

PROPOSED RULEMAKING

DEPARTMENT OF GENERAL SERVICES DEPARTMENT OF AGRICULTURE

[70 PA. CODE CHS. 2, 10 AND 110]

General Provisions; Device Type Approval and State Metrology Laboratory

The Department of General Services (DGS) and the Department of Agriculture (Department) propose to establish fees for testing services performed by the State Metrology Laboratory. The proposed rulemaking amends the Department's current regulations in §§ 2.1 and 10.10 (relating to definitions; and fees) and adds Part V (relating to State Metrology Laboratory), administered by Department of General Services, to read as set forth in Annex A.

Statutory Authority

This proposed rulemaking is made under the authority of 3 Pa.C.S. §§ 4101—4194 (relating to Consolidated Weights and Measures Act) (act). Section 4178 of the act (relating to fees) requires that DGS establish, by regulation, fees for metrology laboratory calibration, type evaluation and other testing services. Section 4190 of the act (relating to rules and regulations) provides the Department with the authority to regulate as necessary to implement the act.

Purpose of the Proposed Rulemaking

The proposed rulemaking will fulfill the statutory requirement that DGS establish, charge and collect the fees described in section 4178 of the act. Currently, the State Metrology Laboratory (Laboratory) provides these services without charge. The proposed rulemaking is necessary to comply with the act. The proposed rulemaking will ensure that taxpayer dollars are not used to pay for testing by the Laboratory when user fees are statutorily authorized and required.

Background

Reorganization Plan No. 1 of 1986 (71 P. S. § 751-38) transferred the Department's statutory functions, powers and duties regarding weights and measures laboratory testing to DGS. The Department retained general weights and measures enforcement responsibility. This division of responsibilities between DGS and the Department was repeated in the act, which took effect in 1997.

DGS manages and operates the Laboratory as part of the Division of Quality Assurance in the Bureau of Purchases under the Deputy Secretary for Procurement.

In 1999, the Department promulgated extensive regulations under authority of the act. In particular, § 10.10 states that the Laboratory may charge a fee for device type approval. Under the act, the Laboratory is required to charge and collect fees for metrology calibration and other testing in addition to device type evaluation. A fee schedule was not included in the regulations adopted in 1999.

The proposed rulemaking would establish a schedule of fees and add relevant definitions. As structured, it would

also allow DGS to revise the fee schedule in the future without involving the Department in the promulgation process.

Overview of the Proposed Rulemaking

The proposed rulemaking amends § 10.10 to clarify that DGS will charge fees for metrology testing as required by the act and adds definitions to § 2.1. The proposed rulemaking also adds Chapter 110, in which the DGS adopts procedures and sets fees for Laboratory testing services.

Affected Individuals and Organizations

Each year, the Laboratory provides metrology calibration, type evaluations and testing for several hundred persons, who sell, install, service or repair commercially used weighing and measuring devices and who must have the accuracy of their field standards verified under § 6.3 (relating to field standards). Last year, the Laboratory provided approximately 740 services, including services to approximately 400 private persons. Under the proposed rulemaking, the Laboratory will charge these persons fees for testing now provided for free.

Cities and counties required to procure standards of weights and measures and any additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment), regarding city and county standards and equipment, are exempt from the fee requirements with respect to the calibration, evaluation or other testing of those standards and equipment. See section 4178 of the act.

The general public will benefit because the fees generated will pay for services now paid for from taxpayer dollars.

Fiscal Impact

Commonwealth: The estimated annual revenue to the Commonwealth (DGS) from the proposed rulemaking is approximately \$105,000. The proposed rulemaking should not result in additional costs to the Commonwealth.

Public Sector: No other government entity will incur any costs or realize any savings.

General Public: The proposed rulemaking will impose no costs and have no fiscal impact upon the general public.

Affected Businesses: The affected businesses, which use Laboratory services, will have to pay the fees set in the proposed rulemaking. The anticipated average fee per user is estimated to be \$262.50.

Paperwork Requirements

The proposed rulemaking will result in an increase in paperwork for the Laboratory, which will be required to issue invoices, collect payments and transmit payments to the State Treasury. Under section 4193(c) of the act (relating to disposition of funds), the Treasury Department will have an increase in paperwork to reflect the receipt of the fees from the DGS and to credit the fees collected to the general government appropriations of the DGS for the operation and maintenance of the Laboratory.

Effective Date

The proposed rulemaking will take effect upon publication in the *Pennsylvania Bulletin*.

Public Comments and Contact Person

Interested persons are invited to submit written comments regarding the proposed rulemaking to Mary Benefield Seiverling, Senior Counsel, Office of Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, PA 17125, (717) 787-5599 within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 20, 2005, DGS and the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC). On that same date, the Department submitted a copy of this proposed rulemaking to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee and DGS submitted a copy of this proposed rulemaking to the Chairpersons of the House Committee on State Government and the Senate Committee on State Government. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the DGS and the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

DONALD T. CUNNINGHAM, Jr.,
Secretary
Department of General Services

DENNIS C WOLFF,
Secretary
Department of Agriculture

Fiscal Note: 8-9. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 70. WEIGHTS, MEASURES AND STANDARDS

PART I. WEIGHMASTERS

CHAPTER 2. GENERAL PROVISIONS

§ 2.1 Definitions.

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

ASTM—The American Society of Testing and Measurement.

* * * * *

OIML—The International Organization of Legal Metrology.

* * * * *

State Metrology Laboratory—The Pennsylvania Standards Laboratory within the Department of General Services, having custody of the State standards of weight and measure and of other standards and equipment provided for by the act.

* * * * *

CHAPTER 10. DEVICE TYPE APPROVAL

§ 10.10. Fees.

[(a) Fees.] The State Metrology Laboratory **[may]** will charge **[an applicant]** a fee for conducting tests that may be required for device type approval under this chapter, **and for metrology laboratory calibration, type evaluation and any other testing services it performs under authority of the act. These fees are set forth in § 110.2 (relating to State Metrology Laboratory fee schedule).**

[(b) Exemption.] A city or county which is required to procure standards of weights and measures and additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment) to enforce the act is exempt from having to pay fees with respect to the calibration, evaluation or other testing of those standards and that equipment.]

PART V. STATE METROLOGY LABORATORY

Chap.

110. GENERAL PROVISIONS

CHAPTER 110. GENERAL PROVISIONS

- Sec. 110.1. Metrology services.
- 110.2. State Metrology Laboratory fee schedule.

§ 110.1. Metrology services.

(a) The State Metrology Laboratory provides testing services including calibration to ASTM, NIST and OIML standards.

(b) Requests for testing services must be made by appointment. No standards or equipment will be accepted for testing without appointment.

(c) Units submitted for testing or calibration must be cleaned before submission.

§ 110.2. State Metrology Laboratory fee schedule.

(a) *General.* The State Metrology Laboratory will charge a fee for any testing services it provides under authority of the act. These services include actual metrology laboratory calibration, type evaluation and any other services identified in subsection (c).

(b) *Exemption.* A city or county which is required to procure standards of weights and measures and additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment) to enforce the act is exempt from having to pay fees with respect to the calibration, evaluation or other testing of those standards and that equipment.

