

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Amendment to the Basin Regulations—Water Supply Charges and Comprehensive Plan Relating to Certificates of Entitlement

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to the Commission's *Basin Regulations—Water Supply Charges and Comprehensive Plan* concerning certificates of entitlement. No changes in the substance or administration of the rule are proposed. The purpose of the proposed amendments is to clarify the language of the rule to conform to the Commission's past decisions and current practices in order to provide better notice to users as to how the Commission is implementing its entitlements program and to avoid future controversy.

Supplemental Information

The Delaware River Basin Compact (Compact), the 1961 statute that created the Commission and defined its powers, authorizes the Commission to charge for the use of facilities that it may own or operate and for products and services rendered thereby. Compact, § 3.7. Congress limited this authority by providing that the Commission cannot charge for water withdrawals or diversions that could lawfully have been made without charge as of the effective date of the Compact. Id., § 15.1(b).

By Resolution No. 64-16A in 1964 the Commission authorized a water charging program. It provided for the revenues generated by the program to be used for repayment of the nonfederal share of the investment cost of water supply storage facilities associated with federal projects within the Basin. In anticipation of Commission investment in storage at the Beltzville Lake and Blue Marsh Reservoir projects in Pennsylvania, the Commission by Resolution No. 1971-4 defined, among other things, the means by which it would establish water charging rates. Consistent with § 15.1(b) of the Compact, Resolution No. 1971-4 provided that charges would be applicable only to the amount of water withdrawn in excess of the amount taken or legally entitled to be taken by an entity during the preceding year. By Resolution No. 74-6, the Commission instituted a system of water supply charges for surface water withdrawals within the Basin. That resolution provided for the issuance of certificates of entitlement to then-current water users, establishing the amount of water each could lawfully take from the surface waters of the Basin without charge, consistent with § 15.1(b) of the Compact. The resolution provided that a certificate of entitlement was not transferable, except under limited circumstances set forth in enumerated exceptions.

Because entitlements treat users that commenced water withdrawals before the enactment of the Compact more favorably than users who commenced water withdrawals later, even though all users benefit equally from the facilities financed by water supply charges, courts and the Commission have emphasized the need to eliminate entitlements over time. Both the Commission and the courts have construed narrowly the exceptions to the rule that entitlements are not transferable, and the Commission

has in its decisions consistently held that changes in ownership or control would extinguish a certificate. However, the language of the regulations has never explicitly defined "changes in ownership or control." As a consequence, in the decisions that the Commission has been asked to make in its adjudicatory capacity and that the courts have subsequently been asked to decide, the matter of what constitutes a change of ownership or control has been controversial.

In 1994, in response to a ruling by the Third Circuit in *Texaco Refining and Marketing, Inc. v. DRBC*, 824 F. Supp. 500 (D.Del. 1993), aff'd., No. 93-7475 (3d Cir. June 24, 1994) (per curiam), the Commission adopted Resolution No. 94-20. That resolution incorporated an explicit "ownership and/or control" test and eliminated the merger exception included in the Commission's regulations at the time. In addition, the exception for corporate reorganizations embodied in Section 5.2.1.F.2 of the Water Charging Regulations was amended to apply only when the reorganization "does not affect ownership and/or control."

In spite of the 1994 amendment, some members of the Basin community have continued to interpret the language of the rule in a manner contrary to the Commission's consistent interpretation. To avoid further controversy, the Commission proposes a more thorough revision of the language, intended to remove any ambiguity.

In addition to defining "change in ownership and/or control" with much greater specificity, the proposed revisions also make clear that a merger at any tier in a corporate organization will extinguish a certificate held by a subsidiary in the same way as if the merger had occurred at the subsidiary level. Although the Commission has interpreted its rule this way in the past, the rules have never been explicit on this point.

The proposed amendments preserve and clarify the corporate reorganization exception contained in the current regulation. The Commission traditionally has not extinguished an entitlement in the case of an internal reorganization, and it does not propose a change in this practice.

The proposed amendments also preserve the existing exception for agricultural uses. Historically, agriculture has been treated differently than other uses. For purposes other than agriculture, an entitlement is issued to a user and would not be transferable to a different user, even if the use remained the same. In the case of agriculture, however, an entitlement effectively runs with the land, as long as the land remains in agriculture. The proposed amendments provide that an entitlement can be reissued to the successor of a holder of a certificate issued for agricultural water use, provided that the successor demonstrates that the water will continue to be used for agricultural irrigation purposes.

Dates

The public hearing on the proposed rule change will be held on Wednesday, December 7, 2005, at approximately 2:30 p.m. as part of the Commission's regularly scheduled business meeting. The time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 p.m.. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event that all those who wish to testify cannot be heard on December 7, the hearing will be

continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning (609) 883-9500, Ext. 224. Written comments will be accepted through Tuesday, January 10, 2006.

Addresses

The public hearing will be held in the Goddard Room at the Commission's office building, located at 25 State Police Drive in West Trenton, New Jersey. Directions to the Commission's office building are posted on the Commission's website at www.drbc.net. Written comments should be addressed to the Commission Secretary as follows: by e-mail to paula.schmitt@drbc.state.nj.us; by fax to the Commission Secretary, (609) 883-9522; by United States mail to the Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to the Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

Additional Information, Contact

The full text of the proposed amendment and the text of the current regulation are posted on the Commission's website, www.drbc.net.

It is proposed to amend the *Basin Regulations—Water Supply Charges* as follows:

Sections 5.2.1.D through 5.2.1.F are proposed to be replaced with the following:

D. Limitations.

1. A certificate of entitlement is granted to a specific user for water withdrawals or diversions at a specific facility in the amount of the Legal Entitlement as defined in Section 5.1.3.B.

2. A certificate of entitlement shall not be applied, transferred or modified to apply to a facility other than the facility initially specified in the certificate.

3. A certificate of entitlement may not be transferred from the certificate holder to another user, except as provided in the Exceptions set forth in Section 5.2.1.F.

4. A certificate of entitlement does not exempt the certificate holder from paying water supply charges for any portion of water withdrawals or diversions used outside the facility specified in the certificate and any additional service area to which the facility supplied water as of October 27, 1961. For purposes of this Section 5.2.1.D.4, a certificate holder claiming an exemption from charges for water supplied within a service area shall submit proof satisfactory to the Commission identifying the facility's service area as of October 27, 1961. In the absence of proof of the service area as of October 27, 1961, the service area defined in the Commission docket, if any, for the facility in effect at the time the certificate was issued shall be deemed to be the facility's service area. In the absence of proof of a service area, the certificate shall only exempt the certificate holder from paying water supply charges for water used at the facility.

E. Termination of Certificate.

1. A certificate of entitlement terminates pursuant to this Section 5.2.1.E and without the need for Commission action if (i) the certificate holder dissolves or otherwise ceases to exist, (ii) the certificate holder ceases the withdrawals or diversions at the facility to which the certificate of entitlement applies for operational reasons including without limitation a shutdown of the facility for purposes other than maintenance or improvement, an abandonment of the intake without prompt replacement

or a change in process, (iii) the certificate holder through contract, lease or other agreement ceases to be the user or public water system supplier of the water withdrawn or diverted at the facility, (iv) the certificate holder changes the principal use of the facility or (v) there is a change in the ownership or control of the facility. Once terminated, a certificate of entitlement may not be reinstated or reissued.

