RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CH. 109]

Corrective Amendment to 25 Pa. Code § 109.301 (2)(i)(A)

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25 Pa. Code § 109.301(2)(i)(A) (relating to general monitoring requirements) as deposited with the Legislative Reference Bureau and the text published at 32 Pa.B. 3894, 3902 (August 10, 2002) and the text published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 335). The heading for the table in clause (A) was inadvertently changed on final publication of the amendment in the *Pennsylvania Bulletin*. The correct heading should be Samples/Week.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code § 109.301(2)(i)(A). The corrective amendment to 25 Pa. Code § 109.301(2)(i)(A) is effective as of August 10, 2002, the date the defective text was printed in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 109.301(2)(i)(A) appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 109. SAFE DRINKING WATER

Subchapter C. MONITORING REQUIREMENTS

§ 109.301. General monitoring requirements.

The monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference. Public water suppliers shall monitor for compliance with MCLs and MRDLs in accordance with the requirements established in the National Primary Drinking Water Regulations, except as otherwise established by this chapter unless increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

* * * * *

(2) *Performance monitoring for unfiltered surface water and GUDI.* A public water supplier using unfiltered surface water or GUDI sources shall conduct the following source water and performance monitoring requirements on an interim basis until filtration is provided, unless increased monitoring is required by the Department under § 109.302:

(i) Except as provided under subparagraphs (ii) and (iii), a public water supplier:

(A) Shall perform fecal coliform or total coliform density determinations on samples of the source water immediately prior to disinfection. Regardless of source water turbidity, the minimum frequency of sampling for fecal or total coliform determination may be no less than the following:

System Size (People)	*Samples/Week*
<500	1
500—3,299	2
3,300—10,000	3
10,001—25,000	4
25,001 or more	5

* * * * *

[Pa.B. Doc. No. 03-2310. Filed for public inspection December 5, 2003, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PODIATRY

[49 PA. CODE CH. 29]

Continuing Education

The State Board of Podiatry (Board) amends Chapter 29 by listing a preapproved course provider from which licensees can obtain the requisite amount of continuing education credits in a biennial period to read as set forth in Annex A. The Board also amends Chapter 29 by instituting fees for reviewing continuing education waivers or extension requests and reinstatement of license requests following inactive or expired status to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The final-form rulemaking is authorized under sections 9, 9.1 and 15 of the Podiatry Practice Act (act) (63 P. S. §§ 42.9, 42.9a and 42.15).

C. *Background and Purpose*

The final-form rulemaking was precipitated by problems that occurred during the biennial renewal period ending December 31, 2000. During that renewal period, approximately nine continuing education providers filed applications for course approval with the Board after the October 18, 2000, Board meeting. The conferences had already taken place, but had not yet been approved as providing acceptable continuing education credits for the

Board's licensees. Those applications could not be considered by the Board until the following meeting, which took place in January 2001, after the renewal period had already passed. This created an enormous problem for licensees who had relied on the credits they received from those conferences to effectuate their biennial registration.

To avoid this problem during the ensuing biennial renewal periods, the Board amends its continuing education regulations to include a preapproved course provider. Instituting the Council on Podiatric Medical Education (CPME) as a preapproved provider would further eliminate the Board's task of sifting through lengthy course applications at each meeting and voting whether to approve or disapprove the individual courses.

The proposed rulemaking was published at 32 Pa.B. 5759 (November 23, 2002).

D. *Description of Final-Form Rulemaking*

Section 29.13 (relating to fees) is amended by adding the following fees:

Application	*Current Fee*	*Amended Fee*
Review of continuing education waiver or extension requests	0	$50
Review of reinstatement of license requests following inactive or expired status	0	$25

Section 29.60 (relating to definitions) is added to define "biennium," "certification," "clock hour" and "provider."

Section 29.61 (relating to requirements for biennial renewal and eligibility to conduct educational conferences) adds the requirements for biennial renewal, emphasizing that it is the responsibility of the licensee to ensure that the licensee has met the required 30 hours of credit per biennium. Applicants for license renewal are required to provide to the Board a signed statement certifying that the licensee has complied with the continuing education requirements. In the past, problems with noncompliance have arisen because licensees have not been diligent in complying with the Board's regulations that only courses approved by the Board will be accepted as continuing education credit. Additionally, subsection (a) informs the licensee that a maximum of 10 clock hours of computer/Internet, self-study magazine or journal article courses will be accepted by the Board.

Sections 29.62 and 29.63 (relating to length of time of educational conferences; and curriculum of educational conferences) are amended to provide that educational conferences shall offer at least 1 hour of instruction, instead of the current 4 hours. This is intended to give both licensees and providers increased flexibility.

The most important addition to the Board's continuing education requirements is § 29.63a (relating to preapproved course provider). Courses or programs offered or approved by the CPME will be accepted by the Board for continuing education credit.

Section 29.64 (relating to applications for approval of educational conferences) is amended to approve educational conferences by having the applicant—licensee or provider—submit an application for program/course approval if the licensee chooses to attend a program that is not offered by the preapproved provider or if a provider would like to gain Board approval for a particular program it is offering. Section 29.64(b) is amended by requiring detailed information about the prospective course. The Board felt that a copy of the program brochure or the course syllabus, or both, would be sufficient.

