RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 25]

Hearing Aid Sales and Registration

The Department of Health (Department) amends Chapter 25 (relating to controlled substances, drugs, devices and cosmetics) to read as set forth in Annex A.

A. *Purpose and Background*

The Hearing Aid Sales Registration Law (act) (35 P. S. §§ 6700-101—6700-802) governs the sale of hearing aids and regulates the related activities of hearing aid dealers and fitters. It imposes duties upon, and prohibits certain acts by, hearing aid dealers and fitters, and provides for penalties that may include denial, suspension or revocation of a dealer's or fitter's registration. The act was amended by the act of December 21, 1998 (P. L. 1190, No. 153) (Act 153). The changes made by Act 153 included imposing continuing education requirements upon hearing aid fitters and making failure to comply with those requirements a cause for denial, suspension or revocation of a registration certificate. Act 153 also raised the fees for registration certificates and required disclosure agreements and money-back-guarantees to be provided to purchasers and prospective purchasers of hearing aids. Act 153 required the Department to promulgate regulations to effectuate the continuing education requirements imposed by it.

Prior to Act 153, certain portions of the act were preempted due to regulations promulgated by the Federal Food and Drug Administration (FDA) under the Federal Food Drug, and Cosmetic Act (21 U.S.C.A. §§ 301—397, specifically 21 U.S.C.A. § 360k). The Federal regulations regarding hearing aids were published at 21 CFR 801.420 and 801.421 (relating to hearing aid devices; professional and patient labeling; and hearing aid devices; conditions for sale). A few Pennsylvania requirements that conflicted with the Federal regulations were conditionally exempted from preemption under the final rule issued by the FDA in Docket No. 77N-0333, dated October 10, 1980 (45 FR 67321) (Final Rule). This final-form rulemaking is responsive to the preemption issues raised by the Federal regulations and is intended to clarify the state of the law.

B. *Summary*

This final-form rulemaking breaks Chapter 25 into Subchapters A and B (relating to controlled substances, drugs, devices and cosmetics; and hearing aid sales and registration) to differentiate the regulations adopted under the act and pertaining to hearing aid sales and registration from the rest of Chapter 25, which otherwise consists entirely of regulations adopted under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

The Department received four comments on the proposed rulemaking. The commentators included the Independent Regulatory Review Commission (IRRC); James P. Rametta, Rametta Audiology and Hearing Aid Center; Dorothy Kardos, Central Pennsylvania Eye and Ear; and Dorothy Kardos, President, Pennsylvania Hearing Aid Alliance (PHAA), on behalf of PHAA. The comments and the Department's responses follow.

C. *Comments*

§ 25.201 (relating to application)

This section explains to whom the final-form rulemaking applies. No comments were received regarding this section. This section is adopted as proposed.

§ 25.202 (relating to definitions)

This section defines terms used in Subchapter B. IRRC commented that the terms "hearing aid user," "prospective hearing aid user" and "purchaser" should also be defined to avoid confusion. The Department accepts this recommendation and has added definitions of these terms.

IRRC also questioned whether Commonwealth residents would be permitted to seek medical treatment for hearing problems from out-of-State physicians given that the definition of "physician" included in the proposed rulemaking is an individual who has a currently registered license to practice medicine or osteopathic medicine in this Commonwealth. Commonwealth residents may seek medical treatment from whomever they wish. However, the act requires an examination and recommendation from a physician, unless waived by the prospective purchaser. Since section 403 of the act (35 P. S. § 6700-203) permits a registrant to accept a medical recommendation from any licensed physician, the Department has deleted the proposed definition in response to the IRRC comment.

§ 25.203 (relating to Advisory Council)

This section establishes the Hearing Aid Advisory Council and requires annual meetings. The final-form rulemaking deletes the specific requirements as to the frequency and time of notice of meetings. This section did not engender comment. It is adopted as proposed.

§ 25.204 (relating to application for and renewal of registration)

This section establishes how registration certificates may be applied for and renewed. The proposed amendments to subsection (d) required registrants to apply to renew a registration certificate at least 30 days before it expired. IRRC suggested that, since all registration certificates expire on April 15, subsection (d) should state specifically that renewals must be submitted by March 16. The Department accepts this comment and has changed subsection (d) to include the date by which registrants must apply for renewal.

The Department clarified proposed amendments to subsection (e), which would provide that an expired registration certificate may be renewed within 5 years of its expiration by applying for renewal, paying the renewal fee and any delinquency fee due, and satisfying the applicable continuing education requirements. The Department has clarified that this also applies to registration certificates that their holders request be placed on inactive status. When a registration is placed on inactive status, it may be renewed for up to 5 years from the date it was made inactive. Although the statute does not specifically mention inactive certificates, the 5-year limit on renewal ensures that an individual who is "out of practice" cannot simply resume practicing after more than 5 years have passed without demonstrating competency to do so. The 5-year time limit therefore logically applies to individuals who have in effect directly informed the Department that they will not be practicing.

Proposed amendments to subsection (f) permitted an applicant to petition for more than two renewals of a temporary registration certificate, for good and sufficient cause. IRRC commented that subsection (f) should set forth the process for applicants to be able to do this. The Department accepts this comment and has included language that requires applicants to send a letter stating their reasons for requesting an additional renewal to the Division of Home Health's (Division) address. The Department will then determine whether or not the cause is sufficient so as to merit the additional renewal.

Proposed subsection (g), intended to inform registrants that a renewal not requested 30 days prior to the expiration of a registration certificate may not be received on time, did not specifically state the expiration date for registration certificates. IRRC suggested that the specific date of April 15 be used. The Department accepts this comment and has changed subsection (g) to state that a registrant who files for renewal after March 16 may not receive a renewal before the certificate expires.

§ 25.205 (relating to additional registration requirements)

This section establishes additional requirements to receive temporary and regular registration certificates. IRRC pointed out that proposed amendments to subsection (d)(3), which list the requirements for an apprentice hearing aid fitter to change sponsors, use the word "affirmed" to apply to statements which must be filed by the apprentice giving reasons for the desired change, and by the prospective sponsor. IRRC suggested that the Department should explain how affirmation is accomplished. The Department accepts this comment, and has changed § 25.205(d)(3) to make clear that affirmation may be given in any form so long as it is in writing, signed and contains a statement to the effect that it is truthful.

IRRC also asked whether subsection (d)(3) and (4), having to do with how an apprentice may change sponsors or how a sponsor may terminate responsibilities with regard to an apprentice, requires good cause to be shown. The Department will not require good cause. An explanation is required when an apprentice wishes to change sponsors, largely to enable the Department to ensure that a sponsor is not repeatedly failing in his duties when the sponsor agrees to take on an apprentice. However, a simple representation that the relationship is not working out to the satisfaction of one or both parties will suffice. The Department has made no changes to subsection (b) in response to the comment.

§ 25.206 (relating to examinations)

This section establishes a schedule for the fitter examinations. IRRC commented that the Department should provide the actual address to which a prospective exam taker should write to obtain the date of the next examination, and should also clarify whether it would be possible to request an examination date by e-mail or telephone. The Department accepts these comments, and has modified subsection (b) to refer to the address in § 25.204(a). Subsection (b) has also been changed to state that individuals may telephone or e-mail the Division, and also provides the Department's website, on which the Department intends to post the examination dates and contact information.

§ 25.207 (relating to categories of registrations; fee schedule)

This section establishes registration fees and requirements for registration certificates. IRRC commented that the Department could reword the proposed amendments to subsection (h) to make it more understandable. The Department accepts this comment, and has reworded subsection (h) as suggested.

§ 25.208 (relating to display of registration certificates; offices)

This section sets out requirements for the information contained on registration certificates. IRRC asked that the Department explain the process for filing a notice of a change in the registrant's place of business, as required in the proposed amendments to subsection (d). The Department has modified subsection (d) to state that registrants should file notice of a change in their business addresses by writing to the Department at the address given in § 25.204(a).

§ 25.209 (relating to facilities, procedures and instrumentation)

This section includes requirements for physical facilities, testing and fitting procedures and standards for instruments. IRRC pointed out that the Department proposed to delete from subsection (b)(1) a list of persons who the fitter should verify performed the test and to substitute the phrase "individual authorized by law." IRRC suggested that the Department should restore the phrase to facilitate understanding of who the Department considers to be individuals who are authorized by law. However, the Department feels that without the change, subsection (b) could lead a registrant to believe that anyone supervised by a physician, audiologist or fitter is authorized by law to perform hearing tests, which is not necessarily the case. To clarify the proposed changes to subsection (b) and to respond to concerns, the Department has revised subsection (b)(1) to state that a registrant may rely on a representation made by an appropriately licensed individual under whose auspices the testing is being done, that the testing was performed by an appropriately authorized individual.

IRRC pointed out that subsection (c)(1), requiring test instruments to be calibrated in accordance with current standards set by the American National Standards Institute (ANSI), refers to standards that were published in 1969. The most recent ANSI standards in this area were published in 1996. The Department has revised subsection (c) to reference the 1996 ANSI standards.

§ 25.210 (relating to receipt, disclosure agreement and money back guarantee to purchaser—purchaser protection)

This section lists requirements for receipts, establishes a form disclosure agreement/money back guarantee and provides instructions for its use. All of the commentators indicated that initial screening and testing would be necessary to determine whether a patient needs a hearing aid. However, proposed subsection (b), which included the disclosure agreement requirements, required completion of the entire disclosure agreement and money back guarantee form to be completed prior to the provision of any services. Given the variety of hearing aids available, costs cannot be accurately estimated prior to completing an examination. The commentators indicated that the form should be restructured to accommodate the order in which the activities of testing, fitting and selecting a hearing aid are done. IRRC specifically stated that the final-form rulemaking should require that Part A of the form be completed with the patient's signature, date and time prior to testing. Once the testing has been finished, Part B should be completed.

The act, however, requires registrants to provide a disclosure agreement that is to be explained in detail and

signed by the registrant and the consumer prior to the provision of any service. The disclosure agreement must contain a complete description of what the fitting procedure does and does not include, and an itemization and disclosure of all fees associated with the fitting procedure or process and the sale and delivery of a hearing aid or similar device, including any cancellation fees authorized by the act.

In deference to these comments, particularly from the practitioners who indicate that it is necessary for them to be able to do the disclosure agreement in stages, the Department has revised the disclosure agreement/money back guarantee form and proposed subsections (b) and (c) to accommodate both the statutory requirements and the needs of the commentators. Subsection (b) has been revised to clarify that the disclosure agreement/money back guarantee must be provided and explained in detail in accordance with subsection (c) before the provision of any service.

The revisions to subsection (c)(1) require registrants to complete and explain Part A of the disclosure agreement/money back guarantee in detail, in deference to the statutory requirement that a complete description of what the fitting procedure or process includes must be given and fees associated with the fitting procedure or process and the sale and delivery of the hearing aid must be itemized and disclosed. This is intended to ensure that purchasers understand what services they are paying for and requires registrants to break out each service separately. Registrants should be especially certain to separate those services which are rendered in connection with the fitting process from those which are connected with the sale and delivery of a hearing aid and which might occur after a hearing aid is actually delivered. This statutory requirement is particularly important to understand in light of the fact that if a purchaser cancels an order for a hearing aid prior to delivery, any moneys paid for services not yet rendered must be refunded. These services must, therefore, be itemized separately.