(c) *Schedule of fees.* The State Metrology Laboratory will charge the following fees for the indicated testing services:

| <i>General type of test</i> | <i>Description</i> | <i>Fee</i> |
|-----------------------------|--|-----------------|
| Precision mass | Up to ASTM E 617 Class 2 or best calibration but not to a specific class to and including 30 kg. or 50 lb. | \$30 per weight |

| <i>General type of test</i> | <i>Description</i> | <i>Fee</i> |
|-----------------------------|--|---|
| Precision mass | ASTM E617 Class 3 and 4 and OIML Class F1 and F2 to and including 30 kg. or 50 lb. | \$12 per weight |
| Ordinary mass | NIST Class F and ASTM E617 Classes 5, 6, 7 and OIML Class M1, M2 and M3 to and including 5 kg. or 10 lb. | \$2 per weight (without adjustment) \$10 per weight (with adjustment) |
| Ordinary mass | NIST Class F and ASTM E617 Classes 5, 6 and 7 from 10 kg. or 20 lb. to 50 kg. or 100 lb. | \$5 per weight (without adjustment) \$10 per weight (with adjustment) |
| Ordinary mass | NIST Class F and ASTM E617 Classes 5, 6 and 7 from 100 kg. or 200 lb. to 2500 kg. or 5500 lb. | \$15 per weight (without adjustment) \$25 per weight (with adjustment) |
| Ordinary mass | Weight Carts | \$50 per cart |
| Volume transfer | 5 gallon/20 liter test measures | \$15 per measure (includes adjustment) |
| Volume transfer | 10 gallon to 50 gallon | \$50 per prover (includes adjustment) |
| Volume transfer | 51 to 100 gallon | \$150 per prover (includes adjustment) |
| Volume transfer | Greater than 100 gallon | \$150 plus \$50 per each additional 100 gallons or fractions thereof |
| Gravimetric calibrations | Metal Test Measures to 5 gallon or 20 liters or 1 cubic foot | \$35 per item |
| Length calibrations | Metal Tapes or Rules | \$15 per point tested |
| Timing devices | Stopwatches | \$30 |
| Wheel load weighers | | \$6 per scale |
| Special tests | | \$75 per man-hour |

(d) *Payment of fees.* A deposit for the estimated fee shall be submitted when the testing request is made. Fees are payable at the time the metrology service is provided, regardless of whether the item tested is certified or approved.

[Pa.B. Doc. No. 05-837. Filed for public inspection April 29, 2005, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Miscellaneous Special Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking relates to permits for the use of cast nets or throw nets for the taking of gizzard shad and alewife on Lake Arthur in Butler County.

A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect immediately upon publication of an order in the *Pennsylvania Bulletin*.

B. *Contact Person*

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

C. *Statutory Authority*

The proposed 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 proposed rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Several years ago, the Commission promulgated a regulation pertaining to the issuance of permits for the use of cast nets for taking live gizzard shad and alewife at Raystown Lake in Huntingdon County. Live gizzard shad and alewife have proved to be a popular bait for striped bass but are difficult to capture by means of conventional seines and nets less than or equal to 4 feet in diameter. Subsequently, the Commission amended its regulation at Raystown Lake to increase the maximum size from 12 to 20 feet in diameter.

A recent application was filed for use of larger cast nets at Lake Arthur to capture alewife for striped bass angling. This application was denied as the cast net permit applies only to Raystown Lake. The use of a net such as this at Lake Arthur warrants consideration given the presence of surface schooling alewife for much of the year and the desire to enhance striped bass angling there. The Commission has determined that using larger cast nets on Lake Arthur is feasible and can be done without adverse impacts. This regulation will enhance striped bass fishing in the region. The Commission therefore proposes that § 65.24 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will increase paperwork in that individuals who wish to use cast nets or throw nets to take gizzard shad and alewife on Lake Arthur will be required to complete an application and, if approved, the Commission will issue a permit. The Commission estimates that it will issue less than 100 permits each year for the use of cast nets or throw nets on Lake Arthur. No new paperwork requirements will be created because the Commission already issues net permits under section 2902 of the code (relating to net permits).

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public. Under section 2902 of the code, the Commission has the authority to issue net permits for a fee of \$10.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this notice in the Pennsylvania Bulletin. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

Fiscal Note: 48A-169. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

| County | Name of Water | Special Regulations |
|--------|---------------|---|
| | * | * * * * * |
| Butler | Lake Arthur | The Executive Director or a designee may issue permits for use of cast nets or throw nets for taking only gizzard shad and alewife. In addition to other permit conditions that the Executive Director may require, the permits shall be limited to cast nets or throw nets of no greater than 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inches. |

| County | Name of Water | Special Regulations |
|--------|---------------|---------------------|
| | * | * * * * * |

[Pa.B. Doc. No. 05-838. Filed for public inspection April 29, 2005, 9:00 a.m.]

[58 PA. CODE CH. 65]

Fishing; Special Trout Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking would simplify the existing special trout fishing regulations by combining certain existing programs and making certain conditions consistent across all special trout regulation programs. The proposed rulemaking has a focus on preserving opportunities for the harvest of trophy trout; however, the Commission would also like to receive public comment on an alternative simplification scheme that has a focus on catch and release.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2006.

B. Contact Person

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposed rulemaking is available on the Commission's website: www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to §§ 65.2, 65.3, 65.4a, 65.5, 65.6, 65.7 and 65.24 and the addition of §§ 65.14 and 65.15 (relating to catch and release fly-fishing only areas; and catch and release all-tackle areas) are published under the statutory authority of sections 2102 and 2307 of the code (relating to rules and regulations; and waters limited to specific purposes).

D. Purpose and Background

The proposed rulemaking is designed to simplify, improve and make consistent the Commission's special trout regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

E. Summary of Proposals

The Commission is committed to simplifying regulations used in trout management. Although a 1997 study of ex-license buyers indicated that the complexity of regulations was not a primary reason for not purchasing a fishing license, attendees at the Trout Summit 2002 and members of the Trout Management Discussion Group have encouraged the Commission to simplify these regulations. Results of studies on waters managed with these special regulations have shown that benefits are difficult to discern among and between the different programs. The Commission believes that consolidation and simplification is possible and that the Commission will be able to continue to conserve fish while reducing impediments to fishing.

Consolidation has other benefits as well. It will reduce the number of different signs/posters that are necessary to adequately inform anglers of the special regulations. It will also increase angler understanding and compliance with the regulations with fewer programs to remember.

Currently, there are a number of special regulations programs used in trout stream management. They include Delayed Harvest Fly-Fishing-Only (FFO), Heritage Trout Angling, Trophy Trout, All-Tackle (AT) Trophy Trout, Catch-and-Release, Delayed Harvest Artificial Lures Only (ALO), Wild Brook Trout Enhancement and at least three different miscellaneous special regulations. The Commission does not envision any changes to the recently created Wild Brook Trout Enhancement Program. The Commission envisions only minor changes to the Delayed Harvest ALO Program to encourage consistency of certain conditions among all special trout regulation programs. Earlier this year, the Commission eliminated the Selective Harvest and AT Selective Harvest Programs. The Commission now proposes to continue its efforts to simplify and consolidate special trout regulations in this notice of proposed rulemaking.

As part of the simplification process and to promote consistency within the special trout regulations programs, the Commission proposes eliminating the barbless hook

requirements, establishing uniform 24 hours of legal angling and eliminating restrictions on wading. Given problems in "pinching" barbs on tiny flies, difficulty in determining whether or not "pinched" barbs are legal or not, lack of substantial scientific literature supporting barbless hooks as a means to reduce mortality of released fish, and limited availability of manufactured barbless hooks, the Commission proposes discontinuing the barbless hook requirement. The Commission proposes that fishing should be permitted on a 24-hour basis rather than the "1 hour before sunrise to 1 hour after sunset" requirement currently on some, but not all, special trout regulations waters. The Commission further proposes that wading should be permitted in all waters.