Section 29.67 (relating to approval or disapproval of educational conferences) provides that the Board will notify the designated person stated on the application for course/conference approval as to the approval or disapproval of the application within 30 days of action taken by the Board at the next scheduled Board meeting. This amends the current regulation which requires the Board to take action on an application within 30 days of receipt of the application. The amendment is necessary because the Board meets bimonthly. When an application for approval of an educational course or conference arrives within a month subsequent to a meeting, the Board is unable to meet the current 30 day requirement because the Board meets every 60 days. With the amendment, even if the application arrives right after a Board meeting, the Board has 30 days from the time of the next board meeting to notify the designated person stated on the application whether or not the course/conference has been approved.

Section 29.68 (relating to continuing education exemptions) adds a provision allowing for waivers of the continuing education requirements for serious illness or other demonstrated hardship. In addition, a fee shall be assessed for review of waiver or extension requests. Section 29.13 is amended to reflect this new fee.

Section 29.69 (relating to continuing education requirement for biennial renewal of inactive and lapsed licenses) states that a licensee seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennium. In addition, a fee of $25 shall be assessed for reactivation of an inactive or lapsed license. This fee is also reflected in § 29.13.

Section 29.69a (relating to disciplinary action authorized) notifies the licensee that submission of fraudulent information to the Board or failure to complete the required number of continuing education credits may result in disciplinary action. This section was published as § 29.70 in the proposed rulemaking and is renumbered in the final-form rulemaking.

E. *Comment and Regulatory Review of Proposed Rulemaking*

Publication of the proposed rulemaking was followed by a 30-day public comment period during which the Board received no public comments.

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 Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The following are the comments submitted by the HPLC and IRRC and the Board's responses:

1. In response to the HPLC's suggestion that course providers be required to retain documentation of attendance at courses as a backup means to authenticate attendance in the event a licensee's documentation is lost or comes into question, the Board will retain § 29.65 (relating to compilation of official attendance list).

2. The HPLC requested an explanation as to how continuing education will be accomplished through computer/Internet, magazine or journal article courses.

The Commonwealth and Texas are the only two states that currently do not accept these kinds of courses for continuing education. To receive credit through an Internet course, a licensee must pay a fee to log into the

course, provide a license number, complete the entire course and take a self-examination, which is then submitted to the CPME-approved provider. After a licensee has read a magazine or journal article, a self-examination must be completed, which is then sent to the CMPE approved provider along with a fee.

3. The HPLC and IRRC requested an explanation as to why American Medical Association (AMA) and American Osteopathic Association (AOA) courses relevant to the practice of podiatry, which appeared in the exposure draft, were excluded from the proposed rulemaking.

In response to the exposure draft of the amendments, the executive director of the Pennsylvania Podiatric Medical Association (PPMA) sent a persuasive letter to the Board in which objected to the inclusion of the AMA and the AOA courses. The following reasons were cited:

(a) The American Podiatric Medical Association works closely with the CPME to assure that the substance and presentation of a program granting continuing education credits is in compliance with the requirements of the CPME.

(b) The PPMA has, in the past, run programs with the Pennsylvania Medical Society, which have not had required attendance tracking efforts.

(c) Attendance verification is one of the hallmarks of the CPME programs.

(d) The operation of continuing education programs through the CPME is a source of income to benefit the profession and its continued ability to fund research and maintain quality standards.

In 2002, the CPME approved 68 sponsors. Once a sponsor is approved under the CPME criteria, the sponsor may offer as many courses as it likes. The vast array of courses approved by the CPME encourages licensees to take courses that have already been approved.

However, the Board agrees with the HPLC and IRRC that courses provided by the AMA and the AOA may be of educational value to podiatrists. That the CPME is a preapproved provider does not preclude licensees or AMA/AOA sponsors from seeking course approval from the Board under § 29.64.

4. IRRC recommended that the definition of "clock hour" be changed to "60 minutes of instruction, exclusive of coffee breaks, lunches, visits to exhibits and the like." The Board has complied with this recommendation in § 29.60.

5. IRRC commented that if § 29.61(c) requires applicants for license renewal to provide a signed statement certifying compliance with the continuing education requirements "on forms approved by the Board," then the name of the "form" and whether it can be downloaded from the Board's website should be included in the final-form rulemaking.

The signed statement appears on the biennial license renewal application itself, not on a separate document or form. Therefore, the Board has clarified this subsection.

6. IRRC questioned whether § 29.61(d) requires a licensee to retain continuing education course attendance certificates for 5 years after the completion of the course or for 5 years after the biennial period during which the course is completed.

Section 29.61(d) has been amended and specifies that the licensee is required to retain attendance certificates for 5 years after the completion of the course.

7. IRRC questioned the Board's statutory authority to implement § 29.68, which provides that the Board ". . . may waive all or a portion of the continuing education requirement for biennial renewal upon request of a licensee for serious illness or other demonstrated hardship."

Section 15 of the act authorizes the Board to make reasonable rules and regulations as it deems necessary and proper to carry out the intent and purposes of the act within the scope of the act. Under this statutory provision, the Board, in implementing continuing education regulations under section 9 of the act, has the discretion to decide that disciplinary action not be taken against a licensee who, because of serious illness or demonstrated hardship, cannot obtain continuing education credits. The Board, as well as most licensing authorities, has long recognized that hardship circumstances (such as military service or debilitating illness) may occur that should excuse a licensee's inability to obtain the required continuing education credits. Section 29.68 codifies that discretion.

G. *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector. To the contrary, having a preapproved course provider would reduce the amount of paperwork. The majority of course providers would no longer need to file applications for Board approval which are currently processed by Board staff.

H. *Sunset Date*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 7, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 5759, to IRRC and the Chairpersons of the SCP/PLC and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and 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 the final-form rulemaking, the Department has considered all comments from IRRC, the SCP/PLC and the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 30, 2003, the 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 October 23, 2003, and approved the final-form rulemaking.