Registrants would also be required to preliminarily explain Part B, including any cancellation fees that might be incurred if an individual purchases and then returns a hearing aid. Subsection (c)(1) states that, if registrants do not charge fees for services, they should note that in Part A of the disclosure agreement.

Revised subsection (c)(2) requires the registrant to sign and have the prospective user or authorized representative sign the disclosure agreement after Part A has been explained and completed and Part B has been preliminarily explained. The disclosure form itself has changed to permit both the registrant and the customer to sign the disclosure agreement/money back guarantee under Part A at this juncture. The statement below Part A, which has been added to as proposed, states that the disclosure agreement was provided, Parts A and B were explained, Part A was completed before any services were provided and that Part B was completed after services were provided and before any payment was made. The disclosure agreement thus contemplates the possibility that the registrant or prospective hearing aid user may elect not to proceed after testing by stating that "If Part B is not completed, it is because a hearing aid was not recommended or not desired." This allows for the fact that the prospective user may not need a hearing aid, the registrant may not wish to recommend one or the prospective user may not wish to purchase one at the time the testing is done. These possibilities are reflected in subsection (c)(3), which instructs the registrant how to proceed if Part B becomes inapplicable. If Part B is completed, it must also be fully explained at that time, before any payment is provided.

A statement has been added after Part A to clarify that refunds of fees which are ordered by a court under the Commonwealth's consumer protection laws will not be affected by the characterization in the disclosure agreement of these fees as "not refundable." The Attorney General, who enforces the Commonwealth's consumer protection laws, was concerned that the disclosure agreement would mislead consumers and registrants to believe that refunds could not be ordered by a court of competent jurisdiction. Clarifying language suggested by the Attorney General was added to the disclosure agreement.

The next step in the process is for the registrant to explain the money-back guarantee. If the prospective user or authorized representative decides to purchase a hearing aid, the purchaser and registrant sign the signature lines under the guarantee and the purchaser should complete the time and date line. See subsection (c)(4). Proposed subsection (c)(4)—(6) has been deleted and replaced in accordance with the revisions to the disclosure agreement. The information in those paragraphs that is relevant to the revised form has been included elsewhere in subsection (c).

Subsection (c)(5) makes clear that a registrant may still extend the money back guarantee beyond 30 days if the registrant wishes to do so and that the 30 day period starts on the date of delivery of the hearing aid. Subsection (c)(6) explicitly instructs the registrant to provide the customer with a copy of the disclosure agreement after it is fully completed except for the serial number of the hearing aid and the block that is concerned with the date and time of delivery.

IRRC also questioned why it is necessary to have the time and date recorded twice on the form if the entire form must be completed prior to rendering any services. It is important to recognize the separation between the services that are rendered in connection with the fitting of the hearing aid, the sale of the hearing aid and the delivery of the hearing aid to the purchaser. The form as proposed did allow for the prospective user to sign before any fitting services were provided, and then sign again when the decision to purchase was made. It is important that the registrant provide the required information and services before the prospective user agrees to the sale. Recording the time that each signature is made is intended to provide some evidence that the time between the initial explanation of the form and the decision of the prospective user or authorized representative to purchase the hearing aid has allowed for the provision of services. If the serial number is not known until the hearing aid is delivered, this information may be filled in or updated at that time. Now that the Department has clarified the fact that the first signatures are to be completed before any services are provided and the second signatures are to be contemporaneous with the sale, the time of each signature remains an important piece of evidence that registrants have properly followed the process as outlined in subsection (c). In addition, the requirement to record the date of delivery on the form provides evidence of the start of the 30-day money back guarantee period.

IRRC further suggested that the Department allow for registrants to use forms other than those provided by the Department. The Department accepts this comment, and has revised subsection (b) to include the words "or on a form approved by the Department."

Two commentators pointed out that ear molds are not part of the hearing aid, and should not be included in the price of the hearing aid for refund purposes. Because the ear molds are not returnable to a manufacturer (as hearing aids are), registrants should be able to retain the entire cost of the ear mold even if the hearing aid is returned. However, as one of the commentators indicated, the act mandates that a purchaser is entitled to a refund of the price of the hearing aid and accessories together, except for a cancellation fee of the lesser of $150 or 10% of the price of the hearing aid and accessories. Ear molds are included in "accessories." The Department, therefore, has made no changes to the final-form rulemaking in response to these comments.

Commentators also referenced a statement in the preamble to the proposed rulemaking which stated that registrants do not suffer a great financial loss when a purchaser returns a hearing aid, since manufacturers give credit for returns. The commentators pointed out that return of a hearing aid has an ultimate financial impact on registrants and end users alike. Under FDA regulations, manufacturers cannot resell a returned hearing aid as new or use any part of it in a hearing aid that is to be designated as new. Any losses suffered by manufacturers as a result of a return are recovered in the prices of new hearing aids. More returns must necessarily result in higher prices for hearing aids. The commentators did not suggest changes to the rulemaking in connection with this point. As the act establishes the return policy and FDA regulations govern when a hearing aid may be considered new, the Department made no changes to the regulations in response to these comments.

§ 25.211 (relating to medical recommendations; waiver forms)

This section requires registrants to obtain medical recommendations or waiver forms signed by the prospective user before selling a hearing aid. IRRC pointed out that proposed amendments to subsection (a) incorrectly allow an individual who is "18 years of age" to sign a waiver form. In fact, the act requires a medical examination for individuals 18 years of age or younger who are buying a new hearing aid. The language has been corrected to read "19 years of age or older."

IRRC stated that the phrase "a legally proper waiver" as used in proposed subsection (b) is unclear, and questioned whether both the State and Federal medical waiver forms are legally proper. Both the State and Federal waiver forms are legally proper where the sale of a used hearing aid is concerned. Subsection (b) has been revised to explicitly state that a legally proper waiver in this limited circumstance is either the State or Federal waiver form.

§ 25.212 (relating to medical recommendations by examining physicians)

This section as proposed sets out the requirements for medical recommendations provided by physicians. No comments were received regarding this section. This section is adopted as proposed.

§ 25.213 (relating to consumer review)

This section establishes additional documentation that must be provided to a prospective hearing aid user, and incorporates certain requirements of the Unfair Trade Practices and Consumer Protection Law (UTPCPL) (73 P. S. §§ 201-1—209-6). IRRC expressed concern with subsection (b), which permits consumers to avoid contracts for sale entered into in connection with a contact with or call on a purchaser at the purchaser's home. The proposed amendments to subsection (b) state that a notice of rescission is effective "when deposited" in the United States mail. IRRC asked when the notice is considered to be "deposited." This common legal presumption does allow for a rescission to be effective when it is deposited in the mail, even though the registrant will not be aware of the rescission until it is delivered. In this way, the consumer has the full 3 days to change his mind; if the consumer had to ensure that the rescission was delivered within the 3 days, there would effectively be no "cooling off" period. The issue pointed out by IRRC is a possible evidentiary problem, which could arise in the context of a dispute as to when the notice was deposited, particularly in the absence of a postmark or other written evidence as to when the notice was deposited (such as a receipt for certified mail). The evidentiary question at that point would rest with the factfinder in the dispute.

IRRC was also concerned that subsection (b) is not clear enough as to the other permissible ways that the registrant may be given notice of rescission, and recommended that the Department list those ways. The Department will not implement this recommendation. These requirements are found in the UTPCPL. They are applicable whether or not incorporated in the Department's regulations; they are so incorporated because the act permits the Secretary to deny, suspend or revoke a registrant's certificate for untruthfulness or bad reputation in general, and more specifically for being enjoined from a violation of the UTPCPL. Incorporation in this manner places a registrant on more specific notice of the UTPCPL requirements. However, the Attorney General has primary responsibility for enforcement of the UTPCPL. The Department believes that specifically listing methods of service by which registrants are placed on notice of rescission could prove to be misleading to registrants, since the Attorney General's Office may ultimately interpret what is permitted under the UTPCPL differently than the Department. The Department has combined subsections (b) and (c) to clarify that all the requirements discussed are drawn directly from the UTPCPL and that the statute is controlling in this matter.

§ 25.214 (relating to recordkeeping)

This section contains recordkeeping requirements for registrants. No comments were received regarding this section. This section is adopted as proposed.

§ 25.215 (relating to denial, revocation or suspension of a registrant's certificate)

This section as proposed listed reasons for which a registration certificate may be denied, revoked or suspended. No comments were received regarding this section. The reference to the "United States Department of Health, Education and Welfare" was corrected to say "United States Department of Health and Human Services." This section is otherwise adopted as proposed.

§ 25.216 (relating to continuing education requirements)

This section as proposed established continuing education requirements and stated how they relate to the renewal of a registration certificate. The Department has changed the phrase "would need to," found in subsection (b), to "shall." This enhances the clarity and grammatical correctness of the provision, but does not change the requirement therein. IRRC properly pointed out that the date on which the first 2-year period for which continuing education requirements are applicable did not begin on April 15, 2002, as stated in the preamble in the Department's submission to IRRC, but on April 15, 2003. This

correction was made by the Legislative Reference Bureau prior to publication of the proposed rulemaking.

§ 25.217 (relating to approval of continuing education programs)

This section as proposed established requirements for continuing education programs. IRRC commented that the content of proposed subsection (a)(1) is adequately covered in proposed subsection (a)(2). The Department has deleted proposed subsection (a)(1). IRRC questioned how the Department will enforce the requirement in proposed subsection (a)(4) (adopted as subsection (a)(3)) that materials will be "well written." The Department has responded to this comment by requiring that written materials used in continuing education programs must be "clear, informative and grammatical," which the Department believes may be ascertained by reading the materials.

IRRC also asked what it meant to be a "qualified" instructor, as stated in proposed subsection (a)(5) (adopted as subsection (a)(4)). The Department does not wish to implement rigid standards having to do with credentials or being approved by certain National organizations that fulfill these functions. Some fitters who have submitted and led their own continuing education programs have done an excellent job, and the Department would like these individuals to continue to contribute to the continuing education process. To be responsive to IRRC's concerns, the Department has deleted the word "qualified" and substituted the phrase "experienced and knowledgeable in the subject matter taught." Whether an instructor is experienced and knowledgeable will be evaluated on a number of factors including qualifications, experience, the quality of the materials submitted in support of the program and any other relevant information that can be obtained, including any feedback offered by registrants who are familiar with the instructor or the program.

Finally, IRRC questioned what is meant by a "suitable setting," as that phrase is used in proposed subsection (a)(5) (adopted as subsection (a)(4)). The Department does not intend, nor have the resources, to investigate all of the physical areas in which programs may be offered. However, it is anticipated that complaints may be received if the setting in which a continuing education course was offered was particularly inappropriate in some aspect. If complaints prove to be valid, including this requirement will enable the Department to ensure that a provider does not continue to provide a course in an inappropriate setting. The Department has therefore reworded this subsection to require "a setting conducive to learning the material being taught, including any necessary equipment or facilities."