The proposed rulemaking will result in fewer programs and simplified regulations within programs. In undertaking the simplification of these special trout regulations, the Commission was presented with two options: one focusing on catch and release and the other focusing on trophy trout. The primary difference between the two alternatives is that the option focusing on trophy trout contains a provision for taking one large trout and the option focusing on catch and release does not.

The programs under the two options are shown on the following chart:

| 2005 Program | Commission Proposal Trophy Trout Focus | Alternative C & R Focus |
|--|---|------------------------------------|
| Wild Brook Trout | Wild Brook Trout | Wild Brook Trout |
| Delayed Harvest ALO | Delayed Harvest ALO | Delayed Harvest ALO |
| Heritage Trout Angling Delayed Harvest FFO | Catch-and-Release FFO | Catch-and-Release FFO |
| Catch-and-Release Trophy Trout (14-inch) | Trophy Trout ALO (24-inch) | Catch-and-Release ALO |
| AT Trophy Trout (14-inch) Allegheny River (14-inch) | Trophy Trout AT (24-inch) | Catch-and-Release AT |
| Spring Creek Valley Creek | Catch-and-Release AT | Catch-and-Release AT |

The proposal for which the Commission primarily seeks public comment contains the trophy trout focus. However, the Commission also seeks public comment on an alternative proposal that focuses on catch and release and would not allow the harvesting of any fish in certain special regulation waters.

The Commission's primary proposal retains the Wild Brook Trout Enhancement Program and Delayed Harvest ALO (with time of day fishing restriction removed) and consolidates the remaining eight special regulations into four programs, including the new Catch and Release FFO, the renamed Trophy Trout AT, the renamed Trophy Trout ALO and the new Catch and Release AT.

The Commission's proposal has the following components:

(1) The Commission proposes establishing a new program called Catch and Release FFO. The Heritage Trout Angling Program and the Delayed Harvest FFO Program will be eliminated, and all waters currently in them (7 waters in the Heritage Program and 26 waters in the Delayed Harvest FFO Program) will be designated into the new Catch-and-Release FFO Program. This program will provide no closed season with no harvest, no hourly restrictions, no restriction on wading and no requirement for barbless hooks. During the substantial public commentary regarding the proposal to permit AT on delayed harvest waters during the harvest season, a large segment of the fly fishing community indicated a preference for no-harvest in the current Delayed Harvest FFO Program. The main change for current delayed harvest FFO waters is the removal of the former summer harvest season.

The effect of the proposed amendments are shown on the following chart:

| Action | Program | Number Waters | Harvest Season | Size Limit | Creel Limit | Tackle |
|------------------------|--------------------------------|----------------------|---------------------------|-------------------|--------------------|---------------|
| New Program § 65.14 | Catch and Release FFO | 33 | None | — | None | FFO |
| Eliminate § 65.2 | Delayed Harvest FFO Areas | 26 | June 15 through Labor Day | 9" | 3 | FFO |
| Eliminate § 65.3 | Heritage Trout Angling Program | 7 | None | — | None | FFO |

(2) The Commission proposes to rename the All Tackle Trophy Trout to Trophy Trout All Tackle. This program will offer a year-round harvest season (increased from mid-April to Labor Day) with a 24-inch minimum length limit (increased from 14 inches), a one trout daily creel limit and no wading restrictions. The area of the Allegheny River, Warren County, will be moved from miscellaneous special regulations in § 65.24 (relating to miscellaneous special regulations) to the Trophy Trout AT program in renamed § 65.4a (relating to all-tackle trophy trout).

The effect of the proposed changes is shown in the following table:

| Action | Program | Number Waters | Harvest Season | Size Limit | Creel Limit | Tackle |
|---------------------|--------------------------------|---------------|-----------------------------|------------|-------------|--------|
| New Name § 65.4a | Trophy Trout AT | 5 | Year-round | 24" | 1 | AT |
| Rename § 65.4a | AT Trophy Trout | 4 | Mid-April through Labor Day | 14" | 2 | AT |
| Remove from § 65.24 | Allegheny River, Warren County | 1 | Mid-April through Labor Day | 14" | 2 | AT |

(3) The Commission proposes renaming the existing Trophy Trout Program to the Trophy Trout Artificial Lures Only Program and eliminating the existing Catch and Release Program. All waters in the existing Trophy Trout Program will remain in the renamed program and all waters in the existing Catch and Release Program will be designated to the Trophy Trout ALO Program. Tackle for this program will remain ALO as currently specified for both existing programs, except barbed hooks will now be allowed. Fishing will be permitted year-round with no hourly restriction and no taking of bait fish or fish bait. A 24 inch minimum length limit and a one trout per day creel limit will apply.

The effect of these proposed amendments is shown in the following table:

| Action | Program | Number Waters | Harvest Season | Size Limit | Creel Limit | Tackle |
|------------------|---------------------------|---------------|-----------------------------|------------|-------------|--------|
| New Name § 65.7 | Proposed Trophy Trout ALO | 26 | Year-round | 24-inch | 1 | ALO |
| Rename § 65.7 | Trophy Trout Program | 8 | Mid-April through Labor Day | 14-inch | 2 | ALO |
| Eliminate § 65.5 | Catch-and-Release Areas | 18 | None | — | — | ALO |

(4) The Commission proposes creating a new program called Catch and Release All-Tackle. One miscellaneous special regulation water, Spring Creek, Centre County, and one water designated under § 65.23 (relating to special restrictions on polluted zones), Valley Creek, Chester County, will be designated into this new program.

The effect of the proposed amendments is shown in the following table:

| Action | Program | Number Waters | Harvest Season | Size Limit | Creel Limit | Tackle |
|---------------------|----------------------|---------------|----------------|------------|-------------|--|
| New Program § 65.16 | Catch and Release AT | 2 | None | — | None | AT |
| Remove from § 65.23 | Valley Creek | 1 | None | — | None | Valley Forge National Park special bait restrictions apply |
| Remove from § 65.24 | Spring Creek | 1 | None | — | None | AT |

(5) The Commission proposes amending the Delayed Harvest ALO Program to remove the daily fishing time restriction and to clarify that wading is permitted and a current trout/salmon stamp is required.

Accordingly, the Commission proposes that §§ 65.2, 65.3, 65.4a, 65.5, 65.6, 65.7 and 65.24 be amended to read as set forth in Annex A. The Commission further proposes the addition of §§ 65.14 and 65.15 to read as set forth in Annex A.

In addition to the proposal containing the preceding components, the Commission also seeks public comment on an alternative proposal that focuses on catch and release. The proposal focusing on catch and release is similar to the proposal focusing on trophy trout in that it retains the Wild Brook Trout Enhancement Program and the Delayed Harvest ALO (with the time of day fishing restrictions removed) and in that the Heritage Trout

Angling Program and Delayed Harvest FFO Program will be eliminated and all waters in them will be designated into a new Catch and Release FFO Program. However, the Catch and Release Program and Trophy Trout Program, under the catch and release alternative, would become Catch and Release ALO fishing areas. Under the alternative proposal, the AT Trophy Trout waters and the Allegheny River special regulation area would be combined with Spring and Valley Creeks into a new Catch and Release AT Program. The catch and release alternative proposal would prohibit harvesting of any trout on waters regulated under the Catch and Release FFO, Catch and Release ALO and Catch and Release AT Programs.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 45 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

Fiscal Note: 48A-170. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.2. [Delayed harvest fly-fishing only areas] (Reserved).

