RULES AND REGULATIONS

Title 4—ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

[4 PA. CODE CH. 61]

Instruction to Bidders

The Department of General Services (Department) acting under sections 506, 2401.1 and 2408 of The Administrative Code of 1929 (71 P. S. §§ 186, 631.1 and 638) and section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201), deletes Chapter 61.

Purpose

Since the bid instructions for construction contracts are established by regulation, they do not allow for flexibility. The instructions to bidders tell the bidders how to prepare and submit their bids for construction projects. These provisions must be customized by the Department for individual projects. The Department has substantially modified these bid instructions in the years since 1975 without amending the regulations. Since the regulatory instructions are not the current Department instructions to bidders, this chapter is obsolete and is being deleted.

Notice of proposed rulemaking was published at 32 Pa.B. 5277 (October 26, 2002). Publication was followed by a 30-day public comment period during which the Department did not receive any comments. The Senate State Government Committee, the House State Government Committee and the Independent Regulatory Review Commission (IRRC) also had no comments.

Fiscal Impact

There will be some savings in administrative time and expense. The Department would incur significant time and expense if it were required to proceed with the regulatory process each time it wanted to revise its instructions to bidders. If Chapter 61 is not deleted and the Department decides to change its instructions twice a year and it is required to pursue the regulatory process, the estimated administrative cost to the Department would be $18,000 per year.

Paperwork Requirements

The final-form rulemaking will impose no new or different paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 9, 2002, the Department submitted a copy of the proposed rulemaking, published at 32 Pa.B. 5277, to IRRC and the Chairpersons of the House State Government Committee and the Senate State Government Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), the final-form rulemaking was deemed approved by IRRC effective November 3, 2004.

Effective Date

This final-form rulemaking is effective as of this publication in the *Pennsylvania Bulletin*.

Additional Information

Individuals who need information about the final-form rulemaking should contact Mary Benefield Seiverling, Senior Counsel, Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125.

Findings

The Department finds that:

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

(2) The final-form rulemaking adopted by this order is necessary and appropriate for the performance of the Department's duties under The Administrative Code of 1929.

Order

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

(a) The regulations of the Department, 4 Pa. Code Chapter 61, are amended by deleting §§ 61.1—61.16 to read as set forth in Annex A.

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

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

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

DONALD T. CUNNINGHAM, Jr.,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 6282 (November 20, 2004).)

Fiscal Note: Fiscal Note 8-4 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

Subpart C. CONSTRUCTION AND PROCUREMENT

ARTICLE II. CONSTRUCTION

CHAPTER 61. (Reserved)

§§ 61.1—61.16. (Reserved).

[Pa.B. Doc. No. 04-2135. Filed for public inspection December 3, 2004, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES
[4 PA. CODE CH. 63]
General Conditions of Contract

The Department of General Services (Department), acting under sections 506, 2401.1 and 2408 of The Administrative Code of 1929 (71 P. S. §§ 186, 631.1 and 638) and section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201), deletes Chapter 63 (relating to general conditions of the contract).

Purpose

Since the general contract conditions are established by regulation, they do not allow for flexibility. These provisions must be customized by the Department for individual projects as required. The Department has substantially modified these general conditions of contract in the years since 1975 without amending the regulations. Since the regulatory contract terms are not the Department's current General Conditions of Contract, Chapter 63 is being deleted.

Notice of proposed rulemaking was published at 32 Pa.B. 5277 (October 26, 2002). Publication was followed by a 30-day public comment period during which the Department did not receive any comments. The Senate State Government Committee and the House State Government Committee had no comments. The Independent Regulatory Review Commission (IRRC) submitted one comment to the proposed rulemaking on March 10, 2003.

Summary of Comment to Proposed Rulemaking and Response

IRRC recommended that the Department review other chapters of 4 Pa. Code (relating to administration) to identify and delete any references to Chapter 63 that are being deleted and thus will be obsolete, such as the cross reference in § 68.61 (relating to nondiscrimination clause; compliance prequalification).

The Department concurs with that recommendation and has determined that § 68.61 is the only cross reference in 4 Pa. Code that will become obsolete as a result of rescinding Chapter 63. However, this cross reference is not the only aspect of § 68.61 that is obsolete. The entire section has been superseded by the subsequent enactment of 62 Pa.C.S. § 3701 (relating to contract provisions prohibiting discrimination), and many of the other provisions in Chapter 68 (relating to contract compliance) are also obsolete and no longer used. Chapter 68 contains provisions concerning contractor compliance with affirmative action and nondiscrimination obligations. The Department plans to develop and propose a comprehensive rulemaking to update Chapter 68 including the obsolete cross reference in § 68.61. Therefore, the Department is issuing this final-form rulemaking to delete Chapter 63 without any changes to previously published proposed rulemaking. With this final-form rulemaking, the Department is immediately rescinding Chapter 63. The Department will then deal with § 68.61 in a broader proposed rulemaking to update Chapter 68.

Fiscal Impact

This final-form rulemaking relieves the Department of the administrative time and expense the Department would incur if it was required to proceed with the regulatory process each time that it wanted to revise its contract terms. The estimated cost is $18,000 a year if the regulations were not rescinded and the Department decides to change its contract terms twice a year and is required to pursue the regulatory process.

Paperwork Requirements

This final-form rulemaking will not impose new or different paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 6, 2001, the Department submitted a copy of this proposed rulemaking, published at 32 Pa.B. 5277, to IRRC and the Chairpersons of the House State Government Committee and the Senate State Government Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

In preparing the final-form rulemaking, the Department has considered the comment that it received from the IRRC and has responded as stated in this preamble. No other comments were received.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), 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 November 4, 2004, and approved the final-form rulemaking.

Effective Date

This final-form rulemaking is effective as of this publication in the *Pennsylvania Bulletin*.

Additional Information

Individuals who need information about the final-form rulemaking should contact Mary Benefield Seiverling, Senior Counsel, Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125.

Findings

The Department finds that:

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

(2) The final-form rulemaking adopted by this order is necessary and appropriate for the performance of the Department's duties under The Administrative Code of 1929.

Order

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

(a) The regulations of the Department, 4 Pa. Code Chapter 63, are amended by deleting §§ 63.1—63.3, 63.11, 63.12, 63.21—63.23, 63.31—63.50, 63.61—63.64, 63.71—63.74, 63.81—63.84, 63.91—63.93, 63.101—63.107, 63.111—63.113, 63.121, 63.122, 63.131—63.134, 63.141—63.143, 63.151—63.153, 63.161—63.163, 63.171—63.197, 63.201 and 63.211 to read as set forth in Annex A.

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

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

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

DONALD T. CUNNINGHAM, Jr.,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 6292 (November 20, 2004).)

Fiscal Note: Fiscal Note 8-3 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

Subpart C. CONSTRUCTION AND PROCUREMENT

ARTICLE II. CONSTRUCTION

CHAPTER 63. (Reserved)

§§ 63.1—63.3. (Reserved).

§ 63.11. (Reserved).

§ 63.12. (Reserved).

§§ 63.21—63.23. (Reserved).

§§ 63.31—63.50. (Reserved).

§§ 63.61—63.64. (Reserved).

§§ 63.71—63.74. (Reserved).

§§ 63.81—63.84. (Reserved).

§§ 63.91—63.93. (Reserved).

§§ 63.101—63.107. (Reserved).

§§ 63.111—63.113. (Reserved).

§ 63.121. (Reserved).

§ 63.122. (Reserved).

§§ 63.131—63.134. (Reserved).

§§ 63.141—63.143. (Reserved).

§§ 63.151—63.153. (Reserved).

§§ 63.161—63.163. (Reserved).

§§ 63.171—63.197. (Reserved).

§ 63.201. (Reserved).

§ 63.211. (Reserved).

