

RULES AND REGULATIONS

Title 10—BANKS AND BANKING

DEPARTMENT OF BANKING

[10 PA. CODE CH. 44]

Mortgage Bankers and Brokers; Continuing Education

The Department of Banking (Department), under the authority contained in sections 304(e) and 310(a) of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (act) (63 P. S. §§ 456.304(e) and 456.310(a)), adopts Chapter 44 (relating to mortgage bankers and brokers and consumer equity protection).

Statutory Authority

This final-form rulemaking is expressly mandated by section 304(e) of the act and is promulgated under that section and section 310(a) of the act.

Background and Purpose

This final-form rulemaking implements a regulatory framework for the oversight of continuing education for licensees under the act, as mandated by section 304(e) of the act, which was originally contained in the act of December 21, 1998 (P. L. 987, No. 131). The act of June 25, 2001 (P. L. 621, No. 55) changed the section to section 304(e). Section 304(e) of the act was the result of the mortgage industry seeking continuing education for the first mortgage industry in this Commonwealth. The mortgage industry also sought to have continuing education regulated by the Department by requiring the Department to promulgate appropriate regulations to govern the continuing education programs.

Explanation of Regulatory Requirements

This final-form rulemaking requires mortgage bankers, mortgage brokers and loan correspondents, as those terms are defined in section 302 of the act (63 P. S. § 456.302), to complete 6 hours of continuing education per annual renewal period, and requires limited mortgage brokers, as that term is defined in the act, to complete 2 hours of continuing education per annual renewal period. Licensees are required to submit proof of compliance with these requirements annually to the Department to renew a license.

Entities Affected

This final-form rulemaking will affect all licensees under the act, approximately 2,848. The rulemaking may also affect any entity or person applying to the Department to become a provider of continuing education programs.

Public Comment

The only comments received by the Department were from the Independent Regulatory Review Commission (IRRC).

Fiscal Impact and Paperwork Requirements

It is expected that the approximately 2,848 licensees under the act will be required to pay tuition costs to continuing education providers, the approximate monetary amount of which is unclear at this time, in addition to travel and travel-related expenses associated with

attending continuing education programs. Licensees that fail to comply with this final-form rulemaking may be subject to a fine of up to \$2,000 for each offense or suspension, revocation or nonrenewal of their license. There will be no savings to the regulated community associated with the implementation of this final-form rulemaking.

Promulgation of this final-form rulemaking will change existing reporting, recordkeeping and other paperwork requirements for the industry as well as the Department. Section 304(e) of the act requires licensees to demonstrate to the satisfaction of the Department that at least one person from each licensed office has attended a required minimum number of hours of continuing education annually. Licensees will need to maintain records indicating what continuing education programs have been attended, by whom, when and where. Demonstration of attendance will be submitted to the Department at the time of license renewal as a requirement of renewal. Licensees and employees will be required to maintain attendance records for the 3 most recent annual renewal periods. This will assist licensees, their employees and the Department in determining whether continuing education requirements have been met, especially in cases when licensee employees have changed employers or employment status, or both. It is noted that fulfillment of the education requirement causes the employees's current licensee employer to be in compliance with this final-form rulemaking. The Department will retain the information provided by the industry to ensure ongoing compliance with the regulations by licensees and their employees.

The Department will promote the quality of the continuing education programs by requiring continuing education providers to submit a course plan which will include outlines, proposed content, instructors' qualifications, and the like.

Forms or reports, or both, have not been developed at this time.

Sunset Date

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

Summary of Comments and Responses on the Proposed Rulemaking

Notice of proposed rulemaking was published at 31 Pa.B. 1236 (March 3, 2001). During the public comment period, the only written comments received by the Department were from IRRC. The Department considered the written comments received in formulating the final-form regulations. The Department has completed a review of the comments and has prepared a Comment and Response Document that addresses each comment on the proposed rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 1, 2001, the Department submitted a copy of the proposed rulemaking, to IRRC and the Chairpersons of the House Committee for Business and Economic Development and the Senate Committee on Banking and Insurance.

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with

copies of the comments as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on December 10, 2001, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 20, 2001, and approved the final-form regulations.

Findings

The Department finds that:

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

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

(3) This final-form rulemaking does not enlarge the purpose of the proposal published at 31 Pa.B 1236.

Order

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

(a) The regulations of the Department, 10 Pa. Code, are amended by adding §§ 44.1—44.5 to read as set forth in Annex A.

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

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

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

JAMES B. KAUFFMAN, Jr.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 123 (January 5, 2002).)

Fiscal Note: Fiscal Note 3-40 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 44. MORTGAGE BANKERS AND BROKERS AND CONSUMER EQUITY PROTECTION

CONTINUING EDUCATION

Sec.	
44.1.	Definitions.
44.2.	Requirements.
44.3.	Reporting, verification and recordkeeping.
44.4.	Review and approval.
44.5.	Enforcement.

§ 44.1. Definitions.

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

Act—The Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101—456.3101).

Annual renewal date—July 1 of each calendar year.

Annual renewal period—The licensing term commencing July 1 of 1-calendar year and ending on June 30 of the following calendar year.

Continuing education program—

(i) An educational program as required by section 304(e) of the act (63 P. S. § 456.304(e)) which contributes directly to the enhancement of the professional competence of a mortgage professional to engage in the first mortgage loan business.

(ii) The term does not include programs which instruct in matters such as office or business management, personnel management or similar subjects not directly related to the first mortgage loan business.

Continuing education provider—A provider of a continuing education program that has been approved by the Department.

Credit hour—Sixty minutes of classroom instruction or the equivalent as determined by the Department.

First mortgage loan business—The first mortgage loan business as defined in section 302 of the act (63 P. S. § 456.302).

Instructor—An individual responsible for teaching a continuing education program that has been approved by the Department.

Licensee—A person licensed under the act.

Limited mortgage broker—A limited mortgage broker as defined in section 302 of the act.

Loan correspondent—A loan correspondent as defined in section 302 of the act.

Mortgage banker—A mortgage banker as defined in section 302 of the act.

Mortgage broker—A mortgage broker as defined in section 302 of the act.

Mortgage professional —

(i) A manager of each licensed office maintained by a licensee; any owner, director, officer or W-2 employee of a licensee who has the authority to underwrite or approve loans, either individually or in combination with other individuals as members of a committee; or any owner, director, officer or W-2 employee of a licensee who, as part of his official duties, directly contacts borrowers to present, negotiate or advise regarding loan terms.

(ii) A mortgage professional does not include any individual who engages solely in processing loan applications or other administrative or clerical functions, or both.

Person—A person as defined in section 302 of the act.

§ 44.2. Requirements.

(a) Except as provided in subsection (b), to renew a license, a licensee shall demonstrate to the satisfaction of the Department that:

(1) In the case of a mortgage banker, mortgage broker or loan correspondent, the licensee maintains at least one separate mortgage professional at each licensed office who has successfully completed during the annual renewal period at least 6 credit hours of continuing education programs which shall include 1 credit hour of Pennsylvania residential mortgage law, including the act and the

Loan Interest and Protection Law (41 P. S. §§ 101—605), 1 credit hour of business ethics and 4 credit hours from among one or more of the following subject areas:

(i) Federal residential mortgage law, including the Real Estate Settlement Procedures Act (12 U.S.C.A. §§ 2601—2617), the Truth in Lending Act (15 U.S.C.A. §§ 1601—1667e) and the Equal Credit Opportunity Act (15 U.S.C.A. §§ 1691—1691f).

(ii) The first mortgage loan business.

(2) In the case of a limited mortgage broker, the licensed individual has successfully completed during the annual renewal period at least 2 credit hours of continuing education programs which shall include 1 credit hour of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law and 1 credit hour from among one or more of the following subject areas:

(i) Business ethics.

(ii) Federal residential mortgage law, including the Real Estate Settlement Procedures Act, the Truth in Lending Act and the Equal Credit Opportunity Act.

(iii) The first mortgage loan business.

(b) The continuing education requirements imposed by this chapter shall apply to all renewals of licenses except when an initial licensee has been licensed by the Department for less than 6 months prior to its first annual renewal date, in which case the licensee shall be in compliance with this chapter within 6 months after its first annual renewal date.

(c) A mortgage professional who acts as an instructor shall be credited with 2 credit hours of continuing education for every 1 credit hour taught per annual renewal period.

(d) Continuing education program credit hours earned in excess of the minimum requirement established by this section during any annual renewal period may not be carried over to a successive annual renewal period.

§ 44.3. Reporting, verification and recordkeeping.

(a) Except as provided in § 44.2(b) (relating to requirements), a licensee shall include as part of its renewal application a statement that the requirements of this chapter have been completed by at least one separate mortgage professional at each licensed office, or in the case of a limited mortgage broker, by the licensed individual. The statement shall include a list of continuing education programs completed by the designated mortgage professional for each licensed office or the individual limited mortgage broker licensee. The list shall include:

- (1) The name of continuing education providers.
- (2) The name of continuing education programs.
- (3) The number of credit hours attended by the mortgage professional.
- (4) The locations and dates attended.

(b) The Department may verify satisfactory completion of the requirements of this chapter by methods including examination of the licensee.

(c) The Department may assess licensees examination costs for examinations made under subsection (b) consistent with section 308(a)(4) of the act (63 P. S. § 456.308(a)(4)).

(d) A licensee shall retain all original documents relating to the completion of each continuing education program by each mortgage professional for 3 annual renewal periods.

§ 44.4. Review and approval.

(a) The Department will have the sole authority to approve or deny continuing education programs. The Department does not approve or endorse continuing education providers.

(b) A prospective continuing education provider may apply for continuing education program approval on an application provided by the Department. The application shall be submitted to the Department at least 90 days prior to the first date that the proposed continuing education program will be offered. The applicant shall attach:

(1) An outline of the proposed continuing education program, and the method of instruction, either in-person or through interactive technology.

(2) A resume detailing each proposed instructor's qualifications.

(3) Other information that the Department may require.

(c) The proposed continuing education program is required to satisfy the following criteria to be considered. The program shall be:

(1) A formal program of learning which contributes directly to the professional competence of a mortgage professional to engage in the first mortgage loan business.

(2) At least 1 credit hour.

(3) Conducted by one or more instructors. The following individuals are not qualified to be an instructor, unless the Department determines otherwise:

(i) An individual who has had his license suspended or revoked by the Department.

(ii) An individual who has been the owner, director or officer of a licensee that has had its license suspended or revoked by the Department.

(iii) An individual who has been a party to a Department order or agreement prohibiting the individual from engaging in the first mortgage loan business in this Commonwealth or acting in any other capacity related to activities regulated by the Department.

(d) The Department will have 60 days from receipt of a completed application to approve or deny the proposed continuing education program. An application will be deemed completed when the requirements of subsections (b) and (c) have been fulfilled. If the Department fails to approve or deny an application submitted by a prospective continuing education provider within 60 days of its receipt, the continuing education program will be deemed approved by the Department. The Department may deny an application submitted by a prospective continuing education provider if the continuing education program or provider fails to satisfy any of the conditions or requirements contained in this chapter or the act.

(e) Approval of a continuing education program by the Department is valid for 1 annual renewal period and does not constitute permanent approval of the continuing education program.

(f) Continuing education providers shall provide free access to Department personnel to monitor their continuing education programs.

(g) Continuing education providers shall retain original records of attendance for each continuing education program conducted by the continuing education provider for

3 annual renewal periods and shall provide the Department access to the records upon request.

§ 44.5. Enforcement.

(a) The Department may levy a fine of up to \$2,000 for each offense under section 314(c) of the act (63 P. S. § 456.314(c)) or suspend, revoke or refuse to renew a license under section 313(a) of the act (63 P. S. § 456.313(a)), if a licensee fails to comply with any requirement of this chapter.

(b) The Department may revoke its approval of a continuing education provider's continuing education program if the continuing education provider fails to comply with any requirement of this chapter or the act.

[Pa.B. Doc. No. 02-338. Filed for public inspection March 1, 2002, 9:00 a.m.]

**Title 28—HEALTH
AND SAFETY**

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 701, 705, 709, 711 AND 713]

Drug and Alcohol Facilities and Services

The Department of Health (Department) adopts amendments to Part V (relating to drug and alcohol facilities and services) to read as set forth in Annex A.

Purpose and Background

These amendments establish updated and relevant physical plant standards for the licensure of residential and nonresidential services which protect the health and safety of clients being served in drug and alcohol programs within this Commonwealth and employees working in those facilities. These standards reduce the risk of health hazards and problems such as overcrowding, infectious diseases, rodent and other pest hazards to humans, unclean kitchen and food storage areas, and unsafe child care areas.

The Department's Division of Drug and Alcohol Program Licensure (Division) currently inspects and licenses 853 (215 residential and 638 nonresidential) drug and alcohol facilities and applies physical plant standards from Chapters 709, 711 and 713 (relating to standards for licensure of freestanding treatment facilities; standards for certification of treatment activities which are a part of a health care facility; and standards for approval of prevention and intervention activities). The Division inspects drug and alcohol facilities on at least an annual basis. There are no known local physical plant inspection procedures that are in place as a substitute for these standards.

Chapter 705 (relating to physical plant standards) has been created to replace current physical plant regulations which were found throughout Part V. Those physical plant standards as applied to drug and alcohol treatment and rehabilitation facilities and services were not consistent with current health, safety, fire and panic code requirements. They were insufficient to provide minimal health and safety protection for clients and employees. They were vague and minimal in scope. Enforcement for the protection of individuals in these facilities was difficult. The new standards will provide sufficient guidance and detail to inform facilities exactly what is expected

and required. They represent a dramatic improvement in the protection of the patients and employees at the facilities, and they are clear to allow for precise and uniform enforcement.

Provisions deleted by this final-form rulemaking relating to physical plants were located in eight separate subchapters, each dealing with a different type of facility. Those provisions were, for the most part, identical. The more logical approach being applied here is to consolidate all physical plant regulations into one chapter where they can be easily referenced, and to delete the separate physical plant regulations located throughout.

Summary

This final-form rulemaking amends Part V by amending § 701.1 (relating to general definitions); deleting various sections in Chapters 709, 711 and 713. This final-form rulemaking also adds Chapter 705.

General Comments

Proposed rulemaking was published at 29 Pa.B. 5835 (November 13, 1999). A 30-day comment period was provided. The Department received comments from 17 commentators. The commentators were the Independent Regulatory Review Commission (IRRC), the Department of Public Welfare (DPW) (which provided informal comments to the Department in the Spring of 2000, after the public comment period closed), four legislators, two counties, the Pennsylvania Halfway House Association, the Philadelphia Alliance and seven providers. Some comments were identical to others and, where duplicated, are only recited once.

Many of the comments received from DPW suggested that these regulations be made consistent with 55 Pa. Code Chapter 3800 (relating to child residential and day treatment facilities). As much as possible, this consistency has been achieved.

The single most commented upon item was in proposed § 705.5(b) (relating to sleeping accommodations). This subsection requires that each facility maintain certain minimum square footage requirements for resident bedrooms. The main concern expressed by facilities is that the proposed square footage requirements would impose substantial burdens on facilities to the extent that significant costs would be incurred in achieving compliance. They commented further that, in the absence of compliance, a significant number of beds would be lost, resulting in significant revenue losses and the ultimate closing of facilities.

The Department has considered these comments, and after consultation with the staff of IRRC and the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services, the Department has agreed to exempt rooms that had been used as bedrooms prior to the effective date of this final-form rulemaking in currently licensed facilities from the square footage per resident and the maximum number of residents per bedroom requirement. Therefore, rooms used as bedrooms as of the effective date of these final-form regulations will be exempted from this requirement. After the effective date of these final-form regulations, additional beds and additional or replacement bedrooms shall be subject to this requirement.

Finally, the Department consulted with the Department of Labor and Industry (L & I) regarding the Pennsylvania Construction Code Act (code) (35 P. S. §§ 7210.101—7210.1103) and regulations to be adopted with that code. It is anticipated that L & I's proposed regulations will be

published soon. If an inconsistency is identified after the L & I regulations are issued in final-form, the Department will review its regulations at that time and determine whether amendments are necessary.

CHAPTER 701. GENERAL PROVISIONS

Subchapter A. Definitions

Section 701.1 defines the types of facilities used in these regulations. No comments addressing this section were received. This section is adopted as proposed.

CHAPTER 705. PHYSICAL PLANT STANDARDS

This chapter addresses the standards for physical plant for residential and nonresidential facilities. Most of the comments that were made to Subchapter A (relating to residential facilities) were also made to Subchapter B (relating to nonresidential facilities). Rather than repeat the comments and the Department's response to them, the Department will address the parallel regulations simultaneously and provide one response to similar comments applicable to both sections.

Section 705.1. General requirements for residential facilities; Section 705.21. General requirements for nonresidential facilities.

These sections establish general requirements for all facilities.

Comment: The preamble and proposed subsection (c) discuss licensure of facilities. However, licensure is not included in the general requirements. The regulations should be amended to include a cross reference to existing requirements for licensure found in §§ 709.11—709.18.

Response: The Department agrees with this comment and has amended these sections to include a specific reference to the licensure requirements in Chapter 709.

Sections 705.2 and 705.22. Building exterior and grounds.

These sections deal with maintenance of the outside and grounds of all facilities.

Comment: The reference in paragraph (1) to playgrounds is not applicable.

Response: The Department disagrees with this comment. Often facilities admit women for treatment who have children. These children stay with their mothers. Thus, some residential facilities do have children and provide playground equipment for those children. Paragraph (1) does state that compliance is required "when applicable."

Comments: Paragraph (2) requires grounds of the facility to be in "good condition." The phrase "good condition" is unclear. The Department should either add specific requirements for the grounds or delete the requirement that the grounds be in good condition.

The Department should use general and measurable words such as "free from hazards."

Response: The Department agrees with these comments. The unclear language has been deleted and replaced with general and measurable language.

Comments: Paragraph (4) requires removal of garbage "on a regular basis, at least once a week." The phrase "on a regular basis" is unnecessary and should be deleted.

The Department should use general and measurable words such as "trash outside the facility shall be kept in closed receptacles that prevent the penetration of insects and rodents."

Response: The Department agrees with these comments and has amended the paragraphs accordingly.

Section 705.3. Living rooms and lounges.

This section provides for minimum comfort standards in living spaces in residential facilities.

Comments: Proposed paragraph (1) is vague. The Department should delete "appropriately furnished" and "which creates a relaxed and comfortable atmosphere" or use standards that can be clearly understood and enforced.

The Department should use general and measurable words such as "accommodate number of people" and "free from hazard."

Response: The Department agrees with these comments and has amended the section accordingly.

Sections 705.4 and 705.23. Counseling areas.

These sections deal with providing for appropriate space and privacy for counseling.

Comments: The phrase "adequate space" in paragraph (1) is unclear. The Department should delete the term or use a standard that can be clearly understood and enforced.

Paragraph (2) is unclear. The Department should delete "comfortable furnishings" and "which are appropriate for the intended purpose" or use standards that can be clearly understood and enforced.

The term "sufficient" in paragraph (3) is not measurable.

The Department should clarify that there should not be excessive noise that disturbs counseling sessions in paragraph (4).

Response: The Department agrees with these comments and has amended these sections accordingly.

Section 705.5. Sleeping accommodations.

This section establishes minimal adequate safety standards for sleeping quarters in residential facilities.

Comment: Reference should be made to the various provisions of 55 Pa. Code § 3800.102 (relating to child bedrooms).

Response: This section has been rewritten to be consistent with DPW regulations.

Comment: Subsection (a) has several vague requirements. Paragraph (1) requires bed frames to be of "solid construction" and "sized appropriately to the needs of the resident." Paragraphs (2) and (3) use the term "comfortable." The Department should delete these phrases, or use standards that can be clearly understood and enforced.

Response: This subsection is rewritten as suggested. Paragraphs (2) and (3) were combined, as were paragraphs (4) and (5). The word "comfortable" has been deleted in several paragraphs.