J. *Contact Person*

Further information may be obtained by contacting Gina Bittner, Board Administrator, State Board of Podiatry, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649, gbittner@state.pa.us.

K. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31 1968

(P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 32 Pa.B. 5759.

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

L. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 29, are amended by amending §§ 29.13, 29.61—29.63, 29.64, 29.67 and 29.68 and by adding §§ 29.60, 29.63a, 29.69 and 29.69a to read as set forth in Annex A.

(*Editor's Note:* Section 29.65 was proposed to be deleted but is being retained in the final-form rulemaking.)

(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*.

JEFFREY S. GERLAND, D.P.M.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 5579 (November 8, 2003).)

Fiscal Note: Fiscal Note 16A-446 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 29. STATE BOARD OF PODIATRY

LICENSES

§ 29.13. Fees

(a) The schedule of fees charged by the Board is as follows:

Initial license	$30
Biennial renewal of license	$395
License by reciprocity	$95
Branch office certificate	$20
Application for approval of educational conference	$75
Certification of licensure or scores	$25
Verification of licensure	$15
Application for authorization to perform radiologic procedures	$25
Review of continuing education waiver or extension requests	$50
Review of reinstatement of license requests following inactive or expired status	$25

(b) Fees shall accompany applications and be made payable to the "Commonwealth of Pennsylvania" by personal check or money order.

CONTINUING EDUCATION

§ 29.60. Definitions.

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

Biennium—The period from January 1 of an odd-numbered year to December 31 of the next even-numbered year.

Certification—A statement signed by the licensee certifying that continuing education requirements have been met along with information and documentation relative to the course.

Clock hour—Sixty minutes of instruction, exclusive of coffee breaks, lunches, visits to exhibits and the like.

Provider—An agency, organization, institution, association or center approved by the Board to offer an organized course or program.

§ 29.61. Requirements for biennial renewal and eligibility to conduct educational conferences.

(a) As a condition of biennial renewal of a license, a licensee shall have completed 30 clock hours of continuing education during the preceding biennium in acceptable courses and programs in podiatry by approved providers. It is the responsibility of the licensee to ensure that credits used to comply with this continuing education requirement have been approved by the Board. Excess clock hours may not be carried over to the next biennium. A maximum of 10 clock hours of computer/Internet, magazine or journal article courses, which are approved by the Council on Podiatric Medical Education, shall be accepted by the Board.

(b) Providers approved by the Board are eligible to conduct educational conferences.

(c) Applicants for license renewal shall provide, on the renewal application, a signed statement certifying that the continuing education requirements have been met and information to document their certification, including the following:

(1) The date attended.

(2) The clock hours claimed.

(3) The title of the course or program and description of content.

(4) The provider which sponsored the course or program.

(5) The location of the course or program.

(d) The licensee shall retain attendance certificates to document completion of the prescribed number of clock hours for 5 years following the completion of each course, which shall be produced upon demand by the Board or its auditing agents.

§ 29.62. Length of time of educational conferences.

(a) Educational conferences shall offer at least 1 hour of instruction.

(b) Educational conferences will be approved for continuing education credit at the rate of one credit per clock hour of instruction, exclusive of coffee breaks, lunches, visits to exhibits and the like.

§ 29.63. Curriculum of educational conferences.

(a) Basic subjects for educational conferences may include: anatomy, physiology, bacteriology, mycology, pharmacy, chemistry, X-ray, surgery, preoperative care, postoperative care, biomechanics, pathology, dermatology, and law and podiatry.

(b) In addition to the subjects listed in subsection (a), the Board may approve other subjects which it will determine appropriate for a conference. These subjects may be presented to the Board by the institute or organization sponsoring the educational conference.

§ 29.63a. Preapproved course provider.

Courses or programs offered or approved by the Council on Podiatric Medical Education will be accepted for continuing education credit. All courses shall fall within the scope of podiatry practice. The Board will not approve courses or programs, or portions thereof, in office management or in marketing the practice.

§ 29.64. Applications for approval of educational conferences.

The Board may approve other continuing education courses or programs for credit so long as the applicant submits an application furnished by the Board for program approval in compliance with the following:

(1) Course applications shall be submitted to the Board for approval at least 60 days prior to the scheduled date of the proposed educational conference.

(2) The application shall include a copy of the full program brochure or the course syllabus, or both. Further information may be required and shall be submitted in a timely fashion.

(3) The Board shall be notified immediately of material changes in any approved conference. Board approval can be withdrawn should changes in proposed conferences not adhere to the Board's requirements.

§ 29.67. Approval or disapproval of educational conferences.

(a) The Board will notify an applicant for course approval as to the approval or disapproval of the application within 30 days of action taken by the Board at the next scheduled Board meeting.

(b) A notice by the Board that it has failed to approve an application for an educational conference shall include a statement setting forth its reasons for disapproval.

(c) An applicant whose application has been disapproved by the Board may submit a new application within 10 days after the receipt of the disapproval of application by the Board. Applications shall document the manner in which the proposed conference has been altered to comply with the Board's requirements. The applicant will then be notified, as soon as it is within the Board's capability, of the action taken on the new application.

§ 29.68. Continuing education exemptions.

(a) Continuing education credits are not required for the years in which a licensed and currently registered podiatrist is in active military service or engaged in an American Podiatry Association approved Podiatric Residency Program.