A commentator suggested that no more than 1/3 of all continuing education credits should be able to be obtained from any one manufacturer, and stated that certain manufacturers exclude persons from educational programs they offer. The commentator further stated that no continuing education credits should be accepted from any group that does not open their seminars to all fitters. In accordance with subsection (a)(5) (proposed as subsection (a)(6)), continuing education programs must be open to all persons with a current, suspended or expired registration certificate in order to be approved by the Department.

§ 25.218 (relating to credit for continuing education)

This section as proposed sets out the requirements for obtaining continuing education credits. Proposed subsection (e) (adopted as subsection (f)) required registrants to supply the Department with the materials the Department requests for evaluation prior to preapproving a self-study continuing education course. In its comments, IRRC asked what materials are to be provided. The Department has changed the subsection to clarify that the Department may require any of the materials to be used in the course to be provided for review. The Department also clarified, in response to IRRC's comments, that approval may be applied for after the course is taken, although the Department cannot guarantee that it will approve a course which has already been taken.

IRRC further commented that proposed subsections (c) and (g) deal with similar issues and should be combined. The Department respectfully disagrees. Proposed subsection (c) permitted a fitter to receive continuing education credits for serving as an instructor, with the caveat that only half of the required credit hours for a renewal may be fulfilled through instruction; the other half must be acquired by attending continuing education programs. Proposed subsection (g) stated that the same program may not be attended or taught for credit towards a single renewal of a fitter's registration certificate, but that the same program may be taught or attended again for a subsequent renewal. The Department considers these to be two different subjects, which should be placed in separate subsections. Because both of the provisions are related in that they do discuss teaching for continuing education credit, proposed subsection (g) was moved to become subsection (d) so that it could be read and compared more easily with subsection (c). It is intended that the subsections will be understood more clearly as a result. The remainder of the section has been renumbered accordingly.

The Department has changed proposed subsection (a) to state that no credit shall be "given" rather than "received" if the person offering the program determines that a fitter has not participated in a continuing education program adequately to earn the credit. This change contributes to grammatical correctness and clarity, but does not change the requirement stated in subsection (a).

It should be noted that section 311 of the act (35 P. S. § 6700-311) requires fitters to have completed, during the 2 years immediately preceding the expiration date of the certificate, 20 credits of continuing education. The practical effect of the requirement not permitting the same program to have been taught or attended twice for the renewal of a registration, means that during the 2-year "look back" period for that renewal, the same course cannot appear as having been taught or attended twice. The first full 2-year period begins April 15, 2003. On April 15, 2005 (the first renewal for which the full 20 credits will be required), a fitter cannot have taken or taught the same course twice for credit. If a fitter took one particular course May 1 of 2003, that course could be taken again for credit toward the April 15, 2006, renewal, because the 2-year look back period for the April 2006 renewal would run from April 15, 2004, to April 15, 2006, so the credits acquired May 1, 2003, would no longer be valid. If the fitter took the same course on May 1 of 2004, however, the course could not be taken again until after April 15, 2006, because the course would be included in the 2-year look back for the April 15, 2006 renewal.

§ 25.219 (relating to responsibilities of persons offering continuing education programs)

This section as proposed imposed certain requirements on providers of continuing education programs. No comments were received regarding this section. This section is adopted as proposed.

§ 25.220 (relating to right to enter, inspect and obtain records)

This section as proposed established under what circumstances a Department representative may inspect or obtain records from a registrant. No comments were received regarding this section. This section is adopted as proposed.

§ 25.221 (relating to exceptions)

This proposed section permitted the Department to grant exceptions to the regulations for good cause, except for statutory requirements repeated therein. No comments were received regarding this section. This section is adopted as proposed.

D. *Fiscal Impact*

The final-form rulemaking adopts the increased registration fees for hearing aid dealers and fitters imposed by Act 153. Additionally, hearing aid fitters will incur costs to obtain the continuing education credits required by Act 153. Because the fees set forth in the final-form rulemaking merely repeat the fees imposed by the act and the amount of continuing education required is also imposed by statute, almost all costs directly attributable to the regulations are costs that will be incurred by persons who need to meet regulatory requirements to offer continuing education courses. However, persons offering continuing education credits are permitted to charge persons who attend those courses, and may recoup their costs through enrollment fees. One cost that is directly attributable to the regulations will be the cost incurred by registrants due to having used the Department's disclosure agreement/money back guarantee form. Registrants may also incur some costs due to the establishment, in Act 153, of a 30-day money-back guarantee to purchasers, which may enable purchasers to return hearing aids where registrants otherwise might not have permitted them to do so. However, Act 153 does allow registrants to retain the lesser of $150 or 10% of the purchase price of each hearing aid with accessories, so it is unlikely that registrants will suffer actual financial loss due to the new requirement.

E. *Paper Requirements*

The final-form rulemaking will result in some additional paperwork for the Commonwealth in that the Department will be responsible for ensuring that hearing aid fitters have met their continuing education requirements. Hearing aid fitters will also need to retain records enabling them to establish that these requirements are met. Registrants will need to provide to each customer the disclosure agreement and money-back guarantee required by Act 153, and will also be required to retain copies of those documents in their records. Persons who offer continuing education courses will need to satisfy paperwork requirements.

The final-form rulemaking attempts to reduce necessary paperwork by enabling registrants to use alternative forms of payment to pay fees, including credit cards, and by including the Department's website, which will contain much of the information that registrants need to fulfill the regulatory requirements.

F. *Effective Date/Sunset Date*

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*. No sunset date is established. The Department will monitor the effectiveness of the regulations on a continuing basis and make changes as needed.

G. *Statutory Authority*

The Department's general authority to promulgate regulations is established by section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)). The Department is given specific authority to promulgate rules and regulations to enforce the act in section 205 of the act (35 P. S. § 6700-205), which section was amended by Act 153 to include the authority to promulgate regulations to effect the new requirements of Act 153.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 22, 2003, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 3223 (July 6, 2002), to IRRC and the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees 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 House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 11, 2003, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 4, 2003, and approved the final-form rulemaking. The Office of Attorney General approved the regulations on May 12, 2004.

I. *Contact Person*

Questions regarding the final-form rulemaking should be submitted to Theresa A. Ritchie, R.Ph., Director, Hearing Aid Program, Department of Health, P. O. Box 90, Harrisburg, PA 17108, (717) 783-1379. Persons with disabilities who require an alternative format of these regulations (for example, large print, audiotape or Braille) should contact Theresa A. Ritchie so that necessary arrangements may be made, for speech or hearing, or both, impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

J. *Findings*

The Department finds:

(1) Public notice of the intention to adopt the amendment 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 rulemaking in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes.

K. *Order*

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

(a) The regulations of the Department, 28 Pa. Code Chapter 25, are amended by amending §§ 25.201—25.215 and by adding §§ 25.216—25.221 to read as set forth in Annex A

(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 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*.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 6376 (December 20, 2003).)

Fiscal Note: Fiscal Note 10-165 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 28. HEALTH AND SAFETY

PART III. PREVENTION OF DISEASES

CHAPTER 25. CONTROLLED SUBSTANCES, DRUGS, DEVICES AND COSMETICS

Subchapter A. CONTROLLED SUBSTANCES, DRUGS, DEVICES AND COSMETICS

Subchapter B. HEARING AID SALES AND REGISTRATION

§ 25.201. Application.

(a) *Scope*. This subchapter applies to all persons engaged in the business of selling or fitting hearing aids in this Commonwealth; except that physicians and audiologists are exempted from all provisions regarding hearing aid fitters.

(b) *Authority*. This subchapter is adopted under the act.

§ 25.202. Definitions.

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

Act—The Hearing Aid Sales Registration Law (35 P. S. §§ 6700-101—6700-802).

Advertise and any of its variants—The use of a newspaper, magazine or other publication, book, notice, circular, pamphlet, letter, handbill, poster, sign, placard, label, tag, window display, store sign, radio, television announcement, Internet, or other means or methods employed to bring to the attention of the public the practice of selling or fitting hearing aids.

Audiologist—A person who holds a current license as an audiologist issued by the State Board of Examiners in Speech-Language and Hearing, or a person who is permitted to practice audiology pursuant to an exemption to the audiologist licensure requirement under section 6(b) of the Speech-Language and Hearing Licensure Act (63 P. S. § 1706(b)).

Authorized representative—A person who is authorized by law to make a decision, required pursuant to this subchapter, for a hearing aid user or prospective hearing aid user.

Business of selling hearing aids—

(i) Selling, leasing or offering for sale or lease new, used or reconditioned hearing aids exclusive of parts, attachments or accessories, at retail, either as exact replacements for damaged or worn out units or written specifications provided by an audiologist, otologist or otolaryngologist.

(ii) The term does not include fitting or the practice of fitting and selling hearing aids.

Continuing education program—A program approved by the Department for credit towards the continuing education requirements for the renewal of the registration certificate of a hearing aid fitter.

Conviction—A plea or verdict of guilty, or a conviction following a plea of nolo contendere to a charge of a crime involving moral turpitude.

Department—The Department of Health of the Commonwealth.

Fitting—Includes the physical acts of adjusting the hearing aid to the individual, taking audiograms, making ear molds, advising the individual with respect to hearing aids, making audiogram interpretations and assisting in the selection of a suitable hearing aid to sell a hearing aid.

Hearing aid—A wearable instrument or device designed or offered to aid or compensate for impaired human hearing together with any parts, attachments or accessories for those instruments or devices, including ear molds but excluding batteries and cords.

Hearing aid dealer—A person engaged in the business of selling hearing aids.

Hearing aid fitter—An individual engaged in the practice of fitting and selling hearing aids.

Hearing aid user—An individual who uses a hearing aid.

Practice of fitting and selling hearing aids—Those practices used solely for making selections, adaptations and sales of hearing aids.

Prospective hearing aid user—An individual who is considering buying a hearing aid or whose hearing is being evaluated by a registrant.

Purchaser—An individual who has agreed to purchase a hearing aid from a registrant.

Registrant—A hearing aid dealer or fitter holding a current certificate of registration.

Secretary—The Secretary of Health of the Commonwealth.

Sponsor—An individual registered in this Commonwealth as a hearing aid fitter who agrees to supervise an apprentice hearing aid fitter.

Used hearing aid—

(i) A hearing aid that has been worn for any period of time by a user.

(ii) A hearing aid is not a used hearing aid if it has been worn only by a prospective user as part of a bona fide hearing aid evaluation conducted in the presence of the registrant or an individual selected by the registrant and authorized by law to assist the prospective user in making such an evaluation.

§ 25.203. Advisory Council.

(a) The Advisory Council (Council) will be composed as provided for under section 201 of the act (35 P. S. § 6700-201).

(b) It will be the duty of the Council to advise the Secretary, to the best of its ability, on the administration of the act.

(c) The Council will hold at least one annual meeting at a time and place designated by the Secretary for the purpose of providing information and advice to the Department.

(d) A Council member may convey the impression, either publicly or privately, that the member is acting officially for the Council only with prior authorization from the Council.

§ 25.204. Application for and renewal of registration.

(a) *Application*. An application for registration or renewal of registration as a hearing aid dealer, hearing aid fitter, apprentice hearing aid fitter or temporary hearing aid fitter can be obtained from the Division of Home Health, Pennsylvania Department of Health, 132 Kline Plaza, Suite A, Harrisburg, Pennsylvania 17104.