2. A change in ownership or control of the facility includes, but is not limited to, any transaction, acquisition, merger or event (collectively "transaction") resulting in (i) a transfer of title to the facility, (ii) a person or entity or the shareholders or other owners of an entity becoming the beneficial owner, directly or indirectly, or acquiring alone or in concert the power or right to vote at least 20 percent of any class of ownership interest in a certificate holder or any of its parent entities, regardless of the tier in the corporate or entity structure at which the transaction occurs, or (iii) a change of the de facto controlling interest in a certificate holder or any of its parent entities, regardless of the tier in the corporate or entity structure at which the change occurs.

3. A change of the de facto controlling interest in an entity includes, but is not limited to, a change of the persons or entities with the ability or authority, expressed or reserved, to direct the management or policies of an entity and/or to take at least one of the following actions:

(i) amend or change the entity's identity;

(ii) appoint or remove at least 50% of the members of the Board of Directors or Trustees of a corporation, general partner of a partnership or a similar member of the governing body of an entity;

(iii) amend or change the by-laws, constitution, or other operating or management direction of the entity;

(iv) control the sale of, use of or access to any or all of the entity's assets;

(v) encumber the entity's assets by way of mortgage or other indebtedness;

(vi) control any or all of the assets or other property of the entity upon the sale or dissolution of the entity;

(vii) dissolve the entity;

(viii) arrange for the sale or transfer of the entity to a new ownership or control;

(ix) select or change the management of the entity or determine management compensation; or

(x) set operating policies, financial policies or budgets.

4. For purposes of applying the factors listed in Section 5.2.1.E.3, consideration may be given to circumstances particular to the person or entity and certificate holder involved, including without limitation the ability of that person or entity to take actions in light of the number of shares in the certificate holder or its parent entities that are actively voted, the practice of any majority shareholder in exercising or refraining from exercising majority rights, and any agreements giving the person or entity the right to control votes of others.

5. A series of transactions undertaken pursuant to a plan or that are otherwise related shall be considered a single transaction for purposes of this Section 5.2.1.E. For purposes of calculating the twenty percent threshold in Section 5.2.1.E.2(ii), the securities, shares or other interests held immediately prior to the transaction shall be added to the securities, shares or other interests acquired in the transaction. A transaction involving a change of the

de facto controlling interest within the meaning of Sections 5.2.1.E.2(iii) and E.3 shall constitute a change in ownership or control regardless whether or not the person or entity acquiring or transferring securities, shares or other interests owns at least twenty percent of the interests immediately before or after the transaction.

F. Exceptions.

1. Agricultural Exception.

(i) Whenever ownership or possession of land in agricultural use is transferred, any certificate of entitlement with respect to such land shall be deemed to run with the land, if but only if within sixty days following the land transfer the new user demonstrates to the Executive Director that it will continue to use the water withdrawn or diverted for agricultural irrigation. Following any such timely demonstration, the Executive Director shall transfer the certificate of entitlement to the new user. The Executive Director may extend the sixty day period for good cause shown.

(ii) A certificate of entitlement that has been transferred pursuant to Section 5.2.1.F.1(i) relieves the user of the obligation to pay water supply charges only with respect to the quantity of water in fact used by the new certificate holder for agricultural irrigation up to the Legal Entitlement specified in the certificate, and not with respect to the quantity of water used for any other purposes. The provisions of Section 5.3.3 shall apply to water uses outside the scope of the certificate of entitlement.

(iii) A certificate of entitlement that has been transferred pursuant to Section 5.2.1.F.1(i) terminates pursuant to this Section 5.2.1.F.1(iii) and without the need for Commission action if and when the certificate holder ceases using the water for agricultural irrigation, provided that if the cessation occurs in conjunction with a transfer of ownership or possession of the land in agricultural use, the certificate of entitlement may be transferred to a new user pursuant to Section 5.2.1.F.1(i). Once terminated, a certificate of entitlement may not be reinstated or reissued.

2. Corporate Reorganization Exceptions.

The following provisions apply where a corporate parent directly or indirectly owning 100% of each class of shares of all of its subsidiary corporations decides to reorganize those subsidiary corporations without affecting the corporate parent's 100% ownership interest.

(i) Whenever a corporate reorganization consists solely of a change of the name, identity, internal corporate structure, or place of organization of a corporate certificate holder, the Executive Director may reissue a certificate of entitlement in the name of the new owner of the facility, provided that the reorganization does not affect ownership and/or control by the certificate holder's corporate family of companies within the meaning of Sections 5.2.1.E.2, E.3, E.4 and E.5 and does not alter the corporate parent's 100% ownership interest.

(ii) A merger or other plan, transaction or series of transactions that effectuates a change of ownership or control within the meaning of Sections 5.2.1.E.2, E.3, E.4 and E.5 does not fall within the exemption of Section 5.2.1.F.2(i) on the basis that a corporate reorganization constitutes part of the merger, plan, transaction or series of transactions.

PAMELA M. BUSH,
Secretary

Fiscal Note: 68-47. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART V. DELAWARE RIVER BASIN COMMISSION
CHAPTER 901. GENERAL PROVISIONS

§ 901.2. Comprehensive Plan and water quality.

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A [(2001)] (2005) and the Water Code and Water Quality Standards as set forth in 18 CFR Part 410 [(2001)] (2005) are hereby incorporated by reference and made a part of this title.

§ 901.3. Water supply charges.

The Basin Regulations—Water Supply Charges as set forth in 18 CFR Part 420 [(1994)] (2005) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 05-2018. Filed for public inspection November 4, 2005, 9:00 a.m.]

**DEPARTMENT OF
REVENUE**

[61 PA. CODE CH. 91]

Realty Transfer Tax Amendments

The Department of Revenue (Department), under authority in section 1107-C of the Tax Reform Code of 1971 (TRC) (72 P. S. § 8107-C), proposes to amend Chapter 91 (relating to Realty Transfer Tax) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The amendments to Chapter 91 are made to address numerous legislative changes and to bring the regulatory provisions into conformity with Departmental policy.

Explanation of Regulatory Requirements

Section 91.101 (relating to definitions) is amended by updating and adding several definitions in accordance with various legislative changes and court decisions. A summary of the amendments is as follows:

“Association” is amended to address a 1994 statutory amendment to 1 Pa.C.S. § 1991 (relating to definitions) and a 1997 statutory amendment to section 1101-C of the TRC (72 P. S. § 8101-C).

“Child” is added to address an issue raised in *Steidle v. Commonwealth*, 717 A.2d 1084 (Pa. Cmwlth. 1998).

“Conservancy” is added to address a 1989 statutory amendment to section 1102-C.3(18) of the TRC (72 P. S. § 8102-C.3(18)).

“Corporation” is added to address the 1994 statutory amendment to 15 Pa.C.S. § 8925 (relating to taxation of limited liability companies).

“Debt” and “financing transaction” are added for use in the regulations.

“Living trust” and “ordinary trust” are added to address the 1997 statutory amendment to section 1101-C of the TRC.

“Settlor” and “testamentary trust” are added for use in the regulations.

The Department is proposing numerous amendments to improve the clarity of various sections, including §§ 91.132, 91.135, 91.155, 91.162, 91.166 and 91.202.

Section 91.113(b) (relating to imposition of tax on declarations of acquisition) is amended to address the family farm partnership language in section 1102-C.5(b.1) of the TRC (72 P. S. § 8102-C.5(b.1)).

