-provided renewal form, acceptable proof of completion of continuing education and the required certification fee under § 401.2 (relating to Department fees). The Department will post this form on its Internet website (www.dli.state.pa.us) and provide it upon request.

(c) An applicant for renewal shall obtain identification in accordance with § 401.4 (relating to application and identification).

(d) The Department will not renew a certification that is expired for more than 1 year unless the applicant submits a certification application under § 401.4 and passes the required examinations under § 401.6 (relating to certification categories and testing).

(e) An applicant for certification renewal shall submit proof of completion of each continuing education course. The proof of completion shall be completed by the course provider and contain the following information:

- (1) The name and address of the training provider.
- (2) The dates attended.
- (3) The credit hours claimed.
- (4) The title of the course.
- (5) The subject matter of the course.

(f) The Department will not renew the certification of a person who was decertified in accordance with § 401.14 (relating to decertification or refusal) during the period that the Department ordered the decertification.

§ 401.9. Continuing education.

(a) Prior to certification renewal, an applicant shall complete 15 credit hours of continuing education in courses relating to the professional competency of code administrators. An applicant with multiple certification areas shall complete 15 credit hours of continuing education for each category after the issuance of the certification or most recent renewal of certification. The applicant is not required to complete more than 45 credit hours for renewal. At least 1/3 of the applicant's continuing education requirement shall be in approved courses relating to the applicant's certification categories.

(b) The Department will approve credit as follows:

(1) One credit hour for each 60 minutes actually spent at one course except as otherwise listed in this subsection.

(2) One credit hour for each 60-minutes of completion time for a self-study course calculated by the sponsor. The Department may modify credit hours for a self-study course to comply with this section.

(3) Five credit hours for successful completion of an examination for an additional certification category under subsection (c)(5).

(4) One credit hour for each 60 minutes actually spent in attendance at a model code organization code change hearing under subsection (c)(6).

(c) The Department approves the following as acceptable courses of study for continuing education credits:

(1) Attendance at a seminar or technical presentation by an approved provider.

(2) Completion of a self-study course offered by an approved provider.

(3) Completion of a classroom course offered by an accredited academic institution.

(4) Instruction at a continuing education seminar or technical presentation for an approved provider.

(5) Successful completion of an examination for an additional certification category listed in § 401.6 (relating to certification categories and testing)

(6) Attendance at a model code organization code change hearing.

§ 401.10. Department-approved providers.

(a) The following providers are approved to offer instruction for continuing education credit hours:

(1) The National Conference of States on Building Codes and Standards.

(2) A Federal, Commonwealth or state agency.

(3) An accredited academic institution.

(4) A model code organization or its accredited local chapter.

(5) A trade association representing design professionals or the construction industry.

(6) A National standards writing organization.

(7) An association serving or representing Commonwealth municipalities.

(8) Approved testing providers under § 401.6 (relating to certification categories and testing) for credit hours under § 401.9(c)(5) (relating to continuing education).

(b) The Department will approve additional providers who demonstrate the competency to provide approved continuing education programs. An applicant for approval as a provider shall submit a completed Department-provided application and appropriate documentation that it meets the requirements of § 401.9. The Department will post a list of approved providers on its Internet website (www.dli.state.pa.us) and provide the list upon request.

(c) The Department may revoke approval of any provider that does not comply with § 401.9 or this section. Actions will be taken subject to the right of notice, hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

§ 401.11. Certification of third-party agency.

(a) Current certification as a third-party agency is required to act as a construction code official, perform

plan review of construction documents, inspect construction or administer and enforce codes and regulations in accordance with the act under contract with a person, firm, corporation or the Commonwealth.

(b) An applicant for certification as a third-party agency shall submit a completed Department-provided application to the Department and pay the required fee.

(c) An applicant for certification as a third-party agency shall submit documentation that its employees or agents who act as construction code officials and perform plan review of construction documents, inspect construction or administer or enforce codes and regulations under the act are currently registered or certified in the specific categories applicable to the work performed.

(d) An applicant for certification under this section shall submit acceptable documentation of insurance coverage required under § 401.12 (relating to liability insurance).

(e) A third-party agency shall provide written notification to the Department within 60 days of the hiring or change of employment status of an employee or agent who acts as a construction code official and performs plan review of construction documents, inspects construction or administers or enforces codes and regulations under the act.

(f) A certification expires 3 years after date of issuance. The Department will renew a third-party agency certification when the applicant meets all of the following:

(1) Submits a completed Department-provided renewal form.

(2) Pays the required fee under § 401.2 (relating to Department fees).

(3) Submits proof of liability insurance coverage under § 401.12.

(4) Not decertified under § 401.14 (relating to decertification).

§ 401.12. Liability insurance.

(a) A third-party agency shall carry errors and omissions liability insurance in at least the amount of \$1 million for each person and each occurrence to satisfy claims or judgments for property damage or personal injury, or both.