(a) The Executive Director, with the approval of the Commission, may designate waters as delayed-harvest, fly-fishing only areas. The designation of waters as delayed-harvest, fly-fishing only areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted delayed-harvest fly-fishing only areas except in compliance with the following requirements:

(1) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials so long as all flies are constructed in a normal fashion on a single hook with components wound on or about the hook. Anything other than these items is prohibited.

(2) Fishing shall be done with tackle which is limited to fly rods, fly reels and fly line with a maximum of 18 feet in leader material or monofilament line attached. Spinning, spincast and casting rods and reels are prohibited.

(3) The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

(4) Fishing hours are: 1 hour before sunrise to 1 hour after sunset during the regular and any extended trout season.

(5) Minimum size is: 9 inches, caught on, or in possession on, the waters under regulation.

(6) The daily creel limit is: Three combined species except during the period after Labor Day and before June 15 when the daily limit shall be zero trout combined species, caught on or in possession on the waters under regulation.

(7) Taking of baitfish is prohibited.]

§ 65.3. [Heritage Trout Angling Program] (Reserved).

(a) The Executive Director, with the approval of the Commission, may designate waters as areas subject to Heritage Trout Angling Program regulations. The designation of waters as Heritage Trout Angling Program areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted Heritage Trout Angling Program areas except in compliance with the following requirements:

(1) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials so long as all flies are constructed in a normal fashion on a single barbless hook with components wound on or about the hook. Anything other than these items is prohibited.

(2) Fishing shall be done with tackle which is limited to fly rods, fly reels and fly line with a maximum of 18 feet in leader material or monofilament line attached. Spinning, spincast and casting rods and reels are prohibited.

(3) The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

(4) Fishing hours are 1 hour before sunrise to 1 hour after sunset.

(5) No trout may be killed or had in possession.

(6) There is no closed season.

(7) Wading is permitted unless otherwise posted.

(8) Taking of baitfish or fishbait is prohibited.]

§ 65.4a. [All-tackle trophy] Trophy trout all-tackle areas.

(a) The Executive Director, with the approval of the Commission, may designate waters as [all-tackle] trophy trout all-tackle areas. The designation of waters as [all-tackle] trophy trout all-tackle areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted [all-tackle] trophy trout all-tackle areas except in compliance with the following requirements:

* * * * *

(2) Minimum size is [: 14] 24 inches, caught on, or in possession on, the waters under regulation.

(3) The daily creel limit is [: two] one trout [—combined species—from 8 a.m. on the opening day of trout season in April until midnight Labor Day, except during the period from the day after Labor Day to the opening day of regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation].

* * * * *

§ 65.5. [Catch-and-release areas] (Reserved).

(a) The Executive Director, with the approval of the Commission, may designate waters as catch-and-release areas. The designation of waters as catch-and-release artificial lures only areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted catch-and-release areas except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only constructed of metal, plastic, rubber or wood or with flies and streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Barbed hooks are prohibited; fishing may be done with barbless hooks only.

(2) The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

(3) Fishing hours are 1 hour before sunrise to 1 hour after sunset.

(4) No trout may be killed or had in possession.

(5) The catch and release program is open to fishing the year-round; there is no closed season.

(6) Wading is permitted unless otherwise posted.

(7) Taking of baitfish or fishbait is prohibited.]

§ 65.6. Delayed harvest artificial lures only areas.

* * * * *

(b) It is unlawful to fish in designated and posted delayed-harvest, artificial lures only areas except in compliance with the following requirements:

* * * * *

(3) [Fishing hours are: 1 hour before sunrise to 1 hour after sunset during the regular and any extended trout season.] A current trout/salmon stamp is required.

* * * * *

§ 65.7. Trophy [Trout Program] trout artificial lures only areas.

(a) The Executive Director, with the approval of the Commission, may designate waters as trophy trout artificial lures only areas. The designation of waters as trophy trout artificial lures only areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted trophy trout artificial lures only areas except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood or with flies and streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Anything other than these items is prohibited.

* * * * *

(3) The program is open to fishing [the entire year] year-round; there is no closed season.

(4) The minimum size is [14] 24 inches, caught on or in possession on the waters under regulation.

(5) The daily creel limit is [two] one trout [—combined species—except during the period from the day after Labor Day to 8 a.m. of the opening day of regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation].

* * * * *

(7) A current trout/salmon stamp is required.

§ 65.14. Catch and release fly-fishing only areas.

(a) The Executive Director, with the approval of the Commission, may designate waters as catch and release fly-fishing only areas. The designation of waters as catch and release fly-fishing only areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted catch and release fly-fishing only areas except in compliance with the following requirements:

(1) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials so long as all flies are constructed in a normal fashion on a single hook with components wound on or about the hook. Anything other than these items is prohibited.

(2) Fishing shall be done with tackle which is limited to fly rods, fly reels and fly line with a maximum of 18 feet in leader material or monofilament line attached. Spinning, spincast and casting rods and reels are prohibited.

(3) The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

(4) Trout may not be killed or had in possession.

(5) The program is open to fishing year-round; there is no closed season.

(6) Taking of baitfish or fishbait is prohibited.

(7) A current trout/salmon stamp is required.

§ 65.15. Catch and release all-tackle areas.

(a) The Executive Director, with the approval of the Commission, may designate waters as catch and release all-tackle areas. The designation of waters as catch and release all-tackle areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted catch and release all-tackle areas except in compliance with the following requirements:

(1) Trout may not be killed or had in possession.

(2) The program is open to fishing year round, there is no closed season.

(3) A current trout/salmon stamp is required.

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

| <i>County</i> | <i>Name of Water</i> | <i>Special Regulations</i> |
|---------------|---|---|
| [Centre] | [Spring Creek—16.6 miles downstream from the SR 3010 bridge to the mouth (excluding the established Heritage Trout Angling project at Fisherman’s Paradise and the exhibition area in Bellefonte). This area shall be known as “Spring Creek Special Trout Management Area.”] | [Trout (all species)—No closed season under no-harvest regulations with no tackle restrictions.] |
| [Warren] | [Allegheny River—8.75 miles downstream from the outflow of the Allegheny Reservoir to the confluence with Conewago Creek] | [Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from 8 a.m. on the opening day of regular trout season through midnight Labor Day, except during the period from the day after Labor Day to the opening day of regular trout season of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply.] |

[Pa.B. Doc. No. 05-839. Filed for public inspection April 29, 2005, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25] Deletion of Exam Fees

The State Board of Osteopathic Medicine (Board) proposes to amend §§ 25.223 and 25.231 (relating to applications for examination; and schedule of fees) by deleting references to examination applications and examination fees to read as set forth in Annex A.

A. Effective Date

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The proposed rulemaking is authorized under section 13.1 of the Osteopathic Medical Practice Act (act) (63 P. S. § 271.13a).

C. Background and Purpose

The Board is proposing to eliminate references to Nationally established examination fees over which the Board has no control or involvement. The General Assembly has indicated its preference for the recognition of National uniform examinations and grading services in accordance with section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a). Over the past several years, National uniform examinations have been developed for every category of license the Board issues. The fees for the examinations are established by the National examiners and are subject to being changed periodically by the National examiner. Thus, it is unnecessary and impractical for the Board to continue to publish the National examiners’ examination fees in the Board’s regulations. Because examination fees are no longer established by

the Board, section 13.1 of the act is inapplicable as to National uniform examinations. Thus, the Board is eliminating reference to these examination fees. Also, the Board is proposing to eliminate the reference to the osteopathic diagnosis and manipulative therapy examination fee. This examination is administered by Professional Credential Services (PES) and the applicant for this examination pays the examination fee directly to PES.