(b) *Apprentice hearing aid fitter*. A completed application for registration as an apprentice hearing aid fitter shall be filed with the Department at least 30 days before the fitter's examination that the applicant intends to take, together with a check, money order or other approved method of payment as the Department publishes in a notice in the *Pennsylvania Bulletin*, in the amount of $50. An additional $150 shall be paid before taking the fitter's examination. The application fee is not refundable, but the $150 fee for the examination will be refunded to an applicant who is found to be ineligible to take the examination.

(c) *All other registrations.* A completed application for any registration certificate, other than a registration certificate as an apprentice hearing aid fitter, may be filed at any time, together with a check, money order or other approved method of payment as the Department publishes in a notice in the *Pennsylvania Bulletin*, in the amount of the appropriate application fee.

(d) *Renewal of current certificate.* A registrant shall apply to renew a current registration certificate by March 16 prior to the certificate's expiration, by submitting a completed renewal application, available from the Department, along with the renewal fee of $100. To renew a hearing aid fitter's registration certificate, the applicant shall also demonstrate satisfaction of the continuing education requirements under § 25.216 (relating to continuing education requirements).

(e) *Renewal of expired certificate*. An expired registration certificate may be renewed within 5 years after its expiration or inactive date by filing an application for renewal, with payment of the renewal fee, and payment of the delinquency fee if the application is received more than 30 days after the expiration date. To renew an expired hearing aid fitter's registration certificate, the applicant shall also demonstrate satisfaction of the continuing education requirements under § 25.216.

(f) *Renewal of fitter's temporary registration certificate and apprentice certificate*. Upon application, the Secretary may renew a temporary certificate or apprentice certificate for a period which shall expire 30 days after the next available fitter's qualifying examination has been given. The Secretary will not issue more than two renewals of these certificates, except upon petition of an applicant for good and sufficient cause shown. An applicant may petition the Department for an additional renewal. The petition shall include the reasons for which the additional renewal is requested. An applicant shall send a petition for additional renewal to the Division at the address given in subsection (a). The Department will then decide whether to issue the renewal.

(g) *Late application for renewal*. A person who files for renewal of a registration certificate after March 16 may not receive the renewal before the registration certificate expires.

§ 25.205. Additional registration requirements.

(a) *Hearing aid dealers*. No requirement is imposed in addition to those imposed under § 25.204(c) (relating to application for and renewal of registration).

(b) *Hearing aid fitters*. A hearing aid fitter shall pass the qualifying examination as provided by the act.

(c) *Reciprocal registration—certificate by endorsement*.

(1) An applicant for registration to practice as a hearing aid dealer or as a hearing aid fitter who is licensed or registered in any other state, which has requirements equal to or greater than those in this Commonwealth for registration as a hearing aid dealer or fitter and which maintains reciprocal practice privileges with this Commonwealth, may be granted a registration certificate by endorsement by the Secretary. Being qualified to apply for a hearing aid fitter's registration certificate by endorsement relieves the applicant from having to take the qualifying examination otherwise required under the act.

(2) In all other respects, the applicant for a registration certificate by endorsement shall be registered in the same manner and meet the same requirements as other registrants.

(3) If the Commonwealth does not maintain reciprocal practice privileges with a state in which a person is registered or otherwise authorized to function as a hearing aid fitter or dealer, the person may apply for a temporary registration certificate under subsection (e).

(d) *Apprentice registration*. Apprentice registration shall conform to the following:

(1) An applicant for registration as an apprentice hearing aid fitter shall have a sponsor responsible for the training and supervision of the applicant.

(2) An application shall be accompanied by a statement of the sponsor:

(i) Setting forth the type of supervision which shall be given the applicant.

(ii) Providing an outline of the training program to be followed in preparing the applicant for examination. The training program shall include education and training in at least the following areas:

(A) The anatomy and physiology of the ear.

(B) The function of hearing aids.

(C) The grounds for revocation or suspension of a certificate of registration, or probation of a registrant, under the act.

(D) The violations and penalties under the act.

(E) The procedures and use of equipment established by the Department for the fitting and selling of hearing aids.

(F) The taking of ear mold impressions.

(G) The medical and rehabilitation facilities for children and adults that are available in the areas served.

(H) The criteria for medical referral when found to exist either from observation by the registrant or on the basis of information furnished by the prospective hearing aid user, to include those criteria in § 25.211(d) (relating to medical recommendations; waiver forms).

(iii) Providing the registration number of the sponsor.

(3) An apprentice hearing aid fitter desiring to change sponsors shall furnish the Department a sworn or affirmed request giving reasons for the change and a sworn or affirmed statement from the new sponsor setting forth the information required by paragraph (2), and accompanied by the apprentice's certificate of registration. An affirmed statement may be given in any form so long as it is in writing, signed, and contains a statement to the effect that it is truthful.

(4) A sponsor desiring to terminate responsibilities with regard to an apprentice shall give the apprentice 10 days written notice of the reasons for the action and shall notify the Department at the same time by certified mail.

(e) *Temporary registration*. Temporary registration shall conform to the following:

(1) A temporary fitter's registration certificate will be issued to an applicant who satisfactorily demonstrates having been engaged in the fitting and selling of hearing aids at an established place of business in a state other than this Commonwealth for 2 years within a 5-year period immediately before making application and who otherwise fulfills the requirements of the act and this subchapter.

(2) The temporary registrant shall take the hearing aid fitter's examination to qualify for a regular hearing aid fitter's registration certificate.

(3) The temporary registration certificate shall expire 30 days after the administration of the qualifying examination that the temporary registrant takes. The temporary registrant shall take the qualifying examination no earlier than 90 days after the date the temporary registration certificate was issued, and no later than 1 year after the date the temporary registration certificate was issued.

§ 25.206. Examinations.

(a) An examination to obtain registration as a hearing aid fitter shall be held at least twice each year, at a time and place to be fixed by the Secretary at least 45 days before the examination date.

(b) The date of an examination may be obtained by writing to the Division at the address given in § 25.204(a) (relating to application for and renewal of registration), by checking the Department's website at www.health.state.pa.us, or by phone or e-mail to the Division.

(c) The passing grade on an examination will be determined by the Secretary.

§ 25.207. Categories of registrations; fee schedule.

(a) A registration certificate, other than a temporary or apprentice registration certificate, shall expire at midnight of April 15 of each year, if not renewed.

(b) For a hearing aid dealer, the initial registration fee is $200 if the Department issues the registration certificate between April 15 and October 14, and $100 if the Department issues the registration certificate between October 15 and April 14. The annual renewal fee is $100 for both dealers and fitters.

(c) For a hearing aid fitter's registration certificate, the initial registration fee is $200, $150 of which will be refunded if the applicant is ineligible to take the qualifying fitter's examination. The annual renewal fee is $100.

(d) For a registration certificate by endorsement the fees shall be the same as in subsection (b).

(e) For a temporary hearing aid fitter's registration certificate, the initial registration fee is $200, $150 of which is for the examination. A refund of the $150 will be made if the applicant is ineligible to take the qualifying examination for a fitter's registration certificate. Instead of paying the full $200 when making the application, the applicant may pay $50 when making the initial application, and $150 before taking the examination for the first time. The renewal fee is $100.

(f) For an apprentice fitter's registration certificate, the fee is $50 plus an additional $150 before the apprentice takes the fitter's examination. The renewal fee is $100.

(g) For a duplicate or replacement registration certificate, the fee is $10. The registrant shall obtain a duplicate certificate upon the loss of an original certificate or for a branch office. The registrant shall obtain a replacement registration certificate upon a name change by the person holding a certificate.

(h) The fee to retake the fitter's examination for an applicant who has previously failed the examination is $50.

(i) A delinquency fee will be assessed if an applicant applies for renewal of a registration certificate after May 15. The delinquency fee is $50.

(j) For renewal of a suspended registration certificate, the fee is $100 plus the delinquency fee if one has otherwise accrued.

§ 25.208. Display of registration certificates; offices.

(a) A registrant shall display the dealer's or fitter's registration certificate at the place of business listed in the registrant's application.

(b) If a registrant maintains more than one place of business within this Commonwealth, the registrant shall apply for a duplicate registration certificate for each branch office. The registrant shall display the appropriate duplicate registration certificate in each office.

(c) The place of business identified in a registrant's application shall be an office at a fixed location. An office which is part of a building normally used as a residence shall be in a space set aside for office purposes only.

(d) A registrant shall file notice of a change in the registrant's place of business with the Department at least 10 work days before the change by writing to the Department at the address given in § 25.204(a) (relating to application for and renewal of registration).

(e) A registrant shall make the registration certificate available for inspection on request of any client, prospective client, Department employee or law enforcement official.

§ 25.209. Facilities, procedures and instrumentation.

(a) *Facilities.* A registrant shall engage in the practice of fitting or selling a hearing aid only if the registrant provides:

(1) An appropriate test area, the ambient noise level of which shall have a documented readout of 55 dB or lower on the A scale of a sound level meter.

(2) A selection of hearing aid models, supplies and accessories to provide for the immediate needs of hearing aid users or prospective hearing aid users.

(b) *Procedures.* A registrant shall satisfy the following:

(1) The registrant shall sell a hearing aid only if within 6 months before the sale an examination of the prospective hearing aid user was conducted using pure tone air conduction, bone conduction and speech audiometry tests. This requirement does not apply when the registrant is replacing a hearing aid with another of the same make, model and response. The registrant shall sell a hearing aid replacing another of the same make, model and response only if within 12 months before the sale an examination of the prospective hearing aid user was conducted using pure tone air conduction, bone conduction and speech audiometry tests. The registrant shall verify that the tests were performed by an individual authorized by law to do so. The registrant may rely on a representation by the physician, audiologist or fitter who performed or supervised the tests that the individual who performed the tests was authorized to do so.

(2) The registrant shall:

(i) Perform air conduction tests for hearing level thresholds at frequencies of 250 Hz, 500 Hz, 1,000 Hz, 2,000 Hz, 4,000 Hz and 6,000 Hz or 8,000 Hz, with masking if necessary.

(ii) Perform bone conduction tests for hearing level thresholds at frequencies of 500 Hz, 1,000 Hz, 2,000 Hz and 4,000 Hz, with masking if necessary.

(iii) Maintain records of the test results for each ear for 7 years.

(iv) Perform a speech reception or speech awareness threshold test using an electronic speech audiometer with head or insert ear phones.

(v) Perform a word discrimination or other speech intelligibility test for conversational level speech using an electronic speech audiometer with head or insert ear phones.

(3) The registrant shall sell a hearing aid only if the hearing aid is fitted to the wearer to ensure physical and operational comfort and improvement in hearing function is demonstrated and documented in at least one of the following areas: speech detection, speech awareness levels, speech intelligibility, orientation or speech reception threshhold.

(c) *Instrumentation.* A registrant shall satisfy the following:

(1) All test instruments shall be calibrated once each year or more often if necessary to meet current American National Standards Institute standards for pure tone and speech audiometry as identified by 1996 A.N.S.I. standards or applicable succeeding A.N.S.I. standards.

(2) Instruments transported to test sites shall be calibrated to the standard set forth in paragraph (1) every 6 months, or more frequently as needed.

(3) Calibration shall be performed by a qualified individual other than the owner.