[Pa.B. Doc. No. 04-2136. Filed for public inspection December 3, 2004, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 115]

Public Adjuster Contracts and Licensing Requirements

The Insurance Department (Department) amends § 115.2 (relating to contents of public adjuster contracts, minimum standards) to read as set forth in Annex A.

Statutory Authority

The final-omitted rulemaking is adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and under the specific statutory authority of sections 1—8 of the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608) (act).

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

Purpose

This final-omitted rulemaking will allow the section to be consistent with the statute. The Department is only modifying § 115.2 and is not amending any portion of the remainder of Chapter 115 (relating to public adjuster contracts and licensing requirements).

Explanation of Regulatory Requirements

Section 5 of the act allows a consumer 4 calendar days in which the consumer can rescind a contract with a public adjuster. The Department, in an attempt to standardize language and be consistent from chapter to chapter, determined that business days was more consistent throughout many of the chapters. Therefore, the Department changed calendar days to business days when this section was promulgated in 2002.

This final-omitted rulemaking will correct the deficiency and make consistent the terms between the regulation and the statute and thus avoid potential problems that consumers and public adjusters may have with future contracts.

Fiscal Impact

There will be minimal impact on public adjusters, as their contract will need to be revised. As many public adjusters are using computers to generate their contracts, the Department does not expect this expense to be significant.

Affected Parties

This final-omitted rulemaking will affect all public adjusters who do business in this Commonwealth.

Effectiveness/Sunset Date

This final-omitted rulemaking will become effective upon final adoption and publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis so no sunset date has been assigned.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 19, 2004, the Department submitted a copy of the final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insur-

ance. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5(c) of the Regulatory Review Act, on November 17, 2004, the final-omitted rulemaking was deemed approved by the Senate Banking and Insurance Committee and the House Insurance Committee. The Attorney General approved the final-omitted rulemaking on October 29, 2004. IRRC met on November 18, 2004, and approved the final-omitted rulemaking.

Findings

The Insurance Commissioner finds that:

(1) There is good cause to amend § 115.2 effective upon publication with the proposed rulemaking omitted. Deferral of the effective date of rulemaking would be impractical and not serve the public interest. Under section 204(3) of the CDL there is no purpose to be served by deferring the effective date.

(2) There is good cause to forego public notice of the intention to amend § 115.2 because notice of the rulemaking under the circumstances is unnecessary and impractical because the change proposed is necessary to ensure the consistency with the statute.

Order

The Commissioner, acting under the authority in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 115, are amended by amending § 115.2 to read as set forth in Annex A.

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

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

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

M. DIANE KOKEN,
Insurance Commissioner

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 6476 (December 4, 2004).)

Fiscal Note: 11-223. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 115. PUBLIC ADJUSTER CONTRACTS AND LICENSING REQUIREMENTS

GENERAL

§ 115.2. Contents of public adjuster contracts, minimum standards.

(a) A public adjuster contract shall contain, at a minimum, the following information:

(1) The title of the contract to read: Public Adjuster Contract.

(2) The name, business name, address and telephone number of the public adjuster.

(3) The name and address of the insured.

(4) The consideration expressed as a percentage of any payments to be received on the negotiated claim, or as a maximum dollar amount.

(5) A space provided for the execution date (month, day, year) of the contract.

(6) A space provided for the signature of the insured and the public adjuster.

(7) A provision setting forth the insured's right to cancel, which shall be printed in prominent type on the first page of the public adjuster contract in substantially the following form:

Notice of Right to Cancel

You, the insured, may cancel this contract at any time prior to midnight of the fourth calendar day after the execution date of this contract. If you exercise your right to cancel this contract, you will be liable for reasonable and necessary emergency out-of-pocket expenses or services which were paid for or incurred by the public adjuster to protect the interests of the insured during the period preceding cancellation.

If you cancel this contract, anything of value given by you under the contract will be returned to you within 15 business days following the receipt by the public adjuster of your cancellation notice, and any security interest arising out of the contract will be cancelled. To cancel this contract, mail, fax or deliver in person a signed and dated copy of this notice or any other written notice, indicating your intent to cancel and the date thereof to (name of public adjuster) at (business address of public adjuster) not later than midnight of (date). I hereby cancel this contract.

_____
(Date)

_____
(Insured's signature)

(b) A public adjuster contract may not contain any contract term that:

(1) Allows the public adjuster's fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company.

(2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster.

(3) Imposes late fees or collection costs on the insured.

[Pa.B. Doc. No. 04-2137. Filed for public inspection December 3, 2004, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 167]

Workers' Compensation Act Provider Fees

The Insurance Department (Department) adopts Chapter 167 (relating to Workers' Compensation Act—provider fees) to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is adopted under the general authority of sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and section 306(f.1)(3)(i) of the Workers' Compensation Act (act) (77 P. S. § 531(3)(i)).

Comments and Response

Notice of proposed rulemaking was published at 34 Pa.B. 3255 (June 26, 2004) with a 30-day comment period. During the 30-day comment period, comments were received from the Pennsylvania Medical Society, the Pennsylvania Association of Nurse Anesthetists and the Insurance Federation of Pennsylvania, Inc. (IFP). During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department. No changes were made to Annex A in this final-form rulemaking.

The Pennsylvania Medical Society and the Pennsylvania Association of Nurse Anesthetists both supported the proposed rulemaking. The IFP raised several issues with the proposed rulemaking.

The Department's response to the issues raised by the IFP is as follows.

The IFP states that the Department has not made or supported a determination that the current reimbursement level for anesthesiologists is unreasonable. The IFP's overriding objections to the regulations are its assertions that the Department failed to make the findings required under section 306(f.1)(3)(i) and (v) of the act to justify the proposed increase and that the proposed increase is counter to the general goal of the act, which the IFP asserts is medical cost containment. The IFP also objects because the Department's determination to increase the reimbursement rate for anesthesiologists was based solely on its review of data that was submitted by the Pennsylvania Society of Anesthesiologists (PSA).

Under an extensive review process, the Department did make the determination that the PSA had satisfied the statutory criteria to have the workers' compensation anesthesiology conversion factor reviewed for reasonableness in accordance with section 306(f.1)(3)(v) of the act. Further, after reviewing the data and expert reports submitted by the PSA, the Department ultimately determined that the existing workers' compensation reimbursement rate for anesthesiologists was not reasonable and that a new rate should be established by regulation in accordance with section 306(f.1)(3)(i) and (v) of the act. As the petitioner, the PSA was required to submit data to the Department in support of its request for the issuance of a regulation. In doing so, the PSA did not preselect the data in any way but submitted all data that it could obtain. Further, the data submitted by the PSA was extensive, credible and persuasive and, together with the expert reports, fully supports the Department's determination to establish a new reimbursement rate for anesthesiologists under the Workers' Compensation Program (Program).

The IFP stated that the proposed reimbursement level is unreasonable and contrary to the goals of the act.

The revised reimbursement rate established by the Department is reasonable in light of the data and expert reports submitted to the Department by the PSA, which demonstrated that the disparity between anesthesia allowances under the workers' compensation and private managed care systems was substantially and patently disproportionate to disparities for other providers. The revised reimbursement rate is based on an average of reimbursement rates in the private managed care market and, as such, is not unreasonable. Because the PSA satisfied the explicit criteria for relief set forth in the act, the Department believes that it would not be appropriate to deny the PSA relief based on the general goal of cost containment, which the IFP asserts to be the purpose of the act.

The IFP asserts that the Department's reliance on section 306(f.1)(3)(v) of the act is misplaced.

The Department believes that section 306(f.1)(3)(v) of the act is clear and, together with section 306(f.1)(3)(i) of the act, provides the Commissioner with statutory authority to promulgate this final-form rulemaking.