In addition, the Board is taking this opportunity to delete references in § 25.223(b) to specific dates for the administration of examinations and related deadlines for the submission of examination applications because the examinations are now computer-based, rather than written, and therefore are administered regularly as scheduled by the applicant.

D. Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions or members of the private sector who apply for examinations. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

E. Sunset Date

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

F. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 20, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

G. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Beth Sender Michlovitz, Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

THOMAS R. CZARNECKI, D.O.,
Chairperson

Fiscal Note: 16A-5315. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter E. PERFORMANCE OF RADIOLOGIC PROCEDURES BY AUXILIARY PERSONNEL

§ 25.223. Applications for examination.

* * * * *

(b) [The examinations listed in subsection (a) are administered in this Commonwealth on the third Thursday of March, July and October. Applications for the March examination shall be received by December 31, applications for the July examination shall be received by April 30 and applications for the October examination shall be received by July 31.

(c)] * * *

Subchapter F. FEES

§ 25.231. Schedule of fees.

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

* * * * *

[Osteopathic Manipulative Therapy Examination\$87]

* * * * *

Application for radiology [(ARRT)] examinations \$25

[ARRT Examination in Radiography..... \$20

ARRT Examination in Nuclear Medicine Technology..... \$20

ARRT Examination in Radiation Therapy Technology..... \$20

ARRT Limited Examination in Radiography-Thorax and Extremities \$25

ARRT Limited Examination in Radiography-Skull and Sinuses.....\$25]

* * * * *

[Pa.B. Doc. No. 05-840. Filed for public inspection April 29, 2005, 9:00 a.m.]

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

[49 PA. CODE CHS. 47—49] Continuing Education

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend §§ 47.32—47.37 and 47.41 and add §§ 48.31—48.42 and 49.31—49.42 (relating to continuing education) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Under section 18(a) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1918(a)), the Board is authorized to require evidence of continuing education as a condition of license renewal.

Background and Purpose

With the enactment of the act of December 21, 1998 (P. L. 1017, No. 136), the Board now licenses marriage and family therapists, clinical social workers and professional counselors along with social workers. The Board's current regulations provide for continuing education of social workers only. The proposed rulemaking will amend the provisions pertaining to continuing education for social workers in Chapter 47 to extend the continuing education requirement to clinical social workers and add similar provisions in Chapters 48 and 49, which will include continuing education requirements for marriage and family therapists and professional counselors respectively. This proposed rulemaking will require 30 clock hours of continuing education as a condition of biennial renewal of a license beginning with the renewals in 2007.

Description of Proposed Rulemaking

The proposed rulemaking would amend §§ 47.32—47.37 and 47.41. These sections currently contain the continuing education requirements for licensed social workers. These sections would be amended to extend the continuing education requirements to clinical social workers. In addition, 3 of the 30 hours of continuing education would be required to be completed in topics related to ethical issues. The Board also proposes to add §§ 48.31—48.42 to include continuing education requirements for

marriage and family therapists and §§ 49.31—49.42 to including continuing education requirements for professional counselors.

Sections 48.31 and 49.31 (relating to definitions) would define the terms “biennium,” “certification,” “clock hour” and “provider.” Section 47.32 (relating to requirement for biennial renewal) would be amended to extend the continuing education requirement to licensed clinical social workers effective with the 2007 renewals and also to require that at least 3 of the required 30 clock hours be completed in topics related to ethical issues. Similarly, §§ 48.32 and 49.32 (relating to requirement for biennial renewal) would require marriage and family therapists and professional counselors to complete, as a condition of biennial renewal for 2007 renewals and thereafter, 30 clock hours of continuing education offered by approved providers which must include at least 3 clock hours in ethical issues. Any excess hours may not be carried over to the next biennium.

Section 47.33 (relating to acceptable continuing education courses and programs) would be amended and §§ 48.33 and 49.33 (relating to acceptable continuing education courses and programs) would be added to explain that acceptable continuing education courses and programs would be those that are geared toward the master’s level practitioner and must pertain to the scope of practice appropriate to the particular license. Subsection (d) would allow a licensee to accrue up to 20 of the required clock hours in home study courses offered by approved providers so long as the course has specific learning objectives and the provider evaluates the extent of learning that has taken place.

Section 47.34 (relating to registration of continuing education providers, courses and programs) would be amended and §§ 48.34 and 49.34 (relating to registration of continuing education providers who offer one course or program) would be added to clarify the requirements for the registration of continuing education providers who offer or intend to offer only one course or program. A provider could be an agency, organization, institution, association, center or individual. These provisions set forth the information required from the applicant and permit the Board to reject a submitted course or program which is outside the scope of practice for that particular license or is unacceptable because of presentation, content or failure to meet the standards under §§ 47.35, 48.35 and 49.35 (relating to standards for courses and programs). Applicants who are disapproved by the Board will receive a letter explaining the reason for disapproval and inform the applicant of the opportunity to submit a revised application within 10 days of receipt of the disapproval. Subsection (f) allows the Board to withdraw approval of a provider for cause and provides that the provider will be notified in writing of the reasons for withdrawal of approval.

Section 47.35 would be amended and §§ 48.35 and 49.35 would be added to set out the standards that courses and programs must meet in order to be approved by the Board. Section 47.36 (relating to sources of continuing education courses and programs) would be amended and §§ 48.36 and 49.36 (relating to preapproved providers of continuing education courses and programs for marriage and family therapists; and preapproved providers of continuing education courses and programs for professional counselors) would be added to list the providers that the Board has determined have already met the standards of §§ 47.35, 48.35 and 49.35 and therefore are considered to have preapproval status.

These providers would be approved for all courses and programs given by these providers (whereas §§ 47.34, 48.34 and 49.34 pertain to providers offering only one course or program). Subsection (b) would allow the Board to consider for approval, on a biennial basis, other organizations that offer multiple courses and programs for licensees.

Sections 47.36a, 48.37 and 49.37 (relating to other sources of continuing education) would authorize the Board to grant clock hours on a case-by-case basis for particular types of experiences. Section 47.37 (relating to reporting of hours spent in continuing education) would be amended and §§ 48.38 and 49.38 (relating to reporting by licensee of hours spent in continuing education) would require applicants for license renewal to provide a signed statement certifying that the continuing education requirements have been met. Subsection (b) would list the information that a licensee would need to submit in the event that the licensee would be selected for audit. Sections 48.39 and 49.39 (relating to retention of records) would require a licensee to retain documentation of completion of the required continuing education for 4 years following the certification period pertaining to that particular biennial renewal period.

Sections 48.40 and 49.40 (relating to exemption and waiver) would provide that an individual applying for licensure in this Commonwealth for the first time would be exempted from the continuing education requirement for the biennial renewal period following initial licensure. Subsection (b) would permit the Board to waive all or a portion of the continuing education requirement for biennial renewal upon request of a licensee. The request would need to be in writing and include a description of the circumstances sufficient to show why compliance is impossible. Waivers could be granted for serious illness, military service or other demonstrated hardship.