Comments: Subsection (b) requires facilities to provide a minimum of 60 square feet of bedroom space per bed (including space occupied by furniture) for each resident sharing a room and a minimum of 80 square feet for single bedrooms. The square footage requirement is unreasonable. The Department should reconsider the impact of this provision. This requirement could cause facilities to eliminate beds and lose significant income.

The Department states that existing facilities would be exempted from certain requirements which might impose costs too great for them to absorb and continue to function effectively. The Department should explain the following:

- The need for this requirement and why the square footage requirements are not included with the “grandfather” exemptions in § 705.1(c).

- How many currently licensed facilities would not meet the requirement in subsection (b) based on their current population.

- How many beds would be lost to existing facilities and how much income these facilities would lose as a result of the proposed square footage requirements.

A significant number of long standing programs will be adversely affected by the 60 square feet per resident requirement.

The “retrofit or close” effect of this section would be very hurtful, especially in the area of women’s and children’s services.

The listed dimensions would create a conflict in the ability of licensed facilities to serve persons due to limitations of existing bedrooms in terms of floor space and ceiling height.

In requiring a minimum of 60 square feet of space per bed, subsection (b) does not exempt existing facilities. If these regulations are made effective, some facilities would be unable to meet the requirement. The population of these facilities would be reduced. These facilities have been licensed for a certain number of residents. This regulation conflicts with the current licensing capacity of the facility. This regulation would decrease the number of available treatment beds within this Commonwealth. Those facilities operating at less capacity would have increased per diem costs. In essence, it would cost more per day to treat an individual and fewer individuals will receive treatment at the same costs to the Commonwealth as before these regulations.

In the case of facilities serving women with children, where the children are residents with their addicted mother, it is often clinically appropriate to have the children in the bedroom with the mothers, thus increasing the number of individuals in excess of four. The standard would result in future programs that serve women with children being forced to provide bedrooms which would accommodate fewer than four women residents because the children would have to be counted in the bedroom number. This regulation would result in higher cost of construction which could not be adequately reimbursed through a fee for service arrangement.

These regulations result in the decommissioning of available beds, thereby decreasing the availability of treatment services to those in need.

While available beds would decrease, the per diem costs of each bed would increase proportionately. Replacing these beds would be difficult, if not impossible. Zoning for drug and alcohol facilities has become more difficult each year. In some cities and townships, the establishment of a drug and alcohol facility is impossible. When zoning is permitted, it is usually in neighborhoods with older buildings making renovations very expensive.

A 110 square foot space with a bunk bed would only accommodate one resident. This site would cause some programs to reduce their population to a point where they would no longer be able to financially support themselves.

The 60 square feet space requirement will place a severe hardship on many existing treatment facilities and halfway houses. Most nonprofit organizations operate under stringent budget constraints. When they are forced to eliminate beds to meet space standards, the loss in

revenue will force many to reduce staff, placing further limits on treatment availability. The loss of only a few beds could force small agencies to close. Existing agencies should be grandfathered, permitting them to continue utilizing current sleeping accommodations.

The American Correctional Association (ACA) Standards for Adult Community Residential Services’ sleeping accommodations requirement is 25 square feet of unencumbered space per client, a lower space requirement than that proposed in this section. When the number of clients (beds) must be reduced, staff must be terminated and treatment capability is reduced, stressing an already taxed system.

The space requirements contained in the proposed standard would have a tremendous impact on the public treatment system and result in significantly increased costs. For programs that utilize bunk beds, the requirement would be excessive. The requirement will result in the loss of beds, thus increasing rates.

Sixty square feet per person will negatively affect programs to the extent of severely limiting total treatment capability accessible to publicly funded clients.

Response: Bedrooms containing beds included in the licensed capacity of facilities licensed as of the effective date of this regulation will be exempted from the requirement relating to square footage per resident. This exemption will not apply to new bedrooms if a facility expands its capacity or renovates to relocate or add bedrooms. Also, this exemption will not apply if the facility relocates or rebuilds. The square footage requirements have been reduced from 80 square feet to 70 square feet for individuals occupying a single bedroom. Wording has been added to reduce the square footage requirements when bunk beds are used from 60 square feet per person to 50 square feet per person. In essence, this allows for two people, with beds, dressers, chairs and anything else they might have, to share a 10 foot by 10 foot room.

This regulation will not affect programs with women and children. Children will not be considered residents for the purpose of calculating the square feet of bedroom floor space required per resident or the maximum number of residents per bedroom.

Similar standards established in other states were reviewed in formulating this subsection. The standard for a majority of states is consistent with this regulation. The following are some examples: New Jersey requires 70 square feet of clear floor space for single occupancy and a minimum of 50 square feet of clear floor space per patient, with 3 feet of clear space between and at the foot of beds. Rhode Island requires 85 square feet for single occupancy and 60 square feet per person for multiple occupancy. Montana requires 100 square feet for single occupancy and 80 square feet per person with no more than 4 persons per room. New York requires 100 square feet exclusive of closet space for single occupancy and 80 square feet per person with a maximum of four persons per room, with an exception of 60 square feet per person for alcohol treatment of less than 5 days.

Subsection (c) is rewritten as suggested.

Subsection (d) is combined with subsection (b) as suggested.

No comment was received on subsections (e)—(h). They have been relettered (d)—(g). The former subsection (f), now subsection (e), has been rewritten for clarification.

Subsection (h) is new, based on suggestions from commentators.

Subsection (i) applies to bedrooms, not the entire facility.

Comments: Subsection (j) should more directly state its requirements, such as "Bedrooms located in a basement shall meet the following requirements: . . ."

Paragraph (1) uses the vague term "appropriate." The Department should delete this term.

Paragraph (3) requires two basement exits "each located reasonably remote from the other in a manner to reduce the possibility that both will be blocked in an emergency situation." It is unclear how a facility would comply with this phrase. The Department should amend this language to more clearly state its intent.

Response: This subsection has been rewritten as recommended.

Other change: The Department added subsection (h) (relating to bedroom windows) based on a recommendation that these regulations be consistent with 55 Pa. Code Chapter 3800. Facilities licensed prior to the effective date of these regulations shall be exempt from this provision.

Sections 705.6 and 705.24. Bathrooms.

These sections provide standards for bathrooms in residential and nonresidential facilities.

Comment: In § 705.6(3), the Department should delete "adequate" and "to meet the needs of the residents" or provide a more definitive standard.

Response: The Department agrees with this comment and has amended this paragraph. This section also now sets a measurable standard for the temperature of hot water.

Comment: In § 705.6 there is no mention of toiletry items and nonslip surfaces.

Response: The Department agrees with this comment and has added a provision regarding slip-resistant surfaces for bathtubs and showers in paragraph (4).

Comments: Section 705.24(1) requires bathrooms to be "conveniently located throughout the facility." It is unclear what the phrase "conveniently located throughout the facility" means. The Department should amend this language to state a more definitive standard.

Section 705.24(1) uses the term "lavatories." Paragraph (3) uses the phrase "toilet and washrooms." For consistency, the Department should use the term "bathrooms" in those paragraphs.

Response: The Department agrees with these comments. The vague unclear language has been deleted and the words and phrases have been changed to be consistent throughout. This section also now sets a measurable standard for the temperature of hot water.

Sections 705.7 and 705.25. Food service.

These sections provide for health and safety standards in food preparation areas for all facilities.

Comment: The term "adequate" in paragraph (1) is vague and should be deleted.

Response: The Department agrees with this comment and has revised the paragraph accordingly.

Comment: "Food preparation areas" should be added to paragraph (3).

Response: The Department agrees and has added the language.

Comment: "Cleanable" should be deleted from paragraph (4).

Response: The Department agrees and has deleted the word.

Comment: The term "properly" in paragraph (5) is vague. Similar requirements in 55 Pa. Code § 3800.104(e) (relating to kitchen areas) specify that cold food must be stored at or below 40°F, hot food at or above 140°F, and frozen foods at or below 0°F. The Department should consider including specific temperature storage requirements in the final-form regulations.

Response: The Department agrees with this comment and has adopted those standards.

Other changes: The Department deleted the words "and dining" from paragraph (7) because this section relates to food preparation areas only and not dining areas. Also, this section has been renamed "food service" to take into account situations when food is prepared and cooked for residents in other than traditional kitchen areas. This section allows for facilities to contract with food vendors or caterers for food service to their residents. In those cases, this section's requirements pertaining to an onsite food preparation area or central food preparation area would not apply. This section also provides for a facility to be served by a single, central food preparation area. This includes "campus-type" arrangements where several residential facilities exist in close proximity and food is prepared within one of the buildings or in an adjacent central "dining hall" area on the campus. This also includes multiple facilities where food is delivered to one or more facilities within a certain geographic area from a central food preparation area operated by the facility either at one of the residential facilities or at a separate location.

For nonresidential facilities, food service is not required. When food service is provided, it may be provided by onsite or central areas, or by contractual arrangements with vendors or caterers.

The health requirements relating to food service, storage, preparation and safety apply to residential and nonresidential facilities only if the facility operates an onsite food preparation area or a central food preparation area.

Sections 705.8 and 705.26. Heating and cooling.

These sections deal with temperature standards in all facilities.

Comments: As written, paragraph (1) would require all facilities to have air conditioning to maintain an indoor temperature of no more than 90°F.

Do all facilities have air conditioning and is the use of fans excluded? The Department should allow for fans or explain the need for this requirement.

Response: The Department agrees with these comments. The language has been revised to require some type of mechanical ventilation whenever the indoor temperature exceeds 90°F.

Comment: Paragraph (2) appears to apply to portable (nonkerosene) electric heaters that have already received approval by Federal regulators concerning their safety. Facilities in older buildings, where heating is generally adequate, still may have certain areas that require supplemental heaters to ensure appropriate temperatures are consistently maintained, especially on very cold or windy days. The requirement to ensure that supplement-

tal heating devices are permanently mounted could cause facilities to incur great expense. Also, in some cases, they are prohibited by landlords.

Response: The Department understands these concerns. Nevertheless, it is of great concern to the Department that portable, unsecured heating devices pose a very high risk of fire. Protecting the health and safety of patients and staff outweighs permitting these devices. Furthermore, this provision is consistent with 55 Pa. Code Chapter 3800.

Finally, these facilities are licensed only by State authority. There is no Federal regulation of drug and alcohol treatment facilities. Therefore, it is unclear what the commentator means when it states that "Federal regulators" have approved these devices for use in licensed facilities. That a particular device has received some type of "safety" approval by a Federal agency is irrelevant for the purposes herein.

Sections 705.9 and 705.27. General safety and emergency procedures.

These sections deal with general safety and emergency procedures.

Comments: Paragraph (4) requires each facility to "provide written procedures for staff and residents to follow in case of an internal or external emergency or disaster." The difference between an "emergency" and a "disaster" is unclear. Furthermore, paragraph (4) refers to "emergencies" and paragraph (5) refers to "fire, or other disaster situations." If there is a distinction between an "emergency" and a "disaster," the Department should define these terms in § 701.1. If there is no distinction, the Department should use a single term consistently.

Paragraph (4) requires the written procedures to be developed with assistance from "qualified fire and safety personnel." To improve clarity, the Department should specify the credentials necessary to be considered "qualified fire and safety personnel." The Department should clarify who reviews the procedures and when the review is conducted.

Paragraph (4)(ii) is lengthy and unclear. The requirements should be listed separately. Also, transfer and evacuation procedures should address situations when the residents are impaired by drugs or alcohol.

The regulatory meaning of "internal or external" emergency is the same and these words should be deleted.

Response: The Department agrees with these comments. Paragraph (4) has been rewritten as suggested to enhance clarity and eliminate vagueness.

Comment: In paragraph (5), all reportable incidents should fall into this category to make it more comprehensive and global.

Response: This is the only mandatory reportable incident provision. At some time in the future, the Department may amend the general licensure requirements to include a reportable incidents section and move the requirements of paragraph (5). The Department has not amended this paragraph based upon the comment.

Sections 705.10 and 705.28. Fire safety.

These sections deal with fire safety.

Comments: Subsection (a)(1)(ii) requires facilities to maintain two exits on every floor. Each exit is to be "remote enough from the other to reasonably ensure that both will not be blocked in an emergency situation." If the intent of subsection (a)(1)(ii) is to prevent everyone from

crowding one exit in an emergency, the Department could specify the number of exits required in relation to the number of occupants per floor in residential facilities. The Department could also specify the minimum distance required between exits. Finally, the phrase "reasonably ensure" is vague and should be deleted.

In §§ 705.10(a)(1)(iii) and 705.28(a)(1)(iv), the term "guards" is vague. The Department should define this term or use another term that more clearly indicates what is required on stairs, ramps, balconies and landings.

Response: The Department agrees with these comments. These subparagraphs have been rewritten and §§ 705.10(a)(1)(iv) and 705.28(a)(1)(v) have been deleted, as appropriate, to provide clarity.

Comments: Subsection (b) requires the facility to "maintain" smoke detectors and fire alarms, but does not state how quickly a malfunctioning alarm must be repaired. Section 3800.130(g) (relating to smoke detectors and fire alarms) of DPW's regulations require repairs to be made within 48 hours of when the smoke detector or fire alarm is discovered to be inoperable. Subsection (b) should specify that if the smoke detectors or fire alarms are inoperable, repairs must be completed within a specific timeframe.

Refer to 55 Pa. Code § 3800.130(b), (f) and (g).

Response: The Department agrees with these comments and has amended the subsection to be consistent with the previously referenced provisions.

Comments: Subsection (c)(4) requires facilities to instruct all staff and residents in the use of fire extinguishers. The primary responsibility of a resident in the case of a fire is to sound the alarm and then to get out. Instructing a resident in the use of a fire extinguisher implicitly requires a resident to use a fire extinguisher and may place the resident at risk. The Department should reconsider the requirement for residents to be instructed in the use of fire extinguishers.

This subsection should specify that if the fire extinguisher is inoperable, repairs shall be completed within a specific timeframe.

Response: The Department agrees with these comments and has revised this subsection accordingly.

Comments: Fire drills should be conducted quarterly or semiannually.

Subsection (d)(1) requires a fire drill to be conducted every 60 days. Since the duration of treatment for some residents and clients of nonresidential facilities may be less than 60 days, the Department should consider more frequent fire drills. Alternatively, the Department could require individual fire drill instruction for new residents. The Department should also define "special incidents."

Subsection (d)(2) requires fire drills to be conducted at different times of the day and night. However, the regulation does not specifically require any drills to be conducted during sleeping hours. The Department should consider periodically requiring fire drills during sleeping hours.

Subsection (d)(3) requires that personnel on all shifts be "trained to perform assigned tasks during emergencies." The Department should clarify what is included in the training and when the training must occur.

Refer to 55 Pa. Code § 3800.132 (relating to fire drills).

Response: The Department agrees with these comments regarding monthly fire drills. It has adopted appropriate language.

Sections 705.11 and 705.29. Child care.

These sections establish safety provisions for child care in all facilities.

Comment: Paragraph (1)(ii) requires access to "suitable recreational equipment." The term "suitable" is vague and should be deleted or replaced with more specific requirements.

Response: The Department agrees and has deleted the word "suitable."

Comments: Rather than security screens, would safety locks suffice in certain circumstances?

Paragraph (2)(ii) requires safety screens for all windows. This requirement appears to be unnecessary for windows that do not open. The Department should revise this requirement to apply to all operable windows.

Paragraph (2)(iii) requires protective caps for each electrical outlet within reach of small children. How is "small" defined? Basically, a child can reach all outlets. Because of the ambiguity of the language, the Department should delete the phrase "within reach of small children" from these paragraphs.

Paragraph (2)(iv) requires facilities to secure storage areas where "potentially dangerous" substances are kept. The Department should delete the phrase "potentially dangerous" or define it so that it can be clearly understood and enforced.

Response: The Department agrees with these comments and has reworded these paragraphs accordingly.

Rescinded Sections

The Department is rescinding the various sections relating to physical plant regulations scattered throughout Part V. The physical plant sections which are rescinded are those in Chapter 709, Subchapters C and G, Chapter 711, Subchapter C—G and Chapter 713, Subchapter C.

Fiscal Impact

There will be some fiscal impact on the drug and alcohol treatment facilities. Due to "grandfathering" provisions, no existing licensed facilities will be required to reduce the number of currently licensed beds. The majority of licensed facilities (638 outpatient) will not be affected at all by these final-form regulations relative to sleeping accommodations.

The remainder of the final-form regulations received little or no comment, indicating that the vast majority of facilities believe that the regulations are appropriate and are already in compliance with them or consider compliance to be achievable at little additional cost.

These final-form regulations will have minimal fiscal impact on the Department. At most, Department staff might be required to spend additional time at each facility. Field representatives inspected physical plants under the previous regulations. The general scope of the inspection, though for the most part not enforceable under the previous regulations, included most of what is now regulated. Where staff could previously only make suggestions to facilities on how to improve health and safety, they can now enforce regulations to make real and substantive health and safety improvements. The net increase in Commonwealth costs in terms of staff inspection time, however, will be negligible.

Paperwork Requirements

A system for inspection of facilities is currently in place. It is anticipated that new inspection forms will be created to replace current forms. The net increase in paperwork is expected to be minimal.

Effective Date/Sunset Date

These final-form regulations are effective upon publication in the *Pennsylvania Bulletin*. For currently licensed facilities, compliance with these final-form regulations will be required within 9 months after they become effective. For any facility that has applied for licensure but has not yet been licensed prior to the effective date of these final-form regulations and for any facility that applies for licensure after the effective date of these final-form regulations, compliance will be required as part of the licensure process. No sunset date has been established. The Department will review and monitor the effectiveness of these regulations on a continuing basis.

Statutory Authority

Statutory authority for this final-form rulemaking is found in Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1051—1059), which require regulations for adequate and proper provisions for: (i) fire prevention; (ii) water supply and sewage disposal; (iii) sanitation; (iv) lighting and heating; (v) ventilation; (vi) safety; (vii) equipment; (viii) bed space; (ix) recordkeeping; and (x) humane care, and which authorize and empower the Department to adopt regulations establishing minimum standards for building, equipment, operation, care, program and services and for the issuance of licenses, as transferred to the Department by Reorganization Plan Number 2 of 1977 (71 P. S. § 751-25); and Reorganization Plan Number 4 of 1981 (71 P. S. § 751-31) and the Pennsylvania Drug and Alcohol Abuse Control Act (71 P. S. §§ 1690.101—1690.114), which gives the Department the power to promulgate rules and regulations necessary to carry out the provisions of the act.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 1, 1999, the Department submitted a copy of the proposed rulemaking published at 29 Pa.B. 5835 to IRRC and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered comments from IRRC, the Committees and the public.

On September 13, 2001, the Department requested that the regulations be tolled in accordance with section 5.1(g)(1) of the Regulatory Review Act (71 P. S. § 745.5a(g)(1)) to consider revisions recommended by IRRC. IRRC did not object to tolling. The Department submitted the revised regulations to the Committees and to IRRC for their review on October 15, 2001.

On October 23, 2001, the Committees notified IRRC that they disapproved the regulations. On October 29, 2001, the Department withdrew the final-form regulations to make changes to the regulations to satisfy the concerns of the Committees. The Department resubmitted the revised final-form regulations to the Committees and to IRRC for their review on November 14, 2001.

These final-form regulations were deemed approved by the House Health and Human Services Committee and the Senate Public Health and Welfare Committee on December 4, 2001. IRRC met on December 6, 2001, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act. The Office of Attorney General approved the regulations on February 14, 2002.

Contact Person

Questions regarding these final-form regulations may be submitted to John C. Hair, Director, Bureau of Community Program Licensure and Certification, Department of Health, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665. Persons with disabilities may submit questions in alternative formats such as by audio tape or Braille. Speech or learning impaired persons may use V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT]. Persons with disabilities who would like to obtain this document in an alternative format (such as, large print, audio tape or Braille) may contact John Hair so that necessary arrangements may be made.