The IFP also states that the Department's proposed regulation fails to comply with the requirements of the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

The IFP appears to assert that the Department's determination that the existing reimbursement rate was not reasonable should have been included in the body of the regulation itself. Under the act, however, only the new reimbursement rate is to be promulgated by regulations following the Department's determination that an existing rate is not reasonable. In promulgating this final-form rulemaking, the Department has fully complied with the requirements of the Regulatory Review Act, including publishing a proposed rulemaking in the *Pennsylvania Bulletin* and accepting public comments thereon.

Affected Parties

The final-form rulemaking will affect all anesthesiologists who provide anesthesia services to persons whose care is reimbursed under the Program when the anesthesia conversion factor is a basis for reimbursement. It will also affect all insurers and others who directly or indirectly assume responsibility for the costs of medical care provided under the Program.

Fiscal Impact

State Government

There will be no increase in cost to the Department due to the adoption of Chapter 167.

General Public

There will be no fiscal impact to the public.

Political Subdivisions

The final-form rulemaking will not impose additional costs on political subdivisions.

Private Sector

There is minimal fiscal impact as a result of the final-form rulemaking. There is no specific data available identifying the precise costs associated with the cost of anesthesiology benefits under the workers' compensation system. However, it is known that the expenses resulting from medical benefits are approximately 45% of total loss expenses. In addition, the loss expenses resulting from anesthesiology is a minor cost in comparison to the total costs of surgical expenses. Therefore even though Chapter 167 will increase the reimbursement of anesthesiology expenses by 63%, it should affect the overall costs only minimally.

Paperwork

There is no anticipated additional paperwork expected as a result of this final-form rulemaking.

Effectiveness/Sunset Date

The rulemaking will become effective upon adoption and publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions regarding this final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, psalvatore@state.pa.us, fax (717) 705-3873.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 19, 2004, the Department submitted a copy of the proposed rulemaking to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted proposed rulemaking, the Department provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of that material is available to the public upon request.

In preparing this final-form rulemaking, the Department considered all comments received from IRRC, the Committees and the public.

This final-form rulemaking was deemed approved by the House and Senate Committees on November 17, 2004. In accordance with section 5a(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), IRRC met on November 18, 2004, and deemed approved the final-form rulemaking in accordance with section 5a(e) of the Regulatory Review Act.

Findings

The Commissioner finds that:

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

Order

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

(a) The regulations of the Department, 31 Pa. Code, are amended by adding §§ 167.1 and 167.2 to read as set forth in Annex A.

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

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

(d) The regulation adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 6476 (December 4, 2004).)

Fiscal Note: Fiscal Note 11-222 remains valid for the adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 167. WORKERS' COMPENSATION ACT—PROVIDER FEES

Sec.
167.1. Purpose.
167.2. Payment for anesthesia services.

§ 167.1. Purpose.

The purpose of this chapter is to set the allowance for anesthesia services provided to patients under the Workers' Compensation Act (77 P. S. §§ 1—2626) when the allowance utilizes the anesthesia conversion factor.

§ 167.2. Payment for anesthesia services.

The Workers' Compensation Part B Fee Schedule shall be amended by multiplying the anesthesia conversion factor applicable to Codes 100-1999 by a multiplier of 1.632. The Fee Schedule, as amended, shall apply to anesthesia services provided in all regions after December 4, 2004.

[Pa.B. Doc. No. 04-2138. Filed for public inspection December 3, 2004, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Established Place of Business for Dealers

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) amends § 19.18 (relating to established place of business for dealers) to read as set forth in Annex A.

Description and Need for this Final-Form Rulemaking

This final-form rulemaking amends § 19.18(a)(3)(ii) to permit a licensed vehicle dealer to display up to five vehicles in a nonconforming area that is not open to the public.

Under the current provisions, a dealer may display vehicles only in areas that are properly graded and surfaced. The purpose of this restriction is to protect potential customers who might slip or otherwise be injured while looking at a vehicle in an area that is not properly graded or surfaced. A consequence of this restriction is that a dealer may not showcase a vehicle, such as on grass, boulders or a raised display, to advertise it to the public. This final-form rulemaking permits a dealer that has an adequate conforming display area at its facility to display up to five vehicles in a nonconforming

area, "so long as customers are not permitted to be present in the nonconforming area."

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 32 Pa.B. 5417 (November 2, 2002) with a 30-day public comment period. The Board did not receive comments from any members of the public. The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of its review of proposed rulemaking under the Regulatory Review Act.

Both IRRC and the HPLC questioned how the public is to be kept out of nonconforming display areas, especially outside of business hours. IRRC also questioned whether a dealer would be held responsible for keeping the public out of nonconforming areas. The HPLC also questioned whether the lowering of public safety measures is justified by economic reasons.

Restricting the display of vehicles for sale to a properly graded and surfaced area is a preventive measure. A customer, possibly distracted by the vehicle for sale from adequately observing footing, is more protected from slipping or otherwise being injured by the display area if that display area is properly graded and surfaced. When customers are kept out of a nonconforming area, there is no lowering of public safety measures.

In response to these comments from IRRC and the HPLC, the Board revised the proposed rulemaking to suggest measures that a dealer might take to make clear that customers are not permitted to be present in the nonconforming area, such as by posted nontrespassing sign, barrier or other reasonable precaution. The Board does not intend, by this rulemaking, to alter in any way the obligation that a dealer, as the possessor of real estate, owes to those who enter upon the land.

Additionally, in § 19.18(8) the Board referenced the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235), know as the Fire and Panic Act. Because the pertinent sections of the Fire and Panic Act were repealed by enactment of the Pennsylvania Construction Code Act (35 P. S. § 7210.101—7210.1103), the Board has revised this paragraph to refer only to the Pennsylvania Construction Code Act.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

This final-form rulemaking is promulgated under sections 2 and 4(9) of the Board of Vehicles Act (act) (63 P. S. §§ 818.2 and 818.4(9)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 2, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 5417, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 19, 2004, the final-form rulemaking was approved by the HPLC. On November 3, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 4, 2004, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Teresa Woodall, Board Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1697 or st-vehicle@state.pa.us.

Findings

The Board finds that:

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

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

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 32 Pa.B. 5417.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 19, are amended by amending § 19.18 to read as set forth in Annex A.

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

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

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

EDWIN K. GALBREATH, Jr.,
Chairperson

(*Eitor's Note:* For the text of the order of the Independent Review Commission relating to this document, see 34 Pa.B. 6292 (November 20, 2004).)

Fiscal Note: Fiscal Note 16A-604 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

DEALERSHIP LICENSE

§ 19.18. Established place of business for dealers.

A licensed dealer shall maintain an established place of business that meets the following criteria:

(1) *Permanent enclosed building.* The dealer shall own or rent a permanent enclosed building for use by the dealership. A permanent enclosed building may consist of an office trailer with skirting and a permanent foundation. The dealership must be separated from adjoining businesses and residences by partitions or walls.

(2) *Private office.* The dealership must have a private office, separate from display areas and repair and servicing facilities, that has space for the storage of books and records.

(3) *Display area.* The dealership must have a display area—whether indoors, outdoors or partly indoors and partly outdoors—where the public is permitted and invited in the regular course of business to inspect or test drive the vehicles that are being offered for sale, purchase or exchange by the dealership. The display area may not include areas of the dealership premises on which are placed vehicles that are wrecked or damaged, that are awaiting reconditioning or preparation for sale, purchase or exchange, that are being serviced or repaired, that are part of general inventory, or that are otherwise not being offered for sale, purchase or exchange to the public. The display area shall meet the following requirements:

(i) *Size.*

(A) The display area of a dealership that buys, sells or exchanges vehicles must be large enough for the display of at least five vehicles—with doors opened—of the kind that are bought, sold or exchanged by the dealership. The display area of a dealership that buys, sells or exchanges recreational vehicles, manufactured housing and mobile homes must have a display area of at least 5,000 square feet, unless exempted by section 5(e)(3) or (4) of the act (63 P. S. § 815.5(e)(3) and (4)).