Sections 48.41 and 49.41 (relating to continuing education requirement for biennial renewal of inactive and lapsed licenses) would require a licensee seeking to reinstate an inactive or lapsed license to show proof of compliance with the continuing education requirement for the preceding biennium. Section 47.41 (relating to disciplinary action authorized) would be amended and §§ 48.42 and 49.42 (relating to disciplinary action authorized) would be added to provide for discipline by the Board, under section 11(a)(5) of the act (63 P. S. § 1911(a)(5)), in the event a licensee would submit fraudulent clock hour reports. Subsection (b) would also provide that the falsification of a clock hour report by a program provider would result in revocation of approval by the Board for further program offerings of that provider.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will require the Board to alter its license renewal forms to include data regarding the licensee’s compliance with the continuing education requirements and will also require licensees to maintain their own records of continuing education credits. The proposed rulemaking would not have any additional adverse fiscal impact on the Commonwealth or its political subdivisions. There would be a fiscal impact upon licensees who would be required to pay for and complete continuing education hours.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 20, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a

Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Sandra Matter, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6912, Continuing Education, when submitting comments.

RONALD HAYS,
Chairperson

Fiscal Note: 16A-6912. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

CONTINUING EDUCATION

§ 47.32. Requirement for biennial renewal.

(a) **[For 1997 renewals and thereafter, the]** The Board **[will require]** requires, as a condition of biennial renewal of a **social worker's** license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs in social work offered by approved providers. Excess clock hours may not be carried over to the next biennium. **Effective with the 2007 renewals and thereafter, at least 3 of the required 30 clock hours must be related to ethical issues.**

(b) **For 2007 renewals and thereafter, the Board will require, as a condition of biennial renewal of a clinical social worker's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs in social work offered by approved providers which shall include at least 3 clock hours in ethical issues. Excess clock hours may not be carried over to the next biennium.**

§ 47.33. Acceptable continuing education courses and programs.

* * * * *

(b) **[Acceptable subject matter for continuing education courses and programs is limited to courses and programs pertaining to the enhancement of the social worker's knowledge and practice skills related to helping people achieve adequate and productive personal, interpersonal and social adjustments in their individual lives, in their families and in their community.]** Continuing education courses and programs must be appropriate for the master's level practitioner and pertain to the practice of social work or clinical social work as defined in section 3 of the act (63 P. S. § 1903).

(c) The Board will not approve courses or programs in office management or in marketing the practice.

(d) **A licensee may accrue up to 20 of the required clock hours in home study courses offered by approved providers if the home study has specific learning objectives which the provider evaluates to assure that learning has taken place. Home study courses must be indicated as such on the certificates of attendance.**

§ 47.34. Registration of continuing education providers [, courses and programs] who offer one course or program.

(a) An agency, organization, institution, association **[or]**, center **or individual** seeking to offer **[an]** one organized course or program may apply to the Board as a provider.

(b) An applicant for Board approval as a provider of a course or program shall submit an application, along with a fee of **[\$40] \$45**, at least 90 days before the date the course or program commences.

* * * * *

(e) Upon approval as a qualified provider of a course or program, a Board approval number will be assigned **and be listed on the certificate of attendance.**

(f) The Board reserves the right to reject a submitted course or program which is outside the scope of practice of social work **or clinical social work** or is otherwise unacceptable because of presentation, content or failure to meet the criteria in § 47.35.

(g) Disapproval of a course or program will include a statement setting forth reasons. Applicants may submit **[new applications] a revised application** within 10 days after receipt of disapproval. **[New] Revised** applications shall document alterations made to meet Board requirements. Notification on **[new] revised** applications will occur as soon as possible within the Board's capability.

(h) **The Board may withdraw approval of a course or program for cause. The provider will be notified in writing of the reasons for withdrawal of approval. Withdrawal of approval will be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).**

§ 47.35. Standards for courses and programs.

(a) A provider **[or licensee]** seeking Board approval of a course or program shall present evidence that the course or program **is geared toward the master's level practitioner and** has the following:

(1) Subject matter pertaining to the enhancement of the social worker's or **clinical social worker's** knowledge and practice skills related to helping people achieve adequate and productive personal, interpersonal and social adjustments in their individual lives, in their families and in their community.

* * * * *

(b) Providers shall **[supply adequate facilities including accessibility to persons who are disabled] comply with relevant Federal, State and local laws related to serving people with disabilities and shall provide adequate facilities** and appropriate instructional materials to carry out the continuing education course or program.

* * * * *

§ 47.36. **[Sources] Preapproved providers** of continuing education courses and programs **for social workers and clinical social workers.**

(a) In addition to providers approved under § 47.34 (relating to registration of continuing education providers **[, courses and programs] who offer one course or program**), the Board finds the following entities have currently met the standards in § 47.35 (relating to standards for courses and programs). Accordingly, the following are approved providers:

- (1) Graduate and undergraduate **[schools] programs** accredited by the Council on Social Work Education.
- (2) **[The Child Welfare League of America and its state and local affiliates.**
- (3) **The National Association of Social Workers and its state and local affiliates.**
- (4) **The National Association of Black Social Workers and its state and local affiliates.**
- (5) **The Family Service Association of America and its state and local affiliates.**
- (6) **The National Federation of Societies for Clinical Social Work, Inc. and its state and local affiliates.] The Association of Social Work Boards.**
- (3) **Accredited colleges and universities (graduate level and continuing education programs).**
- (4) **Graduate and postgraduate training programs accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).**
- (5) **The following groups and the providers, courses or workshops approved by them:**
 - (i) **The National Association of Social Workers (NASW) and its state and local affiliates.**
 - (ii) **The Clinical Social Work Federation, Inc. (CSWF) and its state and local affiliates.**
 - (iii) **The National Board for Certified Counselors, Inc. (NBCC).**
 - (iv) **The Commission on Rehabilitation Counselor Certification (CRCC).**
 - (v) **The Certification Board for Music Therapists (CBMT).**

(vi) **The American Art Therapy Association (AATA).**

(vii) **The American Dance Therapy Association (ADTA).**

(viii) **The National Association for Drama Therapy (NADT).**

(ix) **The American Psychological Association (APA).**

(x) **The Approved Continuing Education (ACE) Program developed by the Association of Social Work Boards.**

(xi) **The American Nurses Credentialing Center (ANCC).**

(6) **The following groups and their regional, state and local affiliates:**

- (i) **The Child Welfare League of America.**
- (ii) **The National Association of Black Social Workers.**
- (iii) **The Family Service Association of America.**
- (iv) **The National Federation of Societies for Clinical Social Work, Inc.**
- (v) **The American Association for Marriage and Family Therapy (AAMFT).**
- (vi) **The American Family Therapy Association (AFTA).**
- (vii) **The National Council on Family Relations (NCFR).**
- (viii) **Council of Nephrology Social Workers.**
- (ix) **The American Association of Sex Educators, Counselors and Therapists (AASECT).**
- (x) **The American Association of Pastoral Counselors (AAPC).**
- (xi) **The American School Counselor Association (ASCA).**
- (xii) **The American Counseling Association (ACA).**
- (xiii) **The American Mental Health Counselors Association (AMHCA).**
- (xiv) **The National Rehabilitation Counseling Association (NRCA).**

(b) **The Board will consider for approval, on a biennial basis, other organizations who offer multiple courses and programs for social workers and clinical social workers. An organization seeking Board approval shall submit an application to the Board which includes the information required in § 47.34(c) (relating to registration of continuing education providers who offer one course or program). The application shall be submitted at least 90 days before the date the course or program commences. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons.**

(c) **The approval given to providers is subject to re-evaluation; however, a rescission of approval will be made only in accordance with 1 Pa. Code Part II (relating to [general rules of administrative practice and procedure] General Rules of Administrative Practice and Procedure).**

[(c) The Board may approve participation in other continuing education courses or programs for credit so long as the licensee submits, prior to attendance, an application for program approval and supporting documentation provided in § 47.35, and upon completion of the course or program submits verification of attendance.