(b) As a condition for obtaining and renewing certification, a third-party agency shall submit to the Department satisfactory evidence that it has obtained errors and omissions liability insurance as required by this section. A certification or renewal will not be issued unless the third-party agency provides proof of insurance which shall consist of a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date and policy coverage in the amounts required.

(c) A third-party agency shall notify the Department immediately of the cancellation of its errors and omissions liability insurance, the failure or refusal to renew its errors and omissions liability insurance, change of insurance carrier, change of policy dates or changes of coverage amounts. Upon notice of loss or cancellation of insurance coverage, the Department will immediately initiate action to decertify the third party agency under § 401.14 (relating to decertification or refusal to certify).

§ 401.13. List of code administrators.

The Department will maintain a list of code administrators indicating their categories of certifications on its Internet website (www.dli.state.pa.us). The Department will also make the list available to municipalities and, upon request, the public.

§ 401.14. Decertification or refusal to certify.

(a) *Decertification or refusal to certify.* The Department may initiate action against a code administrator or refuse to issue certification for just cause. Just cause includes the following:

- (1) Failure to remedy an error or omission specified in a formal warning or to comply with an order issued by the Department under this section.
- (2) Fraud or deceit or making untrue representations in obtaining a certification.
- (3) Failure to remit the required certification fee.
- (4) Violation of the act or this chapter.
- (5) Incompetence or gross negligence.
- (6) Acting in a manner presenting a danger to the public health and safety.
- (7) Pleading guilty, entering a plea of *nolo contendere*, being found guilty, receiving probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition to a felony or any crime relating to the business of code administrator in the courts of this Commonwealth, a Federal court or a court of any other state, territory or insular possession of the United States.
- (8) Having a certification or any authorization to engage in the business of code administrator revoked or suspended or having other disciplinary action taken, or an application for certification or authorization to engage in the business of code administrator refused or denied by the proper authority of another state or Federal district, territory or insular possession of the United States, the Federal government or Canada.
- (9) Failing to complete continuing education requirements of the act or engaging in deceit or misrepresentation in the reporting of continuing education requirements.
- (10) Engaging in fraud, deceit or an act of moral turpitude while acting as code administrator.
- (11) Failing to enforce the act or Uniform Construction Code.
- (12) Knowingly aiding and abetting a person engaging in code administrator activity who is not currently certified or registered.
- (13) Being a third-party agency that does not comply with § 401.12 (relating to liability insurance).
- (14) Engaging in the activities of a code administrator or advertising as a code administrator without a current certification required for the work performed, or registration issued by the Department.

(b) *Notice and hearing.* Actions of the Department relating to decertification under this section will be taken subject to the right of notice, hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure). Decertification proceedings shall be con-

ducted under 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

(c) *Procedure for decertification.*

(1) The Department will serve the code administrator with an order to show cause under 1 Pa. Code § 35.14 (relating to orders to show cause). The order to show cause shall contain notification that the certification may be subject to action and the grounds for the action. The order to show cause shall contain notification that the code administrator is to respond in writing within 30 days after the date of service of the order. The Department will also serve a copy of the order to show cause upon the supervising official in the municipality where the alleged incidents occurred and upon the code administrator's current employer.

(2) The code administrator may respond in writing to the allegations in the order to show cause in accordance with 1 Pa. Code § 35.37 (relating to answers to orders to show cause). If made, the answer shall be filed with the Department within 30 days after the date of service of the order to show cause.

(3) At the request of the code administrator, the Department will hold a hearing on the matter. The Secretary will designate a presiding officer to conduct the hearing and to issue a proposed report under 1 Pa. Code §§ 35.201—35.207 (relating to proposed reports generally).

(4) The presiding officer shall have the power to conduct hearings under 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers). The presiding officer shall issue a proposed report that shall be served upon counsel of record or to the parties in the hearing. The presiding officer shall transmit the proposed report and the certified record to the Secretary within 15-days after issuance of the proposed report.

(5) A participant desiring to appeal to the Secretary shall, within 30 days after the service of a copy of the proposed report, file exceptions to the proposed report under 1 Pa. Code § 35.211 (relating to procedure to except to proposed report). A response may be filed within 20 days to the exceptions.

(6) The Secretary or a designee will issue a final order under 1 Pa. Code § 35.226 (relating to final orders).

(d) *Types of corrective action.* When the Department is authorized to take action against a code administrator, the Department may:

- (1) Administer a formal warning.
- (2) Require the code administrator to take remedial educational courses.
- (3) Decertify the code administrator for a period set by the Department. The Department will order the code administrator to surrender his certificate after decertification.
- (4) Deny the application for certification.

(e) *Conditions for reinstatement.* Unless ordered to do so by a court of competent jurisdiction, the Department will not reinstate certification to a person who was decertified until the following conditions are met:

- (1) The full period of decertification ordered by the Department has elapsed.
- (2) The person has complied with conditions imposed by the Department's order of decertification and recertifi-

cation would not be detrimental to the public health and safety.