Section 91.115 (relating to publication of common level ratio factors) is added to codify the Department’s existing practice of annually publishing applicable common level ratio factors for each fiscal year.

Section 91.132 (relating to bona fide sale transactions) is subdivided and amended by adding subsection (c) to address the court decision in *Allebach v. Commonwealth*, 546 Pa. 146, 683 A.2d 625 (1996).

Section 91.136 (relating to appraisal) is subdivided and amended by adding paragraph (1) to incorporate the court decision in *Kennedy Boulevard Associates I, Limited Partnership v. Tax Review Board of Philadelphia*, 751 A.2d 719 (Pa. Cmwlth. 2000).

Additional guidance with regard to confirmatory deeds utilized in business mergers, consolidations and business form changes have been added to § 91.152 (relating to confirmatory deed).

Language clarifying the taxation regarding conversion of real estate between business entities and their owners is added to § 91.154 (relating to documents involving corporations, partnerships, limited partnerships and other associations).

Amendments have been made to § 91.155 (relating to timber and crops) to include natural resources, complete timber removal and products of the soil.

Section 91.156 (relating to trusts) is substantially amended to address the trust provisions in section 1101-C of the TRC and section 1102-C of the TRC (72 P. S. § 8102-C) and the Pennsylvania Supreme Court holdings in *Leigh v. Commonwealth*, 541 Pa. 187, 661 A.2d 1374 (1995) and *Holmes v. Commonwealth*, 539 Pa. 477, 653 A.2d 615 (1995).

Since its adoption in 1988, Table I in § 91.165 (relating to reservations or conveyances of life estates) has remained unchanged. In this proposed rulemaking, the Department is updating the table using factors based on the 2000 Federal census for a single life tenant, computed at 6% interest. In addition, to keep the table current, the Department is proposing in § 91.165(c) to update the table at least once every 5 years by published notice in the *Pennsylvania Bulletin*.

New § 91.170 (relating to the rule in *Baehr Bros. v. Commonwealth*, 493 Pa. 417, 426 A.2d 1086 (1981)) sets forth rules to determine whether a document is excludible or subject to tax. New § 91.171 (relating to transfers by operation of law) describes when a transfer by operation of law is and is not subject to tax.

Numerous amendments to § 91.193 (relating to excluded transactions) are proposed to bring the section into conformity with statutory changes from 1989-1997 to section 1102-C.3 of the TRC, as well as to clarify areas that have been the subject of taxpayer inquiry and to reflect the United States Bankruptcy Court holding in *Baltimore County v. Hechinger Liquidation Trust (In re Hechinger Inv. Co. of Del., Inc.)*, 335 F.3d 243 (3d Cir. Del. 2003). In the past, the Department would allow a transfer

to be exempt from Realty Transfer Tax as long as the parties involved in the transfer showed at the time of the transfer that a plan was agreed upon under Chapter 7 and 13 bankruptcies. However, the *Hechinger* decision now requires that bankruptcies under Chapter 7 and 13 be confirmed prior to changing the deed to be exempt from Realty Transfer Tax. Subsection (c) is added to promulgate the Department’s policy that the list of excluded transactions in subsection (b) does not apply to acquisitions of real estate companies.

Section 91.195 (relating to State-related universities and public charities) is added to explain the taxability of transfers involving State-related universities and public charities.

Section 91.211 (relating to family farm corporation) is amended and §§ 91.221—91.223 (relating to partnerships) are added to address statutory changes to sections 1101-C, 1102-C.3 and 1102-C.5(b.1) of the TRC, regarding family farm partnerships.

Affected Parties

Persons or entities transferring an interest in real property could be affected by the proposed rulemaking.

Fiscal Impact

The Department has determined that the proposed rulemaking will have no significant fiscal impact on the Commonwealth. A relatively small revenue loss could result from the updating of the table concerning the reservations or conveyances of life estates in § 91.165. Conversely, a positive revenue gain may result from the change regarding the treatment of timber in § 91.155. However, there also might be some transactions that would be excluded that were not previously. Finally, the impact of the United States Bankruptcy Court holding in *Baltimore County v. Hechinger Liquidation Trust (In re Hechinger Inv. Co. of Del., Inc.)* results in a more strict standard than the Department was currently using. However, there is no reason to believe that any substantial revenue impact would result from this amendment.

Paperwork

The proposed rulemaking will require no additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulations will become effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of final-form publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061 within 30 days after the date of the 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 October 21, 2005, the Department 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 House Committee on Finance and the Senate Committee on Finance. 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 Department, the General Assembly and the Governor of comments, recommendations or objections raised.

GREGORY C. FAJT,
Secretary

Fiscal Note: 15-429. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE IV. COUNTY COLLECTIONS

CHAPTER 91. REALTY TRANSFER TAX.

Subchapter E. GENERAL

§ 91.101. Definitions.

The following words and terms, when used in this chapter, have the following meanings:

Association—

(i) An unincorporated enterprise owned or conducted by two or more persons, including, but not limited to, a partnership, limited partnership, **limited liability partnership, restricted professional company that is deemed to be a limited partnership under 15 Pa.C.S. § 8997 (relating to taxation of restricted professional companies)** or joint venture.

(ii) The term does not include an ordinary or living trust, **limited liability company**, decedent's estate, tenancy in common, tenancy by the entireties or joint tenancy.

Child—A son or daughter by either natural birth or adoption. The term does not include:

(i) A stepson or stepdaughter.

(ii) A son or daughter of an individual whose parental rights have been terminated.

Conservancy—An entity which possesses a tax exempt status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

Corporation—A corporation, joint-stock association, limited liability company, business trust or banking institution which is organized under the laws of the Commonwealth, the United States or any other state, territory or foreign country or dependency.

Debt—A legally enforceable obligation arising out of a genuine debtor-creditor relationship to pay a fixed or determinable sum of money at a future date.

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Financing transaction—An arrangement in which the following apply:

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(iii) The debtor retains possession and beneficial ownership of the [**realty**] **real estate transferred before default.**

(iv) **The transferee obtains title or ownership to the real estate only so far as is necessary to render the instrument of transfer effective as security for the debt.**

(v) **The transferee or the transferee's successor is obligated to return the transferred real estate at no or only nominal consideration to the debtor upon payment of the debt before default.**

Living trust—An ordinary trust:

(i) **Which, throughout the settlor's lifetime, is revocable by the settlor without the consent of an adverse party.**

(ii) **Which vests no present interest in any of the trust assets in any person other than the settlor or trustee until the settlor dies.**

(iii) **All the corpus and income of which can be reached or materially affected by the settlor without revocation of the trust or the consent of an adverse party.**

(iv) **From which no transfer of property or money may be made by the trustee, at any time prior to the death of the settlor, to any person in the capacity of a beneficiary other than the settlor.**

(v) **Which the trustee or, if the settlor was the trustee, the successor trustee is required under the governing instrument to distribute the corpus and retained income upon the death of the settlor.**

Ordinary trust—

(i) **A private trust which takes effect during the lifetime of the settlor of the trust and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving trust assets, under the ordinary rules applied in the orphan's court division of the court of common pleas or in other chancery or probate courts, until distribution to the beneficiaries of the trust.**

(ii) **The term does not include:**

(A) **Business trusts organized under 15 Pa.C.S. (relating to Associations Code), Massachusetts business trusts or associations using the forms and methods of an ordinary trust which have either of the following features:**

(I) **The treatment of beneficiaries as associates.**

(II) **Beneficial interests in the trust estate or profits that are evidenced by transferable shares, similar to corporate shares, or are otherwise treated as personal property.**

(B) **Minors' estates.**

(C) **Incompetents' estates.**

(D) **A resulting or constructive trust created by operation of law.**

(E) **A testamentary trust.**

Settlor—One who creates and furnishes the consideration for the creation of a trust by the transfer of property to the trust.