(d) Clock hours may be granted on a case-by-case basis for the following:

(1) Participation in clinical conferences, clinical rounds or training under a preceptor provided through hospitals, medical centers, schools and universities.

(2) Services as a teacher, preceptor, lecturer or speaker and for publications of articles, books and research relating to the practice of social work.]

§ 47.36a. Other sources of continuing education.

(a) Clock hours may be granted on a case-by-case basis for the following:

(1) Participation in clinical conferences, clinical rounds or training under a preceptor provided through hospitals, medical centers, schools and universities.

(2) Services as a teacher (first-time experience only), preceptor, lecturer or speaker.

(3) Publications of articles, books and research relating to the practice of social work or clinical social work.

(b) A licensee who wishes to obtain clock hours for credit under subsection (a)(1) and (2) shall submit, prior to participating in the event, an application for approval along with a fee as provided by § 47.34(b) (relating to registration of continuing education providers who offer one course or program). A licensee seeking to obtain clock hours for a publication under subsection (a)(3), shall submit, after the publication of the article, book or research, an application for approval along with a fee as provided by § 47.34(b).

§ 47.37. Reporting by licensee of hours spent in continuing education.

(a) Applicants for license renewal shall provide [, at a time prescribed and on forms approved by the Board,] a signed statement certifying that the continuing education requirements have been met [and providing].

(b) A licensee selected for audit shall provide information to document [their] the licensee's certification, which information shall include the following:

* * * * *

(7) The Board approval number assigned to the course or program.

§ 47.41. Disciplinary action authorized.

(a) A licensed social worker or clinical social worker who submits fraudulent clock hour reports will be subject to disciplinary action under section 11(a)(5) of the act (63 P. S. § 1911(a)(5)).

* * * * *

(Editor's Note: The following text is new. It has been printed in regular type to enhance readability.)

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

CONTINUING EDUCATION

§ 48.31. Definitions.

The following words and terms, when used in this section §§ 48.32—48.42, have the following meanings, unless the context clearly indicates otherwise:

Biennium—The period from March 1 of an odd-numbered year to February 28 of the next odd-numbered year.

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

Clock hour—50 to 60 minutes of instruction or participation in an approved course or program.

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

§ 48.32. Requirement for biennial renewal.

For 2007 renewals and thereafter, the Board will require, as a condition of biennial renewal of a marriage and family therapist's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs offered by approved providers which shall include at least 3 clock hours in ethical issues. Excess clock hours may not be carried over to the next biennium.

§ 48.33. Acceptable continuing education courses and programs.

(a) Only courses or programs offered by Board approved providers will be accepted for continuing education credit.

(b) Continuing education courses and programs must be appropriate for the master's level practitioner and pertain to the practice of marriage and family therapy as defined in section 3 of the act (63 P. S. § 1903).

(c) The Board will not approve courses or programs in office management or in marketing the practice.

(d) A licensee may accrue up to 20 of the required clock hours in home study courses offered by approved providers if the home study course has specific learning objectives which the provider evaluates to assure that learning has taken place. Home study courses must be indicated as such on the certificates of attendance.

§ 48.34. Registration of continuing education providers who offer one course or program.

(a) An agency, organization, institution, association, center or individual seeking to offer one organized course or program may apply to the Board as a provider by filing an application, along with a fee of \$45, at least 90 days before the date the course or program commences. The application must include the following information:

- (1) The full name and address of the applicant.
- (2) The title of the course or program and core subjects covered.
- (3) The dates and location of the course or program.
- (4) The instructor names, titles, affiliations and degrees.

(5) The schedule of the course or program-syllabus, lecturer, time allocated and the like.

(6) The total number of clock hours requested.

(7) The method of certifying attendance.

(8) The objectives.

(9) The course or program coordinator.

(10) The instruction and evaluation methods.

(11) The evidence of meeting the standards in § 48.35 (relating to standards for courses and programs).

(b) Statements made in the application shall be sworn to be true and correct to the best of the applicant's information, knowledge and belief.

(c) Upon approval as a qualified provider of a course or program, a Board approval number will be assigned and shall be listed on the certificate of attendance.

(d) The Board reserves the right to reject a submitted course or program which is outside the scope of practice of marriage and family therapy or is otherwise unacceptable because of presentation, content or failure to meet the criteria in § 48.35.

(e) Disapproval of a course or program will include a statement setting forth reasons. Applicants may submit a revised application within 10 days after receipt of disapproval. Revised applications shall document alterations made to meet Board requirements. Notification on revised applications will occur as soon as possible within the Board's capability.

(f) The Board may withdraw approval of a course or program for cause. The provider will be notified in writing of the reasons for withdrawal of approval. Withdrawal of approval will be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 48.35. Standards for courses and programs.

(a) A provider seeking Board approval of a course or program shall present evidence that the course or program is appropriate for the master's level practitioner and has the following:

(1) Subject matter pertaining to the enhancement of the marriage and family therapist's knowledge and practice skills related to helping people achieve adequate and productive personal, interpersonal and social adjustments in their individual lives, in their families and in their community.

(2) An established mechanism measuring the quality of the course or program being offered.

(3) Established criteria for selecting and evaluating faculty or source material.

(4) Established criteria for the evaluation of each course or program upon completion.

(5) A minimum total duration of at least 2 clock hours. The hours need not be contiguous.

(b) Providers shall comply with relevant Federal, State and local laws related to serving people with disabilities and provide adequate facilities and appropriate instructional materials to carry out the continuing education course or program.

(c) Providers shall insure that instructors have suitable qualifications and are of good reputation and character.

§ 48.36. Preapproved providers of continuing education courses and programs for marriage and family therapists.

(a) In addition to providers approved under § 48.34 (relating to registration of continuing education providers who offer one course or program), the Board finds the following entities have currently met the standards in § 48.35 (relating to standards for courses and programs). Accordingly, the following are approved providers:

(1) Graduate and undergraduate programs accredited by the Council on Social Work Education.

(2) The Association of Social Work Boards.

(3) Accredited colleges and universities (graduate level courses and continuing education programs).

(4) Graduate and postgraduate training programs accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).

(5) The following groups and the providers, courses or workshops approved by them:

(i) The National Association of Social Workers (NASW) and its state and local affiliates.

(ii) The Clinical Social Work Federation, Inc. (CSWF) and its state and local affiliates.

(iii) The National Board for Certified Counselors, Inc. (NBCC).

(iv) The Commission on Rehabilitation Counselor Certification (CRCC).

(v) The Certification Board for Music Therapists (CBMT).

(vi) The American Art Therapy Association (AATA).

(vii) The American Dance Therapy Association (ADTA).

(viii) The National Association for Drama Therapy (NADT).

(ix) The American Psychological Association (APA).

(x) The Approved Continuing Education (ACE) Program developed by the Association of Social Work Boards.

(xi) The American Nurses Credentialing Center (ANCC).

(6) The following groups and their regional, state and local affiliates:

(i) The Child Welfare League of America.

(ii) The National Association of Black Social Workers.

(iii) The Family Service Association of America.

(iv) The National Federation of Societies for Clinical Social Work, Inc.

(v) The American Association for Marriage and Family Therapy (AAMFT).

(vi) The American Family Therapy Association (AFTA).

(vii) The National Council on Family Relations (NCFR).

(viii) Council of Nephrology Social Workers.

(ix) The American Association of Sex Educators, Counselors and Therapists (AASECT).

(x) The American Association of Pastoral Counselors (AAPC).