Findings

The Department finds that:

- (1) Public notice of intention to adopt the regulations 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law.
- (3) The adoption of the final-form regulations is necessary and appropriate.

Order

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

- (a) The regulations of the Department, 28 Pa. Code Part V, are amended by amending § 701.1; by adding §§ 705.1—705.11 and 705.21—705.29; and by deleting §§ 709.27, 709.74, 711.45, 711.57, 711.67, 711.77, 711.88 and 713.27, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Secretary of Health shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.
- (c) The Secretary of Health shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.
- (d) The Secretary of Health shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

- (1) For currently licensed facilities, compliance will be required by December 2, 2002.
- (2) For any facility that applies for licensure after March 2, 2002, compliance will be required as part of the licensure process.

(3) For any facility that has applied for licensure before March 2, 2002, but is not licensed until after March 2, 2002, compliance will be required as part of the licensure process.

ROBERT S. ZIMMERMAN, Jr.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 6998 (December 22, 2001).)

Fiscal Note: Fiscal Note 10-154 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 28. HEALTH AND SAFETY
PART V. DRUG AND ALCOHOL FACILITIES AND SERVICES

CHAPTER 701. GENERAL PROVISIONS

Subchapter A. DEFINITIONS

§ 701.1. General definitions.

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

* * * * *

Nonresidential facility—A facility that does not provide sleeping accommodations and provides one or more of the following activities: outpatient, partial hospitalization, intake, evaluation or referral activities.

* * * * *

Residential facility—An inpatient, nonhospital facility or inpatient freestanding psychiatric hospital that provides sleeping accommodations and provides one or more of the following activities: residential treatment and rehabilitation services, transitional living services or short-term detoxification services, 24 hours a day.

* * * * *

CHAPTER 705. PHYSICAL PLANT STANDARDS

Subch.

- A. RESIDENTIAL FACILITIES**
- B. NONRESIDENTIAL FACILITIES**

Subchapter A. RESIDENTIAL FACILITIES

Sec.

- 705.1. General requirements for residential facilities.
- 705.2. Building exterior and grounds.
- 705.3. Living rooms and lounges.
- 705.4. Counseling areas.
- 705.5. Sleeping accommodations.
- 705.6. Bathrooms.
- 705.7. Food service.
- 705.8. Heating and cooling.
- 705.9. General safety and emergency procedures.
- 705.10. Fire safety.
- 705.11. Child care.

§ 705.1. General requirements for residential facilities.

The residential facility shall:

- (1) Hold a license under Chapter 709 (relating to standards for licensure of freestanding treatment facilities) or a certificate under Chapter 711 (relating to standards for certification of treatment activities which are part of a health care facility).
- (2) Have a certificate of occupancy from the Department of Labor and Industry or its local equivalent.
- (3) Comply with applicable Federal, State and local laws and ordinances.

§ 705.2. Building exterior and grounds.

The residential facility shall:

(1) Maintain all structures, fences and playground equipment, when applicable, on the grounds of the facility so as to be free from any danger to health and safety.

(2) Keep the grounds of the facility clean, safe, sanitary and in good repair at all times for the safety and well-being of residents, employees and visitors. The exterior of the building and the building grounds or yard shall be free of hazards.

(3) Keep exterior exits, stairs and walkways lighted at night.

(4) Store all trash, garbage and rubbish in noncombustible, covered containers that prevent the penetration of insects and rodents, and remove it, at least once every week.

§ 705.3. Living rooms and lounges.

The residential facility shall contain at least one living room or lounge for the free and informal use of clients, their families and invited guests. The facility shall maintain furnishings in a state of good repair.

§ 705.4. Counseling areas.

The residential facility shall:

(1) Maintain space for both individual and group counseling sessions.

(2) Maintain counseling areas with furnishings which are in good repair.

(3) Ensure privacy so that counseling sessions cannot be seen or heard outside the counseling room. Counseling room walls shall extend from the floor to the ceiling.

(4) Locate counseling areas so that noise does not disturb or interfere with counseling sessions.

§ 705.5. Sleeping accommodations.

(a) In each residential facility bedroom, each resident shall have the following:

(1) A bed with solid foundation and fire retardant mattress in good repair.

(2) A pillow and bedding appropriate for the temperature in the facility.

(3) A storage area for clothing.

(b) Each shared bedroom shall have at least 60 square feet of floor space per resident measured wall to wall, including space occupied by furniture. When bunk beds are used, each bedroom shall have at least 50 square feet of floor space per resident measured wall to wall. Bunk beds shall afford enough space in between each bed and the ceiling to allow a resident to sit up in bed. Bunk beds shall be equipped with a securely attached ladder capable of supporting a resident. Bunk beds shall be equipped with securely attached railings on each open side and open end of the bunk. The use of bunk beds shall be prohibited in detoxification programs. Each single bedroom shall have at least 70 square feet of floor space per resident measured wall to wall, including space occupied by furniture.

(c) No more than four residents may share a bedroom.

(d) When calculating the square feet of bedroom floor space under subsection (b) or the number of residents per

bedroom under subsection (c), children occupying a bedroom with an adult family member or guardian may not be included as residents.

(e) Each bedroom shall have direct access to a corridor or external exit.

(f) A bedroom may not be used as a means of egress from or access to another part of the facility.

(g) Sole entrances to stairways or basements may not be located in a resident's bedroom.

(h) Each bedroom shall be ventilated by operable windows or have mechanical ventilation.

(i) Each bedroom shall have a window with a source of natural light.

(j) A residential facility shall prohibit smoking and use of candles in bedrooms.

(k) Bedrooms located in a basement shall meet the following requirements:

(1) The bedroom shall have wall, floor and ceiling coverings such as tile, linoleum, paneling or dry wall.

(2) The bedroom shall have a protective fire wall between the residents and any furnace.

(l) A residential facility shall be exempt from subsections (b), (c), (e), (f) and (i) for rooms that had been used as bedrooms in facilities licensed as of March 2, 2002. If a facility expands its capacity or renovates to relocate or add bedrooms, this exemption does not apply to the new bedrooms. If the facility relocates or rebuilds, this exemption does not apply.

§ 705.6. Bathrooms.

The residential facility shall:

(1) Provide bathrooms to accommodate staff, residents and other users of the facility.

(2) Provide a sink, a wall mirror, an operable soap dispenser, and either individual paper towels or a mechanical dryer in each bathroom.

(3) Have hot and cold water under pressure. Hot water temperature may not exceed 120°F.

(4) Provide privacy in toilets by doors, and in showers and bathtubs by partitions, doors or curtains. There shall be slip-resistant surfaces in all bathtubs and showers.

(5) Ventilate toilet and wash rooms by exhaust fan or window.

(6) Provide toilet paper at each toilet at all times.

(7) Maintain each bathroom in a functional, clean and sanitary manner at all times.

§ 705.7. Food service.

(a) A residential facility shall provide meals to residents through onsite food preparation areas, a central food preparation area or contractual arrangements with vendors or caterers.

(b) A residential facility may operate a central food preparation area to provide food services to multiple facilities or locations. A residential facility that operates an onsite food preparation area or a central food preparation area shall:

(1) Have a food preparation area with a refrigerator, a sink, a stove, an oven and cabinet space for storage.

(2) Clean and disinfect food preparation areas and appliances following each prepared meal.

(3) Clean all eating, drinking and cooking utensils and all food preparation areas after each usage and store the utensils in a clean enclosed area.

(4) Ensure that storage areas for foods are free of food particles, dust and dirt.

(5) Keep cold food at or below 40°F, hot food at or above 140°F, and frozen food at or below 0°F.

(6) Store all food items off the floor.

(7) Prohibit pets in the food preparation area.

(8) Prohibit smoking in food preparation areas.

§ 705.8. Heating and cooling.

The residential facility:

(1) Shall have a heating and cooling ventilation system that is adequate to maintain an indoor temperature of at least 65°F in the winter. When indoor temperatures exceed 90°F, mechanical ventilation such as fans or air conditioning shall be used.

(2) May not permit in the facility heaters that are not permanently mounted or installed.

§ 705.9. General safety and emergency procedures.

The residential facility shall:

(1) Be free of rodent and insect infestation.

(2) Require that pets housed in the residential facility are cared for in a safe and sanitary manner.

(3) Limit smoking to designated smoking areas.

(4) Provide written procedures for staff and residents to follow in case of an emergency which shall include provisions for:

(i) The evacuation and transfer of residents and staff to a safe location.

(ii) Assignments of staff during emergencies.

(iii) The evacuation and transfer of residents impaired by alcohol or other drugs.

(5) Notify the Department within 48 hours of a fire, other disaster or situation which affects the continuation of services.

§ 705.10. Fire safety.

(a) *Exits.*

(1) The residential facility shall:

(i) Ensure that stairways, hallways and exits from rooms and from the residential facility are unobstructed.

(ii) Maintain a minimum of two exits on every floor, including the basement, that are separated by a minimum distance of 15 feet.

(iii) Maintain each ramp, interior stairway and outside steps exceeding two steps with a well-secured handrail and maintain each porch that has over an 18-inch drop with a well-secured railing.

(iv) Clearly indicate exits by the use of signs.

(v) Light interior exits and stairs at all times.

(2) Portable ladders and rope escapes are not considered exits, but may be used in addition to standard exits.

(b) *Smoke detectors and fire alarms.* The residential facility shall:

(1) Maintain a minimum of one operable, automatic smoke detector on each floor, including the basement and attic.

(2) On floors with resident bedrooms, maintain a smoke detector which shall be located within 15 feet of each bedroom door. On floors with no resident bedrooms, the smoke detection device shall be located in a common area or hallway. All detection devices shall be interconnected.

(3) Repair inoperable smoke detectors or fire alarms within 48 hours of the time the detector or alarm is found to be inoperative.

(4) Maintain a manual fire alarm system that is audible throughout the facility in a residential facility where four or more residents reside.

(5) Maintain automatic smoke detectors and fire alarms of a type approved by the Department of Labor and Industry or by the Underwriters Laboratories.

(6) Maintain all smoke detectors and fire alarms so that each person with a hearing impairment will be alerted in the event of a fire, if one or more residents or staff persons are not able to hear the smoke detector or fire alarm system.

(c) *Fire extinguisher.* The residential facility shall:

(1) Maintain a portable fire extinguisher with a minimum of an ABC rating, which shall be located on each floor. If there is more than 2,000 square feet of floor space on a floor, the residential facility shall maintain an additional fire extinguisher for each 2,000 square feet or fraction thereof.

(2) Maintain at least one portable fire extinguisher with a minimum of an ABC rating in each kitchen.

(i) This fire extinguisher shall meet the requirement of one portable fire extinguisher for a 2,000 square foot area.

(ii) The extinguisher shall be located near an exit and away from the cooking area.

(3) Ensure fire extinguishers are inspected and approved annually by the local fire department or fire extinguisher company. The date of the inspection shall be indicated on the extinguisher or inspection tag. If a fire extinguisher is found to be inoperable, it shall be replaced or repaired within 48 hours of the time it was found to be inoperable.

(4) Instruct all staff in the use of the fire extinguishers upon staff employment. This instruction shall be documented by the facility.

(d) *Fire drills.* The residential facility shall:

(1) Conduct unannounced fire drills at least once a month.

(2) Conduct fire drills during normal staffing conditions.

(3) Ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies.

(4) Maintain a written fire drill record including the date, time, the amount of time it took for evacuation, the exit route used, the number of persons in the facility at the time of the drill, problems encountered and whether the fire alarm or smoke detector was operative.

(5) Conduct a fire drill during sleeping hours at least every 6 months.

(6) Prepare alternate exit routes to be used during fire drills.

(7) Conduct fire drills on different days of the week, at different times of the day and night and on different staffing shifts.

(8) Set off a fire alarm or smoke detector during each fire drill.

(9) Prohibit the use of elevators during a fire drill or a fire.

§ 705.11. Child care.

When a residential facility admits children for services or for custodial care, the following requirements apply:

(1) *Building exterior and grounds.* The residential facility shall:

(i) Fence off or have natural barriers to protect children from all areas determined to be unsafe including steep grades, cliffs, open pits, swimming pools, high voltage boosters or roads.

(ii) Provide access to outdoor recreational space and recreational equipment.

(2) *Interior space.* The residential facility shall:

(i) Provide an interior play area which meets the developmental and recreational needs of the children in care.

(ii) Maintain security screens or safety locks for all operable windows.

(iii) Maintain protective caps over each electrical outlet.

(iv) Secure all hazardous and poisonous substances and materials with safety latches or locks.

Subchapter B. NONRESIDENTIAL FACILITIES

Sec.

705.21.	General requirements for nonresidential facilities.
705.22.	Building exterior and grounds.
705.23.	Counseling on activity areas and office space.
705.24.	Bathrooms.
705.25.	Food service.
705.26.	Heating and cooling.
705.27.	General safety and emergency procedures.
705.28.	Fire safety.
705.29.	Child care.

§ 705.21. General requirements for nonresidential facilities.

The nonresidential facility shall:

(1) Hold a license under Chapter 709 (relating to standards for licensure of freestanding treatment facilities), a certificate under Chapter 711 (relating to standards for certification of treatment activities which are part of a health care facility) or approval under Chapter 713 (relating standards of prevention and intervention activities).

(2) Have a certificate of occupancy from the Department of Labor and Industry or its local equivalent.

(3) Comply with applicable Federal, State and local laws and ordinances.

§ 705.22. Building exterior and grounds.

The nonresidential facility shall:

(1) Maintain all structures, fences and playground equipment, when applicable, on the grounds of the facility so as to be free from any danger to health and safety.

(2) Keep the grounds of the facility clean, safe, sanitary and in good repair at all times for the safety and well

being of clients, employees and visitors. The exterior of the building and the building grounds or yard shall be free of hazards.

(3) Keep exterior exits, stairs and walkways lighted at night if in use.

(4) Store all trash, garbage and rubbish in noncombustible, covered containers that prevent the penetration of insects and rodents, and remove it at least once every week.

§ 705.23. Counseling or activity areas and office space.

The nonresidential facility shall:

(1) Maintain space for both individual and group counseling sessions.

(2) Maintain counseling areas with furnishings which are in good repair.

(3) Ensure privacy so that counseling sessions cannot be seen or heard outside the counseling room. Counseling room walls shall extend from the floor to the ceiling.

(4) Locate counseling areas so that noise does not disturb or interfere with counseling sessions.

§ 705.24. Bathrooms.

The nonresidential facility shall:

(1) Provide bathrooms to accommodate staff, clients and other users of the facility.

(2) Provide a sink, a wall mirror, an operable soap dispenser, and either individual paper towels or a mechanical dryer in each bathroom.

(3) Have hot and cold water under pressure. Hot water temperature may not exceed 120°F.

(4) Provide privacy in toilets by doors.

(5) Ventilate bathrooms by exhaust fan or window.

(6) Provide toilet paper at each toilet at all times.

(7) Maintain each bathroom in a functional, clean and sanitary manner at all times.

§ 705.25. Food service.

A nonresidential facility may provide meals to clients through onsite food preparation areas, a central food preparation area or contractual arrangements with vendors or caterers. A nonresidential facility which operates an onsite food preparation area or a central food preparation area shall:

(1) Have a food preparation area with a refrigerator, a sink, a stove, an oven and cabinet space for storage.

(2) Clean and disinfect food preparation areas and appliances following each prepared meal.

(3) Clean all eating, drinking and cooking utensils and all food preparation areas after each usage and store the utensils in a clean enclosed area.

(4) Ensure that storage areas for foods are free of food particles, dust and dirt.

(5) Keep cold food at or below 40°F, hot food at or above 140°F, and frozen food at or below 0°F.

(6) Store all food items off the floor.

(7) Prohibit pets in the food preparation area.

(8) Prohibit smoking in food preparation areas.

§ 705.26. Heating and cooling.

The nonresidential facility:

(1) Shall have a heating and cooling ventilation system that is adequate to maintain an indoor temperature of at least 65°F in the winter. When indoor temperatures exceed 90°F, mechanical ventilation such as fans or air conditioning shall be used.

(2) May not permit in the facility heaters that are not permanently mounted or installed.

§ 705.27. General safety and emergency procedures.

The nonresidential facility shall:

(1) Be free of rodent and insect infestation.

(2) Require that pets which are housed in a nonresidential facility be cared for in a safe and sanitary manner.

(3) Limit smoking to designated smoking areas.

(4) Provide written procedures for staff and clients to follow in case of an emergency which shall include provisions for:

(i) The evacuation and transfer of clients and staff to a safe location.

(ii) Assignments of staff during emergencies.

(5) Notify the Department within 48 hours of a fire, other disaster or situation which affects the continuation of services.

§ 705.28. Fire safety.

(a) *Exits.*

(1) The nonresidential facility shall:

(i) Ensure that stairways, hallways and exits from rooms and from the nonresidential facility are unobstructed.

(ii) Maintain a minimum of two exits on every floor, including the basement, that are separated by a minimum distance of 15 feet.

(iii) Maintain each ramp, interior stairway and outside steps exceeding two steps with a well-secured handrail and maintain each porch that has over an 18 inch drop with a well-secured railing.

(iv) Clearly indicate exits by the use of signs.

(v) Light interior exits and stairs at all times.

(2) Portable ladders and rope escapes are not considered exits, but may be used in addition to standard exits.

(b) *Smoke detectors and fire alarms.* The nonresidential facility shall:

(1) Maintain a minimum of one operable automatic smoke detector on each floor, including the basement and attic.

(2) Place the smoke detector in a common area or hallway. All detection devices shall be interconnected.

(3) Repair inoperable smoke detectors or fire alarms within 48 hours of the time the detector or alarm is found to be inoperative.

(4) Maintain a manual fire alarm system that is audible throughout the facility.

(5) Maintain automatic smoke detectors and fire alarms of a type approved by the Department of Labor and Industry or by the Underwriters Laboratories.

(c) *Fire extinguishers.* The nonresidential facility shall:

(1) Maintain a portable fire extinguisher with a minimum of an ABC rating which shall be located on each floor. If there is more than 2,000 square feet of floor space on a floor, there shall be an additional fire extinguisher for each 2,000 square feet or fraction thereof.

(2) Maintain at least one portable fire extinguisher with a minimum of an ABC rating in each kitchen.

(i) This fire extinguisher shall meet the requirements of one portable fire extinguisher for a 2,000 square foot area.

(ii) The extinguisher shall be located near an exit and away from the cooking area.

(3) Ensure fire extinguishers are inspected and approved annually by the local fire department or fire extinguisher company. The date of the inspection shall be indicated on the extinguisher or inspection tag. If a fire extinguisher is found to be inoperable, it shall be replaced or repaired within 48 hours of the time it was found to be inoperable.

(4) Instruct staff in the use of the fire extinguisher upon staff employment. This instruction shall be documented by the facility.

(d) *Fire drills.* The nonresidential facility shall:

(1) Conduct unannounced fire drills at least once a month.

(2) Conduct fire drills during normal staffing conditions.

(3) Ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies.

(4) Maintain a written fire drill record including the date, item, the amount of time it took for evacuation, the exit route used, the number of persons in the facility at the time of the drill, problems encountered and whether the fire alarm or smoke detector was operative.

(5) Prepare alternate exit routes to be used during fire drills.

(6) Conduct fire drills on different days of the week, at different times of the day and on different staffing shifts.

(7) Set off a fire alarm or smoke detector during each fire drill.

(8) Prohibit the use of elevators during a fire drill or a fire.

§ 705.29. Child care.

When a nonresidential facility admits children for services or for custodial care, the following requirements apply:

(1) *Building exterior and grounds.* The nonresidential facility shall:

(i) Fence off or have natural barriers to protect children from all areas determined to be unsafe including steep grades, open pits, swimming pools, high voltage boosters or roads.

(ii) Provide access to outdoor recreational space and recreational equipment.