(b) The Board may waive all or a portion of the continuing education requirement for biennial renewal upon request of a licensee for serious illness or other demonstrated hardship. The request shall be made in writing, contain supporting documentation, and shall include a description of circumstances sufficient to show why compliance is impossible. A waiver request will be evaluated by the Board on a case-by-case basis. The Board will send written notification of its approval or denial of a waiver request.

(c) A fee shall be assessed for review of waiver or extension requests in accordance with § 29.13 (relating to fees).

§ 29.69. Continuing education requirement for biennial renewal of inactive and lapsed licenses.

(a) A licensee seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennium as required by § 29.61 (relating to requirements for biennial renewal and eligibility to conduct educational conferences).

(b) A fee shall be assessed for review of reinstatement of license requests following inactive or expired status in accordance with § 29.13 (relating to fees).

§ 29.69a. Disciplinary action authorized.

A licensed podiatrist who submits a false report or fails to complete the required number of continuing education credits may be subject to disciplinary action.

[Pa.B. Doc. No. 03-2311. Filed for public inspection December 5, 2003, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE
[49 PA. CODE CH. 31]
Rules of Professional Conduct for Veterinarians

The State Board of Veterinary Medicine (Board) adopts an amendment to § 31.21 (relating to Rules of Professional Conduct for Veterinarians) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 32 Pa.B. 2997 (June 22, 2002). Publication was followed by a 30-day public comment period during which the Board received one comment. On August 9, 2002, the House Professional Licensure Committee (HPLC) informed the Board that it would not be submitting comments to the proposed rulemaking. The Senate Consumer Protection and Professional Licensure Committee (SCP-PLC) made no comments. The Independent Regulatory Review Commission (IRRC) submitted comments to the proposed rulemaking on August 22, 2002.

Summary of Comments and Responses to Proposed Rulemaking

IRRC Comments

IRRC pointed out an inconsistency in the introductory language to definitions for "drug," "prescription drug" and "under the veterinarian's care." On some occasions, the Board prefaced the definition by stating the definition was applicable only for a particular subsection. The Board finds that these definitions are generally applicable to all of § 31.21, and strikes the prefatory language "for purposes of this section" in the final-form rulemaking.

Regarding proposed § 31.21, Principle 8(d)(6), IRRC requested the Board's references to the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. §§ 301—397) and 21 CFR (relating to food and drugs) be made more specific as to what sections of the law and what parts of the *Code of Federal Regulations* apply. Upon review of IRRC's com-

ments and concerns, the Board has determined that this subsection should be revised. First, veterinarians have an affirmative duty to comply with Federal and State laws and regulations pertaining to all aspects of drug dispensing including labeling. Thus, as IRRC suggested, the subsection would not provide necessary or useful information to the practicing veterinarian. Additionally, the specificity suggested by IRRC would require the Board to revise its regulations whenever the Federal government made substantial changes. Veterinarians receive training in both State and Federal drug labeling requirements and the Board's regulation does not need to specify the many State and Federal laws and regulations in this area. Therefore, the Board strikes all references to Federal laws and regulations.

Principle 8(f) would have required a veterinarian to provide a client with a written prescription, rather than dispense a drug, if the client requested a prescription. Principle 8(f) also provided that the veterinarian would not be subject to discipline if the veterinarian refused to give the client a written prescription because the veterinarian had a good faith belief that the prescription might be misused. IRRC questioned "the need for the 'good faith belief' exemption," and stated that where a prescription was filled was an issue unrelated to whether the medication was necessary.

The good faith exemption applied to situations when the veterinarian had "a good faith belief that the prescription would be misused." Any health care practitioner, including a veterinarian, with the authority to dispense or prescribe medications may legally refuse to give a prescription to a patient or client if the practitioner has a good faith belief the prescription may be misused. A veterinarian is only permitted to prescribe "in good faith in the course of his professional practice." See section 111(e)(i) of The Controlled Substance, Drug Device and Cosmetic Act (35 P. S. § 780-111(e)(i)). If a veterinarian cannot in good faith give a client a written prescription because the veterinarian believes the prescription may be misused, the veterinarian may not provide a written prescription. The good faith exception is consistent with other State law.

The Board considered several types of possible misuse of a written prescription. First, a client might misuse a prescription by failing to promptly fill the prescription and administer the medication. In this case, dispensing the drug rather than issuing a written prescription would ensure that the animal's treatment began in a timely manner and the special duty of a veterinarian to attend to the welfare of the animal patient would be fulfilled. In the judgment of the professional members of the Board regarding the prescribing, dispensing and use of drugs in veterinary medicine, a veterinarian must have the ability to refuse to issue a prescription where in the veterinarian's professional judgment it would be detrimental to the health of the animal or the public welfare.

Second, the Board considered the possibility that a client could misuse a prescription by altering the prescribed quantity to use the medication on animals that are not under the veterinarian's care, to use more than the prescribed amount on the animal for which the medication was prescribed, to sell the medication to others or to misuse the medication himself.

Third, the Board was cognizant of the responsibilities of a veterinarian that go beyond animal patient and the owner-client. For example, veterinarians who work with farm animals have a duty to protect this Commonwealth's milk and meat supply, and all veterinarians have a duty to protect the public health and welfare. The Board's regulation would not have changed the current law or acceptable and prevailing standards of veterinary medical practice and ethics. Therefore, the Board declined to strike the good faith exemption as proposed by IRRC.

IRRC further commented that the regulation would be improved by the addition of a provision in the final-form rulemaking that would require a veterinarian to notify clients that the clients could request a written prescription rather than a dispensed drug. IRRC's comment appears to be aimed at providing the consumer of veterinary services with options regarding the provision of drugs.