(xi) The American School Counselor Association (ASCA)

(xii) The American Counseling Association (ACA).

(xiii) The American Mental Health Counselors Association (AMHCA).

(xiv) The National Rehabilitation Counseling Association (NRCA).

(b) The Board will consider for approval, on a biennial basis, other organizations who offer multiple courses and programs for marriage and family therapists. An organization seeking Board approval shall submit an application to the Board which includes the information required in § 48.34(a). The application shall be submitted at least 90 days before the date the course or program commences. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons.

(c) The approval given to providers is subject to re-evaluation; however, a rescission of approval will be made only in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 48.37. Other sources of continuing education.

(a) Clock hours may be granted on a case-by-case basis for the following:

(1) Participation in clinical conferences, clinical rounds or training under a preceptor provided through hospitals, medical centers, schools and universities.

(2) Services as a teacher (first-time experience only), preceptor, lecturer or speaker.

(3) Publications of articles, books and research relating to the practice of social work or clinical social work.

(b) A licensee who wishes to obtain clock hours for credit under subsection (a)(1) and (2) shall submit, prior to participating in the event, an application for approval along with a fee of \$45 as provided by § 48.34(a) (relating to registration of continuing education providers who offer one course or program). A licensee seeking to obtain clock hours for a publication under subsection (a)(3) of this section, shall submit, after the publication of the article, book or research, an application for approval along with a fee of \$45 as provided by § 48.34(a).

§ 48.38. Reporting by licensee of hours spent in continuing education.

(a) Applicants for license renewal shall provide a signed statement certifying that the continuing education requirements have been met.

(b) A licensee selected for audit shall provide information to document the licensee's certification. The information must include the following:

(1) The date attended.

(2) The clock hours claimed.

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

(4) The school, hospital, medical center or organization which sponsored the course or program.

(5) The instructor.

(6) The location of course or program.

(7) The Board approval number assigned to the course or program.

§ 48.39. Retention of records.

The licensee shall retain documentation of completion of the prescribed number of clock hours for 4 years following the certification which shall be produced upon request by the Board or its auditing agents. The Board

will utilize a random audit of renewals to determine compliance with the education requirement.

§ 48.40. Exemption and waiver.

(a) An individual applying for licensure in this Commonwealth for the first time shall be exempted from the continuing education requirement for the biennial renewal period following initial licensure.

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

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

A licensee seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennium.

§ 48.42. Disciplinary action authorized.

(a) A licensed marriage and family therapist who submits fraudulent clock hour reports will be subject to disciplinary action under section 11(a)(5) of the act (63 P. S. § 1911(a)(5)).

(b) The falsification of a clock hour report by a program provider will result in revocation of approval by the Board for further program offerings of that provider.

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

CONTINUING EDUCATION

§ 49.31. Definitions.

The following words and terms, when used in this section and §§ 49.32—49.42, have the following meanings, unless the context clearly indicates otherwise:

Biennium—The period from March 1 of an odd-numbered year to February 28 of the next odd-numbered year.

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

Clock hour—50 to 60 minutes of instruction or participation in an approved course or program.

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

§ 49.32. Requirement for biennial renewal.

For 2007 renewals and thereafter, the Board will require, as a condition of biennial renewal of a professional counselor's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs offered by approved providers which shall include at least 3 clock hours in ethical issues. Excess clock hours may not be carried over to the next biennium.

§ 49.33. Acceptable continuing education courses and programs.

(a) Only courses or programs offered by Board approved providers will be accepted for continuing education credit.

(b) Continuing education courses and programs must be appropriate for the master's level practitioner and pertain to the practice of professional counseling as defined in section 3 of the act (63 P. S. § 1903).

(c) The Board will not approve courses or programs in office management or in marketing the practice.

(d) A licensee may accrue up to 20 of the required clock hours in home study courses offered by approved providers if the home study has specific learning objectives which the provider evaluates to assure that learning has taken place. Home study courses must be indicated as such on the certificates of attendance.

§ 49.34. Registration of continuing education providers who offer one course or program.

(a) An agency, organization, institution, association, center or individual seeking to offer one organized course or program may apply to the Board as a provider by filing an application, along with a fee of \$45, at least 90 days before the date the course or program commences. The application must include the following information:

- (1) The full name and address of the applicant.
- (2) The title of the course or program and core subjects covered.
- (3) The dates and location of the course or program.
- (4) The instructor names, titles, affiliations and degrees.
- (5) The schedule of the course or program-syllabus, lecturer, time allocated and the like.
- (6) The total number of clock hours requested.
- (7) The method of certifying attendance.
- (8) The objectives.
- (9) The course or program coordinator.
- (10) The instruction and evaluation methods.
- (11) The evidence of meeting the standards in § 49.35 (relating to standards for courses and programs).

(b) Statements made in the application shall be sworn to be true and correct to the best of the applicant's information, knowledge and belief.

(c) Upon approval as a qualified provider of a course or program, a Board approval number will be assigned and shall be listed on the certificate of attendance.

(d) The Board reserves the right to reject a submitted course or program which is outside the scope of practice of professional counseling or is otherwise unacceptable because of presentation, content or failure to meet the criteria in § 49.35.

(e) Disapproval of a course or program will include a statement setting forth reasons. Applicants may submit a revised application within 10 days after receipt of disapproval. Revised applications shall document alterations made to meet Board requirements. Notification on revised applications will occur as soon as possible within the Board's capability.

(f) The Board may withdraw approval of a course or program for cause. The provider will be notified in writing of the reasons for withdrawal of approval. With-

drawal of approval will be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 49.35. Standards for courses and programs.

(a) A provider seeking Board approval of a course or program shall present evidence that the course or program is geared toward the master's level practitioner and has the following:

(1) Subject matter pertaining to the enhancement of the professional counselor's knowledge and practice skills related to helping people achieve adequate and productive personal, interpersonal and social adjustments in their individual lives, in their families and in their community.

(2) An established mechanism measuring the quality of the course or program being offered.

(3) Established criteria for selecting and evaluating faculty or source material.

(4) Established criteria for the evaluation of each course or program upon completion.

(5) A minimum total duration of at least 2 clock hours; however, the hours need not be contiguous.

(b) Providers shall comply with relevant Federal, State and local laws related to serving people with disabilities and provide adequate facilities and appropriate instructional materials to carry out the continuing education course or program.

(c) Providers shall insure that instructors have suitable qualifications and are of good reputation and character.

§ 49.36. Preapproved providers of continuing education courses and programs for professional counselors.

(a) In addition to providers approved under § 49.34 (relating to registration of continuing education providers who offer one course or program), the Board finds the following entities have currently met the standards in § 49.35 (relating to standards for courses and programs). Accordingly, the following are approved providers:

(1) Graduate and undergraduate programs accredited by the Council on Social Work Education.

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(xiii) The American Mental Health Counselors Association (AMHCA).

(xiv) The National Rehabilitation Counseling Association (NRCA).

(b) The Board will consider for approval, on a biennial basis, other organizations who offer multiple courses and programs for professional counselors. An organization seeking Board approval shall submit an application to the Board which includes the information required in § 49.34(a). The application shall be submitted at least 90 days before the date the course or program commences. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons.

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§ 49.42. Disciplinary action authorized.

(a) A licensed professional counselor who submits fraudulent clock hour reports will be subject to disciplinary action under section 11(a)(5) of the act (63 P. S. § 1911(a)(5)).

(b) The falsification of a clock hour report by a program provider will result in revocation of approval by the Board for further program offerings of that provider.

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