(B) The minimum size display area requirements of this paragraph do not apply to a licensed vehicle dealer that sells only new firefighting or emergency service vehicles.

(ii) *Grading and surfacing.* An outdoor display area must be properly graded. The outdoor display area of a dealership that buys, sells or exchanges vehicles must be surfaced with concrete, asphalt, slag, brick, stone, aggregate, gravel, cinder or similar material. A dealership that otherwise complies with this paragraph may display up to five vehicles without regard for the grading or surfacing where those vehicles are displayed, so long as customers are not permitted to be present in the nonconforming area. A dealer may demonstrate that customers are not permitted to be present in the nonconforming area by posting a no-trespassing or similar sign, erecting a barrier or taking another reasonable precaution.

(iii) *Separation from adjacent parking areas.* An outdoor display area must be separated from the parking areas of adjacent businesses and residences by grass strips, ropes and pennants, painted lines or some other conspicuous means of separation.

(iv) *Lighting.* If a dealership with an outdoor display area intends to be open during evening hours, the display area must be lighted adequately.

(4) *Repairs and ancillary services.* A dealership that buys, sells or exchanges mobile homes or manufactured housing must do one of the following:

(i) Provide transportation, installation and repair services to its customers.

(ii) Make available to its customers a list of persons or companies who provide transportation, installation and repair services.

(5) *Telephone.* The dealership must have a single business line telephone, located within the permanent enclosed building, that is used for the dealership. The telephone number must be listed under the dealership's licensed name.

(6) *Sign.* The dealership must exhibit a sign, either permanently affixed to the building or erected in the outdoor display area, that shows the licensed name of the dealership and that is visible to the public.

(7) *Land-use ordinances.* The dealership must be in full compliance with applicable building codes, zoning ordinances and other land-use ordinances.

(8) *Fire-safety requirements.* A dealership must posses a certificate of occupancy issued by a building code official in accordance with the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

(9) *Posting of business hours.* The dealership must post its regular business hours in a conspicuous place for the visiting public.

[Pa.B. Doc. No. 04-2139. Filed for public inspection December 3, 2004, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Continuing Education for Certified Registered Nurse Practitioners

The State Board of Nursing (Board) adopts §§ 21.332—21.337 to read as set forth in Annex A.

Notice of proposed rulemaking was published at 32 Pa.B. 5666 (November 16, 2002). Publication was followed by a 30-day public comment period during which the Board did not receive any comments from the public. On February 6, 2003, the House Professional Licensure Committee (HPLC) submitted two comments. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) made no comments. The Independent Regulatory Review Commission (IRRC) submitted comments to the proposed rulemaking on February 28, 2003.

Section 3(c) of the act of December 9, 2002 (P. L. 1567, No. 206) (Act 206) amended the Professional Nursing Law (act) (63 P. S. §§ 211—226) by adding section 8.1 to the

Professional Nursing Act (63 P. S. § 218.1) that requires all certified registered nurse practitioners (CRNPs) to complete 30 hours of Board-approved continuing education prior to biennial renewal of certification. Act 206 also requires that CRNPs with prescriptive authority complete at least 16 of the 30 hours in pharmacology. The proposed rulemaking cited section 2.1(k) of the act (63 P. S. § 212.1(k)) as the statutory authority for the rulemaking. Upon inquiry from the Office of Attorney General, the Board explained that its authority arose also from section 6.1 of the act (63 P. S. § 216.1), which authorizes the Board to establish and approve programs for the preparation of registered professional nurses. These sections of the act authorized the Board, jointly with the State Board of Medicine, to promulgate § 21.283(3) (relating to prescribing and dispensing drugs) effective November 18, 2000, which mandated 16 hours of continuing education in pharmacology for CRNPs with prescriptive authority. With the enactment of Act 206, this final-form rulemaking is authorized by section 8.1 of the act. This final-form rulemaking incorporates the new statutory requirement of continuing education for all CRNPs. The final-form rulemaking was delivered on January 6, 2004.

On January 21, 2004, IRRC requested additional information on § 21.332(b)(4) (relating to requirement of continuing education). IRRC requested that § 21.332(b)(3) and § 21.337(c) (relating to CRNP responsibilities) refer specifically to the disciplinary provisions of the act. These changes were made. Finally, IRRC asked many questions about § 21.332a (relating to inactive status and reactivation). Upon review of this section, the Board determined that the section was confusing as written. The Board elected to withdraw the rulemaking on January 23, 2004, and resubmit after making appropriate revisions.

Summary of Comments and Responses to Proposed Rulemaking

HPLC Comments

The HPLC submitted two comments to the proposed rulemaking. First, the HPLC requested an explanation as to why 50 minutes constituted a continuing education hour instead of 60 minutes. (See § 21.334(f) (relating to sources of continuing education).) The Board decided to use the 50-minute hour because it anticipates that colleges and universities that house CRNP education programs will offer most of the continuing education courses that will be offered to CRNPs and 50 minutes is the standard hour in academia.

Second, the HPLC questioned whether a limit should be placed on the number of credit hours a CRNP could obtain through correspondence courses, taped study courses and other independent study courses. In developing the proposed rulemaking, the Board considered whether it would be appropriate to place a limit on the number of continuing education credits that could be earned in these manners, and decided not to limit the number of distance learning credits that could be earned to satisfy the biennial requirement. The Board determined that it would not limit the number of credits that could be taken in distance learning for the following reasons: first, the Board is aware of only a very few distance learning courses being offered in the area of advanced pharmacology or CRNP practice areas as most of these courses are offered through CRNP programs; second, the nature of the practice of a CRNP in this Commonwealth often places the CRNP in less developed regions of the Commonwealth where the CRNP has difficulty accessing traditional continuing education programs and would greatly benefit by being permitted to meet the biennial requirement with distance learning.

IRRC Comments

When proposed rulemaking was published, Act 206 had not been enacted and the proposed rulemaking governed only CRNPs with prescriptive authority. IRRC commented that the regulation's heading should reflect the regulation's limited application. This change is obviated by the changes made in this final-form rulemaking to conform to Act 206.

IRRC suggested that § 21.334(a), relating to the provision of certificates of completion, would be more appropriate under § 21.335 (relating to requirements for courses). The Board concurs that § 21.334(a) is misplaced and has moved § 21.334(a) to § 21.336 (relating to continuing education course approval). IRRC also advised that the phrase "the Board finds that" in § 21.334 is unnecessary and it has been deleted.

IRRC made numerous comments regarding the proposed rulemaking, including two similar to the HPLC comments. IRRC asked whether an Internet-based course would be included under the terminology "correspondence courses and other independent study courses." The Board considers Internet-based courses to be correspondence courses, when the correspondence occurs through the computer rather than through the United States Postal Service. IRRC also inquired whether the Board should limit the number of credits obtainable through correspondence courses. As explained previously, the Board did not wish to limit credits that could be earned through correspondence courses. Finally, IRRC asked what kind of documentation would be submitted to obtain approval of the course from the Board. Correspondence courses would be approved in the same manner as other continuing education courses, in accordance with § 21.334(b), which provides that CRNPs may obtain Board approval for courses under § 21.336. The Board anticipates that preapproved providers listed in § 21.334(a) will offer the vast majority of continuing education courses, including correspondence courses.

IRRC requested that the Board add to the final-form rulemaking some description of the type of documentation that would be acceptable evidence that the CRNP had been employed in another jurisdiction as a CRNP with prescriptive authority to reactivate a license placed on inactive status under § 21.332(a)(2)(ii). Generally, nurses who have placed their Pennsylvania licenses on inactive status to practice in another state and then seek to reactivate their Pennsylvania licenses submit a letter from their employer describing the nurse's duties. The Board declines to add this explanation to this subsection, as the Board does not believe the provision as written will cause any confusion. In addition, the Board notes that the requirement that the CRNP demonstrate that he has completed continuing education that is substantially equivalent to the requirements of § 21.283(3) could be met by submitting certificates of attendance and course outlines or verification from the other state's nursing board that the requirements are equivalent.