Testamentary trust—A private trust that is established by will or takes effect only at or after the death of the settlor.

Subchapter F. IMPOSITION OF TAX

§ 91.113. Imposition of tax on declarations of acquisition.

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(b) A family farm corporation or family farm partnership is subject to pay a State tax at the rate of 1% of the value of the family farm [realty] real estate held by the family farm corporation or the family farm partnership when it becomes an acquired company under §§ 91.212 and 91.222 (relating to acquired family farm corporations; and acquired family farm partnership). The tax shall be paid within 30 days after the family farm corporation or the family farm partnership becomes acquired.

§ 91.115. Publication of common level ratio factors.

The Department will publish the applicable common level ratio factors for each fiscal year beginning July 1 and ending June 30 and during the fiscal year, any changes thereto, in the *Pennsylvania Bulletin*.

Subchapter G. VALUATION

§ 91.132. Bona fide sale transactions.

(a) In a bona fide sale of [realty] real estate, the value of the [realty] real estate is the total agreed consideration for the sale which is paid or to be paid.

(b) This value includes liens existing before the transfer and not removed thereby—whether or not the underlying indebtedness is assumed—or a commensurate part of the liens, if they also encumber other [realty] real estate.

(c) This value does not include the value of consideration paid by a buyer's assignee, or a subsequent assignee thereof, for the right to have the seller convey the real estate to the assignee or subsequent assignee unless the seller is a party to the assignment and receives part or all of the consideration paid for the assignment. If the seller is a party to the assignment and receives part or all of the consideration paid for the assignment, the value shall include the value of the consideration that the seller receives.

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§ 91.135. Judicial sales and other transactions.

The value of [realty] real estate is its computed value where the [realty] real estate is transferred through any of the following:

(1) By execution upon a judgment or upon foreclosure of a mortgage or under a judicial sale or tax sale or a transfer to a transferee or assignee of a bid or other rights of a purchaser under a judicial or tax sale.

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§ 91.136. Appraisal.

The value of [realty] real estate shall be determined by appraisal only when [the realty] one of the following occurs:

(1) The real estate was transferred in lieu of foreclosure.

(2) The real estate is not the subject of a bona fide sale, cannot be valued under § 91.133 (relating to leases) and is not separately assessed for local real estate tax purposes.

Subchapter H. SPECIAL SITUATIONS

§ 91.152. Confirmatory deed.

(a) A deed made without consideration for the sole purpose of confirming a prior recorded document, including a deed that only asserts an existing survivorship interest, is not taxable. This [exclusion] subsection only applies if the following apply:

* * * * *

(b) A deed made without consideration for the sole purpose of confirming real estate ownership following a merger, consolidation or change in the form or identity of a corporation or an association. This subsection only applies if all of the following occur:

(1) Record title to the subject real estate is in the entity as opposed to its owners.

(2) Without the making of any document:

(i) The resultant entity is vested with all the property, real, personal and mixed, and franchises of, and the debts due, the original association or, in the case of a merger or consolidation, each party thereto.

(ii) The resultant entity is subject to all the obligations of the original association or, in the case of a merger or consolidation, the parties thereto.

(iii) Liens upon the property of the original association or, in the case of a merger or consolidation, any party thereto, are not impaired by the change in form.

(iv) Any claim existing or action or proceeding pending by or against the original association or, in the case of a merger or consolidation, any party thereto, may be prosecuted to judgment against the resultant entity.

(3) The original entity or, in the case of a merger or consolidation, any party thereto, is not required to wind up its affairs or pay its liabilities and distribute its assets either because there is no break in the continuity of its existence or because its separate existence ceases with the reformation.

(4) Considering all the ownership interests in the original entity or, in the case of a merger or consolidation, any party thereto, there is no change in proportionate ownership interests resulting from the change in form.

(5) Title to real estate would not revert or be in any way impaired by reason of the merger, consolidation or change.

Example 1. A and B are equal partners in a general partnership known as AB, general partnership. One of the assets of the partnership is real estate. The real estate is titled in the names of A and B, individually, as co-tenants. A and B want to convert their general partnership to a limited partnership known as AB, LP. A and B set up an LLC to be the 1% general partner in the limited partnership. A and B will

have a 99% limited partnership interest in the limited partnership (that is, A and B each have a 49.5% limited partnership interest). In order to effectuate the conversion, A and B merge the partnership into the limited partnership. The limited partnership is the surviving entity of the merger. The general partnership ceases to exist as a result of the conversion. After the conversion, A and B prepare a deed for the partnership real estate to confirm the partnership's change of form to the limited partnership. The deed is taxable because legal title to the real estate was in the name of A and B individually. Legal title was never transferred to the general partnership.

Example 2. Assume the same facts as Example 1 except that general partnership AB purchased the real estate with partnership funds and titled the real estate in the name of the partnership. A and B have merely converted their form of organization from that of a general partnership to a limited partnership. It continues its same business and has all the same assets and liabilities as the general partnership. Further, ownership has not changed. A and B were equal partners in the general partnership and are equal general partners (through their equal ownership of the LLC) and limited partners. Because the general partnership held the real estate of record and there has only been a change in form of the business, the deed is not taxable.

Example 3. Assume the same facts as Example 2, except that A becomes the general partner and B becomes the limited partner. Each holds a 50% interest in the partnership's income. Although A and B each have an equal income interest, A now has sole control over the partnership as the general partner and B has only an income interest as a limited partner. In the general partnership, A and B had equal management and income interests. Because there is a change in ownership interests, the deed is taxable.

(c) A deed made without consideration for the sole purpose of confirming a change in place of organization.

(d) Notwithstanding the provisions of § 91.154 (relating to documents involving corporations, partnerships, limited partnerships and other associations), when determining if there is a change in proportionate ownership interests, corporations and associations will not be considered to be entities separate from their members, partners, stockholders or shareholders; and when determining if there is a change in proportionate ownership interests resulting from the change to a limited partnership, the interests of the limited partners and general partners will both be considered.

(e) A deed made without consideration for the sole purpose of confirming that a prior recorded document was void ab initio and revesting record title in the grantor is not taxable.

§ 91.154. Documents involving corporations, partnerships, limited partnerships and other associations.

(a) Corporations, joint-stock associations, business trusts, banking institutions, partnerships, limited part-

nerships, joint ventures and associations are entities separate from their stockholders, shareholders, partners and members. Transfers between these entities and their stockholders, shareholders, partners and members, including transfers between a subsidiary and a parent corporation and transfers in consideration of the issuance or cancellation of stock, are fully taxable, unless the transaction is excluded under § 91.193(b)(12) or (13) (relating to excluded transactions) or subsection (b) or (c).

(b) There is no tax upon the conversion of real estate from the separate property of a stockholder, shareholder, partner or member to the property of a corporation, joint-stock association, business trust, banking institution, partnership, limited partnership, joint venture or association, provided the conversion is neither effectuated by deed nor memorialized by a writing satisfying the requirements of the Statute of Frauds. However, any writing confirming such a conversion will not be excludible under either § 91.151 or § 91.152 (relating to correctional deeds; and confirmatory deeds).