(2) *Interior space.* The nonresidential facility shall:

(i) Provide an interior play area which meets the developmental and recreational needs of the children in care.

(ii) Maintain security screens or safety locks for all operable windows.

(iii) Maintain protective caps over each electrical outlet.

(iv) Secure all hazardous and poisonous substances and materials with safety latches or locks.

CHAPTER 709. STANDARDS FOR LICENSURE OF FREESTANDING TREATMENT FACILITIES

Subchapter C. GENERAL STANDARDS FOR FREESTANDING TREATMENT ACTIVITIES

§ 709.27. (Reserved).

Subchapter G. STANDARDS FOR INPATIENT NONHOSPITAL ACTIVITIES—TRANSPORTATION LIVING FACILITIES (TLFs)

§ 709.74. (Reserved).

CHAPTER 711. STANDARDS FOR CERTIFICATION OF TREATMENT ACTIVITIES WHICH ARE A PART OF A HEALTH CARE FACILITY

Subchapter C. STANDARDS FOR INTAKE EVALUATION AND REFERRAL ACTIVITIES

§ 711.45. (Reserved).

Subchapter D. STANDARDS FOR INPATIENT NONHOSPITAL ACTIVITIES—RESIDENTIAL TREATMENT AND REHABILITATION

§ 711.57. (Reserved).

Subchapter E. STANDARDS FOR INPATIENT NONHOSPITAL ACTIVITIES—SHORT-TERM DETOXIFICATION

§ 711.67. (Reserved).

Subchapter F. STANDARDS FOR INPATIENT NONHOSPITAL ACTIVITIES—TRANSITIONAL LICENSING FACILITIES (TLFs)

§ 711.77. (Reserved).

Subchapter G. STANDARDS FOR PARTIAL HOSPITALIZATION ACTIVITIES

§ 711.88. (Reserved).

CHAPTER 713. STANDARDS FOR APPROVAL OF PREVENTION AND INTERVENTION ACTIVITIES

Subchapter C. GENERAL STANDARDS FOR PREVENTION AND INTERVENTION ACTIVITIES

§ 713.27. (Reserved).

[Pa.B. Doc. No. 02-339. Filed for public inspection March 1, 2002, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Reference Library and Facsimile Machines

The State Board of Pharmacy (Board) amends §§ 27.14 and 27.20 (relating to supplies; and facsimile machines) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The final-form amendments are authorized under sections 4(j) and 6(k)(1) and (9) of the Pharmacy Act (63 P. S. §§ 390-4(j) and 390-6(k)(1) and (9)).

C. *Background and Purpose*

Section 27.14(c)(14) currently requires a pharmacy to have an adequate reference library including two or more of the latest editions of references specifically listed in the section. The final-form rulemaking amends this section by eliminating the specific list of references and replacing it with language that allows a pharmacy to maintain references which are more appropriate and necessary to that pharmacy's area of practice.

Section 27.20 allows a pharmacist to fill a prescription for a Schedule II controlled substance that is received on a facsimile machine under certain conditions. This section is consistent with Federal law with one exception. Federal law allows a pharmacist to use the facsimile prescription as the original prescription for all Schedule II controlled narcotic substances for hospice patients, while § 27.20 only allows a facsimile prescription as the original prescription for "injectable" Schedule II controlled substances for hospice patients. The final-form rulemaking amends this section and makes it consistent with Federal law.

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of the proposed rulemaking was published at 31 Pa.B. 2480 (May 12, 2001). Publication was followed by a 30-day public comment period during which the Board received one public comment. Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The following is a response to the comments.

Section 24.14. Supplies.

IRRC recommended that the Board consider deleting repeated references to the phrase "an adequate reference library" in this section for greater readability and less repetition. The Board agrees and has amended this section accordingly.

IRRC also commented that the phrase "safe and effective manner" used in subsection (c)(14)(iii)(A) was unclear and recommended that the Board include examples of what it considers "a safe and effective manner." The intention underlying this final-form rulemaking was to ensure that pharmacists had reference materials that are applicable to their type of pharmacy practice (for example, nuclear pharmacy vs. family pharmacy). Therefore, the Board determined not to cite specific referenced volumes. To accommodate IRRC's concern, however, the Board has amended the language in an attempt to clarify what it meant with regard to this particular standard.

Section 27.20. Facsimile machines.

There were three comments regarding this section. First, HPLC, IRRC and Mr. Greene questioned the use of the phrase "which will be administered to . . ." in subsection (a)(2)(i) and (iii). IRRC questioned whether the Board intended to exclude self-administered medications, and if not, recommended that the Board replace the phrase with the phrase "for the direct administration" used in the

Federal regulations. The HPLC noted Mr. Greene's comment that patients often self-administer their medications. Mr. Greene recommended eliminating the phrase "which will be administered to" and replacing it with the word "for." The Board did not intend to exclude self-administration for hospice patients. Its intent is only to be consistent with Federal law. IRRC is correct that Federal law uses the phrase "for the direct administration" but this is in regard to prescriptions written for a Schedule II narcotic substance for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion. See 21 CFR 1306.11(e) (2000) (relating to requirement of prescriptions). Section 27.20(a)(2)(i) follows this Federal regulation and the Board has amended this subsection by deleting the phrase "which will be administered to" and replacing it with "to be compounded for the direct administration" so that it will now be consistent with the most current version of the Federal law. However, this phrase is not used with regard to prescriptions written for Schedule II narcotic substances for patients in a hospice program. Rather, 21 CFR 1306.11(g) (2000) uses the language recommended by Mr. Greene. Therefore, the Board has amended § 27.20(a)(2)(iii) eliminating the phrase "which will be administered to" and replacing it with the word "for." Again, the Board's intent is to have the language in its regulation follow that of the Federal law.

Second, the HPLC noted Mr. Greene's comment that the term "narcotic" should be removed from subsection (a)(2)(i) and (iii) because corresponding Drug Enforcement Administration (DEA) regulations will be applicable to new, nonnarcotic Schedule II controlled substances. However, the Board is not aware of any DEA regulations eliminating the word "narcotic." Rather, the most current version of 21 CFR 1306.11(e) and (g) (2000) still includes the word "narcotic." The Board will not remove the word narcotic from these subsections unless the Federal law removes it.

Finally, the HPLC, IRRC and Mr. Greene recommended that the Board replace "hospice patient" in subsection (a)(2)(iii) with "patient enrolled in a hospice care program" to be consistent with the language in the Federal regulations. The Board agrees with this recommendation and has amended this subsection accordingly.

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

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

F. Fiscal Impact and Paperwork Requirements

This final-form rulemaking will have no fiscal impact or impose any additional paperwork requirements on the Commonwealth or its political subdivisions. Additionally, the final-form rulemaking should not necessitate any legal, accounting or reporting requirements on the regulated community.

G. Sunset Date

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

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 12, 2001, the Board submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 2480 to IRRC and to Chairpersons of the SCP/PLC and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the SCP/PLC and the HPLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered the comments received from IRRC, the SCP/PLC, the HPLC and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on December 26, 2001, this final-form rulemaking was deemed approved by the SCP/PLC and the HPLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 10, 2002, and approved the final-form rulemaking.

I. Contact Person

Further information may be obtained by contacting Melanie Zimmerman, Executive Secretary, State Board Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7156, www.dos.state.pa.us.

J. Findings

The Board finds that:

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

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

(3) These final-form regulations do not enlarge the purpose of proposed rulemaking published at 31 Pa.B. 2480.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 27, are amended by amending §§ 27.14 and 27.20 to read as set forth in Annex A.

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

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

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

MICHAEL A. PODGURSKI, R.Ph.
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 477 (January 26, 2002).)

Fiscal Note: Fiscal Note 16A-549 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY STANDARDS

§ 27.14. Supplies.

(a) A pharmacy shall maintain a supply of drugs and devices adequate to meet the needs of the health professions and the patients it is intended to serve. The applicant for a pharmacy permit shall show proof by affidavit that the applicant has ordered or possesses and shall continue to maintain an inventory of nonproprietary drugs, devices and equipment appropriate to the practice of that pharmacy. The inventory shall include at least \$5,000 worth of nonproprietary drugs and devices, at cost, from a licensed wholesaler or manufacturer. The inventory may not go below this figure at any time.

(b) Drugs which must be removed from active stock shall be removed in accordance with the following provisions:

(1) The pharmacist manager is responsible for removing from the active stock of the pharmacy and disposing of the following:

- (i) A drug whose expiration date has passed.
- (ii) A drug which does not meet legal standards of strength and purity.
- (iii) A drug which varies from the strength and purity indicated on the label of the commercial container.
- (iv) A drug which has been improperly stored.
- (v) A drug which has deteriorated.
- (vi) A drug which is unfit, misbranded or adulterated under Federal or State statutes.

(2) Drugs which have been removed from active stock in accordance with this subsection may not be sold or given away. The drugs shall be returned to the wholesaler or manufacturer for disposal or disposed of by the pharmacy according to Federal or State statutes or regulations.

(3) A pharmacy desiring to or required to dispose of a controlled substance shall contact the nearest DEA office for authority and instructions to dispose of the substance.

(4) The pharmacist manager shall be responsible for keeping proper records of controlled substances which have been disposed of. These records shall include the name of the substance, the number of units or the volume of the substance or the number of commercial containers and the date and manner of disposal.

(c) A pharmacy shall maintain at least the following equipment and supplies:

- (1) A Class A prescription balance or other scale with a no-load sensitivity of 6 milligrams or less.
- (2) Both an apothecary set of weights from 1/2 grain to 1 ounce and a set of metric weights from 10 milligrams to 50 grams.
- (3) A mechanical refrigerator having the appropriate temperature control for the storage of the drugs, vaccines,

biologicals or medicaments which require specific temperatures for their stability. The refrigerator shall be kept within the prescription area.

(4) At least four graduates assorted to measure 1 ml to 500 ml.

(5) At least two mortars and pestals, glass or wedgewood.

(6) At least three spatulas of assorted sizes, metallic-rust resistant and rubber or nonmetallic composition.

(7) At least two funnels, one 120 ml and the other 480 ml.

(8) One glass or tile slab or specially treated paper for use in compounding ointments.

(9) A book to record sales and transfers of Schedule V controlled substances and poisons. This paragraph does not apply to an institutional pharmacy servicing only inpatients.

(10) An adequate supply of filter paper and powder papers and an adequate supply of empty capsules, prescription containers, prescription and poison and other applicable identification labels used in dispensing of prescription drugs and medication.

(11) Prescription files for keeping prescriptions of nonproprietary drugs in accordance with the act and, for controlled substance prescriptions, the regulations of the DEA in 21 CFR 1304.04(h) (relating to maintenance of records and inventories). The original prescription shall be retained for 2 years. A pharmacy may make use of a computerized recordkeeping system for keeping track of telephone prescriptions, refills, counseling, and the like, if the system has safeguards to prevent accidental erasure and the information can be transferred to hard copy within 72 hours.

(12) Current copies of the act and this chapter.

(13) Federal and Commonwealth statutes and regulations pertaining to the practice of pharmacy.

(14) An adequate reference library which meets the following standards:

(i) Enables a pharmacy to prepare and dispense prescriptions properly, consistent with its scope of practice.

(ii) Includes reference sources appropriate to the type of pharmacy practice at that particular location. A pharmacy shall include in the pharmacy's library current material regarding the technical, clinical and professional aspects of practice with emphasis in the area in which the pharmacy specializes.

(iii) Enables the pharmacist to compound medications in a safe and effective manner consistent with accepted standards of pharmacy practice.

(iv) Lists the possible drug interactions and possible adverse effects of medications dispensed by the pharmacy.

(v) Lists the therapeutic equivalents for medications.

(vi) Lists the therapeutic usage and dosages of medications dispensed by the pharmacy.

(vii) Provides guidelines for the counseling of patients.

(viii) A pharmacy that specializes in nuclear or parenteral prescriptions may limit the library it maintains under subparagraph (ii) relating to the pharmacy's own specialization.

(ix) Maintains the latest editions including current supplements of each of its reference sources.

§ 27.20. Facsimile machines.

(a) *Schedule II controlled substances.*

(1) A pharmacist may fill a prescription for a Schedule II controlled substance which was received on a facsimile machine if the original prescription signed by the medical practitioner is presented to the pharmacist for review prior to the actual dispensing of the controlled substance. The original prescription shall be maintained as the original pharmacy record.

(2) There are three exceptions to the requirement that the pharmacist review the original of the prescription received on a facsimile machine before dispensing a Schedule II controlled substance. A pharmacist may fill and dispense a prescription for a Schedule II controlled substance which was received on a facsimile machine and may use the facsimile as the original pharmacy record of the following:

(i) A prescription for a Schedule II controlled narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion in the patient's home.

(ii) A prescription for a Schedule II controlled substance for a resident of a long-term care facility.

(iii) A prescription for a Schedule II controlled narcotic substance for a patient enrolled in a hospice care program.

(b) *Schedule III, IV and V controlled substances and other nonproprietary drugs.* A pharmacist may fill and dispense a prescription signed by a medical practitioner for a Schedule III, IV or V controlled substance or other nonproprietary drug which was received on a facsimile machine. The pharmacist may use the facsimile as the original pharmacy record.

(c) *General.*

(1) A pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the facsimile copy of a prescription.

(2) Unless the original prescription will be maintained as the original pharmacy record, the quality of paper on which a facsimile copy of a prescription is printed shall be of a type that the facsimile copy can be maintained as a record for at least 2 years, as required under section 4(a)(3) of the act (63 P. S. § 390-4(a)(3)).

(3) A pharmacist or pharmacy may not contribute in any way to the installation of a facsimile machine in the office of a medical practitioner or in an institution.

(4) For purposes of this section, a prescription does not include an order for medication which is dispensed for immediate administration to a patient in an institution.

[Pa.B. Doc. No. 02-340. Filed for public inspection March 1, 2002, 9:00 a.m.]

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47—49]

Licensure

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board)

hereby amends Chapter 47 (relating State Board of Social Workers, Marriage and Family Therapists and Professional Counselors—licensure of social workers) and adds Chapters 48 and 49 (relating State Board of Social Workers, Marriage and Family Therapists and Professional Counselors—licensure of marriage and family therapists; and State Board of Social Workers, Marriage and Family Therapists and Professional Counselors—licensure of professional counselors) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The final-form rulemaking is authorized under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)).

C. *Background and Purpose*

The General Assembly enacted the act of December 21, 1998 (P. L. 1017, No. 136) (Act 136), amending the Social Work Practice Act (63 P. S. §§ 1901—1922) by expanding the State Board of Social Work Examiners to include marriage and family therapists and professional counselors. Act 136 also added three licensure groups: licensed clinical social workers, licensed marriage and family therapists (MFT) and licensed professional counselors. The purpose of these final-form regulations is two-fold: respond to the comments received on proposed rulemaking and incorporate the changes addressing definitions and licensure qualifications necessitated by Act 136.

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of the proposed rulemaking was published at 31 Pa.B. 1571 (March 24, 2001). Publication was followed by a 30-day public comment period during which the Board received comments from a large number of professional associations and organizations, colleges and universities and individuals. The following professional associations and organizations commented on the proposal: The Pennsylvania Social Work Coalition; The Pennsylvania Association for Marriage and Family Therapy; The Pennsylvania Alliance of Counseling Professionals (PACP); The Pennsylvania Counseling Association; The Pennsylvania Society for Clinical Social Work; The Pennsylvania Psychiatric Society; The National Association of Social Workers; Countryside Haven for Health; Pennsylvania Community Providers Association; Pennsylvania Council for Relationships; Case Management Society of America; Philadelphia Child and Family Therapy Training Center, Inc.; Reading Area Community College; Commission for Case Manager Certification; Eastern Baptist Theological Seminary; Moravian Theological Seminary; and Samaritan Counseling Center.

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The following is a response to the comments.

Sections 47.1, 48.1 and 49.1. Definitions.

HPLC, IRRC and the professional organizations had several comments and questions regarding the definition of "supervisor." Following their recommendations, the

Board rewrote this section in each of the chapters, and moved the qualifications for supervisors to a separate section (§ 47.1a (relating to qualifications for supervisors)) for clarity, and then referenced this section in the definition of "supervisor." Individuals qualify as supervisors if they are licensed with 5 years full-time experience, or are licensed in a related field with at least a master's degree and 5 years full-time experience. Additionally, the Board allows a window of time in which unlicensed individuals can qualify as supervisors if they too have 5 years of full-time experience. This provision recognizes the necessity for a transition period for individuals to become licensed and available to serve as supervisors. However, at the end of the transition period, individuals must be licensed to continue as a supervisor. If they are not licensed by that time, a supervisee would need to change supervisors and obtain one that is qualified in order to have their hours of supervised clinical experience continue to be credited. The transition period in Chapters 47 and 49 lasts until January 1, 2006. The Board treats MFT supervisors differently in Chapter 48 in that the transition period lasts until January 1, 2010. MFT supervisors have the additional requirement that they must be an American Association for Marriage and Family Therapy (AAMFT) approved supervisor or supervisor-in-training. Consequently, it will take longer for MFTs to have qualified supervisors, even though courses in MFT supervision are readily available. Therefore, the Board gives them additional time for a transition period. The Board also removed the requirement that MFTs be licensed during the transition period, as this was not their original intent, and the inclusion of the requirement was an oversight. Finally, the Board removed the language in § 47.1 regarding individuals licensed "by a statutory board or social work examiner of another state" This provision was not included in the definition of "supervisor" in Chapters 48 and 49 and IRRC questioned why similar language was not included in §§ 48.1 and 49.1. The Board determined that this provision should be removed from § 47.1 to be consistent with the other chapters.

The Board added a definition for "related field" in all three chapters because it is referenced in the qualifications for supervisor sections.

IRRC questioned whether the definition for "institution of higher education" was intended to be the same as the statutory definition in section 2 of the College and University Security Information Act (24 P. S. § 2502-2). This definition was taken from 22 Pa. Code § 33.102 (relating to definitions) and the Board has added this cross-reference to the definition.

The Board agreed with the recommendations made by HPLC, IRRC, professional organizations and individuals that the definition of "field closely related to the practice of professional counseling" be expanded, and used the language suggested by the PACP for Chapters 48 and 49. In Chapter 49, the definition is now "master's degree in a field closely related to the practice of professional counseling" or "doctoral degree in a field closely related to the practice of counseling" to take the emphasis off of limited fields and placed on the educational degree itself. The Board also added "human services" to this definition in Chapter 49 after receiving numerous comments from public commentators, the HPLC and IRRC.

IRRC noted that the format of the Purdon's citations are inconsistent in § 47.1 in the definitions of "licensed clinical social worker," "licensed social worker" and "provi-

sional licensed social worker." These citations have been corrected to reflect consistency in the final-form rule-making.

IRRC also questioned why there was no definition of the phrase "National accrediting agency" which is used in § 48.13(a)(3)(ii)(B) (relating to licensed marriage and family therapist). The Board considered this and determined it was unnecessary. This is a term of art created by the General Assembly and is defined as an accredited agency approved by the United States Department of Education. IRRC also questioned why there was not a definition for the phrase used in § 48.15(5)(iii)(v) and (vi) (relating to exemption from licensure examination) "in marriage and family therapy as defined in § 48.1." The entire phrase is "graduate level coursework in marriage and family therapy" which is defined in § 48.1. Accordingly, further clarification is unnecessary.

The Board followed IRRC's recommendation and included a definition for the acronym "MFT."

Section 48.2. Educational requirements.

IRRC commented that the word "should" in this section and the phrase "intended to" are indirect, and recommended more direct language. IRRC also noted that plural words were mismatched with singular words. It also recommended that the word "family" should be added to paragraph (2) to make it consistent with paragraph (3)(i). The Board revised the provisions in this section to incorporate IRRC's suggested changes.

IRRC also noted that the word "family" should be added to § 48.2(2) in order to be consistent with § 48.2(3)(i). The Board has incorporated this suggestion.