(3) The person complies with § 401.4 (relating to application and identification).

(f) Subsection (c) supplements 1 Pa. Code §§ 35.14, 35.37, 35.201—35.207, 35.185—35.190, 35.211 and 35.226.

§ 401.15. Registration of current code administrators.

(a) A current code administrator engaged in plan review or inspection of one-family or two-family residential property may continue to engage in these activities without meeting the training and certification requirements of this chapter until 3 years from effective date of the adoption of the final-form regulations for the Uniform Construction Code. To engage in plan review or inspection of one-family or two-family dwelling units after 3 years from effective date of adoption of the final-form regulations for the Uniform Construction Code, a current code administrator shall meet the certification and training requirements of this chapter.

(b) A current code administrator engaged in plan review or inspection of other buildings and structures that are not one-family or two-family residential structures may continue to engage in these activities without meeting the training and certification requirements of this chapter until 5 years from effective date of adoption of the final-form regulations for the Uniform Construction Code. To engage in plan review and inspection of other buildings and structures after 5 years from the effective date of adoption of the final-form regulations for the Uniform Construction Code, a current code administrator shall meet the training and certification requirements of this chapter.

(c) A current code administrator shall register with the Department by submitting a completed Department-provided form and furnishing required documentation. Documentation is to consist of an affidavit completed by the employer responsible for oversight of the current code administrator's activities and an affidavit completed by the current code administrator containing a description of the current code administrator's duties, employment and length of employment.

(d) The Department will issue an identification card to a current code administrator who meets the requirements of this section, completes a Department-provided form and pays the required fee under § 401.2 (relating to Department fees).

(e) The identification card will expire as registration on the date that the current code administrator must meet the training and certification requirements of this chapter.

(f) A current code administrator shall notify the Department in writing if the identification card is lost or destroyed. The Department will charge a required fee for issuance of a new identification card under § 401.2.

(g) A current code administrator is not required to obtain a new registration for a change of employer.

(h) A current code administrator may not approve plans or perform inspections relating to accessibility requirements without being currently certified by the Department as an accessibility inspector/plans examiner.

§ 401.16. Change of address or employer.

A certification or registration holder shall notify the Department of any change of mailing address or employer within 30 days.

[Pa.B. Doc. No. 02-568. Filed for public inspection April 12, 2002, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

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

Examinations; Application for Licensure and Certification; Fees

The State Board of Veterinary Medicine (Board) amends §§ 31.3, 31.11, 31.32—31.35, 31.39 and 31.41, concerning applications for licensure and examination, to read as set forth in Annex A.

Notice of proposed rulemaking was published at 30 Pa.B. 6213 (December 2, 2000). Publication was followed by a 30-day public comment period during which the Board received no comments from the general public. The House Professional Licensure Committee (HPLC) submitted comments on February 2, 2001. The Senate Consumer Protection and Professional Licensure Committee made no comments. The Independent Regulatory Review Commission (IRRC) submitted comments to the proposed rulemaking on March 2, 2001.

Summary of Comments and Responses to Proposed Rulemaking

Section 31.32(a)(4) (relating to certification)

The HPLC and IRRC recommended that the Board clarify the effect that a prior disciplinary action in another state might have on an applicant for licensure in this Commonwealth. Under the current Veterinary Medicine Practice Act (act) (63 P. S. §§ 485.1—485.35) and the Board's regulations, applicants for veterinary licensure must demonstrate that they are in good standing with the licensing board of any other state in which they are licensed. Section 31.32(a)(4) extends this requirement to an applicant for certification as an animal health technician.

The Board agrees with the HPLC and IRRC that this section would benefit from clarification and adopts their recommendation. The Board finds that the clarity of § 31.32 would be improved if it mirrored the language of § 31.11(b) (relating to application for licensure), which requires the applicant to submit documentation as a prerequisite to licensure. Using this language also indicates that the Board reviews applications on a case-by-case basis. Because applications evidencing discipline in another state are reviewed on a case-by-case basis, the Board cannot predetermine what restrictions, if any, may be placed on an applicant with a disciplinary record. The Board may determine that it is appropriate to deny certification or upon certification, restrict the technician's practice upon consideration of factors such as the nature of the prior infraction, whether the individual's practice is limited in another state, and the length of time that has passed since the infraction.

In addition, the Board agrees with the HPLC and IRRC that the section should be amended to clarify that the Board will have the discretion to deny certification when the applicant has a history of disciplinary action. The Board adopts this proposal, and adds language to § 31.39 (relating to grounds for disciplinary proceedings) to indicate that the Board may refuse to certify an applicant or may, upon certification, place restrictions upon an applicant's practice in this Commonwealth based on prior disciplinary action by another state board. As with an applicant who has a criminal history, an applicant who has been disciplined by another state board must come before the Board for a determination of whether the applicant should be granted certification or licensure, should be granted limited or probationary certification or licensure, or should be denied certification or licensure.