(c) There is no tax upon the conversion of real estate from the property of a corporation, joint-stock association, business trust, banking institution, partnership, limited partnership, joint venture or association to the separate property of a stockholder, shareholder, partner or member, provided the conversion is neither effectuated by deed nor memorialized by a writing satisfying the requirements of the Statute of Frauds. However, any writing confirming such a conversion will not be excludible under either § 91.151 or § 91.152.

(d) Examples are as follows:

Example 1. A transfers real estate to A, B and C trading as XYZ Partnership or A, B and C, co-partners. The deed from A is fully taxable. Partnerships are separate entities from their partners.

Example 2. Assume the same facts as Example 1, except that A merely converts the real estate to the partnership's use by oral agreement. There is no deed or other writing that satisfies the requirements of the Statute of Frauds. Because record title remains with A, no tax is due.

Example 3. D, E and F are partners in both TUV and QRS partnerships. D, E and F, trading as TUV Partnership, transfer real estate to D, E and F trading as QRS Partnership. The deed is fully taxable because TUV Partnership and QRS Partnership are separate entities even though each has the same partners.

§ 91.155. Timber [and], crops and natural resources.

* * * * *

(b) Standing timber [and crops are] is considered nontaxable personal property if the instrument provides for severance and complete removal [within an immediate ascertainable date] at once or as soon as it can be reasonably done. A transfer of standing timber is taxable if the transferee has discretion as to the time of removal, the instrument is indefinite as to the time for removal or the instrument provides more time for the removal than is reasonably necessary, considering the nature and extent of the land and the number of feet of merchantable timber to be removed.

(c) Products of the soil are considered nontaxable personal property if one of the following apply:

- (1) The products are planted annually and gathered during a single, annual season.
- (2) The products are propagated for the purpose of being transplanted or grafted.
- (3) The products require annual pruning, spraying or cultivation.
- (4) The products are the annual products of shrubs, trees or annual or perennial plants.

§ 91.156. Trusts.

(a) *Transfers to ordinary trusts.* A transfer to an ordinary trust is fully taxable, [except if] unless the transfer of the same property would be wholly exempt if the transfer were made directly from the grantor to all of the possible beneficiaries who have a remainder interest or who are otherwise entitled to receive the property or the proceeds from the sale of the property as a beneficiary under the terms of the trust, whether or not the beneficiaries are contingent or specifically named.

Example: G transfers property to a trust without consideration for the use of B, G's spouse, for life. Under the trust, the remainder interest is vested in G's church. As a direct transfer to the religious organization would be taxable, the transfer to the trust is fully taxable.

(b) *Contingent beneficiaries.* A trust provision which identifies a contingent beneficiary by reference to the heirs of the trust settlor as determined by the laws of intestate succession will by itself neither qualify nor disqualify a transfer from the exemption provided by subsection (a).

(c) *Transfers to living trusts.* A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust is exempt.

(d) *Transfers from ordinary trusts.* A transfer from [a] an ordinary trust is fully taxable except for a transfer for no or nominal actual consideration from the trustee to [a beneficiary specified in the original recorded trust agreement under which the property was initially conveyed into the trust] the person who has the vested remainder interest or who is otherwise entitled to receive the property or the proceeds from the sale of the property as a beneficiary under the terms of the trust.

(e) *Inter vivos transfers from living trusts.*

(1) A transfer for no or nominal consideration from the trustee of a living trust during the settlor's lifetime to a grantee other than the settlor will be treated as if the transfer were made directly from the settlor to the grantee.

(2) A transfer from the trustee of a living trust to its settlor is exempt if the settlor conveyed the property to the trust.

(f) *Transfers from testamentary trusts and living trusts after the death of the settlor.* A transfer of real estate from a testamentary trust or from a living trust after the death of its settlor is exempt from tax only if the transfer is made for no or nominal actual consideration and to the person who, under the governing instrument of the trust, has the vested remainder interest or who is otherwise entitled to receive the property or the pro-

ceeds from the sale of the property as a beneficiary under the terms of the trust.

(g) *Requirement for exemption.* An exemption will not be granted under this section unless the recorder of deeds is presented with a copy of the trust agreement.

§ 91.162. Turnkey projects.

A transfer of [realty] real estate to a developer or contractor who is required by contract to reconvey the [realty] real estate to the grantor after making contracted-for improvements to the [realty] real estate is not taxable if no beneficial interest in the real estate is transferred to the developer or contractor. The reconveyance to the grantor is also not taxable.

§ 91.165. Reservations or conveyances of life estates.

(a) [Table I is used in computing the tax base of a life estate or remainder interest in realty. If the transferor has conveyed only a life estate in realty, while reserving the remainder to himself, the transaction is taxable. The tax base is computed by multiplying the value of the realty as determined under § 91.135 (relating to judicial sales and other transactions) by the life estate factor, based on the age of the life tenant, taken from Table I.

Example 1: L conveys a life estate to T in realty that is valued under § 91.135 at \$100,000. T is 50 years old. Life estate factor is: .84743; Value = \$100,000 × .84743 = \$84,743.

(b) If the transferor of realty has reserved to himself a life estate, while conveying the remainder, the transaction is taxable. The tax base shall be computed by multiplying the value of the realty as determined under § 91.135 by the remainder factor, based on the age of the life tenant, taken from Table I.

Example 2: L conveys to T realty that is valued under § 91.135 at \$100,000 but reserves a life estate for himself. L is 50 years old. Remainder factor is .15257; Value = \$100,000 × .15257 = \$15,257.

TABLE I

1 Age	2 Life Estate	3 Remainder
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635

TABLE I

1 Age	2 Life Estate	3 Remainder
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257
51	.83874	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236

TABLE I

1 Age	2 Life Estate	3 Remainder
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025]

The value of a life estate or remainder interest in real estate will be the consideration paid or to be paid for the life estate or remainder interest.

(b) When no or nominal consideration or consideration less than actual monetary worth is paid for a life estate or remainder interest in real estate, the factors in Table I shall be multiplied by the real estate's computed value to calculate the value of a life estate or remainder interest.

Example 1: In an arm's length transaction for actual monetary worth, L conveys a life estate interest (or remainder interest, as the case may be) in real estate to T for \$50,000. The taxable value of the life estate is the consideration paid, that is \$50,000.

Example 2: L conveys a life estate interest in real estate to T for less than actual monetary worth. L reserves the remainder interest for himself. The computed value of the entire real estate is \$100,000. T is 50 years old. The life estate factor for T's life is .84743. Therefore, the taxable value of T's life estate interest is the computed value of the entire real estate multiplied by T's life estate factor (\$100,000 × .84743), or \$84,743.

Example 3: L conveys a remainder interest in real estate to T for less than actual monetary worth. L retains a life estate interest in the real estate. The computed value of the entire real estate is \$100,000. L is 50 years old. The life estate factor for L's life is .84743. The remainder factor for T's remainder interest is .15257. Therefore, the taxable value of T's remainder interest is the computed value of the entire real estate multiplied T's remainder factor (\$100,000 × .15257), or \$15,257.