The Board gave careful consideration to IRRC's comment. The Board was concerned that it would be difficult to regulate a notice provision because of the variety of practice settings of veterinarians. For example, there is no equivalent in a mobile practice to posting a sign in the waiting room or examination room of a veterinary hospital. To require a veterinarian to provide oral notice would not be appropriate under certain circumstances. For example, if a client's terminally ill animal needed painkillers so that it could remain comfortable and the client could bring the animal home to die, it would be callous for the veterinarian to inquire whether the client wanted a written prescription. In addition, veterinarians, unlike physicians, are prohibited from selling professional veterinary products without a veterinarian/client relationship. See § 31.1 (relating to definitions) and § 31.21, Principle 3(d). Thus, depending on the type of medication, it may be difficult or impossible for the client to fill the prescription anyplace other than the prescribing veterinarian's office. In this case, it would be fruitless to require the veterinarian to notify the client that the client could obtain a written prescription. For these reasons, the Board declined to impose a general notice requirement on its licensees.

Finally, IRRC suggested that the regulation should reference the recordkeeping requirements in § 31.22 (relating to recordkeeping rationale) and the specific recordkeeping requirements for controlled substances in 21 CFR Part 1304 (relating to records and reports of registrants). The Board added a new section to the rulemaking specifying the duty of the veterinarian to keep appropriate records relating to drugs and prescription drugs and has added a new subsection to proposed Principle 8.

IRRC disapproved the Board's final-form rulemaking at its July 24, 2003, meeting. In its disapproval order, IRRC stated the following:

> One issue, which we raised in our comments, remains a concern. Our comments suggested that the final-form regulation require veterinarians to inform clients that they have the option of receiving a written prescription that can be filled elsewhere. The Board did not include such a requirement in the final-form regulation.
>
> We believe that notification to the consumer of the opportunity to request a written prescription is in the public interest and will not impose an unreasonable burden upon veterinarians. (71 P. S. §§ 745.5b(b)(1)(i) and (ii), and (b)(3)).[1]

[1]Section 5.2 of the Regulatory Review Act, 71 P. S. §§ 745.5b, relates to criteria for review of regulations. Sections 5.2(b)(1)(i) and (ii) of the Regulatory Review Act, 71 P. S. §§ 745.5b(b)(1)(i) and 745.5b(b)(1)(ii), empower the Commission to consider direct and indirect costs to the Commonwealth, to its political subdivisions and to the private sector and the adverse effects on prices of goods and services, productivity or competition, in determining whether a rulemaking is in the public interest. Section 5.2(b)(3) of the Regulatory Review Act, 71 P. S. § 745b(b)(3), empowers the Commission

We have determined this regulation is consistent with the statutory authority of the Board (63 P. S. § 485.5(2)) and the intention of the General Assembly. However, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

Following IRRC's disapproval, the Board submitted a report to the Chairpersons of the HPLC and the SCP-PLC. The Board withdrew proposed subsection (f) to further study IRRC's concerns and whether the Board's regulations should include a notice requirement. The Board, following a suggestion by one Commissioner, also wished to further study what type of notice would be appropriate given: (1) the variety of settings in which veterinarians practice; (2) the health and welfare of the animals cared for by veterinarians; (3) the health and safety of the human public; and (4) the legality, availability and cost of obtaining veterinary drugs from sources other than from the treating veterinarian. Following submission of its report, IRRC met on September 25, 2003, and approved the amended final-form rulemaking, noting: "We must assert that we are very displeased with the deletion of the written prescription provision. As stated previously, we were looking for further improvement of this provision, not its deletion." IRRC urged the Board to publish a proposed rulemaking addressing the written prescription and public notice issues at the earliest possible opportunity. The HPLC also approved the amended final-form rulemaking.

Public Comment

The Board received one comment from the public regarding the proposed rulemaking from the Pennsylvania Society for Biomedical Research (Society). The Society stated that the proposed rulemaking "would not and cannot apply to" persons exempted from section 32(5) of the Veterinary Medical Practice Act (act) (63 P. S. § 485.32(5)) and that "no rule or regulation issued by the State Board of Veterinary Medicine under 49 Pa. Code Ch. 31 applies to" any persons exempted from section 32(5) of the act. The Board concurs that none of its regulations are enforceable against unlicensed persons exempted by this section of the act. However, if persons exempted from the act choose to be licensees of the Board, the Board believes that the act and its regulations would apply to those persons.

Statutory Authority

This final-form rulemaking is authorized under section 5(2) of the act (63 P. S. § 485.5(2)). Section 5(2) of the act empowers the Board to adopt regulations regarding professional conduct.

Fiscal Impact and Paperwork Requirements

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 2997, to IRRC and to the HPLC and the SCP-PLC. In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the HPLC and the SCP-PLC Committees with copies of all comments received, as well as other documents.

to consider the clarity, feasibility and reasonableness of the regulation in determining whether the regulation is in the public interest.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board received one comment from the public. The Board also received comments from IRRC. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC and the public.

This final-form rulemaking was approved by the HPLC and the SCP-PLC on June 24, 2003. IRRC met on July 24, 2003, and disapproved the proposed rulemaking, citing section 5.2(b)(1)(i), (ii) and (3) of the Regulatory Review Act. On September 5, 2003, the Board delivered its report to IRRC under the Regulatory Review Act and an amended final-form rulemaking. IRRC approved the amended final-form rulemaking on September 25, 2003. On October 8, 2003, the HPLC met and approved the final-form rulemaking. The final-form rulemaking was deemed approved by the SCP-PLC on October 9, 2003.