Section 31.32(a)(5)

With respect to § 31.32(a)(4) and (5), the HPLC questioned how the Board would be able to make a determination that a conviction is more than 10 years old or that an applicant is satisfactorily rehabilitated if the applicant need only provide a statement that the applicant has not been convicted of a drug related felony. IRRC also asked the Board to respond to the questions of the HPLC and, in addition, to explain the need for, and purpose of, an exception for an applicant who otherwise satisfies the qualifications contained in the Board's regulations.

Section 31.32(a)(5) is virtually a verbatim recitation of § 31.11(b)(4), which applies to applicants for veterinary licensure. Section 31.11(b)(4) is taken verbatim from section 9(b)(4) of the act (63 P. S. § 485.9(b)(4)). Section 31.32(a)(5) would apply the same criteria to applicants for certification as an animal health technician as are applied to applicants for veterinary licensure with respect to past criminal convictions for drug-related felonies.

The Board has interpreted and applied section 9(b)(4) of the act and § 31.11(b)(4) to require an applicant for veterinary licensure to disclose whether they have been convicted of a felony under The Controlled Substance, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) or a felony relating to a controlled substance in a court of law of the United States or other state. An applicant who has not been convicted of a crime is eligible for licensure. An applicant who discloses that they have been convicted of a crime is required to provide a current criminal record history check from the State Police and the state police in any state where the applicant was convicted of a crime and certified copies of all relevant court documents. An applicant with a felony drug record is only eligible for licensure if the enumerated conditions are met: first, at least 10 years must have passed since the date of conviction; second, the applicant must demonstrate significant progress in personal rehabilitation; and third, the applicant must otherwise meet all requirements for licensure.

The Board can determine whether 10 years have elapsed since the date of the applicant's conviction from current criminal records history submitted by the applicant. An applicant with a criminal history related to drugs is required to demonstrate his progress in personal rehabilitation at a hearing before the Board. Evidence presented by the applicant may include documentation evidencing a period of sustained recovery from a prior drug abuse problem, evaluation by a licensed professional indicating that the applicant is at low risk to reoffend, lack of subsequent criminal convictions, satisfactory

completion of criminal probation, work history, personal recommendations and the applicant's testimony.

The HPLC and IRRC also questioned the need for § 31.32(a)(5)(iii), which would require a technician applicant who had been convicted of a felony to "otherwise satisf[y] the qualifications contained in the Board's regulations." This language almost verbatim mirrors the language of § 31.11(b)(4)(iii), which applies to applicants for veterinary licensure, as is required by section 9(b)(4)(iii) of the act. The language is intended to indicate that § 31.32(b)(5) does not contain the complete list of licensure qualifications for persons with drug related felonies in their background.

Just as the act gives the Board discretion in granting, refusing or restricting a license to practice veterinary medicine, the Board's regulations give the Board discretion in granting, refusing, suspending, revoking or otherwise restricting a certificate as an animal health technician. (See sections 21 and 24 of the act (63 P. S. §§ 485.21 and 485.24) and §§ 31.32 and 31.39. For example, a veterinary applicant who has been disciplined in another state for failing to maintain a veterinary clinic in a clean and sanitary condition may be required to report to the Board any change in employment and submit to random inspections of their facility. The amendment to § 31.32(a)(4) (5) would permit the Board, under § 31.39(a)(4)—(6), to impose an appropriate restriction on a technician's license. For example, when considering the application of a technician disciplined in another state for exceeding the allowed scope of practice, the Board might grant a license conditioned upon completion of a course on the scope of practice of a technician in this Commonwealth, or monitoring of the technician's practice by the supervising veterinarian.

Sections 31.11(a) and 31.33 (relating to application for licensure; and applications)

IRRC also commented on §§ 31.11(a) and 31.33. IRRC first suggested that the Board's regulations should instruct applicants for certification as an animal health technician how to obtain application forms for taking the animal health technician examination from the testing organization. Applicants to take the animal health technician examination are students in a school that offers a degree program in veterinary technology. The animal health technician examination is a standard examination required for licensure in all 50 states. The schools offering these programs provide their students with extensive information regarding the examination. The information is also available from the Board's website. The Board does not believe it is necessary to provide these students with contact information in the regulation, and therefore declines to make the suggested modification.

In addition, IRRC suggested that the regulations should inform technician applicants of where to find the testing dates for the veterinary technician National examination. For the reasons explained previously, the Board finds it unnecessary to include this information in the regulations.

Finally, IRRC questioned why the Board was deleting its telephone number from the regulations. The telephone number currently in the regulations is not correct and has been out of date since at least 1998. The Bureau of Professional and Occupational Affairs is likely to move to other offices before the regulations are published. Rather than publish another incorrect telephone number, the Board determined it should remove the telephone number from its regulations.