Section 49.2. Educational requirements.

The HPLC, IRRC and the PACP noted that many counselor preparation programs are currently unable to meet the clinical instruction requirement for 600 hours of supervised internship experience in paragraph (9). The Board followed the commentators' recommendations and included language that allows for a transition period of 5 years where this requirement may be satisfied by completion of a total of 6 semester hours or 9 quarter hours of practicum/internship experience.

Sections 47.11(f), 48.11(c) and 49.11(c). Licensure examination.

IRRC questioned why the applicant is responsible for directing that the testing organization send examination results and other information requested to the Board. The examinations in these sections are all from National testing organizations. In most cases, the individuals apply directly to the testing organization and direct which state they want their examination results sent to. In some instances, they might want scores sent to more than one state. Additionally, some individuals may have taken the examination to obtain their National certification and then direct the testing organization to send that score to the Board at a later date when they are applying for licensure. The regulations provide flexibility for individuals to take this examination whether it is under a National certification or whether it is for licensure by examination. The Board contracts with the testing organization for the use of the organization's examination. Consequently, the examination is available to applicants, but the applicant must still tell the organization what state the applicant wants the examination scores sent to for the previously stated reasons. The "other information" language is also in the regulation to provide flexibility. There are several different licensure groups under this

one Board, there are numerous testing organizations and the information provided by the testing organizations may differ. However, if additional information would be needed by the Board, the applicant would be provided notice of that on the application form or by letter. Finally, IRRC inquired what passing grade the Board will require on the respective examinations. The Board will accept the national passing score as determined by the professional testing agency.

The HPLC, IRRC and a large number of public commentators requested inclusion of the Advanced Alcohol and Other Drug Abuse Counselor Examination (AAODA) given by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse Inc. (IC & RC) and the Examination for Master Addictions Counselors given by the National Board for Certified Counselors (NBCC), as acceptable examinations for licensure as a professional counselor. The Board reviewed materials provided by both organizations and spoke with individuals regarding these examinations and decided to include them as approved licensure examinations.

Section 48.13(a). Licensed marriage and family therapist.

IRRC questioned the Board's intent in subsection (a)(3)(i) and (ii) regarding "graduate course work which is closely related to marriage and family therapy." First, this language is taken directly from the statute, and is thus consistent with the intent of the General Assembly, not the Board. Second, subsection (a)(3)(i)(A) and (B) and (ii)(A) and (B) explain what the General Assembly considers graduate course work which is closely related to marriage and family therapy. IRRC also questioned how much "graduate coursework in marriage and family therapy" the Board will require. The educational requirements for the graduate level coursework are set forth in § 48.2.

Sections 47.12c(b), 48.13(b) and 49.13(b).

The HPLC, IRRC and several professional organizations and individuals commented about these supervised clinical experience requirements. The Board has reworked the sections in all three chapters to reflect those comments and make all three chapters consistent.

IRRC and several professional organizations recommended the deletion of the word "diagnosis" from § 47.12c(b)(1)(i) (relating to licensed clinical social worker) and the addition of "family therapy and group therapy." The HPLC, IRRC and others recommended the addition of "individual therapy and group therapy" to § 48.13(b)(1) and the addition of "family therapy and group therapy" to § 49.13(b)(1) (relating to licensed professional counselor). The Board revised these provisions to incorporate these recommendations.

Subsection (b)(2) and (4) have been revised in each section to reflect the changes made to the definition of "supervisor" and the addition of the qualifications for supervisors section in each chapter. Additionally, following the recommendations of the HPLC, IRRC and professional organizations, these subsections have also been revised to eliminate the requirement that the first 1,800 hours be supervised by a licensed individual in that profession. As noted by IRRC, commentators stated that supervision by professionals in related fields is the norm in rural areas, and that there may not be sufficient numbers of supervisors available in rural areas to meet this requirement. The Board agrees, but still believes that at least 1,800 hours must be supervised by an individual licensed in the supervisee's profession because this is fundamental to the development of the supervisee in the

field. Therefore, 1,800 hours must still be supervised by an individual licensed in that profession; however, it does not need to be the first 1,800 hours.

IRRC and the Pennsylvania Society of Clinical Social Workers commented that the provision in subsection (b)(3) requiring disclosure of a supervisee status to the patient and obtaining written permission to discuss the patient's status with the supervisor was contrary to the current practice in agencies. Because communications between a psychotherapist and a client are privileged and may not be disclosed without consent from the client, the Board believes this requirement is necessary, both for the protection of the client and the protection of the supervisee.

IRRC and other commentators stated that the phrase in subsection (b)(4), "delegate, order and control" was not appropriate since many professionals currently work independently and do not have direct supervisors. The Board agrees and will replace this phrase with "oversee, direct, recommend and instruct." This also makes this section consistent with the definition of "supervision." This subsection also allows a supervisor to delegate responsibilities to another qualified individual. IRRC questioned what qualifications a delegate must have and what the limits were on the supervisory responsibility that could be delegated. A qualified substitute would be an individual meeting the qualifications as a supervisor. The Board revised the language in this provision to make this more clear. The phrase "temporarily unable to provide supervision" limits the delegation of supervision to those situations in which the supervisor is temporarily unable to provide the supervision. For example, if a supervisor were to leave for a 2 week vacation the supervisee should not have to sacrifice 2 weeks of supervised clinical experience. In this scenario, the supervisor could designate another supervisor to fill in for that 2 week period.

The HPLC, IRRC and some professional organizations recommended that subsection (b)(5) be amended to allow for group supervision. IRRC noted that commentators indicated that group supervision is a key process in the development of professional counselors and clinical social workers. However, it should not be mandatory, as currently provided for in § 48.13(b)(5). The Board agrees, and has amended this section in all three chapters to require that a supervisor meet with the supervisee for a minimum of 2 hours for every 40 hours of supervised clinical experience. At least 1 of the 2 hours shall be with the supervisee individually and in person, and 1 of the 2 hours may be with the supervisee in a group setting and in person. The Board chose a ratio of 2 hours for every 40 hours of supervised clinical experience because this is standard in the profession, and also consistent with the supervision requirements of other states (commonly 1 hour for every 20 or 25 hours of experience). The supervision is not required to be onsite. If onsite, the agency itself could provide the supervision or the supervision could be contracted out to be paid for either by the agency or by the supervisee. The Board will monitor the fiscal impact of this requirement in the future.

Subsection (b)(7) has been amended to reduce the 60-day written notice of the intent to terminate supervision to a 2 week notice as recommended by the HPLC, IRRC and several public commentators. Originally, the Board chose a 60 day notice requirement to provide the supervisee with an adequate amount of time to find another supervisor. However, commentators noted that most employment situations only require a 2 week notice, and it would be burdensome for a supervisor to be

required to continue supervision for several weeks after leaving the employment setting.

IRRC had several questions about subsection (b)(8). One of IRRC's three questions concerned why the experience must be in a single setting. The Board included this provision because there are individuals in many different work situations. The Board's primary goal is to ensure that supervisees are providing quality care to their patients as well as gaining valuable experience from the supervised activity. This provision requires an individual to work in one place long enough to establish a relationship with a client and a supervisor. If individuals frequently change work settings and supervisors, the quality of the supervised clinical experience will deteriorate. The Board believes that a 3 month setting (if the individual is working at least 30 hours per week but no more than 50 hours per week) or a 6 month setting (if the individual is working at least 15 hours per week) accomplishes this goal. However, this provision does not preclude an individual from working in more than one setting. For example, it would be acceptable for an individual to hold two part-time positions, so long as each setting meets the requirements of this provision. IRRC also questioned the Board's reasoning for limiting an applicant's work week to 40 hours. The Board believes that after a certain number of hours the learning experience, as well as the therapeutic service to clients, deteriorates. The Board did, however, increase the maximum hours per week from 40 to 50 hours.

IRRC also recommended that the regulation should clearly set a minimum limit of hours per year to count toward the 3 years experience, and more clearly set forth how the 3,600 hours of experience must be met. The Board agrees that the language currently in this provision (the last sentence regarding obtaining experience in the last 10 years, with at least half within the most recent 5 calendar years) is unclear. It amended this subsection by deleting the last sentence. The Board then added subsection (b)(9) which more clearly sets forth how the years and hours of experience must be accumulated. Subsection (b)(9) requires that the supervised clinical experience be completed in no less than 2 years and no more than 6 years, and that no less than 600 hours and no more than 1,800 hours may be credited in any 12-month period. Commentators indicated that provisions for accumulating supervised clinical experience need to allow flexibility for individuals who may want to take time off to have a baby or for those times when individuals are unable to find work. Additionally, the Board believes that there should be a limit on the number of hours acquired in any 12 month period for the reasons previously stated regarding the 50 hour work week. Subsection (b)(9) addresses both of these concerns by allowing an individual to acquire 600 hours per year over the course of 6 years (3,600 hours) but no more than 1,800 hours per year over the course of 2 years (3,600 hours).

Finally, the Pennsylvania Society for Clinical Social Work, the National Association of Social Workers and other public commentators expressed concern for licensed social workers who will have met 3,600 post masters degree hours of supervised clinical experience, but did not know what supervision would be required of them because the regulations had not been established when they were accumulating their 3,600 hours. These commentators recommended that the Board provide some transition period for these individuals so that they do not have to start their supervised experience again because this would place an unfair burden on them. The Board agrees

with this recommendation and acknowledges that MFTs and professional counselors will face the same problem. Therefore, the Board added subsection (c) to §§ 47.12c, 48.13 and 49.13. This subsection provides that, for hours of supervised clinical experience which were obtained within 5 years prior to the effective date of adoption of the final-form rulemaking, an applicant must present evidence of having acquired at least half of those hours under the supervision of an individual in the supervisee's profession. The applicant must also have acquired hours of supervision at a ratio of 2 hours of supervision per 40 hours of supervised clinical experience, half of which may be in group supervision and at least half of which must be provided by an individual in the supervisee's profession. Hours accumulated after the effective date of the final-form rulemaking would need to meet the requirements of subsection (b). Further, subsection (c) provides that the standards for supervisors in §§ 47.12d, 48.14 and 49.14 (relating to standards for supervisors) do not apply to this supervised clinical experience obtained prior to the effective date of adoption of the final-form regulations, because again, these standards would not have been known to the supervisors or the supervisees at the time they were accumulating the experience.

Sections 47.12d, 48.14 and 49.14. Standards for supervisors.

IRRC questioned whether paragraph (3) provides for disqualification of a supervisor subject to disciplinary action. This paragraph will apply only to supervisors whose licenses have been actively suspended or revoked. It does not apply to situations when an individual has simply been charged with a violation. The paragraph sets forth consequences that will follow in the event a supervisor's license has been so disciplined. The supervisor shall immediately notify the supervisee of the action and immediately cease supervision. Credit will be given for hours completed prior to the disciplinary action. The supervisee shall obtain a new supervisor to complete the required experience.

In paragraph (7), IRRC questioned how a supervisor would ensure that the supervisee's status was made known to each patient or client of the supervisee. Subsection (b)(3), in §§ 47.12c, 48.13 and 49.13 requires a supervisee to obtain written permission to discuss the client's case with the supervisor. A supervisor may simply ask to see the client's written permission.

IRRC also had several questions and comments regarding paragraphs (8), (9), (11), (13) and (14). It is an important part of supervision that a supervisor establish objectives for the supervisee (paragraph (8)). Further, the Board believes the supervisor should make recommendations to the supervisee bearing on further professional development, professional study and skills necessary for independent practice (paragraph (13)). There is no requirement in either paragraph (8) or (13) that the objectives and recommendations be in writing. However, supervisors will be asked to attest to compliance with the standards in §§ 47.12d, 48.14 and 49.14 on the verification of experience form which will accompany the supervisee's application for licensure. The supervisor must prepare written evaluations which delineate the supervisee's strengths and weaknesses, and review these on a quarterly basis with the supervisee (paragraph (14)). The Board believes it is necessary to discuss these evaluations on a quarterly basis so the supervisee can make steady progress in his professional development. Additionally, IRRC questioned where the "issues of practice and ethics" referred to in paragraph (9) could be

found. Presently, this paragraph refers to the standards of acceptable and prevailing practice in the professional community. However, this paragraph would also refer to any regulations the Board may promulgate at a later date implementing Board standards. Finally, IRRC and some public commentators questioned why paragraph (11) requires the supervisor to observe client-patient sessions of the supervisee and noted that if the supervisor and supervisee are in separate organizations this may be difficult to accomplish. However, this provision states that a supervisor shall observe the client patient sessions of the supervisee or review recordings of these sessions on a regular basis. The Board wrote this provision specifically so that a supervisor would have the choice of observing the sessions, or in the alternative, reviewing recordings of these sessions. The Board chose to use the word "recordings" without any modifiers. Therefore, any type of recording would be allowed whether it is audio, video or written. IRRC also stated that the requirement that these sessions be reviewed "on a regular basis" was vague. Therefore this paragraph has been amended to remove this phrase.

Sections 47.13b, 48.15 and 49.15. Exemption from licensure examination.

IRRC questioned whether the applications referred to in paragraph (2) are available and how applicants will know to apply before the February 19, 2002, deadline. (*Editor's Note:* The act of February 13, 2002 (P. L. 83, No. 4) extended the deadline for the filing of an application by 1 year.) Applications will be available upon adoption of the final-form rulemaking. Applicants will be notified by publication of the final-form rulemaking in the *Pennsylvania Bulletin* and on the Board's website. Additionally, professional organizations have been very involved in this process and will most likely post a notice on their websites as well. IRRC also inquired about the "required fee" and the need for the Board to establish these fees and include them in the final-form rulemaking. The fees have been established and the Board has submitted a proposed rulemaking package which is currently in the review process.

The HPLC, IRRC and several public commentators noted that the correct deadline for paragraph (3) is February 19, 2002, and it has been amended to reflect this change.

The HPLC, IRRC and many public commentators objected to the proof of practice requirements in paragraph (4). Specifically, they were concerned that the requirement that an applicant's practice consist of at least 15 hours per week, with 10 of those hours consisting of direct client contact, would unfairly exclude experienced professionals who practice in supervisory, administrative, academic or other capacity in which hours are irregular and the client contact minimal. This was not the Board's intent. Originally the hourly requirement was directed at individuals who work part-time in a client practice. However, the Board agrees with commentators that there are many different types of work environments, and a weekly, hourly requirement does not fit every situation. Therefore the Board has amended this paragraph by deleting the hourly requirement. Instead, the Board will simply review the applications to determine whether the applicant has demonstrated proof of practice within the given work environment.

The HPLC, IRRC and the PACP commented that the AAMFT does not approve continuing education courses, and recommended that the list of appropriate continuing education in § 48.15(5)(v) and (vi) be expanded. The

commentators also recommended expanding the list of appropriate continuing education in § 49.15(5)(iv)(C) to include courses offered by professional organizations and accredited institutions. The Board agrees, and amended these sections by incorporating language suggested by PACP. IRRC also questioned what the Board means by "master's level difficulty" in these sections. The purpose of the continuing education in these sections is to make up the difference between a master's degree that is not less than 36 semester hours and the 48 semester hours master's degree needed for licensure by exemption from examination. To that end, the continuing education for these sections should include materials that are the same level of quality and content as a course in a master's degree program. To allow anything less than a master's level difficulty would defeat the purpose.

In § 48.15(6), IRRC questioned whether "clinical membership status from AAMFT" and professional certification are the same thing. This is the only professional certification available to MFTs, and satisfies the requirement of the act. This section also lists the examinations approved by the Board for the purpose of licensure by exemption from examination (grandfathering) only. IRRC had questions about "examinations given by other states" and in what situations they would be acceptable to the Board. In addition to the Association of Marital and Family Therapy Regulatory Boards National MFT examination, the Board will accept an examination given by another state as a requirement for licensure in that state. At least one state (California) has its own examination for licensure. Consequently, there are qualified, experienced individuals now living and practicing in this Commonwealth who passed a state licensing exam rather than the National MFT exam. The Board believes the state licensing exams are equivalent to the National MFT exam for grandfathering purposes.

After receiving a large number of public comments, as well as recommendations from the HPLC and IRRC, the Board amended the list set forth in § 49.15(6) to include certifications for addictions counselors. The Board added the Certified Addiction Counselor credential with the AAODA given by IC & RC and also the Master's Addictions Counselor credential with the Examination for Master's Addictions Counselors given by the NBCC.

Sections 48.16 and 49.16. Application for licensure by reciprocity.

IRRC and some commentators noted that existing § 47.14 (relating to application for licensure by reciprocity) establishes the Board's reciprocity process for social workers licensed in other states, and cited the need for similar reciprocity provisions for clinical social workers, MFTs and professional counselors. The Board agrees and added §§ 48.16 and 49.16 which mirrors the existing language in § 47.14. There is no need to add a separate section for clinical social workers as § 47.14 will apply to them.

Miscellaneous Issues

IRRC commented that the statutory provision in section 2 of the act (63 P. S. § 1920.2) is an important safeguard to make sure licensees only practice in their area of expertise, and questioned why the Board did not include this provision in the amendments to Chapters 47—49. First, this final-form rulemaking only addresses definitions and licensure qualifications. Second, this is a statutory provision already existing in the act itself, and licensees must comply with this requirement. Therefore it is unnecessary to include it in the regulations.

IRRC also asked what recourse or safeguard there is for a supervisee if the Board determines a supervisor is not qualified? The regulations are very clear about both the qualifications for supervisors as well as the standards for supervisors. Supervisees will look to the regulations for guidance when choosing a supervisor. If a supervisee has questions about whether an individual meets the requirements for supervisors, the supervisee can write the Board with concerns prior to engaging that person as a supervisor. As with all licensing acts, it is ultimately the applicant's/licensee's responsibility to be in compliance with the statutory and regulatory requirements.

IRRC and some professional organizations made recommendations concerning typographical errors and section reference errors. These corrections have been made.

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

The Board reviewed this final-form rulemaking and considered its purpose and likely impact on the public and the regulated population under the directives of Executive Order 1996-1, "Regulatory Review and Promulgation." Additionally, in accordance with Executive Order 1996-1, the Board, in developing the rulemaking, solicited comments from the major professional associations representing the social workers and the new licensure classes.

F. *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking would have a fiscal impact and impose additional paperwork requirements on the Commonwealth in that there are three new licensure groups for which applications would be processed and fees would be received.

The amendments should not impose any legal, accounting or reporting requirements on the regulated community.

G. *Sunset Date*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 24, 2001, the Board submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 1571, to IRRC, the SCP/PLC and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the SCP/PLC and the HPLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered the comments received from IRRC, the HPLC and the public. The Board did not receive comments from the SCP/PLC.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on January 7, 2002, this final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 10, 2002, and approved the final-form rulemaking.

I. *Contact Person*

Further information may be obtained by contacting Clara Flinchum, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1389.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 280), know as Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 31 Pa.B. 1571.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this Preamble.

K. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapters 47—49, are amended by amending §§ 47.11 and 47.12, by adding §§ 47.12a and 47.12b and by deleting § 47.13 to read as set forth at 31 Pa.B. 1571; and by amending § 47.1 and by adding §§ 47.1a, 47.12c, 47.12d, 47.13b, 48.1—48.3, 48.11—48.16, 49.1—49.3 and 49.11—49.16 to read as set forth in Annex A.

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

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

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

THOMAS F. MATTA, Ph.D.,
Chairperson

(Editor's Note: The addition of §§ 48.16, 49.3 and 49.16 was not included in the proposed rulemaking at 31 Pa.B. 1571. For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 477 (January 26, 2002).)

Fiscal Note: Fiscal Note 16A-694 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF SOCIAL WORKERS

GENERAL PROVISIONS

§ 47.1. Definitions.

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

Accredited program—A graduate school social work or social welfare program offered by a school accredited by the Council on Social Work Education.

Accredited school—A graduate school accredited by the Council on Social Work Education.