Table I*		
Age	Life Estate Factor	Remainder Factor
0	0.95309	0.04691
1	0.995997	0.04003
2	0.95868	0.04132
3	0.95709	0.04291
4	0.95531	0.04469
5	0.95338	0.04662
6	0.95131	0.04869
7	0.94911	0.05089
8	0.94679	0.05321

Table I*

Age	Life Estate Factor	Remainder Factor
9	0.94433	0.05567
10	0.94171	0.05829
11	0.93896	0.06104
12	0.93606	0.06394
13	0.93307	0.06693
14	0.93003	0.06997
15	0.92697	0.07303
16	0.92392	0.07608
17	0.92084	0.07916
18	0.91773	0.08227
19	0.91452	0.08548
20	0.91119	0.08881
21	0.90772	0.09228
22	0.90412	0.09588
23	0.90036	0.09964
24	0.89643	0.10357
25	0.89232	0.10768
26	0.88801	0.11199
27	0.88348	0.11652
28	0.87876	0.12124
29	0.87383	0.12617
30	0.86871	0.13129
31	0.86339	0.13661
32	0.85786	0.14214
33	0.85210	0.14790
34	0.84612	0.15388
35	0.83989	0.16011
36	0.83342	0.16658
37	0.82669	0.17331
38	0.81969	0.18031
39	0.81241	0.18759
40	0.80484	0.19516
41	0.79695	0.20305
42	0.78875	0.21125
43	0.78023	0.21977
44	0.77140	0.22860
45	0.76228	0.23772
46	0.75286	0.24714
47	0.74318	0.25682
48	0.73322	0.26678
49	0.72298	0.27702
50	0.71244	0.28756
51	0.70162	0.29838
52	0.69054	0.30946
53	0.67922	0.32078
54	0.66766	0.33234
55	0.65587	0.34413
56	0.64383	0.35617
57	0.63156	0.36844
58	0.61911	0.38089
59	0.60650	0.39350
60	0.59376	0.40624
61	0.58086	0.41914
62	0.56777	0.43223
63	0.55450	0.44550
64	0.54105	0.45895
65	0.52745	0.47255
66	0.51366	0.48634
67	0.49966	0.50034
68	0.48548	0.51452
69	0.47115	0.52885
70	0.45675	0.54325
71	0.44233	0.55767
72	0.42794	0.57206
73	0.41360	0.58640
74	0.39927	0.60073

Table I*

Age	Life Estate Factor	Remainder Factor
75	0.38490	0.61510
76	0.37046	0.62954
77	0.35596	0.64404
78	0.34142	0.65858
79	0.32692	0.67308
80	0.31260	0.68740
81	0.29853	0.70147
82	0.28478	0.71522
83	0.27136	0.72864
84	0.25817	0.74183
85	0.24513	0.75487
86	0.23236	0.76764
87	0.22002	0.77998
88	0.20812	0.79188
89	0.19665	0.80335
90	0.18563	0.81437
91	0.17521	0.82479
92	0.16559	0.83441
93	0.15674	0.84326
94	0.14851	0.85149
95	0.14072	0.85928
96	0.13341	0.86659
97	0.12665	0.87335
98	0.12032	0.87968
99	0.11415	0.88585
100	0.10817	0.89183
101	0.10228	0.89772
102	0.09650	0.90350
103	0.09078	0.90922
104	0.08468	0.91532
105	0.07873	0.92127
106	0.07111	0.92889
107	0.06192	0.93808
108	0.04776	0.95224
109	0.02381	0.97619

*Factors in Table I are based on the 2000 Federal census for a single life tenant, computed at 5% interest.

(c) The Department will update Table I at least once every 5 years by published notice in the *Pennsylvania Bulletin*.

§ 91.166. Life maintenance.

[Conveyance] A transfer of [realty in] real estate as consideration [of] for life maintenance is a taxable transaction. [Tax shall] The tax base will be computed based on the value of the [interest in realty conveyed] real estate as determined under § 91.135 (relating to judicial sales and other transactions).

§ 91.170. The rule in *Baehr Bros. v. Commonwealth*, 493 Pa. 417, 426 A.2d 1086 (1981).

(a) A document will be excludible from tax if each of the following requirements is satisfied:

(1) The document stands in the place of two or more other writings.

(2) Each of the writings for which the document stands would be excludible from tax under this article and effective notwithstanding the insolvency, bankruptcy or other legal disability of the signatories thereto.

(3) Title to the affected real estate would not revert or be in any way impaired or encumbered by reason of the recordation of the writings described in paragraphs (1) and (2).

(b) Separate transfers of a greater estate and a lesser estate in real property will be taxed as a single transfer of both estates if the transactions are entered into in contemplation of a merger thereof.

(c) Separate transfers of an interest in timber, coal, oil, gas, or other appurtenance to real estate and the real estate to which the interest is appurtenant will be taxed as a single transfer of both interests if the transactions are entered into in contemplation of their coinciding and meeting in the same person.

§ 91.171. Transfers by operation of law.

Except as provided in § 91.193(b)(1)(i), (7), (12) and (13) (relating to excluded transactions), any writing that satisfies the requirements of the Statute of Frauds and confirms or evidences a transfer that is accomplished by operation of law is taxable on the same basis as a document that effectuates a conveyance or transfer or vests title to real estate.

Subchapter I. EXCLUDED PARTIES AND TRANSACTIONS

§ 91.193. Excluded transactions.

* * * * *

(b) *Additional exclusions.* Other transactions which are excluded from tax include:

(1) A transfer to the United States or the Commonwealth or to an instrumentality, agency or governmental body of either if the transfer is:

(i) In lieu or confirmation of a taking by eminent domain. To qualify for the exclusion, the deed shall be made under a prior statute, ordinance, resolution, plan or order for the condemnation, appropriation or acquisition of the real estate transferred by condemnation or [by condemnation or purchase] in lieu thereof. The statement of value accompanying a document that effectuates such a transfer shall contain a specific reference to the ordinance, resolution or other official action by which the grantee was authorized to file a declaration of taking of the transferred real estate.

* * * * *

(2) A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States, including:

(i) A transfer under a bankruptcy plan confirmed under section 1129 of the act of November 6, 1978 (Pub. L. 95-598) (92 Stat. 2549), known as the Federal Bankruptcy Act (**Bankruptcy Act**) (11 U.S.C. § 1129) and exempt under section 1146(c) of [that act] the **Bankruptcy Act** (11 U.S.C. § 1146(c)). To claim this exclusion, a copy of the order [directing the transfer] and confirmed plan highlighting the specific provision in the plan authorizing the transaction and proof that the deed to be recorded was executed by the parties to the transaction subsequent to the plan confirmation shall accompany the statement of value. Transfers made prior to plan confirmation do not qualify for tax exemption. A transfer is made under a plan confirmed under section 1129 only when the transfer is

authorized by the specific terms of a previously confirmed Chapter 11 plan.

(ii) [A transfer under section 1153(a)(1) of the Northeast Rail Service Act of 1981 (45 U.S.C.A. § 1106(a)(1)).] A transfer under a bankruptcy plan confirmed under section 1225 of the Bankruptcy Act (11 U.S.C. § 1225) and exempt under section 1231(c) of the Bankruptcy Act (11 U.S.C. § 1231(c)). To claim this exclusion, a copy of the order and confirmed plan highlighting the specific provision in the plan authorizing the transaction and proof that the deed to be recorded was executed by the parties to the transaction subsequent to the plan confirmation shall accompany the statement of value. Transfers made prior to plan confirmation do not qualify for tax exemption. A transfer is made under a plan confirmed under section 1225 of the Bankruptcy Act only when the transfer is authorized by the specific terms of previously confirmed Chapter 12 plan.