(4) A signed certificate identifying the most recent date of calibration shall be maintained for inspection by the Department.

§ 25.210. Receipt, disclosure agreement and money back guarantee to purchaser—purchaser protection.

(a) *Receipt.* Upon the sale of a hearing aid, the registrant shall provide the purchaser a signed receipt. The receipt may be made out on more than one sheet of paper and shall contain the following:

(1) The date of sale.

(2) The make, model and serial number or, if no serial number is applicable, an identification number of the hearing aid.

(3) The address of the principal place of business of the registrant.

(4) If the hearing aid is used or reconditioned, a statement which provides that information and which meets the requirements of § 25.215(23) (relating to denial, revocation or suspension of registrant's certificate).

(5) The registrant's registration certificate number.

(6) The terms of any guarantee or express warranty made to the purchaser with respect to the hearing aid.

(7) A copy of the written forms as required by § 25.211 (relating to medical recommendations; waiver forms).

(8) A statement on or attached to the receipt, in no smaller than 10 point type, as follows:

> "The purchaser has been advised at the outset of his relationship with the hearing aid dealer that any examination or representation made by a registered hearing aid dealer and fitter in connection with the practice of fitting and selling of this hearing aid, is not an examination, diagnosis or prescription by a person licensed to practice medicine in this Commonwealth and therefore must not be regarded as medical opinion."

(9) A statement on the face of the receipt, in no smaller than 10 point bold type, as follows: "If your rights are violated, you may contact the State Bureau of Consumer Protection, the Pennsylvania Department of Health in Harrisburg, or your local district attorney."

(b) *Disclosure agreement and money back written guarantee.* Before the provision of any service incidental to or connected with the potential sale of a hearing aid, the registrant shall provide a disclosure agreement and money back written guarantee to the prospective hearing aid user or authorized representative, and shall explain it in detail in accordance with subsection (c). This shall be in 10 point type or larger, and may be made out on more than one sheet of paper, but shall employ the following format or be on a form approved by the Department:

HEARING AID DISCLOSURE AGREEMENT/MONEY BACK GUARANTEE

(Business Name) _____ (Business Address) _____

Telephone No. ( ) _____

PART A.

Description of services included in fitting procedure or process, and sale and delivery of hearing aid.	**FEE** (State whether fee is waived if hearing aid purchased)	**REFUNDABLE** (Upon return of hearing aids)	**NOT REFUNDABLE**

THIS DISCLOSURE AGREEMENT WAS PROVIDED, PARTS A AND B WERE EXPLAINED, AND PART A (FEES FOR SERVICES NOT PART OF THE PRICE OF THE HEARING AID) WAS COMPLETED AT _____ (time) ON _____ (date), BEFORE ANY SERVICES WERE PROVIDED. PART B (CANCELLATION FEES THAT WILL BE INCURRED IF A HEARING AID IS RETURNED UNDER THE 30-DAY MONEY BACK GUARANTEE BELOW), WAS COMPLETED AND EXPLAINED AFTER SERVICES WERE PROVIDED AND BEFORE ANY PAYMENT WAS MADE. IF PART B IS NOT COMPLETED, IT IS BECAUSE A HEARING AID WAS NOT RECOMMENDED OR NOT DESIRED.

NOTHING IN THIS DISCLOSURE AGREEMENT SHALL RELIEVE A REGISTRANT OF THE OBLIGATION TO REFUND ALL OR PART OF THE ABOVE FEES, INCLUDING THOSE LISTED AS NOT REFUNDABLE, IF A COURT DETERMINES THAT THE REGISTRANT HAS VIOLATED A PENNSYLVANIA CONSUMER PROTECTION LAW IN THE SALE OR FITTING OF THE HEARING AID (OR SIMILAR DEVICE) AND IF THE COURT ORDERS SUCH REFUND.

_____ Customer's Signature

_____ Registrant's Signature

PART B.

HEARING AIDS & ACCESSORIES		**DESCRIPTION of GOODS—**include make, model, serial number(s)	**PRICE**	**REFUNDABLE** (upon return of hearing aid)	**NOT REFUNDABLE** (Cancellation Fee)
Hearing Aid(s)	**Right**				
	Left				
Accessories (Describe, if applicable)					
TOTAL					
Total maximum Cancellation Fee is lesser of 10% or $150 per hearing aid including accessories.					

30 Day Money Back Guarantee: If a hearing aid is returned within 30 days of date of delivery in the same condition, ordinary wear and tear excluded, you are entitled to a refund of the portion of the purchase price of the hearing aid and accessories as itemized on the receipt and above, less the cancellation fee stated above. If a cancellation fee is imposed the nonrefundable amount for each aid and accessories cannot exceed 10% of the purchase price of the hearing aid and accessories or $150.00 per aid and accessories, whichever is less. You will, however, be responsible for all nonrefundable service fees listed in Part A. If you cancel your order prior to delivery, you are entitled to full refund of the purchase price of the aid and accessories, and a full refund for services not yet rendered.

_____ Customer's Signature

_____ Registrant's Signature

_____ Date and time of Sale

_____ Registration No.

_____ DATE of DELIVERY

_____ Customer's Signature or Initials

(c) *Additional responsibilities of registrant with respect to the disclosure agreement/money back guarantee.*

(1) Before providing any services incidental to the possible sale of a hearing aid to the prospective hearing aid user, the registrant shall explain Part A of the disclosure agreement/money back guarantee to the prospective hearing aid user or authorized representative and shall complete Part A. The registrant shall also give a preliminary explanation of Part B, including any cancellation fees that may be retained if a purchaser decides to return a hearing aid. The registrant shall include in Part A a complete description of what the fitting procedure or process includes, and shall itemize and disclose fees associated with the fitting procedure or process and the sale and delivery of the hearing aid. For each service provided, the registrant shall identify by dollar amount the portion of the fee that is refundable and the portion that is not refundable. If a fee will be waived if a hearing aid is purchased, that shall be stated. If the registrant charges no fees for services, the registrant shall note that in Part A.

(2) After Parts A and B have been explained and Part A has been completed, the registrant shall have the prospective hearing aid user or authorized representative complete the time and date lines provided under Part A. The prospective hearing aid user or authorized representative and registrant shall also sign under Part A when appropriate.

(3) After completing the necessary testing, if it is determined that a hearing aid will be recommended, the registrant shall explain and complete Part B, itemizing any cancellation fee associated with the sale and delivery of a hearing aid and its accessories by designating that amount as "not refundable." Part B shall be fully explained and completed before any payment is made. If Part B becomes inapplicable due to a decision by the registrant, prospective hearing aid user or authorized representative not to proceed further after testing, the disclosure agreement/money back guarantee need not be fully completed. The registrant shall provide a copy of the partially completed disclosure agreement/money back guarantee to the prospective hearing aid user or authorized representative.

(4) If the registrant and the prospective hearing aid user or authorized representative decide to proceed, the registrant shall explain the 30-day money back guarantee. If the prospective user or authorized representative decides to purchase a hearing aid, the registrant shall have the purchaser sign the second signature line on the disclosure agreement/money back guarantee and complete the line for date and time of sale, and shall also sign when appropriate.

(5) The registrant may revise the relevant portion of the disclosure agreement/money back guarantee form to disclose the registrant's policy of offering a money back guarantee return period longer than 30 days. The money back guarantee shall be for at least 30 days from the date of delivery.

(6) After the disclosure agreement/money back guarantee is fully completed except for the date of delivery block and the hearing aid serial numbers, the registrant shall provide a copy of it to the hearing aid user or authorized representative.

(7) At the time the hearing aid is delivered to the hearing aid user or authorized representative, the registrant shall ensure that the signature or initials of the user or authorized representative is obtained and the date of delivery and serial number are inserted in the block or section provided for that purpose on the disclosure agreement/money back guarantee. After the block is completed with the initials or signature and date and the serial number is inserted, the registrant shall provide a copy of the completed disclosure agreement/money back guarantee to the purchaser.

§ 25.211. Medical recommendations; waiver forms.

(a) Except when selling a replacement of a worn out or damaged hearing aid, when selling a hearing aid for the use of a prospective hearing aid user who is 19 years of age or older, a registrant shall either obtain for the prospective user a medical recommendation that complies with § 25.212 (relating to medical recommendations by examining physicians), or ensure that the prospective user or authorized representative signs a waiver form as provided under section 403 of the act (35 P. S. § 6700-403). The waiver form shall be prepared and used as follows:

(1) The waiver form shall be in 10 point type or larger.

(2) The waiver shall be read to the prospective hearing aid user or authorized representative and explained in a manners that the individual is not encouraged to waive a medical examination and so that the individual will be thoroughly aware that signing the waiver will not be in the prospective hearing aid user's best interest.

(3) The waiver form shall read as follows:

I have been advised that my best interests would be served if I had a medical examination by an otologist or otolaryngologist or any licensed physician before my purchase of a hearing aid.

_____ (Registrant's Name) has fully and clearly informed me of the value of such medical examination. After such explanation, I voluntarily sign this waiver. I choose not to seek a medical examination before the purchase of the hearing aid.

_____
(Signature of Registrant)

_____
(Address of Registrant)

_____
(Signature of Purchaser)

_____
(Date of Signature)

(b) When selling a replacement of a worn out or damaged hearing aid for the use of a prospective hearing aid user who is 18 years of age or older, a registrant shall either obtain for the prospective user a medical recommendation that complies with the requirements of § 25.212, or ensure that the prospective user or authorized representative signs a legally proper waiver of the medical examination. For purposes of this subsection, a legally proper waiver includes a medical waiver form as provided under section 403 of the act and described in subsection (a), or a Federal medical waiver form as approved by the Food and Drug Administration of the United States Department of Health and Human Services.

(c) Except when a registrant is selling a hearing aid to replace an identical hearing aid, the registrant may sell a hearing aid for the use of a prospective user 18 years of age or younger only if the registrant obtains a medical recommendation that complies with the requirements of § 25.212 and is signed by a physician specializing in otolaryngology or otology. When selling an identical re-

placement hearing aid for the use of an individual under 18 years of age, the registrant shall obtain a medical recommendation that complies with the requirements of § 25.212.

(d) Before the sale of a hearing aid a registrant shall inform the prospective hearing aid user or authorized representative, in writing, that it would be in the best interest of the prospective hearing aid user to consult a physician specializing in or qualified to deal with diseases of the ear if the prospective hearing aid user has any of the following conditions:

(1) Visible congenital or traumatic deformity of the ear.

(2) Active drainage from the ear within the previous 90 days or a history of this symptom.

(3) Sudden or rapidly progressive hearing loss within the previous 90 days or a history of this symptom.

(4) Acute or chronic dizziness.

(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.

(6) Visible evidence of cerumen accumulation or a foreign body in the ear canal.

(7) Significant air-borne gap of 15dB or greater at 500 Hz, 1000 Hz and 2000 Hz.

(8) Pain in the ear within the previous 90 days.

§ 25.212. Medical recommendations by examining physicians.

(a) Whenever a medical examination is performed under the act or Federal requirements, before fitting and selling a hearing aid the registrant shall ensure that a medical recommendation has been signed by the examining physician, within 180 days before the sale, on a form which includes the following statement or its equivalent:

I have medically evaluated the hearing ability of

_____

(Patient's Name)

and a hearing aid may be beneficial to this person.