Statutory Authority

The final-form rulemaking is authorized under section 5(7) of the act (63 P. S. § 485.5(7)). Section 5(7) of the act empowers the Board to prescribe the subject, character, manner, time and place of the filing of application. In addition, section 11 of the act (63 P. S. § 485.11) directs the Board to promulgate by regulation, the qualifications and requirements for the certification and regulation of animal health technicians.

Fiscal Impact and Paperwork Requirements

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

Compliance with Executive Order 1996-1

Under Executive Order 1996-1, the Board found compelling need for these regulatory amendments.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 6213, to IRRC and the Chairpersons of the HPLC and the Senate Committee on Consumer Protection and Professional Licensure.

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on March 4, 2002, these final-form regulations were deemed approved by the HPLC and the Senate Consumer Protection and Professional Licensure Committee. IRRC met on March 7, 2002, and approved the final-form regulations under section 5.1(e) of the Regulatory Review Act.

Additional Information

Individuals who need information about the final-form regulations may contact Robert Kline, Administrative Assistant, State Board of Veterinary Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of July 21, 1968 (P. L. 469, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated under, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments are necessary and appropriate for the administration of the act.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending §§ 31.3, 31.11, 31.32—31.35, 31.39 and 31.41, to read as set forth in Annex A.

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

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

(d) The final-form regulations take effect immediately upon publication in the *Pennsylvania Bulletin*.

BRIAN V. HARPSTER, V.M.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 1590 (March 23, 2002).)

Fiscal Note: 16A-5713. 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 31. STATE BOARD OF VETERINARY MEDICINE
GENERAL PROVISIONS

§ 31.3. Examinations.

(a) The examination required as a prerequisite to original licensure as a veterinarian is the North American Veterinary Licensing Examination (NAVLE). The examination will be given at least annually by the National Board Examination Committee.

(b) Applications to take the licensing examinations, together with instructions for applicants, including deadlines for filing and paying fees, may be obtained from the Administrative Office of the Board by contacting the State Board of Veterinary Medicine, Post Office Box 2649, Harrisburg, Pennsylvania, 17105-2649, veterina@pados.dos.state.pa.us.

(c) Examination applications and the fee required shall be submitted directly to the National Board Examination Committee.

LICENSURE

§ 31.11. Application for licensure.

(a) *Application forms.* Application forms for original or reciprocal licensure may be obtained from the Administrative Office of the Board by contacting the State Board of Veterinary Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, veterina@pados.dos.state.pa.us, or by accessing the Board's web page at www.dos.state.pa.us/bpoa/vetbd/mainpage.htm. Application forms shall be returned to the Board at least 60 days prior to the first day of the NAVLE testing period.

(b) *Original licensure.* As a prerequisite to original licensure as a veterinarian, an applicant shall submit the following documentation to the Board:

(1) Evidence of graduation from an approved school or college of veterinary medicine. The applicant's official transcript provided by the degree-granting institution or a verification of graduation from the degree-granting institution shall be evidence of graduation from an approved college of veterinary medicine. A graduate of a school or college of veterinary medicine outside of the United States and Canada shall submit certification by the American Veterinary Medical Association, Educational Commission for Foreign Veterinary Graduates or another program which may subsequently be approved by the American Veterinary Medical Association as proof of graduation from an approved school or college of veterinary medicine.

(2) North American Veterinary Licensing Examination (NAVLE) results as furnished through a National examination grade reporting service. The Board will accept an applicant's grades from the National Board Examination (NBE) and Clinical Competency Test (CCT) examinations if taken within the last 5 years as furnished through a National examination grade reporting service in lieu of the NAVLE, if the applicant passed these examinations with a score equivalent to or higher than the passing score then prevailing in this Commonwealth.

(3) A letter of good standing from the licensure board of each state where the applicant has held a license to practice veterinary medicine, reporting the outcome of disciplinary actions taken against the applicant, if any, in that state.

(4) A statement from the applicant that the applicant has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country unless the following apply:

(i) At least 10 years have elapsed from the date of conviction.

(ii) The applicant satisfactorily demonstrates to the Board that the applicant has made significant progress in personal rehabilitation since the conviction so that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations.

(iii) The applicant otherwise satisfies the qualifications contained in the act.

(c) *Reciprocal licensure.* An applicant for licensure by reciprocity who has held a valid license from another state and has been actively engaged in clinical practice in that state for 5 years immediately preceding application for licensure in this Commonwealth, may be granted a license to practice veterinary medicine in this Commonwealth after having paid the fee required by § 31.41 (relating to schedule of fees), and submitted the following documentation to the Board:

(1) An application form under subsection (a).

(2) A verification of clinical practice, completed by the applicant, describing in detail the applicant's clinical practice during the immediately preceding 5 years.

(3) A letter from the licensure board of the state wherein the applicant has been actively engaged in clinical practice during the immediately preceding 5 years, certifying 5 years of continued licensure in that state.