Additional Information

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

Findings

The Board finds that:

(1) Public notice of intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No 204) (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) The regulation of the Board is necessary and appropriate for the administration of the act.

(4) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposal at 32 Pa.B. 2997.

Order

The Board orders that:

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

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

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

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

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

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 33 Pa.B. 5149 (October 11, 2003).)

Fiscal Note: Fiscal Note 16A-5712 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

PROFESSIONAL CONDUCT

§ 31.21. Rules of Professional Conduct for Veterinarians.

Preamble

The Board is empowered under section 5(2) of the act (63 P. S. § 485.5(2)) to adopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skill and practice in the profession of veterinary medicine. In accordance with this authority, the Board has determined that the following rules are necessary in the public interest to protect the public against unprofessional conduct on the part of veterinarians. The Board therefore adopts this professional conduct code for veterinarians practicing veterinary medicine in this Commonwealth. Some of the rules of conduct are imperatives, cast in the terms, "shall" or "may not." Veterinarians who fail to adhere to these rules will be subject to professional discipline. Other rules, generally cast in the terms "may" or "should," are intended as aspirational goals and define areas under which the veterinarian has professional discretion. No disciplinary action will be taken when a veterinarian acts within the bounds of discretion. References throughout this professional conduct code to imperative conduct on the part of veterinarians also apply to applicants for licensure and temporary permit holders where these persons render services under qualified supervision.

* * * * *

Principle 8. Drugs.

(a)(1) The term "drug" means:

(i) Substances recognized in the official United States Pharmacopoeia, official National Formulary, or Federal Food and Drug Administration Approved Animal Drug Products, or any supplement to them.

(ii) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.

(iii) Substances (other than food) intended to affect the structure or any function of the human body or other animal body.

(iv) Substances intended for use as a component of any substance specified in subparagraph (i), (ii) or (iii), but not including devices as that term is defined in section 2 of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. § 780-102).

(2) The term "prescription drug" means any drug required by Federal law, including Federal regulation, to be dispensed only by a prescription.

(b) A veterinarian shall only prescribe prescription drugs to animals that are under the veterinarian's care. "Under the veterinarian's care" means that the veterinarian or one of the veterinarian's licensed associates has examined the animal or has made medically appropriate and timely visits to the premises where the animal is kept.

(c) Prescription drugs dispensed by a veterinarian, other than drugs for food animals, shall be dispensed in child resistant packaging or in the manufacturer's original packaging, except when the client specifically requests other packaging.

(d) Prescription drugs dispensed by a veterinarian shall be labeled with, at a minimum, the following information:

(1) The name, address and telephone number of the prescribing veterinarian and the name and telephone number of the dispenser, if different.

(2) The brand or generic name of the drug.

(3) The potency and the quantity of the drug.

(4) The number of refills allowed, if any.

(5) Adequate directions for use, which shall include quantity of dose, frequency of administration or application, duration of administration or application, and route or method of administration or application.

(6) Any cautionary statement specified by the veterinarian or required by law.

(7) The name of the patient, if applicable.

(8) The date the drug was dispensed.

(9) The expiration date of the drug.

(e) Veterinarians shall dispense or administer only drugs, including prescription drugs, that are within the expiration date specified by the manufacturer, and shall dispense or administer only drugs that will not expire within the prescribed treatment period.

(f) Veterinarians shall maintain records related to drugs in accordance with § 31.22 (relating to recordkeeping rationale).

[Pa.B. Doc. No. 03-2312. Filed for public inspection December 5, 2003, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 57 AND 59]

[L-00030160]

Electric and Gas Utility Record Retention

The Pennsylvania Public Utility Commission (Commission) on August 7, 2003, adopted a final-form rulemaking order which amends existing regulations regarding record retention requirements for jurisdictional electric and gas utilities by eliminating unnecessary and burdensome reporting requirements when possible. The contact persons are John Crawford, Audits (717) 772-0302, Robert Wilson, Bureau of Fixed Utility Services, (717) 783-6162 and Sherri DelBiondo, Law Bureau (717) 772-4597.

Executive Summary

Section 57.45 (relating to preservation of records) establishes record retention requirements for electric utilities in this Commonwealth, and § 59.45 (relating to preservation of records) establishes record retention requirements for gas utilities in this Commonwealth. These regulations require the public utilities to keep their records in conformity with the most recent publication of "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities," which is published by the

National Association of Regulatory Utility Commissioners (NARUC).[1] See §§ 57.45 and 59.45. The NARUC regulations were last revised in 1985.

By order entered on March 6, 2003, at Docket No. L-00030160, the Commission adopted a proposed rulemaking order to amend 52 Pa. Code §§ 57.45 and 59.45, consistent with the report and recommendation of the working group established to review the Commission's current record retention requirements for electric and gas utilities. The Commission agreed that the record retention changes as proposed by the working group will lessen the record retention burden and associated costs for the relevant utilities without compromising the Commission's ability to adequately regulate those same utilities. See 66 Pa.C.S. § 1501 (relating to character of service and facilities). The Commission added that the proposed changes will facilitate a mandatory, uniform system of recordkeeping for the relevant utilities, consistent with 66 Pa.C.S. §§ 1701—1706 (relating to accounting and budgetary matters).

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 16, 2003, the Commission submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Committees.

The Commission's order initiating the proposed rulemaking was published at 33 Pa.B. 2064 (April 26, 2003). On or around May 27, 2003, the Commission received comments from four parties: the Energy Association, the Peoples Natural Gas Company d/b/a Dominion Peoples, PPL Electric Utilities Corporation and the Office of Consumer Advocate. All parties endorsed the proposed rulemaking to the Commission's record retention regulations for electric and gas utilities in §§ 57.45 and 59.45 and supported adoption of the amended regulations.