_____

(Signature of Physician)

_____

(Date of Evaluation)

(b) If the prospective hearing aid user is 18 years of age or younger, the registrant shall ensure that the prospective user's date of birth has been included on the medical recommendation form.

§ 25.213. Consumer review.

(a) Before signing a waiver form under § 25.211 (relating to medical recommendations; waiver forms) and before the sale of a hearing aid to or for the use of a prospective hearing aid user, the registrant shall:

(1) Provide the prospective hearing aid user or authorized representative with a copy of the User Instructional Brochure for the hearing aid that has been or may be selected for the prospective user.

(2) Review the content of the User Instructional Brochure with the prospective hearing aid user or authorized representative orally or in the predominant method of communication used during the sale.

(3) Give the prospective hearing aid user or authorized representative an opportunity to read the User Instructional Brochure.

(b) If goods or services having a sale price of $25 or more are sold or contracted to be sold to a purchaser as a result of or in connection with a contact with or call on the purchaser at the purchaser's residence, the purchaser may avoid the contract or sale by notifying the registrant of that decision, in writing, within 3 full business days following the day on which the contract or sale was made and by returning or holding available for return to the registrant, in its original condition, any merchandise received under the contract or sale. The notice of rescission is effective when deposited in the United States mail or when service is made in another manner which gives the registrant notice of rescission. These and additional provisions relating to the sale of goods in the purchaser's home, including specific items which shall be included on the purchase receipt, are made a part of this section by incorporation of section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7).

§ 25.214. Recordkeeping.

A registrant shall, upon the consummation of a sale of a hearing aid, keep and maintain records in the registrant's office or place of business at all times. These records shall be kept for 7 years and shall include the following:

(1) Results of all testing conducted under § 25.209 (relating to facilities, procedures and instrumentation). The minimum acceptable test records shall be records of:

(i) Pure tone tests including air and bone conduction with masking where appropriate, and the ambient noise level of the test area.

(ii) Speech reception threshold expressed in decibels of hearing level.

(iii) Most comfortable level expressed in decibels.

(iv) Uncomfortable (tolerance) level expressed in decibels.

(v) Word discrimination test results expressed in percentage indicating the test words used, presentation level, masking level (if applicable), and signal to noise ratio (if applicable).

(2) A copy of the written receipt, disclosure agreement and money back guarantee required by § 25.210 (relating to receipt, disclosure agreement and money back guarantee to purchaser-purchaser protection).

(3) The written physician's recommendation required by § 25.212 (relating to medical recommendations by examining physicians) or the waiver form required by § 25.211 (relating to medical recommendations; waiver forms).

§ 25.215. Denial, revocation or suspension of registrant's certificate.

The Secretary may deny, suspend or revoke a registration certificate provided under the act or the Secretary may impose conditions of probation upon a registrant for any of the following causes:

(1) Gross incompetency which includes the improper or unnecessary fitting of a hearing aid.

(2) Conviction of a felony or misdemeanor involving moral turpitude.

(3) Obtaining a registration certificate by fraud or deceit.

(4) Using the term "doctor" or "physician" or "clinic" or "audiologist" or any derivation thereof as part of the firm name under which the registrant fits and sells hearing aids, unless authorized by law.

(5) Fraud or misrepresentation in the repair, fitting or selling of a hearing aid.

(6) Employing a person to perform a function within the scope of practice of a hearing aid fitter who is not authorized by law to perform the function.

(7) Habitual intemperance.

(8) Gross immorality.

(9) Permitting another person to use the registration certificate for any purpose, except permitting an audiologist or physician employed by the registrant to sell hearing aids for the registrant.

(10) Violating or, with notice or knowledge permitting an employee to violate, the act or this subchapter.

(11) A cause which would be a ground for denial of an application for a registration certificate.

(12) Having been enjoined from violating a provision of the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1—209-6) or being subject to a final order of the Federal Trade Commission, the Department, or the Food and Drug Administration of the United States Department of Health and Human Services, concerning the sale or offering for sale of an unsafe, unhealthful or worthless hearing device or for engaging in conduct which has the tendency to mislead or deceive.

(13) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, that is misleading, deceiving, improbable or untruthful, such as a misrepresentation relating to:

(i) The grade, quality, quantity, origin, novelty, price, dealer cost, terms of sale, use, construction, size, composition, dimensions, type, design, development, visibility, durability, performance, fit, appearance, efficacy, benefits, cost of operation, resistance to climatic conditions, or physiological benefits of a hearing aid or the psychological well-being induced by a hearing aid.

(ii) A service or adjustment offered, promised, or supplied to a purchaser of a hearing aid, or the fee associated with the service or adjustment.

(14) Making a representation that a hearing aid is "guaranteed," without clear and conspicuous disclosure of:

(i) The nature and extent of the guarantee.

(ii) A material condition or limitation of the guarantee which is imposed by the guarantor.

(iii) The manner in which the guarantor will perform thereunder.

(iv) The identity of the guarantor, with disclosure, if applicable, that any guarantee made by the registrant which is not backed up by the manufacturer is offered by the registrant only.

(v) The meaning of "life" or "lifetime" to clarify whether it refers to the life of the purchaser, the product, or otherwise, whenever representations are made that a hearing aid is "guaranteed for life" or has a "lifetime guarantee."

(15) Making a guarantee, warranty, or promise which, under normal conditions, is impractical of fulfillment or which is for a period of time or of a nature that may cause a purchaser to believe that the hearing aid has a greater degree of service ability, durability or performance capability in actual use than is true.

(16) Making a misrepresentation as to the character of the business conducted by the registrant. Unless it is true, a registrant may not represent directly or indirectly through the use of any word or term, in the corporate or trade name, in advertising, or otherwise, that the registrant owns or maintains a laboratory devoted to hearing aid research, testing, experimentation or development. A registrant may not misrepresent in any other material respect the character, extent or type of business conducted by the registrant.

(17) Causing deception that services or advice of a physician were used in the design or manufacture of hearing aids. Unless it is true, a registrant may not represent, directly or by implication, that the services or advice of a physician have been used in the designing or manufacturing of hearing aids. The prohibitions of this paragraph are applicable to the use of the terms "doctor," "physician," "otologist" or "otolaryngologist," to the use of any abbreviations, variations or derivatives of those terms; and to the use of any symbol, depiction, or representation having a medical connotation.

(18) Making a deceptive representation as to the visibility or the construction of a hearing aid. A registrant may not do any of the following:

(i) Represent, directly or by implication, through the use of such words or expressions as "invisible," "hidden," "hidden hearing," "completely out of sight," "conceal your deafness," "hear in secret," "unnoticed even by your closest friends," "no one will know you are hard of hearing," "your hearing loss is your secret," "no one need know you are wearing a hearing-aid," "hidden out of sight when inserted in the ear canal" or by any other words or expressions of similar import, that any hearing aid, device, or part is hidden or cannot be seen unless it is hidden or cannot be seen.

(ii) Represent directly or by implication that a hearing aid utilizing bone conduction has a specified feature such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone-conduction principle and that, in many cases of hearing loss, this type of instrument may not be suitable.

(19) Making an advertisement or other representation which may have the tendency or effect of misleading or deceiving a purchaser or prospective purchaser to believe that a hearing aid or device or part or accessory thereof is a new invention or involves a new mechanical or scientific principle, when that is not true. Representations of the following or similar types, when not fully justified by the facts, are among those prohibited by this paragraph: "amazing new discovery," "revolutionary new invention," "radically new and different," "sensational new laboratory development," "remarkable new electronic device," "brand new invention," "marvelous new hearing invention," "new scientific aid" and "miracle."

(20) Misrepresenting the commercial nature of the registrant's business. A registrant may not represent, directly or by implication, that a commercial hearing aid establishment is a governmental or public one or is a nonprofit medical, educational or research institution, through the use of a term having a medical, professional or scientific connotation, such as "Hearing Center," "Hearing Institute," "Hearing Bureau," "Hearing Clinic,"

"State's Hearing Clinic," or "State's Speech and Hearing Center." Nothing in this paragraph precludes a registrant from representing, if true, that the registrant owns, operates or controls a "Hearing Aid Center" or from using other words or expressions which clearly and nondeceptively identify the registrant's establishment as a commercial hearing aid enterprise.

(21) Making a deceptive advertisement of a hearing aid part, accessory or component. A registrant may not use or cause to be used any type of advertising or promotional literature depicting or describing only a single part, accessory or component of a hearing aid or device, such as a battery on the finger or a transistor held in the hand, in a manner that may have the tendency to mislead or deceive a purchaser or prospective purchaser to believe that the part, accessory or component is all that must be worn or carried.

(22) Making a deceptive testimonial or other endorsement. A registrant may not advertise or otherwise represent that:

(i) A particular individual, organization or institution endorses, uses or recommends the registrant's hearing aids or devices when that is not true.

(ii) A particular individual wears the registrant's hearing aids or devices when that is not true.

(23) Making a representation either directly or indirectly that a hearing aid or part thereof is new, unused or rebuilt when that is not true.

(i) In the marketing of a used hearing aid or a hearing aid which contains used parts, a registrant shall make full and nondeceptive disclosure of the fact in advertising and promotional literature relating to the product on the container, box or package in which the product is packed or enclosed. The required disclosure may be made by use of words such as "used," "second-hand," "repaired" or "rebuilt," whichever applies to the product involved, and it shall appear on a tag physically attached to a hearing aid.

(ii) A registrant may not misrepresent the identity of the rebuilder of a hearing aid. If the rebuilding of a hearing aid was done by other than the original manufacturer, a registrant shall disclose the fact wherever the original manufacturer is identified.

(24) Doing any of the following:

(i) Representing or using a seal, emblem, shield or other insignia which represents, directly or by implication that a hearing aid or device has been tested, accepted or approved by an individual, concern, organization, group or association unless it is true and unless the hearing aid or device has been used in a manner as will reasonably ensure the quality and performance of the instrument in relation to its intended use and the fulfillment of a material claim made, implied or intended to be supported by the representation or insignia.

(ii) Representing that a hearing aid or device tested, accepted or approved by an individual, concern, organization, group or association has been subjected to a test based on a more severe standard of performance, workmanship and quality than is true.

(iii) Making any other false, misleading or deceptive representation respecting the testing, acceptance or approval of a hearing aid device by an individual, concern, organization, group or association. It is not necessary for an individual hearing aid or device to be tested if the method employed is a sample testing and full and nondeceptive disclosure of this fact is given in advertising and otherwise.

(iv) Making a false, misleading or deceptive representation regarding the practice of another registrant or the quality of a hearing aid product made by a hearing aid manufacturer, which enhances or is likely to enhance the registrant's business as a repairer, fitter or seller of hearing aids.

(25) Doing any of the following:

(i) Imitating or simulating the trademark, trade name, brand or label of a competitor which may have the tendency or effect of misleading or deceiving a purchaser or prospective purchaser.

(ii) Using in advertising the name, model name or trademark of a particular manufacturer of hearing aids in a manner that implies a relationship with the manufacturer that does not exist or which otherwise may mislead or deceive a purchaser or prospective purchaser.