IRRC commented that it believes that the Board lacks statutory authority for § 21.332(b)(4), which provides that the Board may waive the continuing education requirement in cases of illness or undue hardship. Section 8.1 of the act authorizes the Board to certify registered nurse practitioners. With this authority comes the authority to pass on the qualifications of applicants for renewal of registered nurse practitioner certification. The Board

understands and respects the Legislature's determination that continuing education contributes to continued competency and ensures the safety of the public. However, the Board is also aware that circumstances may dictate a case-by-case approach. For example, CRNPs serving overseas may be unable to complete required continuing education. The Board does not believe that these nurses should be denied the opportunity to resume their profession when they return to this Commonwealth. The Board intends to use the waiver provision thoughtfully and sparingly, in cases of extreme hardship or prolonged illness. An applicant would apply for a waiver by writing to the Board and explaining the special circumstances the applicant believes warrants the grant of a waiver. IRRC also asked, on January 21, 2004, how many requests for waiver the Board has received. The Board has not received any requests for waiver because nurses have not previously been required to complete continuing education.

Finally, IRRC questioned the reasonableness of § 21.336, noting that the Board had not provided any time limit for submitting applications for the approval of continuing education courses. In the final-form rulemaking, the Board has added a requirement that applications for course approval be submitted at least 60 days prior to the date the course is to be offered.

Amendments to Conform the Rulemaking to the Act and for Clarity

By Act 206, the General Assembly instituted a 30-hour biennial continuing education requirement for all CRNPs, and codified the prior regulatory requirement of 16 hours of biennial continuing education in pharmacology for CRNPs with prescriptive authority. To avoid the confusion that may be caused by different statutory and regulatory provisions relating to continuing education, and to conform this rulemaking to Act 206, the Board has added provisions to the final version of the final-form rulemaking.

Section 21.332 has been amended to make the continuing education provisions apply to all CRNPs. Section 21.332 restates the continuing education requirement and references section 8.1(c) of the act. References in former § 21.332(b)(1) to reactivation have been eliminated and that section has become § 21.332(b)(2). Paragraph (1) has been added to § 21.332(b) to set forth the general 30-hour biennial continuing education requirement for all CRNPs.

For clarity, § 21.332(a)(1) and (2) have been moved to new § 21.332a (relating to inactive status). The inactive status and reactivation section has been split into three subsections instead of the two paragraphs published in the proposed rulemaking. The three new subsections of § 21.332a on inactive status and reactivation are divided as follows: § 21.332a(a) relates to a CRNP placing his certificate on inactive status; § 21.332a(b) relates to a CRNP placing his prescriptive authority approval on inactive status for less than 3 years; and § 21.332a(c) relates to the CRNP placing his prescriptive authority approval on inactive status for more than 3 years. A more stringent continuing education requirement must be met where the prescriptive authority has been inactive for more than 3 years to ensure competency and currency in handling prescription drugs.

Section 21.332(b)(3) was amended to indicate that failure to meet continuing education requirements will subject a CRNP to formal disciplinary action. This amendment conforms the rulemaking to section 15 of the act (63 P. S. § 225). CRNPs, like other professional licensees who are required to complete biennial continuing education, will verify their continuing education compliance and the Bureau of Professional and Occupational Affairs will randomly audit 5% of the licensees by requiring submission of documentation for 30 hours of continuing education. At IRRC's request, the Board specified the reference to the disciplinary section of the act.

A new subsection (a) was added to § 21.333 (relating to continuing education subject matter) to provide for general continuing education courses and the provision relating to pharmacology continuing education was designated as subsection (b). Section 21.334 was similarly amended. Now that all CRNPs in this Commonwealth are required to complete continuing education, it is anticipated that the broad list of preapproved providers will offer courses in both general and pharmacology subjects.

Statutory Authority

This final-form rulemaking is authorized under section 8.1(c) of the act which mandates continuing education for all CRNPs and authorizes the Board to approve continuing education courses for CRNPs. In addition, section 2.1(k) of the act authorizes the Board to promulgate regulations for the administration of the act.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Board is self-supporting and the cost to the Board of reviewing applications for continuing education course approval will be satisfied by the fee charged for approval of continuing education courses. This fee is being promulgated in a separate rulemaking package related to fees. The final-form rulemaking will impose only minimal additional paperwork requirements upon the Board, and none upon any political subdivisions. The private sector, to the extent that it seeks to provide continuing education programs for CRNPs with prescriptive authority, will incur nominal costs in submitting information to the Board.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 16, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 5666, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 19, 2004, the final-form rulemaking was approved by the HPLC. On November 3, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 4, 2004, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

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

(2) These regulations are necessary and appropriate for the regulation of the practice of CRNPs in this Commonwealth.

(3) The amendments made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published under section 201 of the CDL.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by adding §§ 21.332, 21.332a and 21.333—21.337 to read as set forth in Annex A. (*Editor's Note:* The addition of § 21.332a was not included in the proposal which appeared at 32 Pa.B. 5666.)

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

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

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

JANET HUNTER SHIELDS, MSN, CRNP, CS,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 6292 (November 20, 2004).)

Fiscal Note: Fiscal Note 16A-5117 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

CONTINUING EDUCATION

§ 21.332. Requirement of continuing education.

(a) A CRNP shall comply with this section and §§ 21.332a—21.337.

(b) Continuing education requirements shall be completed each biennial cycle.

(1) An applicant for biennial renewal of certification is required to complete, during the 2 years preceding renewal, a minimum of 30 hours of Board-approved continuing education, as set forth in section 8.1(c) of the act (63 P. S. § 218.1(c)). Completion of a course described in § 21.283(2) (relating to prescribing and dispensing drugs) satisfies the continuing education requirement for the biennial renewal period in which it is completed.

(2) An applicant for biennial renewal of prescriptive authority approval is required to complete, during the 2 years preceding renewal, a minimum of 16 of the 30 hours of continuing education in pharmacology. Completion of a course described in § 21.283(2) shall satisfy the continuing education requirement for the biennial renewal period in which it is completed.

(3) A person failing to meet the continuing education requirements for a biennial renewal period will be subject to formal disciplinary action under section 14(a)(3) of the act (63 P. S. § 224(a)(3)).

(4) The Board may waive the requirements of continuing education in cases of illness or undue hardship. It is the duty of each licensee who seeks a waiver to notify the Board in writing and request the waiver prior to the end of the renewal period. The Board will grant, deny or grant in part the request for waiver. An individual who requests a waiver may not prescribe or dispense drugs after the expiration of his current prescriptive authority and until the Board grants the waiver request.

§ 21.332a. Inactive status and reactivation.

(a) A CRNP who places his certification on inactive status is not required to meet the continuing education requirements in § 21.332(b)(1) (relating to requirement of continuing education) during the period the certification is on inactive status. Upon application for reactivation of certification, the CRNP shall show proof of meeting the continuing education requirements for the biennial period immediately preceding the request for reactivation.

(b) A CRNP who places his prescriptive authority approval on inactive status for less than 3 years is not required to meet the continuing education requirements in § 21.332(b)(2) during the period the prescriptive authority approval is on inactive status. Upon application for reactivation of prescriptive authority approval, the CRNP shall show proof of meeting the continuing education requirements for the biennial period immediately preceding the request for reactivation.

(c) A CRNP who places his prescriptive authority approval on inactive status for 3 years or longer may reactivate the prescriptive authority approval by meeting one of the following conditions:

(1) Complete the requirement in § 21.283(2) (relating to prescribing and dispensing drugs) by taking at least 45 hours of course work in advanced pharmacology.