On June 2, 2003, IRRC issued a letter specifying that it had no objections, comments, or recommendations to offer on the Commission's proposal to amend the record retention regulations in §§ 57.45 and 59.45. The letter also noted that the proposed amendments would be deemed approved, if the Commission submits a final-form regulation without revisions and the legislative committees do not take any action. By order entered on August 14, 2003, the Commission adopted a final rulemaking order to amend §§ 57.45 and 59.45, consistent with the letter from IRRC. The amendments were deemed approved by IRRC under section 5(g) of the Regulatory Review Act, effective October 22, 2003.

Public Meeting held
August 7, 2003

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas; Kim Pizzingrilli

Petition of the Energy Association of Pennsylvania for Waiver of 52 Pa. Code § 57.45 (Electric Service: Preservation of Records) and 52 Pa. Code § 59.45 (Gas Service: Preservation of Records); Doc. No. P-00011902

Petition of the Energy Association of Pennsylvania for Amendment of 52 Pa. Code § 57.45 (Electric Service: Preservation of Records) and 52 Pa. Code § 59.45 (Gas Service: Preservation of Records); Doc. No. P-00011903

Rulemaking Re: Amendment of 52 Pa. Code § 57.45 (Electric Service: Preservation of Records) and 52 Pa. Code § 59.45 (Gas Service: Preservation of Records); Doc. No. L-00030160

Final Rulemaking Order

By the Commission

Background

On June 18, 2001, the Energy Association of Pennsylvania (Energy Association) filed two petitions at the P-dockets requesting a waiver and amendment of §§ 57.45 and 59.45 dealing with record retention. Section 57.45 establishes record retention requirements for electric distribution companies (EDCs), while § 59.45 applies to natural gas distribution companies (NGDCs). Both regulations require public utilities to keep their records in conformity with the most recent publication of "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities," which is published by the National Association of Regulatory Utility Commissioners (NARUC).[2] See §§ 57.45 and 59.45. The most recent NARUC requirements were revised in May of 1985.

In support of the petitions, the Energy Association cited the new record retention rules of the Federal Energy Regulatory Commission (FERC), effective January 1, 2001. 18 CFR 125, 225 and 356. These rules updated, reduced and clarified record retention requirements for jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies by revising the general instructions, shortening various record retention periods, increasing retention periods for a few categories of records and removing all but one retention reserve item. *Preservation of Records of Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies*, 65 FR 48148 (2000).

By order entered on April 16, 2002, at Docket Nos. P-00011902 and P-00011903, the Commission denied the petitions filed by the Energy Association requesting a waiver and amendment of §§ 57.45 and 59.45. Although the Commission denied the petitions, the Commission specifically recognized the value of eliminating unnecessary and burdensome reporting requirements, whenever possible. At the same time, we emphasized that the elimination or amendment of existing Commission regulations must not impair our ability to meet our statutory responsibility to ensure that all public utilities in this Commonwealth furnish and maintain adequate, efficient, safe and reasonable service and facilities. See 66 Pa.C.S. § 1501 (relating to character of service and facilities).

With these dual interests in mind, the Commission directed the Law Bureau, in conjunction with the Bureau of Fixed Utility Services and the Bureau of Audits, to convene a working group to review the Commission's current record retention regulations for EDCs and NGDCs. After completing its review, the working group was directed to report its recommendation to the Commission.

By Order entered on March 6, 2003, at the dockets listed in this document, the Commission adopted the consensus report of the working group dated January 30, 2003, to amend the Commission's record retention regulations for electric and gas utilities in §§ 57.45 and 59.45.[3]

[1] NARUC is a nonprofit organization comprised of governmental agencies that regulate the activities of telecommunications, energy and water utilities. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation.

[2] NARUC is a nonprofit organization comprised of governmental agencies that regulate the activities of telecommunications, energy, and water utilities. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation.

[3] The Commission's Office of Trial staff was also consulted and does not oppose the proposed changes.

To effectuate the recommendations of the working group, we initiated a proposed rulemaking to amend §§ 57.45 and 59.45.[4]

On April 26, 2003, the Commission's order initiating the proposed rulemaking was published at 33 Pa.B. 2064. On or around May 27, 2003, the Commission received comments from four parties: the Energy Association, the Peoples Natural Gas Company d/b/a Dominion Peoples, PPL Electric Utilities Corporation and the Office of Consumer Advocate. Parties endorsed the proposed rulemaking to the Commission's record retention regulations for electric and gas utilities in §§ 57.45 and 59.45 and supported adoption of the amended regulations.

On June 2, 2003, IRRC issued a letter specifying that it had no objections, comments or recommendations to offer on the Commission's proposal to amend the record retention regulations in §§ 57.45 and 59.45. The letter also noted that the proposed amendments would be deemed approved, if the Commission submits a final-form regulation without revisions and the legislative committees do not take any action.

Discussion

As previously stated in our proposed rulemaking order, we agree that the proposed record retention changes will lessen the record retention burden and associated costs for the relevant utilities without compromising the Commission's ability to meet its statutory responsibility to ensure that all public utilities in the Commonwealth furnish and maintain adequate, efficient, safe and reasonable service and facilities. See 66 Pa.C.S. § 1501. Moreover, these changes will facilitate a mandatory, uniform system of recordkeeping for the relevant utilities, consistent with 66 Pa.C.S. §§ 1701—1706 (relating to accounting and budgetary matters). Therefore, consistent with the comments of IRRC and the other parties that filed comments in this matter, the Commission has made no revisions, other than the grammatical/stylistic changes made by the Legislative Reference Bureau, to this final-form rulemaking.