(iii) Using a trade name, corporate name, trademark or other designation which may have the tendency or effect of misleading or deceiving a purchaser or prospective purchaser as to the name, nature or origin of a hearing aid or of a material used therein or which is false, deceptive or misleading in another material respect.

(26) Advertising a particular model, type or kind of hearing aid for sale when a purchaser or prospective purchaser responding to the advertisement cannot purchase or is dissuaded from purchasing the advertised model, type or kind, if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.

(i) In determining whether there has been a violation of this paragraph, consideration will be given to acts or practices indicating that the offer was not made in good faith for the purpose of selling the advertised product but was made for the purpose of contacting prospective purchasers and selling them a product or products other than that offered. Among acts or practices which will be considered in making that determination are the following:

(A) The creation, through the initial offer or advertisement, of a false impression of the product offered in a material respect.

(B) The refusal to show, demonstrate or sell the product offered in accordance with the terms of the offer.

(C) The disparagement, by acts or words, of the product offered or the disparagement of the guarantee; credit terms; or availability of service, repairs or parts or the disparagement in another respect, in connection with it.

(D) The showing, demonstrating and in the event of sale, delivery of a product which is unusable or impractical for the purpose represented or implied in the offer.

(E) The refusal, in the event of sale of the product offered, to deliver the product to the purchaser within a reasonable time thereafter.

(F) The failure to have available a quantity of the advertised product at the advertised price sufficient to meet reasonably anticipated demands.

(ii) It is not necessary that each act or practice set forth in subparagraph (i) be present to establish that a particular offer violates this paragraph; any one will be sufficient.

(27) Failing to furnish evidence of the required continuing education or truthful information regarding the continuing education secured when applying for renewal of a registration certificate as a hearing aid fitter.

§ 25.216. Continuing education requirements.

(a) *General requirements.* Except as provided in subsection (d), the continuing education requirement for renewal of a hearing aid fitter's registration certificate is 20 hours of continuing education credit in the 2 years immediately preceding the expiration of the current registration certificate. If the applicant for renewal has had a registration certificate for less than 2 years, the required number of continuing education hours shall be calculated by prorating the number of credit hours required over a 2-year period by the number of months in which the applicant for renewal had the registration certificate which is about to expire. Only months in which the applicant had the registration certificate for at least 15 days shall be considered in the calculations.

(b) *Requirements for renewal of an expired registration certificate.* Except as provided in subsection (d), the continuing education requirement for renewal of a hearing aid fitter's registration certificate that has expired is 20 hours of continuing education credit in the 2 years immediately preceding the filing of the application for renewal, provided that the application for renewal is filed within 5 years after expiration of the previous registration certificate. If more than 5 years have passed since the registration certificate expired, the registration certificate may not be renewed. Instead, the individual shall repeat the hearing aid fitter's certification examination and satisfy other requirements then in effect for an original hearing aid fitter's registration certificate.

(c) *Requirements for renewal of a suspended registration certificate.* The continuing education requirement for renewal of a hearing aid fitter's registration certificate which has been suspended is the same as in subsections (a) and (d). If the individual does not satisfy the continuing education requirement during the period in which the hearing aid fitter's registration certificate is suspended, the suspended registration certificate shall be considered to have expired, and the continuing education requirements in subsection (b) shall apply for renewal of the expired registration certificate.

(d) *Phase-in requirements.* The first 2-year period for which continuing education requirements shall be required began on April 15, 2003.

(e) *Subject matter requirements.* Any subject matter that contributes directly to the professional competence, skills and education of a hearing aid fitter is acceptable subject matter for a continuing education program. At least one-half of all continuing education credit hours by which the hearing aid fitter seeks to qualify for renewal of the registration certificate shall be secured in some combination of the following core subject matter: hearing evaluation, hearing instrumentation technology, ear mold technology, hearing aid repair and maintenance, technical devices to assist the hearing-impaired, psychology of the hearing-impaired, and office procedures and compliance with the act.

§ 25.217. Approval of continuing education programs.

(a) A person may apply to the Department for approval of a continuing education program by submitting to the Department an application on a form supplied by the Department. The applicant shall supply the information requested in the application, including specification of whether the program is fully or partially devoted to any of the core subjects specified in § 25.216(e) (relating to continuing education requirements). The Department will grant approval of a continuing education program and designate whether the program is assigned full or partial credit in one of the core subjects, if the applicant satisfies the Department that the program the applicant will offer will meet the following minimum standards:

(1) The program shall contribute directly to the professional competence, skills and education of a hearing aid fitter.

(2) The program instructors shall possess the necessary practical and academic skills to conduct the program effectively.

(3) Program materials shall be clear, informative, grammatical, carefully prepared, readable and distributed to attendees at or before the time the program is offered whenever practical.

(4) The program shall be presented by a responsible instructor who is experienced and knowledgable in the subject matter being taught, in a setting that is conducive to learning the material being taught, including any necessary equipment and facilities, and is devoted to the educational purpose of the program.

(5) The program shall be open to persons who have a current, suspended or expired hearing aid fitter's registration certificate.

(b) Approval of a continuing education program shall be effective for 3 years.

(c) If renewal of the Department's approval of a continuing education program is desired, at least 90 days before expiration of the 3-year period the person who offered the program shall apply to the Department to renew the Department's approval of that program. The criteria and process applicable to the Department's initial approval of a continuing education program shall apply to renewal of the approval of that program.

§ 25.218. Credit for continuing education.

(a) *Credit hour.* A hearing aid fitter shall receive 1 hour of credit for each 50 minutes of instruction in a continuing education program presented in a classroom setting. Credit may not be given if attendance or other participation in the program is not adequate to meet the educational objectives of the program as determined by the person offering the program. For completing a continuing education program that is not presented in a classroom setting, the hearing aid fitter shall receive the number of credit hours assigned to the program by the Department.

(b) *Program completion.* A hearing aid fitter shall receive no credit for a continuing education program not completed, as evidenced by satisfaction of the check-in/check-out process for a continuing education program presented in a classroom setting and the continuing education report verifying that the hearing aid fitter completed the program, both of which are submitted to the Department by the person who offered the program. The program shall also not be considered completed if the hearing aid fitter does not satisfy other program completion requirements imposed by this subchapter and the continuing education provider.

(c) *Continuing education credit for instruction.* A hearing aid fitter shall receive credit equal to the number of hours served as an instructor in a continuing education program approved by the Department, or in a program

that satisfies requirements for initial certification as a hearing aid fitter, except that only half of the credit hours necessary for renewal of a hearing aid fitter's registration certificate may be obtained through serving as an instructor. The remaining credits necessary to renew a certificate shall be obtained through attendance at continuing education programs.

(d) *Repeat completion or teaching of a continuing education program*. The Department will not accept more than one completion or teaching of a continuing education program for credit toward renewal of a fitter's registration certificate, but will accept a subsequent completion or teaching of the same continuing education program for a subsequent renewal of a fitter's registration certificate.

(e) *Continuing education credit through endorsement*. A hearing aid fitter who attends or teaches a continuing education program offered outside this Commonwealth may apply to the Department to receive credit for the program. The hearing aid fitter shall have the burden of demonstrating to the Department that the course meets standards substantially equivalent to the standards imposed in this subchapter. The Department will assign credit to the program, including the possibility of no credit or partial credit, based upon considerations of whether the program bears entirely upon appropriate subject matter and whether the method of presenting the program meets standards substantially equivalent to those prescribed in this subchapter.

(f) *Continuing education credit assigned to self-study courses*. Credit may be sought from the Department for a self-study continuing education program. The hearing aid fitter shall submit an application to the Department to approve the self-study program for credit before commencing the program and shall supply the Department with the materials the Department requests to conduct the evaluation, which may include any of the materials used in the course. The Department will assign credit to the program based upon considerations of whether the program addresses appropriate subject matter and whether the method of completing the program meets standards substantially equivalent to those prescribed in this subchapter. The Department may require modifications to the proposed self-study as a precondition to approving it for credit. If the materials are unavailable to the fitter prior to taking the course, the fitter may apply to the Department for credit after completing it. However, the Department reserves the right to disapprove the course for credit after it has been completed if it does not meet the standards prescribed in this subchapter.

(g) *Continuing education credit assigned to courses not presented in a classroom setting*. A hearing aid fitter shall be awarded credit for completing a continuing education program without the hearing aid fitter physically attending the program in a classroom setting, provided the program has been approved by the Department for credit when presented in that manner.

(h) *Resolution of discrepancies*. The Department will resolve all discrepancies between the number of continuing education credits reported and the number of continuing education credits a hearing aid fitter alleges to have earned. To help resolve disputes, the hearing aid fitter should retain the original certificate of completion of a continuing education program if a certificate of completion has been received by the hearing aid fitter.

§ 25.219. Responsibilities of persons offering continuing education programs.

(a) *Record of attendance*. A person who offers a continuing education program shall maintain a record of attendance for a program presented in a classroom setting by maintaining a check-in/check-out process approved by the Department, and shall assign at least one person to ensure that all individuals attending the course check in when entering and check out when leaving. If an individual enters a course after the starting time, or leaves a course before the finishing time, the assigned person shall ensure that the time of arrival or departure is recorded for the individual.

(b) *Reporting attendance*. A person who offers a continuing education program shall report to the Department, in the manner and format prescribed by the Department, attendance at each continuing education program presented in a classroom setting.

(c) *Course evaluation*. A person who offers a continuing education program shall develop and implement methods to evaluate the program to determine its effectiveness. The methods of evaluation shall include providing a program evaluation form to each person who attends the continuing education program, and requesting each person to complete the form.

(d) *Record retention*. A person who offers a continuing education program shall retain the completed program evaluation forms and the check-in/check-out record for a program presented in a classroom setting. The person shall retain the records for at least 4 years from the presentation of the program.

(e) *Providing records*. A person who offers a continuing education program shall promptly provide the Department with complete and accurate records relating to the program as requested by the Department.

(f) *Program not presented in a classroom setting*. A person who offers a continuing education program shall be exempt from the requirements of subsections (a) and (b) for a program which is not presented in a classroom setting, if the program is approved by the Department for credit when presented in that manner. When presenting the program to the Department for approval for credit, the person shall present a procedure for monitoring, confirming and reporting hearing aid fitter participation in a manner that achieves the purposes of subsections (a) and (b).

(g) *Monitoring responsibilities*. A person who offers a continuing education program shall ensure that the program was presented in a manner that met all of the educational objectives for the program, and shall determine whether each hearing aid fitter who enrolled in the program met the requirements of this subchapter and of the continuing education program to receive credit for completing the program.

(h) *Program completion*. A person who offers a continuing education program shall report to the Department, in a manner and format prescribed by the Department, completion of a continuing education program by a hearing aid fitter who completes the program, and shall identify to the Department a hearing aid fitter who seeks credit for a program but who did not meet the requirements of the program or this subchapter to receive continuing education credit. The person who offers a continuing education program shall also provide a hearing aid fitter who completes the program with a document certifying completion of the program.

§ 25.220. Right to enter, inspect and obtain records.

Upon request of a Department representative during regular and usual business hours, or at other times when that representative possesses a reasonable belief that a

violation of this subchapter may exist, and upon the representative presenting documentation to identify himself as a representative of the Department, a registrant or person who offers a continuing education program shall:

(1) Produce for inspection equipment and supplies maintained pursuant to this subchapter.