(2) Provide evidence to the Board that:

(i) The CRNP has practiced, for at least 1 of the last 3 years, as a CRNP with prescriptive authority in another jurisdiction.

(ii) The scope of the prescriptive authority in the other jurisdiction is equivalent to prescriptive authority in this Commonwealth.

(iii) The CRNP was required, as a condition for continued practice in the other jurisdiction, to complete continuing education that is substantially equivalent to the requirements of § 21.283(3).

(iv) The CRNP met the continuing education requirements of the other jurisdiction within 1 year of the request for reactivation of prescriptive authority.

§ 21.333. Continuing education subject matter.

(a) Continuing education courses shall address the CRNP's area of practice and meet the requirements of § 21.332(b)(1) (relating to requirement of continuing education).

(b) Pharmacology continuing education courses shall meet the requirements of section 8.1(c) of the act (63 P. S. § 218.1(c)) and § 21.332(b)(2) and must provide the

knowledge and skills to understand the pharmacokinetics and pharmacodynamics of broad categories of drugs and to analyze the relationship between pharmacologic agents and physiologic/pathologic responses.

§ 21.334. Sources of continuing education.

(a) The following providers of continuing education and credentialing organizations have currently met the standards for course approval for continuing education.

(1) Accordingly, provided that these providers agree to abide by § 21.336(a) (relating to continuing education course approval), the courses offered or approved by the following providers or credentialing organizations are approved:

(i) Board-approved CRNP programs.

(ii) The American Nurses Credentialing Center's Commission on Accreditation (ANCC).

(iii) The American Academy of Nurse Practitioners (AANP).

(iv) The National Association of Pediatric Nurse Practitioners (NAPNP).

(v) The American Medical Association (AMA).

(2) The approval given to the providers and credentialing organizations in paragraph (1) is subject to reevaluation. A rescission of provider or credentialing organization approval will be made only in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) or by amendment of this section.

(b) CRNPs may obtain credit for courses offered by providers not indicated in subsection (a)(1) if the provider receives approval of the course under § 21.336 prior to its implementation.

(c) CRNPs may obtain credit for continuing education hours on an individual basis if the CRNP, prior to attendance at the course, obtains Board approval by submitting a request for course approval and supporting documentation listed in § 21.336(b).

(d) CRNPs may obtain credit for correspondence courses, taped study courses and other independent study courses if the course is Board approved.

(e) Up to 4 hours will be credited for service as a teacher, preceptor, lecturer or speaker and for publication in a refereed journal or other scholarly publication relating to pharmacology or the CRNP's area of practice. Application shall be made prior to the service or within 90 days of the publication to assure that the Board will approve the service or publication and to allow the Board to determine the number of contact hours that will be granted.

(f) An hour for purposes of nurse practitioner continuing education is 50 minutes.

§ 21.335. Requirements for courses.

Each course shall have:

(1) An established mechanism to measure its quality, established criteria for selecting and evaluating faculty, and established criteria for the evaluation of each participant who completes the course.

(2) Adequate facilities with appropriate instructional materials to carry out continuing education programs.

(3) Instructors who have suitable qualifications as detailed in § 21.336(d) (relating to continuing education course approval).

§ 21.336. Continuing education course approval.

(a) As a condition of approval, providers and credentialing organizations are required to provide CRNPs who complete continuing education courses with a certificate of completion which contains the information listed in § 21.337(a) (relating to CRNP responsiblities). Providers and credentialing organizations shall maintain records of course attendance for at least 5 years.

(b) Providers referenced in § 21.334(b) (relating to sources of continuing education) or CRNPs applying for individual approval in § 21.334(c), when seeking Board approval of a continuing education course shall pay the required fee (see § 21.253 (relating to fees)) and complete and submit an application for course approval at least 60 days prior to the date the course is to be offered, which shall include the following information:

(1) The full name and address of the provider.

(2) The title of the program.

(3) The dates and location of the program.

(4) The faculty names, titles, affiliations, degrees and areas of expertise.

(5) The schedule of program—title of subject, lecturer and time allocated.

(6) The total number of hours requested.

(7) The method of certifying and assuring attendance, and draft of certificate of attendance to be provided to course participants.

(8) The course objectives.

(9) The target audience.

(10) The core subjects.

(11) The program coordinator.

(12) The instruction and evaluation methods.

(13) Other information requested by the Board.

(c) Upon approval of a course, the Board will assign a course number and determine the number of hours awarded. The provider shall place the course number on the certificate of attendance and shall provide CRNPs who successfully complete a course with a certificate of attendance.

(d) Courses will be approved only in the instructor's demonstrated areas of expertise. Expertise may be demonstrated by the instructor's certification in the specialty area to be presented.

(e) A separate application shall be submitted whenever a change is made to any information submitted under subsection (b), except for information related to a change in date or location, or both, of the program submitted under subsection (b)(3).

§ 21.337. CRNP responsibilities.

(a) A CRNP is required to maintain documentation of completion of continuing education, including:

(1) CRNP name.

(2) Dates attended.

(3) Continuing education hours.

(4) Title of course.

(5) Course provider.

(6) Location of course.

(7) Course number.

(b) Primary responsibility for documenting completion of the continuing education requirements rests with the CRNP. A CRNP seeking to renew certification or prescriptive authority shall verify compliance with continuing education requirements. Documentation of completion of continuing education requirements must be maintained for 5 years. The certificate issued by the course provider must be acceptable documentation. Acceptable documentation of hours obtained through § 21.334(c) or (e) (relating to sources of continuing education) must be the Board approval letter sent to the applicant.

(c) Falsification of information required under this section or failure to complete continuing education requirements by those who continue to practice as a CRNP or to prescribe, may result in the institution of formal disciplinary action under section 14(a)(3) of the act (63 P. S. § 224(a)(3)).

[Pa.B. Doc. No. 04-2140. Filed for public inspection December 3, 2004, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE
[49 PA. CODE CH. 25]
Delegation of Medical Services

The State Board of Osteopathic Medicine (Board) amends § 25.1 (relating to definitions) by adding a definition for "emergency medical services personnel" and amends Subchapter D (relating to minimum standards of practice) by adding § 25.217 (relating to osteopathic physician delegation of medical services) to read as set forth in Annex A.

A. *Effective Date*

This will be effective upon publication as final-form rulemaking in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

Section 16 of the Osteopathic Medical Practice Act (63 P. S. § 271.16) (act) authorizes the Board to promulgate regulations necessary to carry out the purposes of the act. Section 3 of the act (63 P. S. § 271.3) permits osteopathic physicians to delegate medical services and acts to physician assistants, technicians or other allied medical personnel if these services and acts are rendered under the supervision, direction or control of a licensed physician.

C. *Background and Purpose*

The Board routinely receives inquiries about whether a particular delegation of medical services is appropriate. In an effort to be responsive to the regulated community, and to provide a framework that places patient safety and welfare at the forefront of the osteopathic physician's decision making process, the Board determined to codify basic criteria under which an osteopathic physician may delegate the performance of medical services to nonphysicians.

D. *Summary of Comments and Responses on Final-Form Rulemaking*

Notice of the proposed rulemaking was published at 34 Pa.B. 58 (January 3, 2004). The Board received comments from the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Association of Nurse Anesthetists (PANA).

IRRC noted that § 25.217(a)(5) permits someone other than the osteopathic physician to explain the nature and delegation of the medical service to the patient. IRRC pointed out that this subsection is inconsistent with section 3 of the act which indicates that delegated services are to be "rendered under the supervision, direction or control of a licensed physician." IRRC recommended that the regulations should specify the physician's role in the explanation given to the patient. The Board agreed with this recommendation and amended the language to require that the explanation be given by the physician or the physician's designee.