(4) Two certificates of recommendation from licensed veterinarians regarding the applicant's character and competence and attesting to the fact that the applicant has been in active clinical practice during the immediately preceding 5 years.

(5) A letter of good standing from each board office in which the applicant has held a license to practice veterinary medicine, reporting the outcome of disciplinary actions taken against the applicant, if any, in that state.

ANIMAL HEALTH TECHNICIANS AND NONCERTIFIED EMPLOYEES

§ 31.32. Certification.

(a) As a prerequisite to original certification as an animal health technician, an applicant shall submit the following documentation to the Board:

(1) A completed and signed application for animal health technician certification.

(2) Evidence of satisfactory performance on the proficiency examination as determined by the Board.

(3) Evidence of satisfactory completion of an approved program for the training and education of animal technicians.

(4) A letter of good standing from the licensure board of each state where the applicant has held a license as an animal health technician, if any, reporting the outcome of disciplinary actions taken against the applicant in that state.

(5) A statement from the applicant that the applicant has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country within the last 10 years. An applicant convicted of such a felony more than 10 years ago shall also submit the following:

(i) Proof that at least 10 years have elapsed from the date of conviction.

(ii) Satisfactory documentary evidence that the applicant has made significant progress in personal rehabilitation since the conviction so that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations.

(iii) Satisfactory documentary evidence that the applicant otherwise satisfies the qualifications contained in the Board's regulations.

(b) The fee for application for certification is as specified in § 31.41 (relating to schedule of fees).

§ 31.33. Applications.

(a) An applicant for certification by examination shall complete and file an application with the Board as specified in § 31.32 (relating to certification) and remit to the Board the fee specified in § 31.41 (relating to schedule of fees). An applicant for certification by examination shall also complete and file an application for the veterinary technician National examination and the required fee directly with the professional testing organization. Both applications may be obtained from the professional testing organization.

(b) An applicant for certification as an animal health technician by endorsement shall complete and file with the Board an application for certification by endorsement on forms prescribed by the Board. The application form may be obtained from the Administrative Office of the State Board of Veterinary Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649 or by accessing the Board's web page at www.dos.state.pa.us/bpoa/vetbd/mainpage.htm.

§ 31.34. Qualification for examination.

An applicant for examination shall be a graduate of an approved school.

§ 31.35. Examinations.

(a) The examination required for certification as an animal health technician is the Veterinary Technician National Examination (VTNE).

(b) An applicant failing to pass an examination for which the applicant has previously qualified shall be

reexamined at the applicant's request by submitting a new application and by paying the required fee.

(c) The Board may waive the VTNE if an applicant satisfies the following requirements:

- (1) Has met all of the requirements provided for in the act.
- (2) Has filed the required application as provided in § 31.33 (relating to applications).
- (3) Has been issued a certificate as an animal health technician or a veterinary technician in another state whose requirements are at least equal to those of the Commonwealth; a copy of this certificate and proof of current good standing shall be submitted.

§ 31.39. Grounds for disciplinary proceedings.

(a) The Board may suspend or revoke certification of an animal health technician or otherwise discipline a certified animal health technician or refuse to certify an applicant, or, upon certification, restrict the practice of an applicant who is found guilty by the Board or by a court of one or more of the following:

- (1) Willful or repeated violations of the act or of §§ 31.31—31.38.
- (2) Fraud or deceit in procuring or attempting to procure certification or presenting to the Board dishonest or fraudulent evidence of qualifications, or fraud or deception in the process of examination for the purpose of securing certification.
- (3) Fraud, deception, misrepresentation or dishonest or illegal practices in or connected with the person's employment.
- (4) Revocation or suspension by another state of the certification of the person as an animal health technician or a veterinary technician on grounds similar to those which in this Commonwealth allow disciplinary proceedings, in which case the revocation or suspension shall be conclusive evidence.
- (5) Conviction of or plea of guilty or nolo contendere to a violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780.101—780.144), in which case a certified copy of the court record shall be conclusive evidence.
- (6) Conviction of a felony in the courts of this Commonwealth or of a state, territory or country which, if committed in this Commonwealth, would be deemed a felony and suspension or revocation of certification is in the best interest of the public health and the general safety and welfare of the public. A record of conviction in a court of competent jurisdiction shall be sufficient evidence for disciplinary action to be taken as may be deemed proper by the Board.

(7) Permitting or allowing another to use his certification.

(8) Addiction to the habitual use of intoxicating liquors, narcotics or stimulants to an extent that incapacitates the certified animal health technician from the performance of professional obligations or duties.

(b) Certified animal health technicians and noncertified employees who deviate from the permitted scope of practice as set forth in § 31.31 (relating to scope of practice) will be subject to prosecution and the levying of a civil penalty by the Board under section 28(c) of the act (63 P. S. § 485.28(c)). Veterinarians who permit, order or direct certified animal health technicians or noncertified employees to perform duties which are not authorized by

§ 31.31 will be subject to disciplinary action by the Board under section 21 of the act (63 P. S. § 485.21).