(2) Produce for inspection, permit copying and provide within a reasonable period of time, records maintained under this subchapter.

§ 25.221. Exceptions.

The Department may grant an exception to a requirement of this subchapter for good cause shown, except for a statutory requirement that is repeated in this subchapter.

[Pa.B. Doc. No. 04-942. Filed for public inspection May 28, 2004, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, adopted the following final-form rulemaking:

Amend § 141.22 (relating to small game) to create a no discharge zone around Commission vehicles to reduce the chances of employees who are releasing pheasants from being accidentally shot.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The final-form rulemaking was adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 484 (January 24, 2004).

1. *Introduction*

Every year, as Commission employees release pheasants for hunting during the open season, hunters shoot at the pheasants at or near the vehicles being used to transport the pheasants. Not only is this scenario contrary to the notion of fair chase, but it also jeopardizes the safety of Commission employees releasing the pheasants. Adding § 141.22(a)(7) should help reduce the chances of Commission employees being shot when stocking pheasants.

2. *Purpose and Authority*

Because of the increasing number of incidents of careless hunters shooting at pheasants being released by Commission employees during the hunting season at or near Commission vehicles and the potential of serious physical injury, the Commission will now impose a 150-yard no discharge zone around Commission vehicles. This no discharge zone is the same distance currently found in safety zones surrounding occupied dwellings and structures as per section 2505(a) of the code (relating to safety zones). The intent of this final-form rulemaking is to provide the same safety parameters and protections for Commission employees releasing pheasants from Commission vehicles that are currently afforded to the general public at their residences and certain other structures.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 141.22(a) was adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking makes it unlawful for hunters to shoot at pheasants within 150 yards of a Commission vehicle releasing pheasants.

4. *Persons Affected*

Persons who hunt for pheasants will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment 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) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.22 to read as set forth in Annex A.

(*Editor's Note*: A final-form rulemaking containing an amendment to § 141.22 was published at 34 Pa.B. 2328 (May 1, 2004).)

(b) The Executive Director of the Commission shall certify this order, 34 Pa.B. 2328 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-173 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.22. Small game.

(a) *Unlawful activities*. It is unlawful to:

(1) Take small game, protected mammals or protected birds using shot larger than #4 lead, #4 Bismuth/tin or #2 steel.

(2) Take furbearers using shot larger than size BB lead, size BB Bismuth/tin or size T steel.

(3) Possess a firearm while hunting with a raptor.

(4) Use or possess single projectile ammunition or use or possess single projectile ammunition designed for use in a firearm while hunting small game during the muzzleloading firearms deer or bear season, except for a rimfire rifle or handgun .22 caliber or less. This exception does not apply to the Southeast Special Regulations Area. See § 141.1(b)(2) (relating to special regulations areas).

(5) Hunt in a party of more than six persons.

(6) Unless otherwise provided in the act or this title, hunt or take small game with anything other than a shotgun with fine shot, muzzleloading rifle or handgun .40 caliber or less, rimfire rifle or handgun .22 caliber or less, or bow and arrow with or without broadheads. The caliber restrictions do not apply to rifles or handguns while hunting woodchuck.

(7) Discharge a firearm within 150 yards of a Commission vehicle releasing pheasants.

(b) *Definition*. For the purpose of enforcing section 2308(a)(4) of the act (relating to unlawful devices and methods), the term "plugged" means a magazine shotgun which is plugged with a one-piece filler, incapable of removal without disassembling the shotgun or magazine.

(c) *Permitted acts*. Woodchucks may be trapped by properly licensed furtakers with permission of the person in charge of the land from February 1 through September 30 and during the general furbearer trapping season. For the purposes of this subsection, a person means a person as defined in section 2121(c) of the act (relating to definition). Traps and methods shall comply with section 2361 of the act (relating to unlawful acts concerning taking of furbearers) except that traps shall be set within 5 feet of any woodchuck hole or den.

[Pa.B. Doc. No. 04-943. Filed for public inspection May 28, 2004, 9:00 a.m.]

[58 PA. CODE CH. 143]
Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, adopted the following final-form rulemaking:

Amend §§ 143.45 and 143.52 (relating to completing and submitting applications; and procedure for unlimited antlerless licenses) by eliminating the requirement to circle the appropriate number on the antlerless license application envelope, and move the date when county treasurers begin accepting over-the-counter antlerless license applications.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The final-form rulemaking was adopted under the authority of 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 484 (January 24, 2004).

1. *Introduction*

The amendment to § 143.45 changes terminology and eliminates subsection (g), which contained the legal requirement that an applicant for an antlerless license circle the appropriate number on the application envelope. The amendment to § 143.52 adjusts the date for county treasurers accepting over-the-counter applications so as not to conflict with the mail-in application processing demands.

2. *Purpose and Authority*

By eliminating the requirement that the preprinted number on the outside of the envelopes be circled to indicate the number of applications enclosed by those applying for antlerless deer licenses, the Commission will be relieved of being forced to place deficient envelopes into a dead letter file because of an inadvertent mistake by the filer. Rather, the Commission will be legally permitted to accept them and the enclosed applications and process them without unnecessary delay and extra mail handling.

By adjusting the date when county treasurers can begin accepting over-the-counter applications for antlerless deer licenses to the third Monday in September, the burden on county treasurers who are still processing mail-in applications will be lessened and allow ample time for applicants who have applied by mail to have their applications received and processed before others can purchase them over-the-counter.

Section 2705(13) of the code (relating to classes of licenses) lists antlerless deer licenses as one of the licenses that the Commission administers by establishing regulations, requirements and conditions. Section 2722(g)(2) of the code (relating to authorized license-issuing agents) provides that "The commission shall adopt regulations for the administration, control and performance of activities conducted pursuant to the provisions of this Chapter." The amendments to §§ 143.45 and 143.52 were adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking will allow applicants for antlerless licenses who fail to circle the number of applications enclosed within their envelope to have their applications legally accepted and processed. The final-form rulemaking will also allow county treasurers to legally accept over-the-counter antlerless applications at a later date to ease processing demands and conflicts with the mail-in applications.

4. *Persons Affected*

Persons who wish to apply for an antlerless deer license will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

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

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.52 to read as set forth at 34 Pa.B. 484 and by amending § 143.45 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, 34 Pa.B. 484 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-176 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter C. ANTLERLESS DEER LICENSES

§ 143.45. Completing and submitting applications.

(a) Except as otherwise provided in § 143.52 (relating to procedure for unlimited antlerless licenses) and for those applications submitted by qualified landowners, it is unlawful for a county treasurer to accept an application other than from the Commission. County treasurers with unsold antlerless deer licenses shall accept applications over the counter and may immediately issue licenses beginning on the first Monday in November.

(b) The Commission will not accept antlerless deer license applications other than by regular first class mail delivered through and by the United States Postal Service.

(c) Applications will not be accepted by the Commission prior to the start of the normal business day on the first Monday in August.

(d) The application shall be legibly completed, in its entirety, in accordance with instructions on the application.

(e) The application shall be mailed only in the envelope provided.

(f) Applications are limited to not more than three per envelope.

(g) The envelope shall contain return first class postage and a return address. If requirements of this subsection are not met, applications will be placed in a dead letter file and may be reclaimed by the applicant upon contacting the Commission's Hunting License Division in Harrisburg. Postage, both forward and return, is the responsibility of the applicant.

(h) Unless otherwise ordered by the Director, remittance shall be in the form of a negotiable check or money order payable to "County Treasurer" for applications enclosed, and in the total amount specified in the act for each license. Cash may be accepted by county treasurers for over the counter sales.

[Pa.B. Doc. No. 04-944. Filed for public inspection May 28, 2004, 9:00 a.m.]

[58 PA. CODE CH. 147]

Special Permits; Commercial Wildlife Pest Control

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, adopted the following final-form rulemaking:

Amend § 147.721 (relating to general) to include the act of "soliciting" to the definition of activities requiring a commercial wildlife pest control permit.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The final-form rulemaking was adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 485 (January 24, 2004).

1. *Introduction*

The Commission is amending § 147.721 to include the act of "soliciting" as an activity requiring a commercial wildlife pest control permit. It is currently not unlawful to solicit for wildlife pest control without a commercial wildlife pest control permit. Unfortunately, this has resulted in several incidents of nonpermitted persons taking advantage of the public.

2. *Purpose and Authority*

The purpose of the amendment to § 147.721 is to protect the public from unscrupulous persons who advertise to perform commercial wildlife pest control services while not currently possessing a valid and current commercial wildlife pest control permit. Unfortunately, there have been several incidents of persons offering their services and activities for wildlife pest control when neither they nor their employees who were to perform the actual control service possessed a current commercial wildlife pest control permit issued by the Commission. Since the timing of some of these wildlife pest control methods and techniques is often critical, it is vitally important to more effectively regulate the activity.

Section 2901(b) of the code (relating to authority to issue permits) provides that "Unless otherwise provided in this title, the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." The amendment to § 147.721 was adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking makes the act of soliciting to provide commercial wildlife pest control services unlawful without a current permit issued by the Commission.

4. *Persons Affected*

Persons who advertise or solicit wildlife pest control services and who are not currently permitted by the Commission will be affected by the final-form rulemaking. Wildlife pest control permittees will be protected from the competition from unpermitted individuals. The general public will be affected by not having someone advertising wildlife pest control services when they are not permitted by the Commission.

5. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment 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) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.721 to read as set forth at 34 Pa.B. 485.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 485 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-174 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-945. Filed for public inspection May 28, 2004, 9:00 a.m.]

[58 PA. CODE CH. 147]
Special Permits; Falconry

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, adopted the following final-form rulemaking:

Amend § 147.103 (relating to classes of permits) to allow residents of this Commonwealth to apply for a falconry permit at 16 years of age.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The final-form rulemaking was adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 486 (January 24, 2004).

1. *Introduction*

Formerly, section 2901 of the code (relating to authority to issue permits) and § 147.103(a) required a person to be 18 years of age to apply for a falconry permit. The act of June 17, 2003 (P. L. 12, No. 5) (Act 5) amended section 2901 of the code to allow residents of this Commonwealth who are at least 16 years of age to apply for a falconry permit. The Commission has made the two provisions consistent by amending § 147.103(a).

2. *Purpose and Authority*

Act 5 amended section 2901 of the code by amending the age requirement for eligible residents of this Commonwealth to apply for apprentice falconry permits from 18 years of age to 16 years of age. Former regulations

required persons applying for a falconry permit to be at least 18 years of age. To make the regulations compatible with section 2901 of the code, § 147.103(a) is amended to allow persons at least 16 years of age to apply for an apprentice falconry permit.

Section 2901(b) of the code states that unless otherwise provided in the code, the Commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued. The amendment to § 147.103(a) was adopted under this authority.

3. *Regulatory Requirements* The final-form rulemaking will allow a person 16 years of age to apply for a falconry permit.

4. *Persons Affected*

Persons who wish to apply for a falconry permit will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment 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) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.103 to read as set forth at 34 Pa.B. 486.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 486 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-175 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-946. Filed for public inspection May 28, 2004, 9:00 a.m.]