PANA expressed concern that the rulemaking would restrict the practice of other licensed health care practitioners. PANA also expressed concern that the regulation does not provide objective criteria to determine the knowledge or skill of the physician who may be delegating to an individual with more skill and expertise in that particular matter than the physician. The delegation may currently occur under the act. This final-form rulemaking will give further guidance to physicians in delegating medical services to both licensed health care practitioners as well as unlicensed technicians.

E. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector. Citizens of this Commonwealth will benefit in that this final-form rulemaking promotes patient safety and welfare as a consideration in making medical service delegation decisions.

F. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 3, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 58, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 19, 2004, the final-form rulemaking was approved by the HPLC. On November 3, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 4, 2004, and approved the final-form rulemaking.

H. *Contact Person*

Interested persons may obtain information regarding the final-form rulemaking by writing to Beth Sender Michlovitz, Board Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 or bmichlovit@state.pa.us.

I. *Findings*

The Board finds that:

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

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

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

(3) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act and does not enlarge the purpose of the proposed rulemaking published at 34 Pa.B. 58.

J. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by amending § 25.1 and by adding § 25.217 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

THOMAS R. CZARNECKI, D.O.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 6292 (November 20, 2004).)

Fiscal Note: Fiscal Note 16A-5312 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter A. GENERAL PROVISIONS

§ 25.1. Definitions.

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

* * * * *

Emergency medical services personnel—Individuals who deliver emergency medical services and who are regulated by the Department of Health under the Emergency Medical Services Act (35 P. S. §§ 6921—6938).

* * * * *

Subchapter D. MINIMUM STANDARDS OF PRACTICE

§ 25.217. Delegation.

(a) An osteopathic physician may delegate to a health care practitioner or technician the performance of a medical service if the following conditions are met:

(1) The delegation is consistent with the standards of acceptable medical practice embraced by the osteopathic physician community in this Commonwealth. Standards of acceptable medical practice may be discerned from current peer reviewed medical literature and texts, teaching facility practices and instruction, the practice of expert practitioners in the field and the commonly accepted practice of practitioners in the field.

(2) The delegation is not prohibited by the statutes or regulations relating to the other health care practitioner.

(3) The osteopathic physician has knowledge that the delegatee has education, training, experience and continued competency to safely perform the medical service being delegated.

(4) The osteopathic physician has determined that the delegation to a health care practitioner or technician does not create an undue risk to the particular patient being treated.

(5) The nature of the service and the delegation of the service has been explained to the patient and the patient does not object to the performance by the health care practitioner or technician. Unless otherwise required by law the explanation may be oral and may be given by the osteopathic physician or the osteopathic physician's designee.

(6) The osteopathic physician assumes the responsibility for the delegated medical service, including the performance of the service, and is available to the delegatee as appropriate to the difficulty of the procedure, the skill of the delegatee and risk to the particular patient.

(b) An osteopathic physician may not delegate the performance of a medical service if performance of the medical service or if recognition of the complications or risks associated with the delegated medical service requires knowledge and skill not ordinarily possessed by nonphysicians.

(c) An osteopathic physician may not delegate a medical service which the osteopathic physician is not trained, qualified and competent to perform.

(d) An osteopathic physician shall be responsible for the medical services delegated to the health care practitioner or technician.

(e) An osteopathic physician may approve a standing protocol delegating medical acts to another health care practitioner who encounters a medical emergency that requires medical services for stabilization until the osteopathic physician or emergency medical services personnel are available to attend to the patient.

(f) This section does not prohibit a health care practitioner who is licensed or certified by a Commonwealth agency from practicing within the scope of that license or certificate or as otherwise authorized by law. For example, this section is not intended to restrict the practice of certified registered nurse anesthetists, nurse midwives, certified registered nurse practitioners, physician assistants, or other individuals practicing under the authority of specific statutes or regulations.

[Pa.B. Doc. No. 04-2141. Filed for public inspection December 3, 2004, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY
[49 PA. CODE CH. 41]
Notice Requirements

The State Board of Psychology (Board) adopts §§ 41.91 and 41.92 (relating to reporting of crimes and disciplinary actions; and notice of active suspension or revocation) to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is authorized under the authority of sections 3.2(2), 8(a)(6)—(8), 8.1, 11(c) and 17 of the Professional Psychologists Practice Act (act) (63 P. S. §§ 1203.2(2), 1208(a)(6)—(8), 1208.1, 1211(c) and 1217).

Response to Public Comments and Regulatory Review and Amendments in Final Form Rulemaking

Notice of the proposed rulemaking was published at 34 Pa.B. 60 (January 3, 2004). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Psychological Association (PPA). The House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) also submitted comments. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

§ 41.91 (relating to reporting of crimes and disciplinary actions)

Subsection (a)

Subsection (a) requires licensees to notify the Board of any felony or misdemeanor convictions. The HPLC, IRRC and the PPA questioned why the Board did not limit the misdemeanor notification to misdemeanors committed in the practice of psychology. In addition to authorizing the Board to discipline licensees for misdemeanor convictions related to the practice of psychology, section 8(a) of the act, authorizes the Board to impose discipline for other misdemeanors if they fall within other enumerated categories, such as immoral conduct in section 8(a)(11) of the act or submitting an insurance claim for services not actually provided in section 8(a)(14) of the act. In that the determination of whether a misdemeanor conviction falls within section 8(a) of the act is fact-specific, the Board believes that it is prudent for licensees to report all misdemeanors rather than risk failing to report. This provision parallels other licensing boards' reporting requirements.

The PPA questioned whether a licensee would be required to report the conviction if it has been appealed. Under the rulemaking, licensees would be required to report the conviction but may advise the Board that the conviction is on appeal.

Section 8(a)(6) of the act defines "conviction" as including findings of guilt, pleas, dispositions without verdict and accelerated rehabilitative dispositions. The HPLC, IRRC and the PPA recommended that the Board track the language in section 8(a)(6) of the act or reference the act in subsection (a). Owing to this concern, the Board amended subsection (a) by deleting guilty and nolo contendere pleas and inserting a reference to the act.

IRRC also suggested that the Board add the following clause to subsection (a): "or on the biennial renewal application, whichever is sooner" to parallel subsection (b). The Board concurs with this suggestion and has added this clause.

Finally IRRC questioned why the Board used the terms "provincial board of psychology" instead of "country" as referenced in the act. Although the regulated community of psychologists refers to "provincial boards of psychology" when referring to foreign boards rather than "country," the Board has replaced "provincial boards of psychology" with "country" to track the statute.

Subsection (b)

Subsection (b) requires that all disciplinary actions be reported to the Board within 30 days. IRRC correctly comments that the act permits the reports within 90 days. Accordingly, the Board has amended subsection (b) in conformity with section 8.1 of the act.

Additionally, in the proposed rulemaking subsection (b) referred to disciplinary actions by "provincial boards of psychology." IRRC recommended that the Board track the language in sections 8 and 8.1 of the act. Although the Board understands that licensing jurisdictions in other countries refer to themselves as "provincial boards of psychology," the Board has amended the language in subsection (b) to track the act.

§ 41.92 (relating to notice of active suspension or revocation)

In addition to requiring licensees who have been actively suspended or revoked to return their license to the Board within 30 days, in the proposed rulemaking, § 41.92 required licensees to advise their current clients/patients of the disciplinary action in writing. In final-form, the Board identified another group of individuals who should be advised of the licensee's active suspension or revocation—Ph.D. and Psy.D. holders on the licensure track who are obtaining their supervised experience with the disciplined licensee. Under § 41.32(8) (relating to standards for supervisors) a supervisor may not be the subject of a disciplinary action. Timely notification to the supervisees will allow the supervisees to find a replacement for the disciplined licensee.