Act—The Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. §§ 1901—1922).

Board—The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors.

Licensed clinical social worker—A person who is currently licensed as a licensed clinical social worker under section 7 of the act (63 P. S. § 1907).

Licensed social worker—A person who is currently licensed as a licensed social worker under section 7 of the act.

Provisional licensed social worker—A person who is currently licensed as a provisional licensed social worker under section 7 of the act.

Related field—Includes the fields of psychiatry, psychology, marriage and family therapy, counseling, art therapy, dance/movement therapy, drama therapy, music therapy, human services and counseling education.

Supervisee—An individual who is fulfilling the supervised experience requirement for licensure as a clinical social worker.

Supervision—The act of overseeing, directing or instructing the activity or course of action of another.

Supervisor—An individual providing supervision to a supervisee who meets the criteria in § 47.1a (relating to qualifications for supervisors).

§ 47.1a. Qualifications for supervisors.

To qualify as a supervisor, an individual shall meet one of the following criteria:

- (1) Hold a license as a clinical social worker and have 5 years of experience within the last 10 years as a clinical social worker.
- (2) Hold a license and a master's or doctoral degree in a related field, and have 5 years experience within the last 10 years in that field.
- (3) Until January 1, 2006, the following criteria:
 - (i) Practices as a clinical social worker.
 - (ii) Have 5 years experience within the last 10 years as a clinical social worker.
 - (iii) Hold a license to practice as a social worker in this Commonwealth.

LICENSURE

§ 47.12c. Licensed clinical social worker.

(a) *Conditions for licensure.* To be issued a license to hold oneself out as a licensed clinical social worker, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

- (1) Satisfied the general requirements for licensure of § 47.12 (relating to qualifications for licensure).
- (2) Holds a master's degree in social work or social welfare or a doctoral degree in social work from a school accredited by the Council on Social Work Education. An applicant who is a graduate of a foreign school shall submit to the Board an evaluation of foreign credentials performed by the Council on Social Work Education, which assesses the foreign credentials to be the equivalent of the curriculum policy of an accredited graduate school during the same time period, to be considered as

meeting the requirements of having earned a master's degree in social work or social welfare from an accredited school.

- (3) Is licensed under the act as a social worker.
 - (4) Passed the examination required by § 47.11 (relating to licensure examination).
 - (5) Completed at least 3 years or 3,600 hours of supervised clinical experience meeting the criteria in subsection (b) after completion of the master's degree in social work. Supervision for the clinical experience shall be provided by a supervisor as defined in §§ 47.1 and 47.1a (relating to definitions; and qualifications for supervisors).
- (b) *Supervised clinical experience.* Experience acceptable to the Board means experience as a supervisee in a setting that is organized to prepare the applicant for the practice of clinical social work consistent with the applicant's education and training.

- (1) At least one-half of the experience shall consist of providing services in one or more of the following areas:
 - (i) Assessment.
 - (ii) Psychotherapy.
 - (iii) Other psychosocial-therapeutic interventions.
 - (iv) Consultation.
 - (v) Family therapy.
 - (vi) Group therapy.

(2) Supervision for the clinical experience shall be provided by a supervisor as defined in §§ 47.1. and 47.1a. However, 1,800 hours shall be supervised by a supervisor meeting the qualifications in § 47.1a(1) and (3).

(3) A supervisee shall disclose his status as a supervisee to each patient and obtain written permission to discuss the patient's case with the supervisor.

(4) The supervisor shall oversee, direct, recommend and instruct the clinical social work activities of the supervisee.

(i) A supervisor who is temporarily unable to provide supervision shall designate another supervisor as a substitute.

(ii) Although the supervisor shall continue to bear the ultimate responsibility for supervision, those to whom supervisory responsibilities are delegated shall be individually responsible for activities of the supervisee performed under their supervision.

(5) The supervisor, or one to whom supervisory responsibilities have been delegated, shall meet with the supervisee for a minimum of 2 hours for every 40 hours of supervised clinical experience. At least 1 of the 2 hours shall be with the supervisee individually and in person, and 1 of the 2 hours may be with the supervisee in a group setting and in person.

(6) A supervisor shall supervise no more than 6 supervisees at the same time. If this provision creates an undue hardship on a supervisee, the supervisor and supervisee may request an exception to this provision. The request shall state, in writing, the reasons why this provision creates a hardship on the supervisee and why the supervisee is not able to obtain a supervisor who meets the requirements of this provision. Before making a determination, the Board may require a personal appearance by the supervisee and supervisor.

(7) A supervisor who wishes to terminate supervision during the training period shall give the supervisee 2 weeks written notice to enable the supervisee to obtain another qualified supervisor. A supervisor may not terminate supervision when termination would result in abandonment of the supervisee's client/patient.

(8) Supervised work activity will be counted toward satisfying the experience requirement only if it takes place in a single setting for either, first, at least 30 hours per week but no more than 50 hours per week during at least a 3 month period or, second, at least 15 hours per week for a period of at least 6 months.

(9) The supervised clinical experience shall be completed in no less than 2 years and no more than 6 years, except that no less than 600 hours and no more than 1,800 hours may be credited in any 12-month period.

(c) *Supervised clinical experience obtained within 5 years prior to March 2, 2002.*

(1) For hours of supervised clinical experience obtained within 5 years prior to March 2, 2002, the applicant shall present evidence of having acquired at least one-half of those hours under the supervision of a clinical social worker. The applicant shall also have acquired hours of supervision at a ratio of 2 hours of supervision per 40 hours of supervised clinical experience, one-half of which may be in group supervision and at least one-half of which shall be provided by a clinical social worker.

(2) Supervised clinical experience obtained under this subsection is not subject to § 47.12d (relating to standards for supervisors).

§ 47.12d. Standards for supervisors.

Supervisors, and those to whom supervisory responsibilities are delegated, under § 47.12c(a)(5) (relating to licensed clinical social worker) shall comply with the standards in this section. Supervisors will be asked to attest to compliance on the verification of experience form which shall accompany the supervisee's application for licensure. The Board reserves the right to require a supervisor by documentation or otherwise to establish to the Board's satisfaction that compliance occurred.

(1) The supervisor shall be qualified by training and experience to practice in the supervisee's areas of supervised practice.

(2) The supervisor may not be a relative of the supervisee by blood or marriage, may not be involved in a dual relationship which obliges the supervisor to the supervisee and may not engage in treatment of the supervisee.

(3) An individual whose license has been actively suspended or revoked by a licensing board will not qualify as a supervisor.

(i) If during the period of supervision, the supervisor's license is suspended or revoked, the supervisor shall immediately notify the supervisee and immediately cease supervision. Credit will be given for hours completed prior to the disciplinary action.

(ii) The supervisee shall obtain a new supervisor to complete the required experience.

(4) The supervisor shall be responsible for ensuring that the requirements of § 47.12c(b) are met.

(5) The supervisor shall be accessible to the supervisee for consultation.

(6) The supervisor shall be empowered to recommend the interruption or termination of the supervisee's activi-

ties in providing services to a client/patient and, if necessary, to terminate the supervisory relationship. Any hours accumulated for activities not approved by the supervisor will not count towards satisfying the 3,600 hours of supervised experience.

(7) The supervisor shall ensure that the supervisee's status as a supervisee is made known to the supervisee's patients, and also ensure that the supervisee has obtained written permission from each patient to discuss his case with the supervisor.

(8) The supervisor shall establish objectives to be achieved by the supervisee during supervision.

(9) The supervisor shall review issues of practice and ethics with the supervisee.

(10) The supervisor shall maintain notes or records of scheduled supervisory sessions and provide these records to the Board upon request.

(11) The supervisor shall observe client/patient sessions of the supervisee or review recordings of these sessions.

(12) In supervisory meetings, the supervisor shall discuss the supervisee's level of work—for example, the supervisee's areas of competence and areas of needed improvement.

(13) The supervisor shall provide the supervisee with recommendations bearing on further professional development, professional study and skills necessary for independent practice.

(14) The supervisor shall prepare written evaluations or reports of progress which shall delineate the supervisee's strengths and weaknesses. These evaluations or reports shall be discussed with the supervisee on at least a quarterly basis.

(15) The supervisor shall encourage the supervisee to work with professionals in other disciplines as indicated by the needs of each client/patient and shall periodically observe these cooperative encounters.

(16) The supervisor shall encourage the supervisee to access multidisciplinary consultation, as necessary.

§ 47.13b. Exemption from licensure examination—clinical social workers.

A license will be issued without examination to an applicant who meets the following requirements. The applicant shall have:

(1) Satisfied the general requirements for licensure in § 47.12 (relating to qualifications for licensure).

(2) Submitted an application provided by the Board and accompanied by the required fee.

(3) Submitted an application by February 19, 2002.

(4) Demonstrated proof of practice of clinical social work for at least 5 of the 7 years immediately prior to the date of application for license and that the practice was conducted in this Commonwealth. (*Editor's Note:* The act of February 13, 2002 (P. L. 83, No. 4) extended the deadline for the filing of an application by 1 year.)

(5) Successfully met the educational requirements of section 9(a)(4) of the act (63 P. S. § 1909(a)(4)). Continuing education submitted by an applicant under section 9(a)(4)(iii) of the act shall meet the following requirements:

(i) Master's level difficulty.

(ii) Direct practice social work subject matter.

(iii) Excludes courses in office management or practice building.

(6) Demonstrated holding the Board Certified Diplomat (BCD) certification issued by the American Board of Examiners in Clinical Social Work, or a Diplomat in Clinical Social Work (DCSW) Certification or Qualified Clinical Social Worker (QSCW) certification issued by the National Association of Social Workers.

CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS
GENERAL PROVISIONS

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GENERAL PROVISIONS

§ 48.1. Definitions.

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

AAMFT—The American Association for Marriage and Family Therapy.

AMFTRB—The Association of Marital and Family Therapy Regulatory Boards.

Accredited educational institution—A graduate school which is recognized as an institution of higher education or which is accredited by a regional accrediting association recognized by the Council for Higher Education Accreditation.

Act—The Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. §§ 1901–1922).

Board—The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors.

COAMFTE—The Commission on Accreditation for Marriage and Family Therapy Education.

Doctoral degree in marriage and family therapy—A doctoral degree which is awarded upon successful completion of a program in marriage and family therapy which is either accredited by COAMFTE, or, which includes coursework that meets the criteria in § 48.2 (relating to educational requirements).

Field closely related to the practice of marriage and family therapy—Includes the fields of social work, psychology, counseling, child development and family studies, medicine, nursing, pastoral counseling, ministry, theology, education and sociology.

Graduate level coursework in marriage and family therapy acceptable to the Board—Coursework that meets the criteria in § 48.2.

Institution of higher education—An independent institution of higher education, a community college, a State-related institution or a member institution of the State System. (See 22 Pa. Code § 33.102 (relating to definitions)).

Master's degree in marriage and family therapy—A master's degree which is awarded upon successful completion of a program in marriage and family therapy which is either accredited by COAMFTE, or, which includes coursework that meets the criteria in § 48.2.

MFT—Marriage and family therapist.

Planned program of 60 semester hours or 90 quarter hours which is closely related to marriage and family therapy—A program which includes coursework that meets the criteria in § 48.2.

Program recognized by a National accrediting agency—A master, doctor or postgraduate degree training program accredited by COAMFTE.

Related field—Includes the fields of psychiatry, psychology, social work, counseling, art therapy, dance/movement therapy, drama therapy, music therapy, human services and counseling education.

Supervisee—An individual who is fulfilling the supervised experience requirement for licensure.

Supervision—The act of overseeing, directing or instructing the activity or course of action of another.

Supervisor—An individual providing supervision to a supervisee who meets the criteria in § 48.3 (relating to qualifications for supervisors).

§ 48.2. Educational requirements.

Educational requirements are as follows:

(1) *Human development* (3 courses minimum-9 semester or 12 quarter or 135 didactic contact hours).

(i) Courses in this area shall provide knowledge of individual personality development and its normal and abnormal manifestations.

(ii) Coursework shall cover human development across the life span, including special issues that affect an individual's development (that is, culture, gender and human sexuality).

(2) *Marriage and family studies* (3 courses minimum-9 semester or 12 quarter or 135 didactic contact hours). Courses in this area shall be a fundamental introduction to family systems theory.

(3) *Marriage and family therapy* (3 courses minimum-9 semester or 12 quarter or 135 didactic contact hours).

(i) Courses in this area shall have a major focus on family systems theory and systemic therapeutic interventions.

(ii) This area shall provide a substantive understanding of the major theories of systems change and the applied practices evolving from each theoretical orientation.

(4) *Professional studies* (1 course minimum-3 semester or 4 quarter or 45 didactic contact hours).

(i) Courses in this area shall contribute to the professional development of the therapist.

(ii) Areas of study shall include the therapist's legal responsibilities and liabilities, professional ethics as a marriage and family therapist, professional socialization, and the role of the professional organization, licensure or certification legislation, independent practice and interprofessional cooperation.

(5) *Research* (1 course minimum-3 semester or 4 quarter or 45 didactic contact hours). Courses in this area shall assist students in understanding and performing research.

(6) *Practicum* (minimum 1 year, 300 hours of supervised direct client contact with individuals, couples and families).

§ 48.3. Qualifications for supervisors.

To qualify as a supervisor, an individual shall meet one of the following criteria:

(1) Hold a license as an MFT and have received certification as an approved supervisor or supervisor-in-training by the AAMFT.

(2) Hold a license and have at least a master's degree in a related field, and have 5 years experience within the last 10 years in that field.

(3) Until January 1, 2010, meet the following criteria:

(i) Practices as an MFT.

(ii) Have completed a 1-semester graduate course in MFT supervision (at least 30 contact hours) or the equivalent.

(iii) Have 5 years experience within the last 10 years as an MFT.

LICENSURE

§ 48.11. Licensure examination.

(a) The examination required as a prerequisite to being granted a license to hold oneself out as a licensed MFT is the AMFTRB National MFT Examination. It will be given annually and at other times deemed appropriate by the Board, in consultation with the third-party testing organization providing the examination to license applicants of the Board.

(b) The applicant shall apply to the testing organization for admission to the applicable licensure examination and shall pay the required fee at the direction of the testing organization.

(c) The applicant shall be responsible for directing that the testing organization send examination results and other information requested to the Board.

(d) The passing grade for the examination will be determined by the Board.

§ 48.12. General qualifications for licensure.

General qualifications and requirements for applicants for licensure are as follows:

(1) The applicant is of good moral character.

(2) The applicant has not been convicted of a felony, which shall include a judgment, an admission of guilt or a plea of *nolo contendere*, under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or of an offense under the laws of another jurisdiction, which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, 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 would not be expected to create a substantial risk of harm to the health and safety of the applicant's clients or the public or a substantial risk of further criminal violations.

(3) The applicant has submitted an application for licensure on forms furnished by the Board. The application for licensure may be obtained by contacting the

Board by mail at: State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-1389 or by e-mail at: socialwo@pados.state.pa.us.

(4) The applicant has submitted the required application licensure fee by check or money order, payable to the "Commonwealth of Pennsylvania."

(5) The applicant has submitted two certificates of recommendation on forms furnished by the Board.

(6) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.

§ 48.13. Licensed MFT.

(a) *Conditions for licensure.* To be issued a license to hold oneself out as a licensed MFT, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

(1) Satisfied the general requirements for licensure in § 48.12 (relating to general qualifications for licensure).

(2) Passed the examination required by § 49.11 (relating to licensure examination).

(3) Successfully met one of the following educational requirements:

(i) By March 2, 2007, has completed a planned program of 60 semester hours or 90 quarter hours of graduate coursework which is closely related to marriage and family therapy as defined in § 48.1 (relating to definitions), including one of the following:

(A) A master's degree in marriage and family therapy from an accredited educational institution.

(B) A master's degree in a field closely related to the practice of marriage and family therapy as defined in § 48.1 from an accredited educational institution, with graduate level coursework in marriage and family therapy as defined in § 48.1 and § 48.2 (relating to educational requirements) from an accredited educational institution or from a program recognized by a National accrediting agency as defined in § 48.1.

(ii) Successfully completed a planned program of 60 semester hours or 90 quarter hours of graduate coursework which is closely related to marriage and family therapy as defined in § 48.1 including one of the following:

(A) A 48 semester hour or 72 quarter hour master's degree in marriage and family therapy from an accredited educational institution.

(B) A 48 semester hour or 72 quarter hour master's degree in a field closely related to the practice of marriage and family therapy as defined in § 48.1 from an accredited educational institution with graduate level coursework in marriage and family therapy as defined in § 48.1 from an accredited educational institution or from a program recognized by a National accrediting agency as defined in § 48.1.

(iii) Holds a doctoral degree in marriage and family therapy as defined in § 48.1 from an accredited educational institution.

(iv) Holds a doctoral degree in a field closely related to marriage and family therapy as defined in § 48.1 from an accredited educational institution with graduate level coursework in marriage and family therapy as defined in

§ 48.1 from an accredited educational institution from a program recognized by a National accrediting agency as defined in § 48.1.

(4) Has met the following experience requirements:

(i) Individuals who meet the education requirements of paragraph (3)(i) or (ii), shall have completed at least 3 years or 3,600 hours of supervised clinical experience meeting the criteria in subsection (b), obtained after the completion of 48 semester hours or 72 quarter hours of graduate coursework. Supervision for the supervised clinical experience shall be provided by a supervisor as defined in § 48.1.

(ii) Individuals who meet the education requirements of paragraph (3)(iii) or (iv) shall have completed at least 2 years or 2,400 hours of supervised clinical experience which meets the criteria in subsection (b), 1 year or 1,200 hours of which was obtained subsequent to the granting of the doctoral degree. Supervision for the supervised clinical experience shall be provided by a supervisor as defined in § 48.1.

(b) *Supervised clinical experience.* Experience acceptable to the Board means experience as a supervisee in a setting that is organized to prepare the applicant for the practice of marriage and family therapy consistent with the applicant's education and training.

(1) At least one-half of the experience shall consist of providing services in one or more of the following areas:

- (i) Assessment.
- (ii) Couples therapy.
- (iii) Family therapy.
- (iv) Other systems interventions.
- (v) Consultation.
- (vi) Individual therapy.
- (vii) Group therapy.

(2) Supervision for the clinical experience shall be provided by a supervisor as defined in § 48.1 and § 48.3 (relating to definitions). However, 1,800 hours shall be supervised by a supervisor meeting the qualifications in § 48.3(1) or (3).

(3) A supervisee shall disclose his status as a supervisee to each patient and obtain written permission to discuss the patient's case with the supervisor.

(4) The supervisor shall oversee, direct, recommend and instruct the marriage and family therapy activities of the supervisee. (*Editor's Note:* The act of February 13, 2002 (P. L. 83, No. 4) deleted the requirement that clinical social workers have practice experience in the Commonwealth to be eligible for licensure without examination, formerly found at section 9 of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. § 1909(a)(3)).)

(i) A supervisor who is temporarily unable to provide supervision shall designate another supervisor as a substitute.

(ii) Although the supervisor shall continue to bear the ultimate responsibility for supervision, those to whom supervisory responsibilities are delegated shall be individually responsible for activities of the supervisee performed under their supervision.

(5) The supervisor, or one to whom supervisory responsibilities have been delegated, shall meet with the supervisee for a minimum of 2 hours for every 40 hours of

supervised clinical experience. At least 1 of the 2 hours shall be with the supervisee individually and in person, and 1 of the 2 hours may be with the supervisee in a group setting and in person.

(6) A supervisor shall supervise no more than 6 supervisees at the same time. If this paragraph creates an undue hardship on a supervisee, the supervisor and supervisee may request an exception to this paragraph. The request shall state, in writing, the reasons why this paragraph creates a hardship on the supervisee and why the supervisee is not able to obtain a supervisor who meets the requirements of this paragraph. Before making a determination, the Board may require a personal appearance by the supervisee and supervisor.