(iii) Transfers made under the authority of sections 363 or 365 of the Bankruptcy Act (11 U.S.C. §§ 363 or 365) and occurring before the confirmation of a plan will not qualify for exemption under this clause.

* * * * *

(6) Transfers between certain family members:

* * * * *

(iii) The estate of a deceased family member is not a family member for purposes of claiming the familial exemption under this paragraph.

* * * * *

(8) A transfer for no or nominal consideration to a trustee of an ordinary trust, where the transfer of the same property would be wholly excluded if the transfer were made directly by the grantor to all the possible beneficiaries who have remainder interests or are entitled to receive the property or the proceeds from the sale of the property as beneficiaries under the terms of the trust, whether or not the beneficiaries are contingent or specifically named. See § 91.156 (relating to trusts).

(9) A transfer for no or nominal actual consideration from a trustee [to a beneficiary to an ordinary trust] of an ordinary trust to a person who has the vested remainder interest or who is otherwise entitled to receive the property or the proceeds from the sale of the property as a beneficiary under the terms of the trust. See § 91.156.

* * * * *

(18) [A transfer to a conservancy which possesses a tax exempt status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.] A transfer to a conservancy, a transfer from a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions, or a transfer from a conservancy if the real estate is encumbered by a perpetual agricultural conservation easement as defined by the Agricultural Area Security Law (3 P. S. §§ 901-915) and

the conservancy has owned the real estate for at least 2 years immediately prior to the transfer.

* * * * *

(26) The rescission, cancellation or abandonment of an existing lease or contract for a deed for no or nominal consideration.

* * * * *

(32) Transfers for no or nominal actual consideration to the trustee of a living trust from the settlor of the living trust.

(33) Transfers for no or nominal actual consideration from the trustee of a living trust during the settlor's lifetime to the settlor of property conveyed to the trust by the settlor.

(34) Transfers for no or nominal actual consideration from the trustee of a testamentary trust or living trust after the death of the settlor to a person who has the vested remainder interest or who is otherwise entitled to receive the property or the proceeds from the sale of the property as a beneficiary under the terms of the trust.

(c) Documents that convey or evidence the transfer of real estate between the parties involved in the transactions enumerated in subsection (b) are excluded from tax. Subsection (b) has no application to acquisitions of real estate companies as provided in § 91.202.

§ 91.195. State-related universities and public charities.

(a) For purposes of §§ 91.192 and 91.193(a) (relating to excluded parties; and excluded transactions), institutions that are part of the State System of Higher Education constitute excluded parties. Transfers to those institutions by gift or dedication are excluded transactions.

(b) Other State-related universities, such as Lincoln University, the Pennsylvania State University and its affiliate, the Pennsylvania College of Technology, Temple University and its subsidiaries, Temple University Hospital, Inc., and Temple University Children's Medical Center, and the University of Pittsburgh do not constitute excluded parties.

(c) Transfers of property to an institution that is part of the State System of Higher Education other than gift or dedication and all transfers by those institutions are taxable upon the same basis as other transfers to or from excluded parties.

(d) Transfers by gift, dedication or otherwise to or from Lincoln University, the Pennsylvania State University or its affiliate, the Pennsylvania College of Technology, Temple University or its subsidiaries, Temple University Hospital, Inc., and Temple University Children's Hospital, Inc., the University of Pittsburgh or public charities are taxable upon the same basis as transfers between private parties.

Subchapter J. REAL ESTATE COMPANY

§ 91.202. Acquired real estate company.

* * * * *

(c) A transfer of ownership interest between members of the same family is not considered a change in ownership interest.

Example: C and D each own [50 shares or 50%] all of the stock of a corporation in equal shares. C and D transfer their stock to E, C's son, over a 3-year period. As C and E are members of the same family, the transfer between C and E is not a change in ownership interest. Thus, the stock transfers have the effect of transferring only 50% of the total ownership interest in the corporation and the corporation is not acquired.

* * * * *

Subchapter K. FAMILY FARM CORPORATION AND FAMILY FARM PARTNERSHIP CORPORATIONS

§ 91.211. Family farm corporation.

* * * * *

(b) To qualify as an asset devoted to the business of agriculture for the purpose of subsection (a), the assets shall be:

(1) Owned and either used directly by the corporation claiming the exemption or leased to, and used directly by, a member of the same family that owns at least 75% of each class of stock of the corporation claiming the exemption.

(2) Principally devoted by the corporation to the business of agriculture or used by the member for agricultural purposes.

(3) Property of the sort commonly used in the business of agriculture principally for agricultural purposes.

(4) [Set] Used by the member principally for agricultural purposes or set apart and directly used by the corporation primarily for commercial:

* * * * *

(e) For the purposes of this section, the business of agriculture includes a leasing of property to a member of the family having the ownership of a least 75% of each class of its stock if the property is used by the member directly and principally for an agricultural purpose.

PARTNERSHIP

§ 91.221. Family farm partnership.

(a) An entity constitutes a family farm partnership only for so long as the following requirements are satisfied:

(1) At least 75% of the shares of the profits and surplus of the partnership are continuously owned by members of the same family.

(2) In the aggregate, the book value of the partnership's assets that are primarily devoted to the business of agriculture continuously comprise at least 75% of the book value of all of the partnership's assets.

(3) The entity is a general or common law partnership.

(b) Whether an asset is devoted to the business of agriculture shall be determined using the same rules as apply to the assets of family farm corporations. See § 91.211(b) (relating to family farm corporation).

§ 91.222. Acquired family farm partnership.

A family farm partnership becomes an acquired family farm when one of the following occur:

(1) Because of the acquisition or disposition of a partnership asset (including a transfer to a family member), the book value of the partnership's assets that are primarily devoted to the business of agriculture becomes less than 75% of the book value of all of the partnership's assets.

(2) Because of the assignment of an interest in profits or surplus or the death, retirement, bankruptcy, expulsion or addition of a partner, less than 75% of the shares of the profits and surplus of the entity is continuously owned by members of the same family.

(3) The partnership is voluntarily or involuntarily dissolved or otherwise ceases to operate in the form of a general partnership or common law partnership.

§ 91.223. Declaration of acquisition.

A declaration of acquisition shall be filed in accordance with § 91.302 (relating to declaration of acquisition) with respect to family farm real estate held on the date the family farm partnership became acquired.

[Pa.B. Doc. No. 05-2019. Filed for public inspection November 4, 2005, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 137]

Wildlife

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 28, 2005, meeting, proposed to amend § 137.33 (relating to feeding of certain wildlife prohibited) to relocate the restriction on the feeding of elk outside of specified exceptions and to rescind § 137.32 (relating to feeding of elk prohibited) to eliminate duplication and redundancy of language in the regulations.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the June 28, 2005, meeting of the Commission. Comments can be sent until December 30, 2005, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

The Commission recently added § 137.33 to prohibit the feeding of bears outside of specified exceptions. This section was an addition to existing § 137.32, which prohibits the feeding of elk outside of specified exceptions. The Commission now recognizes the duplication and redundancy of maintaining both these provisions due to their similarity in language and restriction. Therefore, the Commission is proposing to combine these two provisions by rescinding § 137.32 and enlarging the scope of § 137.33 to include the elk feeding prohibition.