(c) Disciplinary action by the Board will be taken only after a formal hearing has been held in accordance with the act.

FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

Veterinarians:

Application to original, reactivated, reissued or reciprocal license	\$ 35
Application for continuing education program approval	\$ 35
Verification of licensure	\$ 15
Certification of scores or hours.....	\$ 25
Temporary permit.....	\$ 35
Biennial renewal.....	\$225
Late renewal fee per month or part of month	\$ 5

Animal health technicians:

Application for certification.....	\$ 35
Application for continuing education program approval	\$ 35
Verification of certification.....	\$ 15
Certification of scores or hours.....	\$ 25
Biennial renewal.....	\$ 60
Late renewal fee per month or part of month	\$ 5

[Pa.B. Doc. No. 02-569. Filed for public inspection April 12, 2002, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 91, 109 AND 111]

Boating Safety Education Certificates; Personal Watercraft; Waterskiing

The Fish and Boat Commission (Commission) by this order amends Chapters 91, 109 and 111 (relating to general provisions; specialty boats and water skiing activities; and special regulations counties). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments concern boating.

A. Effective Date

The amendments will go into effect upon publication of this order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The amendments to §§ 91.6, 109.3 and 109.4 (relating to Boating Safety Education Certificates; personal watercraft; and waterskiing, aquaplaning, kiteskiing and similar activities) are published under the statutory authority

of section 5123 of the code (relating to general boating regulations). The amendments to §§ 111.13, 111.27 and 111.43 (relating to Carbon County; Forest County; and Mercer County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The amendments are designed to update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of the amendments is described in more detail under the summary of changes. The Commission's Boating Advisory Board (BAB) considered all of the amendments prior to the Commission's consideration of them on final-form rulemaking and recommended that the Commission adopt them as set forth in the notice of proposed rulemaking with the changes described in this Preamble.

E. Summary of Changes

(1) *Sections 91.6 and 109.3.* Both of these sections refer to temporary Boating Safety Education Certificates. Section 91.6(d) refers to a 90-day temporary certificate. Section 109.3(h)(3) refers to one that is valid for at least 90 days and no more than 180 days from the date of purchasing a personal watercraft. The National Association for State Boating Law Administrators (NASBLA), in its Model Act for Mandatory Boating Safety Education adopted September 13, 2000, recommends that temporary certificates (called temporary operators' permits in the NASBLA model) be issued for a duration not to exceed 60 days. To encourage uniformity and reciprocity between states, the Commonwealth's regulations should comply whenever possible with National reciprocity standards. Accordingly, the Commission has amended these sections as proposed.

(2) *Section 109.4.* To clarify its regulations, the Commission proposed to amend this section by adding a definition of "waterskiing." After the publication of the notice of proposed rulemaking, the Commission received one written comment and at least one oral suggestion that the definition of waterskiing should be modified to include barefoot waterskiing. The Commission, on final-form rulemaking, adopted the definition to read as set forth in Annex A.

(3) *Section 111.13.* The Commission received a petition from boaters who use Beltzville Lake in Carbon County to amend the waterskiing regulations. Beltzville Lake is a relatively small lake within the Beltzville State Park. Waterskiing type activities are currently restricted to 18% or 170 acres of the 950-acre lake. In the petition, the petitioners requested two changes: (1) to change the hours of skiing from 10 a.m. to sunset to sunrise to sunset; and (2) to open the entire lake to waterskiing.

The Commission accepted the petition for further review, and on June 4, 2001, the Commission held a public meeting at the park to obtain public input on the petition to change the regulation on Beltzville Lake. The meeting was well attended and gave Commission staff an opportunity to hear many views on how the lake should be regulated. Commission staff then prepared a report with input from the Bureau of State Parks.

Staff considered five possible options and recommended to the Commission that it consider a compromise solution that will allow waterskiing to begin at sunrise within the existing designated ski area only. This proposal would have little impact on other users and should not negatively affect boating safety. It allows skiers the opportunity to ski on calm water early in the day before wakes

form and should have the additional benefit of reducing congestion in the ski zone, making that area safer. Accordingly, the Commission has amended this section as proposed.

(4) *Section 111.27.* Tionesta Lake was authorized by the Flood Control Act of 1936 and has been in full operation since December 1940. This reservoir project is part of the flood control system operated by the Corps of Engineers for the Allegheny and Upper Ohio Rivers. The pool elevation at Tionesta Lake is generally maintained between elevations 1,089—1,090, which creates a recreational pool of about 450 acres. The flood pool stretches 6 miles up Tionesta Creek from the dam. Much of the recreational pool is very narrow and is peppered with stumps from trees that were left standing when the impoundment was created.