IRRC questioned whether licensees who voluntarily surrender their licenses would also be required to notify their client/patients. The Board believes that where the licensee has voluntarily surrendered the license in lieu of further discipline, notification is necessary. However, where the licensee has surrendered the license not in connection with discipline, for example, because the licensee is retiring or moving to another state, the Board does not believe that the requirements of this section should apply. Accordingly, the Board has amended this provision to include voluntary surrenders in lieu of discipline.

The HPLC and the PPA asked the Board to clarify "actively suspended or revoked." Among the disciplinary sanctions the Board may impose are suspension and revocation. Unless the suspension has been stayed, in both active suspensions and revocations, licensees are prohibited from engaging in the practice of psychology for a specified period of time. In the case of revocations, the statutory prohibition from practice is at least 5 years. The length of an active suspension is set out in the Board's disciplinary order. Because stayed suspensions do not prohibit a licensee from practice, the Board limited this mandatory notification requirement to active suspensions and revocations.

IRRC asked the Board to explain its requirement that actively suspended or revoked licensees assist current clients/patients with transferring records and obtaining alternative professional resources. To ensure continuity of treatment for clients/patients, especially ones who have been treating with the same psychologist for many years,

the Board believes that the actively suspended or revoked licensee must make referrals to other appropriate professionals and provide treatment records. The Board believes that simply immediately ending treatment without these necessary steps would be harmful to the patient, especially in cases where the patient has abandonment and separation issues.

Finally, IRRC asked the Board to explain how this provision would affect school psychologists. School psychologists fit within two categories: certified school psychologists who are not licensed by the Board and licensed school psychologists. As with all other regulations of the Board, school psychologists who are only certified school psychologists and not also licensed school psychologists are not within the Board's jurisdiction and are not required to comply with these regulations. Licensed school psychologists are within the Board's jurisdiction and would have to comply. Because the licensed school psychologists are employed by the school districts directly or as independent contractors, these licenses would be required to notify the school district because the school district is their client.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking will have no fiscal impact on the Commonwealth, its political subdivisions, the public or the regulated community. This final-form rulemaking creates additional reporting requirements on those licensees who voluntarily relinquish their license in lieu of discipline or who are actively suspended or revoked by the Board in that they are required to notify their patients of the Board's disciplinary action. Because the act currently requires all licensees to report nolo or guilty pleas and licensees with multiple licenses to report discipline taken in other states, there are no new legal, reporting or other paperwork requirements on these licensees.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 17, 2003, the Board submitted a copy of this proposed rulemaking, published at 34 Pa.B. 60, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 19, 2004, the final-form rulemaking was approved by the HPLC. On November 3, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 4, 2004, and approved the final form rulemaking.

Contact Person

Further information may be obtained by contacting Christine Stuckey, Administrative Assistant, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649, www.state.pa.us/bpoa/psyc/mainpage.

Findings

The Board finds that:

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

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

(3) This final form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 60.

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

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by adding §§ 41.91 and 41.92 to read as set forth in Annex A.

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

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

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

ALEX M. SIEGEL, J.D./Ph.D.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 6292 (November 20, 2004).)

Fiscal Note: Fiscal Note 16A-6314 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 41. STATE BOARD OF PSYCHOLOGY

NOTICE REQUIREMENTS

§ 41.91. Reporting of crimes and disciplinary actions.

(a) A licensee shall notify the Board of having been convicted, as defined in section 8(a)(6) of the act (63 P. S. § 1208(a)(6)), of a felony or misdemeanor, within 30 days of the conviction, or on the biennial renewal application, whichever is sooner.

(b) A licensee shall notify the Board of disciplinary action in the nature of a final order taken against the licensee by the licensing authority of another state, territory or country within 90 days of receiving notice of the disciplinary action, or on the biennial renewal application, whichever is sooner.

§ 41.92. Notice of active suspension or revocation.

A licensee who has voluntarily surrendered a license in lieu of discipline or whose license has been actively suspended or revoked by the Board shall return the

suspended or revoked license to the Board and notify all current clients/patients and any individuals obtaining supervision for licensure from the licensee of the disciplinary action in writing within 30 days of receiving notice of the disciplinary action. The notice must contain the following:

(1) The sanction imposed.

(2) The effective date and length of the sanction.

(3) The nature of the violation.

(4) A statement that the licensee will assist patients in obtaining alternative professional resources and in transferring psychological records.

[Pa.B. Doc. No. 04-2142. Filed for public inspection December 3, 2004, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing

The Fish and Boat Commission (Commission) by this order amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The changes relate to the imposition of a catch and release/no harvest fishery for all species on waters located in the Wyoming State Forest, Columbia and Northumberland Counties.

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2005.

B. *Contact Person*

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

C. *Statutory Authority*

The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

The final-form rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the final-form rulemaking is described in more detail under the summary of change.

E. *Summary of Change*

Early in 2004, the Department of Conservation and Natural Resources (DCNR), Bureau of Forestry, requested the Commission to implement no-kill regulations on waters within a recently acquired 9,000-acre tract being incorporated into the Wyoming State Forest. The rationale for the request was to give Commission staff an opportunity to survey various fish populations and to prepare and implement fisheries management plans. Also, because these waters had not been open for public use since the 1880s, it seemed prudent to afford some degree of protection to fish populations until Commission staff could develop an appropriate course of action. Thus, by notice published at 34 Pa.B. 456 (January 17, 2004), former Deputy Executive Director Guise, acting under the authority of § 65.25 (relating to temporary changes to fishing regulations), took immediate action to temporarily modify fishing regulations to permit catch and release only of all species on waters located in the Wyoming State Forest. The temporary modifications went into effect immediately and will remain in effect until further notice but in no event will they remain in place after January 1, 2005.

Commission surveys of these waters were completed during the spring of 2004. Results of the lake surveys found that the fish communities consisted of a very low density of gamefish and panfish that exhibited characteristics of unexploited (unfished) populations. Although lake water quality work has not yet been completed, it is apparent from voltages required during the electrofishing phase of the surveys as well as the abundance of bladderwort (an acid loving aquatic plant) that these systems are not very productive. The stream evaluation found very few trout (brook trout) between the reservoirs and no trout upstream from the reservoirs. As was the case in the lakes, the infertile waters are likely the cause of the very sparse trout population. The portions of the stream downstream from the reservoirs would also be negatively impacted during the summer months by the warm (surface) discharges. It is evident that lake fish populations could easily be overexploited under the most conservation of harvest-orientated regulations. The Commission therefore amended § 65.24 so that all of the waters within the South Branch Roaring Creek tract of the Wyoming State Forest will remain under catch and release regulations.

The 6- to 7-mile valley under the direct responsibility of the DCNR will offer a variety of activities for outdoor enthusiasts. For the most part, access will be walk-in or by bicycle. Boating may be restricted to the upper two reservoirs and even then without gasoline motors. Thus, no-kill regulations are quite appropriate in this rather unique setting. The DCNR District Forester and practically every angler encountered during the lengthy survey period in the valley support catch and release angling on these newly acquired public waters—specifically, Bear Gap Reservoir, McWilliams Reservoir, Klines Reservoir and the South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42 (Columbia and Northumberland Counties). The Commission amended § 65.24 to read as set forth in the notice of proposed rulemaking.

As part of the proposed rulemaking package, the Commission also proposed deleting §§ 65.1 and 65.4b (relating to Selective Harvest Program; and All-Tackle Selective Harvest Program). The Commission has not yet considered these proposed changes on final-form rulemaking.

F. *Paperwork*

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of proposed rulemaking was published at 34 Pa.B. 5162 (September 18, 2004). Prior to the formal public comment period, the Commission received one public comment supporting the proposed rulemaking to § 65.24. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.24 to read as set forth at 34 Pa.B. 5162.

(b) The Executive Director will submit this order and 34 Pa.B. 5162 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 34 Pa.B. 5162 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*. The amendment will go into effect January 1, 2005.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-160 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-2143. Filed for public inspection December 3, 2004, 9:00 a.m.]