Accordingly, under 66 Pa.C.S. §§ 501, 1501 and 1701—1706, 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, section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)), section 5 of the Regulatory Review Act (71 P. S. § 745.5) and section 612 of The Administrative Code of 1929 (71 P. S. § 232), we find that the amendments to §§ 57.45 and 59.45 should be approved as set forth at 33 Pa.B. 2064; *Therefore*,

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapters 57 and 59, are amended by amending §§ 57.45 and 59.45 to read as set forth at 33 Pa.B. 2064.

2. The Secretary shall submit this order and 33 Pa.B. 2064 for review and approval to IRRC and the Legislative Standing Committees in both houses of the General Assembly;

3. The Secretary shall submit this order and 33 Pa.B. 2064 to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall certify this order and 33 Pa.B. 2064, and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. The amendments to §§ 57.45 and 59.45 embodied in 33 Pa.B. 2064 shall become effective upon publication in the *Pennsylvania Bulletin*.

6. A copy of this order and 33 Pa.B. 2064 shall be served upon the Energy Association of Pennsylvania, all jurisdictional electric and natural gas utilities, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.

JAMES J. MCNULTY,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 33 Pa.B. 5579 (November 22, 2003).)

Fiscal Note: Fiscal Note 57-227 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 03-2313. Filed for public inspection December 5, 2003, 9:00 a.m.]

[4] In addition to the proposed amendments of the working group, the Commission also proposes several additional technical changes so that the language used in both sections is consistent and uniform.

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 97]

Corrrective Amendment to 58 Pa. Code Chapter 97

The Fish and Boat Commission has discovered a discrepancy between the agency text of 58 Pa. Code § 97.5 (relating to visual distress signals) and Appendices A and C, as deposited with the Legislative Reference Bureau, and the text published at 24 Pa.B. 4771 (September 24, 1994) and the text which currently appears in the *Pennsylvania Code Reporter* (Master Transmittal Sheets No. 259, 306 and 313). When the amendments to this chapter were codified, the text of Appendix A should have been deleted, not Appendix C. Additionally, references to Appendix C in § 97.5 should not indicate that Appendix C has been reserved.

Therefore, under 45 Pa.C.S. § 901: The Fish and Boat Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 97.5 and Appendices A and C. The corrective amendment to 58 Pa. Code § 97.5 and Appendices A and C is effective as of September 24, 1994, the date the defective text was published in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code § 97.5 and Appendices A and C appears in Annex A.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.5. Visual distress signals.

(a) This section applies only to those boats operating on Lake Erie.

(b) A person may not use a boat 16 feet or more in length or a boat carrying six or less passengers for hire unless visual distress signals selected from the list in Appendix C or the alternatives in the number required, are onboard. Devices suitable for day use and devices suitable for night use, or devices suitable for both day and night use, shall be carried.

(c) Between sunset and sunrise, a person may not use a boat less than 16 feet in length unless visual distress signals suitable for night use, selected from the list in Appendix C or alternatives in the number required are onboard.

(d) When a visual distress signal carried to meet the requirements of subsection (b) or (c) requires a launcher to activate, a United States Coast Guard approved launcher shall also be carried.

(e) The persons listed in this subsection need not comply with subsection (b) or (c). Each shall carry onboard the required number of visual distress signals suitable for night use, selected from the list in Appendix C.

(1) A person competing in an organized marine parade, regatta, race or similar event.

(2) A person using a manually propelled boat.

(3) A person using a sailboat of completely open construction, not equipped with propulsion machinery, under 26 feet in length.

(f) It is unlawful to operate a boat unless the visual distress signals required by subsection (b) or (c) are readily accessible.

(g) It is unlawful to operate a boat unless each signal required by subsection (b) or (c) is in serviceable condition and the service life of the signal, if indicated by a date marked on the signal, has not expired.

(h) It is unlawful to do the following:

(1) Operate a boat unless the signal required by subsection (b) or (c) is legibly marked with the United States Coast Guard approval number or certification statement as specified in the Federal regulations.

(2) Display a visual distress signal on water to which this section applies under any circumstances except a situation in which assistance is needed because of immediate or potential danger to the persons onboard.

APPENDIX A. (Reserved)

APPENDIX C

DEVICE DESCRIPTION	*Accepted For Use*	*Number Required to be Carried*
Number marked on device:		
160.022 ... Floating Orange Smoke Distress Signals	Days only	3
160.024 ... Pistol-Projected Parachute Red Flare Distress Signals	Day and night[1]	3
160.036 ... Hand-Held Rocket-Propelled Parachute Red Flare Distress Signals	Day and night	3
160.037 ... Hand-Held Orange Smoke Distress Signals	Day only	3
160.057 ... Floating Orange Smoke Distress Signals	Day only	3
160.066 ... Distress Signal for Boats, Red Aerial Protechnic Flare	Day and night[2]	3
160.072 ... Distress Signal for Boats, Orange Flag	Day Only	1
160.013 ... Electric Distress Light for Boats	Night Only	1

1. These signals require use in combination with a suitable launching device approved under 46 CFR 160.028 (relating to signal pistols for red distress signals).

2. These devices may be either self-contained or pistol launched, and either meteor or parachute assisted type. Some of these signals may require use in combination with a suitable launching device approved under 46 CFR 160.028.

[Pa.B. Doc. No. 03-2314. Filed for public inspection December 5, 2003, 9:00 a.m.]