(7) A supervisor who wishes to terminate supervision during the training period shall give the supervisee 2 weeks written notice to enable the supervisee to obtain another qualified supervisor. A supervisor may not terminate supervision when termination would result in abandonment of the supervisee's client/patients.

(8) Supervised work activity will be counted toward satisfying the experience requirement only if it takes place in a single setting for either, first, at least 30 hours per week but no more than 50 hours per week during at least a 3-month period or, second, at least 15 hours per week for at least 6 months.

(9) The supervised clinical experience shall be completed in no less than 2 years and no more than 6 years, except that no less than 600 hours and no more than 1,800 hours may be credited in any 12-month period.

(c) *Supervised clinical experience obtained within 5 years prior to March 2, 2002.*

(1) For hours of supervised clinical experience obtained within 5 years prior to March 2, 2002, the applicant shall present evidence of having acquired at least one-half of those hours under the supervision of an MFT. The applicant shall also have acquired hours of supervision at a ratio of 2 hours of supervision per 40 hours of supervised clinical experience, one-half of which may be in group supervision and at least one-half of which shall be provided by an MFT.

(2) Supervised clinical experience obtained under this subsection is not subject to the requirements of § 48.14 (relating to standards for supervisors).

§ 48.14. Standards for supervisors.

Supervisors, and those to whom supervisory responsibilities are delegated, under § 48.13(a)(4) (relating to licensed marriage and family therapist) shall comply with this section. Supervisors will be asked to attest to compliance on the verification of experience form which shall accompany the supervisee's application for licensure. The Board reserves the right to require a supervisor by documentation or otherwise to establish to the Board's satisfaction that compliance occurred.

(1) The supervisor shall be qualified by training and experience to practice in the supervisee's areas of supervised practice.

(2) The supervisor may not be a relative of the supervisee by blood or marriage, may not be involved in a dual relationship which obliges the supervisor to the supervisee and may not engage in treatment of the supervisee.

(3) An individual whose license has been actively suspended or revoked by a licensing Board will not qualify as a supervisor.

(i) If during the period of supervision, the supervisor's license is suspended or revoked, the supervisor shall immediately notify the supervisee and immediately cease supervision. Credit will be given for hours completed prior to the disciplinary action.

(ii) The supervisee shall obtain a new supervisor in order to complete the required experience.

(4) The supervisor shall be responsible for ensuring that the requirements of § 48.13(b) are met.

(5) The supervisor shall be accessible to the supervisee for consultation.

(6) The supervisor shall be empowered to recommend the interruption or termination of the supervisee's activities in providing services to a client/patient and, if necessary, to terminate the supervisory relationship. Any hours accumulated for activities not approved by the supervisor will not count towards satisfying the 3,600 hours of supervised experience.

(7) The supervisor shall ensure that the supervisee's status as a supervisee is made known to the supervisee's patients, and also ensure that the supervisee has obtained written permission from each patient to discuss his case with the supervisor.

(8) The supervisor shall establish objectives to be achieved by the supervisee during supervision.

(9) The supervisor shall review issues of practice and ethics with the supervisee.

(10) The supervisor shall maintain notes or records of scheduled supervisory sessions and provide these records to the Board upon request.

(11) The supervisor shall observe client/patient sessions of the supervisee or review recordings of these sessions.

(12) In supervisory meetings, the supervisor shall discuss the supervisee's level of work—for example, the supervisee's areas of competence and areas of needed improvement.

(13) The supervisor shall provide the supervisee with recommendations bearing on further professional development, professional study and skills necessary for independent practice.

(14) The supervisor shall prepare written evaluations or reports of progress which shall delineate the supervisee's strengths and weaknesses. These evaluations or reports shall be discussed with the supervisee on at least a quarterly basis.

(15) The supervisor shall encourage the supervisee to work with professionals in other disciplines as indicated by the needs of each client/patient and shall periodically observe these cooperative encounters.

(16) The supervisor shall encourage the supervisee to access multidisciplinary consultation, as necessary.

§ 48.15. Exemption from licensure examination.

A license will be issued without examination to an applicant who meets the following requirements. The applicant shall have:

(1) Satisfied the general requirements for licensure of § 48.12 (relating to general qualifications for licensure).

(2) Submitted an application provided by the Board and accompanied by the required fee.

(3) Submitted an application by February 19, 2002. (*Editor's Note:* The act of February 13, 2002 (P. L. 83, No. 4) extended the deadline for the filing of an application by 1 year.)

(4) Demonstrated proof of practice of marriage and family therapy for at least 5 of the 7 years immediately prior to the date of application for license.

(5) Have successfully met one of the following education requirements:

(i) Have a doctoral degree in marriage and family therapy as defined in § 48.1 (relating to definitions) from an accredited educational institution.

(ii) Have a doctoral degree in a field closely related to the practice of marriage and family therapy as defined in § 48.1 from an accredited educational institution with graduate level coursework in marriage and family therapy acceptable to the Board as defined in § 48.1.

(iii) Have a master's degree of at least 48 semester hours or 72 quarter hours in marriage and family therapy as defined in § 48.1 from an accredited educational institution.

(iv) Have a master's degree of at least 48 semester hours or 72 quarter hours in a field closely related to marriage and family therapy as defined in § 48.1 from an accredited educational institution with graduate level course-work in marriage and family therapy acceptable to the Board as defined in § 48.1.

(v) Have a master's degree of less than 48 semester hours or 72 quarter hours but not less than 36 semester hours or 54 quarter hours in marriage and family therapy as defined in § 48.1 from an accredited educational institution and have within the past 10 years completed sufficient continuing education satisfactory to the Board to equal the number of hours needed to achieve a total of 48 semester hours or 72 quarter hours at a ratio of 15 continuing education hours equaling 1 semester hour. Continuing education satisfactory to the Board shall meet the following requirements:

(A) Master's level difficulty.

(B) Excludes courses in office management or practice building.

(C) Any course which is related to the practice of marriage and family therapy that has been approved for continuing education credit for licensed psychologists or licensed social workers, has been approved by the National Board for Certified Counselors, Inc. (NBCC), the Commission on Rehabilitation Counselor Certification (CRCC), the Certification Board for Music Therapists (CBMT), AATA, American Dance Therapy Association (ADTA) or the National Association for Drama Therapy (NADT), or has been offered by AAMFT or the Pennsylvania Association for Marriage and Family Therapy (PAMFT).

(vi) Have a master's degree of less than 48 semester hours or 72 quarter hours but not less than 36 semester hours or 54 quarter hours in a field closely related to the practice of marriage and family therapy as defined in § 48.1, from an accredited educational institution with graduate level coursework in marriage and family therapy as defined in § 48.1 and have within the past 10 years completed sufficient continuing education satisfactory to the Board to equal the number of hours needed to achieve a total of 48 semester hours or 72 quarter hours at a ratio of 15 continuing education hours equaling 1 semester hour. Continuing education satisfactory to the Board shall meet the following requirements:

(A) Master's level difficulty.

(B) Excludes courses in office management or practice building.

(C) Any course which is related to the practice of marriage and family therapy that has been approved for continuing education credit for licensed psychologists or licensed social workers, has been approved by NBCC, CRCC, CBMT, AATA, ADTA or NADT, or has been offered by AAMFT or PAMFT.

(2) Demonstrated holding clinical membership status from AAMFT and passing the AMFTRB National MFT Examination or an examination given by another state as a requirement for licensure in that state.

§ 48.16. Application for licensure by reciprocity.

(a) A license shall be issued based on reciprocity to an applicant who meets the following requirements. The applicant shall have:

(1) Satisfied the general requirements for licensure in § 48.12 (relating to general qualifications for licensure).

(2) Provided a letter from other jurisdiction registration boards where the licensed MFT is licensed, certifying licensure and reporting any violations.

(3) Demonstrated qualifications at least equal to the qualifications required by the act and this chapter.

(b) The Board will accept an applicant's examination grades taken in another jurisdiction, as furnished through the professional examination reporting service or from the jurisdiction which administered the examination, in lieu of taking the Commonwealth's required examination.

(1) The applicant shall show that the examination taken in the other jurisdiction is similar to the one offered by the Commonwealth and that the applicant passed the examination with a grade at least equal to the passing grade set by the Commonwealth.

(2) The other jurisdiction in which the applicant is licensed or certified must grant licenses by reciprocity to residents of this Commonwealth who possess a license as an MFT under the act and this chapter.

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS
GENERAL PROVISIONS

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GENERAL PROVISIONS

§ 49.1. Definitions.

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

Accredited educational institution—A graduate school which is recognized as an institution of higher education or which is accredited by a regional accrediting association recognized by the Council for Higher Education Accreditation.

Act—The Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. §§ 1901—1922).

Board—The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors.

CACREP—Council for Accreditation of Counseling and Related Programs.

Doctoral degree in a field closely related to the practice of professional counseling. Includes one of the following:

(i) Doctoral degrees in social work, psychiatry, psychology, art therapy, dance/movement therapy, drama therapy, music therapy, human services, counseling education and child development and family studies.

(ii) Another doctoral degree in any applied behavioral science which is awarded after successful completion of a master's degree in a field closely related to the practice of professional counseling and that includes advanced (beyond the master's level) clinical instruction and advanced (beyond the master's level) coursework in any five of the educational requirements in § 49.2(1)—(8) (relating to educational requirements).

Doctoral degree in professional counseling—A doctoral degree which is awarded upon successful completion of a program which includes coursework that meets and builds upon the educational requirements in § 49.2.

Institution of higher education—An independent institution of higher education, a community college, a State-related institution or a member institution of the State System. See 22 Pa. Code § 33.102 (relating to definitions).

Master's degree in a field closely related to the practice of professional counseling includes. One of the following:

(i) Degrees in social work, psychology, art therapy, dance/movement therapy, drama therapy, music therapy, human services, counseling education and child development and family studies.

(ii) A degree in any applied behavioral science that includes a practicum or internship and meets any five of the educational requirements in § 49.2(1)—(8).

Planned program of 60 semester hours or 90 quarter hours of graduate coursework in counseling or a field closely related to the practice of professional counseling—A program which includes coursework that meets the criteria in § 49.2.

Related field—Includes the fields of psychiatry, psychology, social work, marriage and family therapy, art therapy, dance/movement therapy, drama therapy, music therapy, human services and counseling education.

Supervisee—An individual who is fulfilling the supervised experience requirement for licensure.

Supervision—The act of overseeing, directing or instructing the activity or course of action of another.

Supervisor—An individual providing supervision to a supervisee who meets the criteria in § 49.3 (relating to qualifications for supervisors).

§ 49.2. Educational requirements.

Educational requirements are as follows:

(1) *Human growth and development*—(2 semester or 3 quarter hours) studies that provide an understanding of the nature and needs of individuals at all developmental stages.

(2) *Social and cultural foundations*—(2 semester or 3 quarter hours) studies that provide an understanding of issues and trends in a multicultural and diverse society.

(3) *Helping relationships*—(2 semester or 3 quarter hours) studies that provide an understanding of counseling and consultation processes.

(4) *Group work*—(2 semester or 3 quarter hours) studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills and other group approaches.

(5) *Career and lifestyle development*—(2 semester or 3 quarter hours) studies that provide an understanding of career development and related life factors.

(6) *Appraisal*—(2 semester or 3 quarter hours) studies that provide an understanding of individual and group approaches to assessment and evaluation.

(7) *Research and program evaluation*—(2 semester or 3 quarter hours) studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research.

(8) *Professional orientation*—(2 semester or 3 quarter hours) studies that provide an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards and credentialing.

(9) *Clinical instruction*—(Includes 100 clock hours of supervised practicum experience and 600 clock hours of supervised internship experience). The supervised internship experience shall begin after completion of the supervised practicum experience. Until March 2, 2007, this requirement may be satisfied by completion of a total of 6 semester hours or 9 quarter hours of practicum/internship experience.

§ 49.3. Qualifications for supervisors.

To qualify as a supervisor, an individual shall meet one of the following criteria:

(1) Holds a license as a professional counselor and has 5 years experience within the last 10 years as a professional counselor.

(2) Holds a license and has at least a master's degree in a related field and has 5 years experience within the last 10 years in that field.

(3) Until January 1, 2006, meet the following criteria:

(i) Practices as a professional counselor.

(ii) Has 5 years experience within the last 10 years as a professional counselor.

LICENSURE

§ 49.11. Licensure examination.

(a) The examination required as a prerequisite to being granted a license to hold oneself out as a licensed professional counselor shall be one of the following:

(1) The National Counselor Examination for Licensure and Certification (NCE) given by NBCC.

(2) The Certified Rehabilitation Counselor (CRC) Examination given by CRCC.

(3) The Art Therapy Credentials Board (ATCB) Certification Examination given by ATCB.

(4) The Board Certification Examination given by CBMT.

(5) The practice examination of psychological knowledge given by the North American Association of Master's in Psychology (NAMP).

(6) The Advanced Alcohol & Other Drug Abuse Counselor Examination (AAODA) given by the International

Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse Inc. (IC & RC/AODA).

(7) The Examination for Master Addictions Counselors (EMAC) given by NBCC.

(b) The applicant shall apply to the testing organization for admission to the applicable licensure examination and shall pay the required fee at the direction of the testing organization.

(c) The applicant shall be responsible for directing that the testing organization send examination results and other information requested to the Board.

(d) The passing grade for the examination will be determined by the Board.

§ 49.12. General qualifications for licensure.

General qualifications and requirements for applicants for licensure are as follows:

(1) The applicant is of good moral character.

(2) The applicant has not been convicted of a felony, which shall include a judgment, an admission of guilt or a plea of *nolo contendere*, under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or of an offense under the laws of another jurisdiction, which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, 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 would not be expected to create a substantial risk of harm to the health and safety of the applicant's clients or the public or a substantial risk of further criminal violations.

(3) The applicant has submitted an application for licensure on forms furnished by the Board. The application for licensure may be obtained by contacting the Board by mail at: State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-1389 or by e-mail at: socialwo@pados.state.pa.us.

(4) The applicant has submitted the application licensure fee required by the Board, by check or money order, payable to the "Commonwealth of Pennsylvania."

(5) The applicant has submitted two certificates of recommendation on forms furnished by the Board.

(6) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.

§ 49.13. Licensed professional counselor.

(a) *Conditions for licensure.* To be issued a license to hold oneself out as a licensed professional counselor, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

(1) Satisfied the general requirements for licensure of § 49.12 (relating to general qualifications for licensure).

(2) Passed the examination required by § 49.11 (relating to licensure examination).

(3) Successfully met one of the following education requirements:

(i) By March 2, 2002, has successfully completed a planned program of 60 semester hours or 90 quarter hours of graduate coursework in counseling or a field closely related to the practice of professional counseling as defined in § 49.1 (relating to definitions) including one of the following:

(A) A master's degree in professional counseling from an accredited education institution.

(B) A master's degree in a field closely related to the practice of professional counseling as defined in § 49.1 from an accredited educational institution.

(ii) Has successfully completed a planned program of 60 semester hours or 90 quarter hours of graduate coursework in counseling or a field closely related to the practice of professional counseling as defined in § 49.1 including one of the following:

(A) A 48 semester hour or 72 quarter hour master's degree in professional counseling from an accredited education institution.

(B) A 48 semester hour or 72 quarter hour master's degree in a field closely related to the practice of professional counseling as defined in § 49.1 from an accredited educational institution.

(iii) Holds a doctoral degree in counseling from an accredited educational institution.

(iv) Holds a doctoral degree in a field closely related to the practice of professional counseling as defined in § 49.1 from an accredited education institution.

(4) Has met the following experience requirements:

(i) Individuals who meet the educational requirements of paragraph (3)(i) or (ii), shall have completed at least 3 years or 3,600 hours of supervised clinical experience meeting the criteria in subsection (b), obtained after the completion of 48 semester hours or 72 quarter hours of graduate coursework. Supervision for the supervised clinical experience shall be provided by a supervisor as defined in § 49.1 and § 49.3 (relating to qualifications for supervisors).

(ii) Individuals who meet the educational requirements of paragraph (3)(iii) or (iv) shall have completed at least 2 years or 2,400 hours of supervised clinical experience meeting the criteria in subsection (b), 1 year or 1,200 hours of which was obtained subsequent to the granting of the doctoral degree. Supervision for the supervised clinical experience shall be provided by a supervisor as defined in §§ 49.1 and 49.3.

(b) *Supervised clinical experience.* Experience acceptable to the Board means experience as a supervisee in a setting that is organized to prepare the applicant for the practice of counseling consistent with the applicant's education and training.

(1) At least one-half of the experience shall consist of providing services in one or more of the following areas:

- (i) Assessment.
- (ii) Counseling.
- (iii) Therapy.
- (iv) Psychotherapy.
- (v) Other therapeutic interventions.
- (vi) Consultation.
- (vii) Family therapy.
- (viii) Group therapy.

(2) Supervision for the clinical experience shall be provided by a supervisor as defined in § 49.1. Eighteen hundred hours shall be supervised by a supervisor meeting the qualifications in § 49.3(1) and (3).

(3) A supervisee shall disclose his status as a supervisee to each patient and obtain written permission to discuss the patient's case with the supervisor.

(4) The supervisor shall oversee, direct, recommend and instruct the professional counseling activities of the supervisee.

(i) A supervisor who is temporarily unable to provide supervision shall designate another supervisor as a substitute.

(ii) Although the supervisor shall continue to bear the ultimate responsibility for supervision, those to whom supervisory responsibilities are delegated shall be individually responsible for activities of the supervisee performed under their supervision.

(5) The supervisor, or one to whom supervisory responsibilities have been delegated, shall meet with the supervisee for a minimum of 2 hours for every 40 hours of supervised clinical experience. At least 1 of the 2 hours shall be with the supervisee individually and in person, and 1 of the 2 hours may be with the supervisee in a group setting and in person.

(6) A supervisor shall supervise no more than 6 supervisees at the same time. If this paragraph creates an undue hardship on a supervisee, the supervisor and supervisee may request an exception to this paragraph. The request shall state, in writing, the reasons why this paragraph creates a hardship on the supervisee and why the supervisee is not able to obtain a supervisor who meets the requirements of this paragraph. Before making a determination, the Board may require a personal appearance by the supervisee and supervisor.

(7) A supervisor who wishes to terminate supervision during the training period shall give the supervisee 2 weeks written notice to enable the supervisee to obtain another qualified supervisor. A supervisor may not terminate supervision when termination would result in abandonment of the supervisee's client/patient.

(8) Supervised work activity will be counted toward satisfying the experience requirement only if it takes place in a single setting for either, first, at least 30 hours per week but no more than 40 hours per week during at least a 3-month period or, second, at least 15 hours per week for at least 6 months.

(9) The supervised clinical experience shall be completed in no less than 2 years and no more than 6 years, except that no less than 600 hours and no more than 1,800 hours may be credited in any 12 month period.

(c) *Supervised clinical experience obtained within 5 years prior to March 2, 2002.*

(1) For hours of supervised clinical experience obtained within 5 years prior to March 2, 2002, the applicant shall present evidence of having acquired at least one-half of those hours under the supervision of a professional counselor. The applicant shall also have acquired hours of supervision at a ratio of 2 hours of supervision per 40 hours of supervised clinical experience, one-half of which may be in group supervision and at least one-half of which shall be provided by a professional counselor.

(2) Supervised clinical experience obtained under this subsection is not subject to the requirements of § 49.14 (relating to standards for supervision).

§ 49.14. Standards for supervisors.

Supervisors, and those to whom supervisory responsibilities are delegated under § 49.13(a)(4) (relating to licensed professional counselors) shall comply with this section. Supervisors will be asked to attest to compliance on the verification of experience form which shall accompany the supervisee's application for licensure. The Board reserves the right to require a supervisor by documentation or otherwise to establish to the Board's satisfaction that compliance occurred.

(1) The supervisor shall be qualified by training and experience to practice in the supervisee's areas of supervised practice.