Sometime in the early 1960s, project managers began to install and enforce a 10 mph zone on the portion of the lake from the confluence of Little Piney Run upstream, a distance of about 2 miles. This restriction was never adopted by the Commission as a regulation. In 1974, the Commission was asked by the project manager to make this area slow, no wake. At a series of meetings, the BAB declined to recommend this change. The minutes of these meetings indicate that the BAB felt that the area did not need this strict restriction. The 10 mph zone was continued, but no regulations were passed to enable enforcement.

The Commission's Bureau of Law Enforcement, along with the Corps Project Manager, again requested that this area of the lake be regulated at slow, no wake and that this restriction be adopted as a regulation so that it may be enforced. The request cited the numerous shoals and tree stumps in this area that preclude most high speed operation and a desire to create an area for boating anglers free from other types of operation. It should be noted that there are two boat launch facilities on the lake. The Commission operates the Nebraska Bridge access near the upper limits of the proposed slow, no wake zone. The Corps of Engineers operates a boat launch near the dam that facilitates water skiers and other high-speed boats. The Commission has amended § 111.27 as proposed.

(5) *Section 111.43.* The Commission received a request from the Shenango Lake Water Safety Council to consider imposing restrictions on the towing of aquaplanes and similar devices in certain slow no wake areas on Shenango River Lake in Mercer County. Shenango River Lake is a Corps of Engineers impoundment that was constructed on the Shenango River in 1965 and became operational in 1967. The lake was created for the purpose of flood control, low flow augmentation and recreation. At the top of its recreational pool, the lake has a length of 11 miles and provides 3,500 acres of water surface.

The Water Safety Council (Council), which is comprised of representatives of the Corps of Engineers, the Commission and various users of the lake, makes recommendations concerning the operation of the recreational facilities on the lake. The Council has identified a potential safety problem with the operation of boats in two areas of the lake where boat traffic is directed through bridge piers. These areas have long been designated slow, no wake in recognition of the potential danger. Recently, project managers have observed an increasing number of people who are towing passengers through these areas on aquaplanes, tubes and similar devices. While the operators are maintaining a slow, no wake speed with their boats, the towing of devices behind the boats in the

congested areas has resulted in several close calls for persons on the devices. Additionally, the presence of towlines in the water in the areas increases the potential for entanglement in propellers. Accordingly, the Commission has amended § 111.43, as proposed, to prohibit waterskiing in the slow, no wake zones.

F. Paperwork

The amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 31 Pa.B. 5797 (October 20, 2001). Although the Commission received in excess of 20 public comments (including a petition signed by 1,143 individuals) regarding the amendment to § 111.13, none of the comments were received during the formal comment period. Most of the comments were received prior to the formal comment period and support changing the hours of waterskiing from 10 a.m. to sunset to sunrise to sunset and opening the entire lake to waterskiing. A group that identified itself as "Concerned Lake Users" submitted a petition signed by 1,143 individuals. These users oppose unrestricted waterskiing. Only two public comments support the changes as proposed.

Prior to the formal public comment period, the Commission received one public comment from the Corps of Engineers, Pittsburgh District, which fully supports the amendment to § 111.43. The Commission also received one written comment and at least one oral suggestion that the definition of "waterskiing" in § 109.4 should be modified to include barefoot water skiing. Copies of all public comments have been provided to the Commissioners.

The Commission did not receive any public comments concerning the other proposals.

Findings

The Commission finds that:

- (1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided, and the comments that were received were considered.
- (3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 91, 109 and 111, are amended by amending §§ 91.6, 109.3, 111.13, 111.27 and 111.43 to read as set forth at 31 Pa.B. 5797 and by amending § 109.4 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Executive Director will submit this order, 31 Pa.B. 5797 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 31 Pa.B. 5797 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-123 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 109. SPECIALTY BOATS AND WATER SKIING ACTIVITIES

§ 109.4. Waterskiing, aquaplaning, kiteskiing and similar activities.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Competent observer—A person who has the ability to assess when a skier is in trouble, knows and understands the waterskiing hand signals and is capable of helping a skier.

PFD—Personal Flotation Device.

Trick skier—A water-skier who can be identified by body movements and skiing positions, which readily differentiate the trick-skier from the ordinary "forward" skier engaged in straight skiing or slalom and jump events, and also by the following:

(i) *Skies.* Short (38 inches—40 inches) and wide (8 inches—9 inches) with no keels on bottom.

(ii) *Speed of tow.* Slow (12—18 miles per hour).

(iii) *Rope.* Short (40 to 50 feet) and often with toehold strap attached to handle.

Water ski—A device used by a person to be towed through or on water behind a boat. The term includes conventional water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattress, parasails, kite skis and similar devices.

Waterskiing—A competitive or recreational water sport in which a person is towed across the water's surface behind a boat in any fashion on a water ski as defined in this subsection or on his bare feet.

* * * * *

[Pa.B. Doc. No. 02-570. Filed for public inspection April 12, 2002, 9:00 a.m.]