(2) The supervisor may not be a relative of the supervisee by blood or marriage, may not be involved in a dual relationship which obliges the supervisor to the supervisee and may not engage in treatment of the supervisee.

(3) An individual whose license has been actively suspended or revoked by a licensing Board will not qualify as a supervisor.

(i) If during the period of supervision, the supervisor's license is suspended or revoked, the supervisor shall immediately notify the supervisee and immediately cease supervision. Credit will be given for hours completed prior to the disciplinary action.

(ii) The supervisee shall obtain a new supervisor to complete the required experience.

(4) The supervisor shall be responsible for ensuring that the requirements of § 49.13(b) are met.

(5) The supervisor shall be accessible to the supervisee for consultation.

(6) The supervisor shall be empowered to recommend the interruption or termination of the supervisee's activities in providing services to a client/patient and, if necessary, to terminate the supervisory relationship. Hours accumulated for activities not approved by the supervisor will not count towards satisfying the 3,600 hours of supervised experience.

(7) The supervisor shall ensure that the supervisee's status as a supervisee is made known to the supervisee's patients, and also ensure that the supervisee has obtained written permission from each patient to discuss his case with the supervisor.

(8) The supervisor shall establish objectives to be achieved by the supervisee during supervision.

(9) The supervisor shall review issues of practice and ethics with the supervisee.

(10) The supervisor shall maintain notes or records of scheduled supervisory sessions and provide these records to the Board upon request.

(11) The supervisor shall observe client/patient sessions of the supervisee or review recordings of these sessions.

(12) In supervisory meetings, the supervisor shall discuss the supervisee's level of work—for example, the supervisee's areas of competence and areas of needed improvement.

(13) The supervisor shall provide the supervisee with recommendations bearing on further professional development, professional study and skills necessary for independent practice.

(14) The supervisor shall prepare written evaluations or reports of progress which shall delineate the

supervisee's strengths and weaknesses. These evaluations or reports shall be discussed with the supervisee on at least a quarterly basis.

(15) The supervisor shall encourage the supervisee to work with professionals in other disciplines as indicated by the needs of each client/patient and shall periodically observe these cooperative encounters.

(16) The supervisor shall encourage the supervisee to access multidisciplinary consultation, as necessary.

§ 49.15. Exemption from licensure examination.

A license will be issued without examination to an applicant who meets the following requirements. The applicant shall have:

(1) Satisfied the general requirements for licensure of § 49.12 (relating to qualification for licensure).

(2) Submitted an application provided by the Board and accompanied by the required fee.

(3) Submitted an application by February 19, 2002. (*Editor's Note:* The act of February 13, 2002 (P. L. 83, No. 4) extended the deadline for the filing of an application by 1 year.)

(4) Demonstrated proof of practice of professional counseling for at least 5 of the 7 years immediately prior to the date of application for license.

(5) Have successfully met one of the following educational requirements:

(i) Holds a doctoral degree in professional counseling from an accredited educational institution.

(ii) Holds a doctoral degree in a field closely related to the practice of professional counseling from an accredited educational institution.

(iii) Holds a master's degree of at least 48 semester hours or 72 quarter hours in professional counseling or a field closely related to the practice of professional counseling from an accredited educational institution.

(iv) Holds a master's degree of less than 48 semester hours or 72 quarter hours but not less than 36 semester hours or 54 quarter hours in professional counseling or a field closely related to the practice of professional counseling and has within the past 10 years completed sufficient continuing education satisfactory to the Board to equal the number of hours needed to achieve a total of 48 semester hours or 72 quarter hours at a ratio of 15 continuing education hours equaling 1 semester hour. Continuing education satisfactory to the Board shall meet the following requirements:

(A) Master's level difficulty.

(B) Excludes courses in office management or practice building.

(C) Any course approved by NBCC, CRC, CBMT, AATA, ADTA, the Pennsylvania Certification Board (PCB) or NADT, or which is approved for continuing education credit for licensed psychologists or licensed social workers, and which does not include a course in office management or practice building.

(6) Demonstrated holding one of the following:

(i) The National Certified Counselor (CC) certification from NBCC and having passed the National Counselor Examination given by the NBCC.

(ii) CRC certification from the CRCC and having passed the CRC Examination given by the CRCC.

(iii) The Registered Art Therapist (ATR) certification from the ATCB and having passed the Board Certification Examination given by the ATCB.

(iv) The Academy of Dance Therapists Registered (ADTR) certification from the ADTA and having passed the National Counselor Examination given by the NBCC.

(v) The Music Therapist-Board Certified certification from CBMT and having passed the Board Certification Examination given by the CBMT.

(vi) The Registered Drama Therapist (RDT) certification from NADT and having passed the National Counselor Examination given by NBCC.

(vii) The Certified Clinical Mental Health Counselor (CCMHC) certification from the Academy of Certified Clinical Mental Health Counselors (ACCMHC) and having passed the credentialing examination given by ACCMHC.

(viii) The Nationally Certified Psychologist (NCP) certification from the NAMP, and having passed the Practice Exam of Psychological Knowledge given by NAMP.

(ix) The Certified Addictions Counselor Credential (CAC) from PCB, and having passed the Advanced Alcohol and Other Drug Abuse Counselor Examination given by the IC & RC/AODA.

(x) The Master's Addictions Counselor Credential from NBCC, and having passed the Examination for Master's Addictions Counselors given by NBCC.

§ 49.16. Application for licensure by reciprocity.

(a) A license shall be issued based on reciprocity to an applicant who meets the following requirements. The applicant shall have:

(1) Satisfied the general requirements for licensure of § 49.12 (relating to general qualifications for licensure).

(2) Provided a letter from other jurisdiction registration boards where the licensed professional counselor is licensed, certifying licensure and reporting any violations.

(3) Demonstrated qualifications at least equal to the qualifications required by the act and this chapter.

(b) The Board will accept an applicant's examination grades taken in another jurisdiction, as furnished through the professional examination reporting service or from the jurisdiction which administered the examination, in lieu of taking the Commonwealth's required examination.

(1) The applicant shall show that the examination taken in the other jurisdiction is similar to the one offered by the Commonwealth and that the applicant passed the examination with a grade at least equal to the passing grade set by the Commonwealth.

(2) The other jurisdiction in which the applicant is licensed or certified must grant licenses by reciprocity to residents of this Commonwealth who possess a license as a professional counselor under the act and this chapter.

[Pa.B. Doc. No. 02-341. Filed for public inspection March 1, 2002, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 31]

Sales and Use Tax; Vending Machines

The Department of Revenue (Department), under the authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), amends § 31.28 (relating to vending machines).

Purpose of Rulemaking

With the enactment of the act of April 23, 1998 (P. L. 239, No. 45) (Act 45), the sale of items that are considered taxable when sold from other noneating establishments are subject to tax when sold from vending machines. Vending machines were added to the list of establishments which are not considered to be establishments from which ready to eat food or beverages are sold. Since a vending machine does not qualify as an eating establishment, only the sale of selected food and beverage items as listed in section 204(29) of the TRC (72 P. S. § 7204(29)) are taxable when sold from a vending machine. Taxable tangible personal property, other than food and beverages, is also subject to tax when sold from a vending machine. The sale of candy and gum from a vending machine continues to be exempt.

Explanation of Regulatory Requirements

Subsection (a) defines "juice beverage," "meal," "operator," "selected food and beverage items," "soft drink" and "vending machine" for purposes of § 31.28. Subsection (b) relates to registration and provides that an operator who sells taxable tangible personal property or selected food and beverage items through a vending machine is required to obtain a Sales, Use and Hotel Occupancy Tax license for the purpose of collecting and remitting tax to the Department.

Subsection (c) requires that a sign or sticker stating the name and address of the operator be conspicuously displayed on the vending machine. Subsection (d) explains the scope of taxation for the sale of tangible personal property and food or beverages from a vending machine.

Subsection (e) provides that the sale of selected food and beverage items dispensed by means of a vending machine located on the premises of a school or church is exempt from tax. The sale of tangible personal property other than food or beverages, dispensed by means of a vending machine located on the premises of a school or church, is subject to tax.

Subsection (f) provides that Sales Tax collected by the operator upon taxable property, including selected food and beverage items, shall be reported and remitted to the Department. Subsection (g) explains the taxability of the purchase or lease of vending equipment and supplies.

Affected Parties

This final-form regulation may affect vending machine operators.

Comment and Response Summary

Notice of proposed rulemaking was published at 29 Pa.B. 3738 (July 17, 1999). This proposal is being adopted with changes as set forth in Annex A.

The Department received no public comments. No comments were received from the House Finance Committee or the Senate Finance Committee. The Depart-

ment received comments from the Independent Regulatory Review Commission (IRRC).

The amendments to the proposed rulemaking in response to the comments from IRRC are as follows:

(1) The Department's proposed definition of "soft drink" in subsection (a) provided a simplistic definition; however, IRRC commented that the definition was not as complete as the definition in section 201(a) of the TRC (72 P. S. § 7201(a)). IRRC recommended that the Department include a citation to the statutory definition in the final-form regulation.

The Department has amended the definition to incorporate the statutory definition; however, the wording of the statute was added because it was felt that the statutory citation would not provide sufficient guidance to the taxpayers utilizing the regulation. The Department intentionally did not reiterate all the items that the term "soft drink" does not include because the inclusion of these items could create confusion when read in conjunction with the definition of "selected food and beverage items." For example, coffee is excluded from the definition of "soft drink" yet is taxable as a hot beverage under "selected food and beverage items."

(2) In reading the definition for "selected food and beverage items," IRRC indicated that the Department should clarify whether the microwavable items sold are taxable if an operator does not provide a microwave. The Department agrees with IRRC's comment and has amended subsection (d)(4)(ii)(N), which provides examples of exempt food and beverages, to include cold food for which heating facilities are not provided.

(3) IRRC raised two concerns regarding subsection (d)(2) relating to sales of taxable property other than food and beverages. The subsection provides that the operator of a vending machine can display a sign or sticker indicating the purchase price and amount of tax for each taxable item. IRRC indicated that the Department should clarify whether the posting of this information was optional or mandatory. IRRC also noted that paragraphs (2) and (3) address the requirements for taxing certain items but were not structured in a consistent manner.

To address these concerns, the Department reformatted paragraph (2) to parallel the structure of paragraph (3). In addition, the Department reworded the provision and added an example to clarify that the displaying of a sign or sticker with the purchase price and tax is optional. Paragraph (2) was further amended at the direction of the Office of Attorney General. Discussion of change is addressed at the end of this section of the Preamble.

(4) IRRC identified an error in the proposal in subsection (d)(4)(ii)(I), which lists juice drinks as an item that is not taxable when sold from a vending machine. The listing should have referenced juice beverages. The Department made the correction in the final-form regulation.

(5) The listing of items that are not taxable when sold from a vending machine in subsection (d)(4)(ii) includes prepackaged from water-based products. For clarity, IRRC suggested the Department should provide examples of these products. The Department agrees with IRRC's suggestion and amended the clause accordingly.

(6) Proposed subsection (e)(1) provided that, "Sales of selected food and beverage items dispensed by means of a vending machine located on the premises of a school or church are exempt from tax, if the sales are made in the ordinary course of the activities of the school or church."

IRRC questioned when sales would not be considered in the ordinary course of the church or school's activities. The Department reviewed this provision and concluded that the wording "if the sales are made in the ordinary course of the activities of the school or church" is not necessary and deleted it from the final-form regulation.

During its internal review of the regulation, the Department made stylistic changes throughout the regulation for clarity and consistency.

During its review of the final-form regulation, the Office of Attorney General questioned the Department's position in § 31.28(d)(2)(ii) which provided that the amount required to be inserted in the machine is presumed to be the purchase price of the taxable item of property; however, the operator can rebut this presumption by displaying a sign or sticker on the vending machine which sets forth that portion of the amount required to be inserted which relates to the purchase price of the item and amount of Sales Tax. The Office of Attorney General indicated that as drafted, the sticker requirement was arbitrary, excessively burdensome and unrelated to the administration of the tax collection process.

The Department met with representatives from the Office of Attorney General to discuss the provision and to explain the underlying intent of the language. At its direction, the Department amended § 31.28(d)(2)(ii) in a way that preserves the Department's original intent and does not unnecessary burden the vending machine operator.

Fiscal Impact

The Department determined that the amendment will have no fiscal impact on the Commonwealth. Rather, the amendment clarifies the Department's policy on the taxation of items dispensed from a vending machine.

However, the change in policy required by the Commonwealth Court decision in *CRH Catering Co., Inc. v. Commonwealth*, 539 A.2d 38 (Pa. Cmwlth. 1988) has had a negative impact on revenue. The policy has been in effect since the 1988-89 fiscal year. The fiscal impact of the change in policy was estimated to be about \$0.4 million for fiscal year 1998-99.

This final-form regulation also sets forth the Department's interpretation of Act 45 which amended section 209(29) of the TRC (72 P. S. § 7209(29)) relating to Sales Tax on sales from vending machines. This amendment is estimated to reduce the fiscal year 1999-00 (the first full year of revenue loss) General Fund by \$15.4 million.

Paperwork

The final-form rulemaking will not require additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-form rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. The final-form rulemaking is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the final-form rulemaking is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 30, 1999, the Department

submitted a copy of the notice of proposed rulemaking, published at 29 Pa.B. 3738, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation. In preparing this final-form regulation, the Department has considered the comments received from IRRC, the Committees and the public.

This final-form regulation were deemed approved by the Committees on June 14, 2000, and was approved by IRRC on June 22, 2002, in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Findings

The Department finds that:

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

(2) The amendment is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Department, 61 Pa. Code Chapter 31, are amended by amending § 31.28 to read as set forth in Annex A.

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

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

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

LARRY P. WILLIAMS,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 3534 (July 8, 2000).)

Fiscal Note: Fiscal Note 15-408 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 31. IMPOSITION

SPECIALIZED TYPES OF BUSINESS OR PROPERTY

§ 31.28. Vending machines.

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

Juice beverage—A liquid beverage containing at least 25% by volume natural fruit or vegetable juice.

Meal—A variety of foods prepared for immediate consumption and sold as a single item.

Operator—A person who makes sales of tangible personal property, including food or beverages, primarily through a vending machine.

Selected food and beverage items—Soft drinks; meals; hot or cold sandwiches, including cold meat sandwiches, cheese sandwiches, hoagies, hot dogs, hamburgers and similar sandwiches; brewed coffee; hot beverages such as hot chocolate, hot tea and similar items; food from salad bars; pizza, soup and other food items dispensed from the vending machine in a heated form or which are served in cold form and normally heated in an oven or microwave provided by the operator.

Soft drink—

(i) All nonalcoholic beverages, whether carbonated or not, such as soda water; ginger ale; Coca Cola; lime cola; Pepsi Cola; Dr. Pepper; fruit juice when plain or carbonated water, flavoring or syrup is added; carbonated water; orangeade; lemonade; root beer or all preparations, commonly referred to as "soft drinks" of whatsoever kind, and are further designated as including all beverages, commonly referred to as "soft drinks," which are made with or without the use of any syrup.

(ii) The term does not include a juice beverage.

Vending machine—A device which mechanically dispenses tangible personal property, including food and beverages, for a purchase price.

(b) *Registration.* An operator who sells taxable tangible personal property or selected food and beverage items through a vending machine is required to obtain a Sales, Use and Hotel Occupancy Tax License for the purpose of collecting and remitting tax to the Department. One license is sufficient for any number of machines operated by the same operator.

(c) *Identification requirement.* A sign or a sticker setting forth the name and address of the operator shall be conspicuously displayed on the vending machine.

(d) *Scope.*

(1) *General.* The sale of food or beverages from a vending machine may be taxable or exempt depending upon the type of food or beverage or upon the basis of the location from which the food or beverage is sold. Since a vending machine does not qualify as an eating establishment, only the sale of selected food and beverage items as defined in subsection (a), is taxable when sold from a vending machine. Taxable tangible personal property, other than food and beverages, is also subject to tax when sold from a vending machine.

(2) *Sales of taxable tangible personal property, other than selected food and beverage items.*

(i) *Imposition.* The sale of taxable tangible personal property, such as cigarettes, combs, toys, pencils and similar items is subject to tax upon the purchase price of each individual item.

(ii) *Collection of tax.* The vending machine operator is required to collect tax upon the purchase price of each individual taxable item of property. The amount to be inserted in the machine is presumed to include the amount of tax to be collected for each item. If, however, the Department determines upon audit that the vending machine operator has not reported and remitted tax in accordance with this section and the TRC, the presumption will not apply, and the Department will assess the

vending machine operator as though the amount inserted into the machine was the purchase price without the tax.

Example 1: "A" operates a vending machine from which pencils may be purchased. To obtain a pencil, the purchaser is required to insert 35¢ into the machine. The tax is properly reported and remitted as follows: the purchase price is 33¢ and tax is 2¢.

Example 2: "A" operates a vending machine from which pencils may be purchased. To obtain a pencil, the purchaser is required to insert 35¢ into the machine. "A" reports and remits no Sales Tax. When "A" is audited by the Department, he is assessed as follows: purchase price 35¢, tax 3¢.

(3) *Sales of selected food and beverage items.*

(i) *Imposition.* The sale of selected food and beverage items, as defined in subsection (a), from a vending machine is subject to tax upon the total receipts from the sale of the items.

(ii) *Collection of tax.* An operator of a vending machine from which selected food and beverage items are sold is required to collect and remit Sales Tax at the rate of 6% upon the sale of the selected food and beverage items. Sales Tax shall be computed by the following formula: (Total receipts from the sale of selected food and beverage items ÷ 1.06) × .06 = Sales Tax due.

Example:

"A" operates a vending machine from which milk, coffee and crackers are sold. "A" removes \$100 from the machine representing the following sales: milk—\$50, coffee—\$25 and crackers—\$25. Coffee is a selected food and beverage item. Milk and crackers are not. "A" remits tax in the amount of \$1.42 calculated as follows: $(\$25 \div 1.06) \times .06 = \1.42 .

(4) *Sales of food and beverages other than selected food and beverage items.*

(i) The sales of food and beverages of the type described in this paragraph are not subject to Sales Tax when sold from a vending machine.

(ii) Examples of exempt food and beverages include:

- (A) Baked goods, such as cakes, pies, cookies.
- (B) Potato chips.
- (C) Corn chips.
- (D) Cheese balls.

(E) Pretzels.

(F) Crackers.

(G) Milk products, such as plain milk, chocolate milk, malted milk.

(H) Ice tea and iced coffee.

(I) Juice beverages.

(J) Unflavored water.

(K) Prepackaged ice cream products, such as ice cream cakes and pies, popsicles, sundaes and novelties.

(L) Prepackaged frozen water-based products, such as ice pops, fudge pops, fruit ice, bomb pops and similar items.

(M) Candy and gum.

(N) Other food and beverages not defined as a selected food and beverage item, including cold food for which heating facilities are not provided.

(e) *Vending machine sales on school or church property.*

(1) Sales of selected food and beverage items dispensed by means of a vending machine located on the premises of a school or church are exempt from tax.

(2) Sales of tangible personal property, other than food or beverages, which are dispensed by means of a vending machine located on the premises of a school or church, are subject to tax.

(f) *Remitting tax to the Department.* Sales Tax collected by the operator upon the sale of taxable tangible personal property, including selected food and beverage items, shall be reported and remitted to the Department.

(g) *Purchase or lease of vending equipment and supplies.*

(1) The purchase or lease of vending equipment, including parts, accessories, such as tables, chairs, microwaves, straw and napkin dispensers and other similar items, and supplies, such as straws, napkins, stirrers, eating utensils and similar items, is subject to tax.

(2) Wrapping supplies, such as plastic, paper and styrofoam cups, bowls or similar containers used to wrap property which is sold, are exempt from tax.

[Pa.B. Doc. No. 02-342. Filed for public inspection March 1, 2002, 9:00 a.m.]