Section 103(a) of the code (relating to ownership, jurisdiction and control of game and wildlife) states that "The ownership, jurisdiction over and control of game or wildlife is vested in the commission as an independent

agency of the Commonwealth in its sovereign capacity to be controlled, regulated and disposed of in accordance with this chapter." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife... in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife... in this Commonwealth." The amendments to §§ 137.32 and 137.33 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will rescind § 137.32 and amend § 137.33 to incorporate the provisions currently in § 137.32, which restrict the feeding of elk outside of specified exceptions. This amendment is essentially a relocation or restructuring of existing regulatory language that does not add or expand any requirements.

3. Persons Affected

Persons living within areas where elk are located may be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

5. Effective Date

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

6. Contact Person

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

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-213. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION PART III. GAME COMMISSION CHAPTER 137. WILDLIFE

§ 137.32. [Feeding of elk prohibited] (Reserved).

[Except as otherwise provided in this part or the act, it is unlawful to intentionally lay or place any food, fruit, hay, grain, chemical, salt or other minerals anywhere in this Commonwealth for the purpose of feeding elk found in a wild state in this Commonwealth, or to intentionally lay or place any food, fruit, hay, grain, chemical, salt or other minerals to cause elk found in a wild state within this Commonwealth to congregate or habituate an area. In the event of prolonged periods of deep snow or other inclement weather conditions which may prevent elk found in a wild state within this Commonwealth from obtaining an adequate natural supply of food to sustain them, the Director may declare an emergency to allow for the artificial feeding of elk.]

§ 137.33. Feeding of certain wildlife prohibited.

It is unlawful to, except for normal or accepted farming, habitat management practices, oil and gas drilling, mining, forest management activities or other legitimate

commercial or industrial practices, intentionally lay or place food, fruit, hay, grain, chemical, salt or other minerals anywhere in this Commonwealth for the purpose of feeding bear **or elk**, or to intentionally lay or place food, fruit, hay, grain, chemical, salt or other minerals that may cause bear **or elk** to congregate or habituate an area. If songbird feeders are being used by bears, the Commission may issue a written notice prohibiting the songbird feeding. **In the event of prolonged periods of deep snow or other inclement weather conditions which may prevent elk found in a wild state within this Commonwealth from obtaining an adequate natural supply of food to sustain them, the Director may declare an emergency to allow for the artificial feeding of elk.**

[Pa.B. Doc. No. 05-2020. Filed for public inspection November 4, 2005, 9:00 a.m.]

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 4]

Academic Standards and Assessment

The State Board of Education (Board) proposes to amend Chapter 4 (relating to academic standards and assessment) to read as set forth in Annex A. The Board is acting under the authority of section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

Purpose

Chapter 4 sets forth requirements for instruction, graduation, strategic planning and assessment based on academic standards for this Commonwealth's public schools.

Requirements of the Proposed Rulemaking

The proposed rulemaking amends the following items:

Throughout the chapter, when appropriate, the term "school entity" replaces the term "school district" to reflect that, in addition to school districts, intermediate units, area vocational-technical schools, cyber charter schools and independent schools are covered by the regulations.

§ 4.3 (relating to definitions). The Board amends the existing definitions for the terms "assessment" and "curriculum." The State Board also proposes to add new definitions for the terms "prekindergarten," "school entity" and "world language."

§ 4.4(d)(4)—(7) (relating to general policies). The Board proposes to reorder the sequence of § 4.4(d)(4)—(7) to clarify that parents and guardians may review State assessments and must review them if they wish to have their children excused from the assessment should it conflict with their religious belief.

§ 4.11(g)(10) (relating to purpose of public education). The Board proposes to delete world languages as one of the academic areas for which Board approved academic standards are to be issued. This proposed amendment has the effect of requiring school entities to offer world language instruction in at least two languages to all students.

§ 4.12(a) (relating to academic standards). The Board proposes to delete transitional provisions that are no longer necessary.

§ 4.12(a)(8). The Board proposes to delete world languages as one of the academic areas for which Board approved academic standards are to be issued.

§ 4.12(a)(8) and (9). The Board proposes to add reading, writing, speaking and listening, and mathematics to the list of areas for which academic standards are established. This proposed technical change is necessary to include these standards in the Board's periodic review of academic standards.

§ 4.12(g). The Board proposes to delete the implementation schedule under which the Secretary of Education is required to present academic standards to the Board.

§ 4.13 (relating to strategic plans). The Board proposes to amend the strategic planning requirements to focus school entity plans on strategic, rather than operational, issues and to enable the Department of Education (Department) to consolidate multiple strategic planning requirements into a single, comprehensive plan. The proposed amendments also require school entities to address how they will coordinate activities with the Commonwealth's priorities and major initiatives.

§ 4.21(a) (relating to elementary education: primary and intermediate levels). The Board proposes to add as an option that elementary education programs include prekindergarten.

§ 4.21(b). The Board proposes to extend the focus of the primary level elementary program to literacy skills.

§ 4.21(d). The Board proposes to amend this subsection to provide that primary level elementary instruction shall be standards-based and designed to prepare students to reach the proficient level on local and State assessments.

§ 4.21(b) and (e) and §§ 4.22(a) and (b) and 4.23(b) and (c) (relating to middle level education; and high school education). The Board proposes to amend these sections to include new language to clarify that curriculum and instruction are to be standards-based and instruction is to be aligned with State academic standards.

§ 4.21(e)(6) and (8). The Board proposes to amend and clarify the requirements for health, safety and physical education to include knowledge and practice of lifetime physical activity, personal fitness, basic movement skills and concepts, principles and strategies of movement, and safety practices in physical activity.

§ 4.23(c)(9). The Board proposes to amend § 4.23(c)(9) regarding family and consumer science instruction to include basic knowledge of early literacy skill development.

§ 4.25(a) (relating to languages). The Board proposes to add to subsection (a) a requirement that the Department issue standards for world language instruction and to define the requirements for these standards. The Board proposes to maintain the long-standing requirement that every school district provide planned instruction in at least two languages, one of which is to be in a modern language and one of which is to be offered in a 4-year sequence in the secondary program.

§ 4.27(b) (relating to physical education and athletics). The Board proposes to clarify the requirement that physical education shall be adapted for students who are medically unable to participate in the regular program.

§ 4.29(a) (relating to HIV/AIDS and other life-threatening and communicable diseases). The Board proposes to clarify that instruction in the prevention of HIV/AIDS and other life-threatening diseases shall be

provided to every student and the instruction must be aligned with the academic standards for health.

§ 4.29(b). The Board proposes to amend § 4.29(b) to emphasize that instruction and educational materials used in HIV/AIDS instruction are determined by the local school district in accordance with criteria in § 4.29(c)—(e).

§ 4.29(c). The Board proposes to amend language to recommend that a school district's age appropriate planned instruction conform to the Center for Disease Control and Prevention's guidelines and that school districts be permitted to omit instruction in the elementary grades respecting transmission of disease through sexual activity. The Board also proposes to amend § 4.29(c) to explain that instruction shall stress that abstinence from sexual activity is the only completely reliable means of preventing sexual transmission and that avoidance of illegal drug use is the only completely reliable means of preventing transmission through shared drug paraphernalia.

§ 4.29(d). The Board proposes to amend § 4.29(d) to provide that a student shall be excused from HIV/AIDS instruction when the instruction conflicts with religious beliefs, after an inspection of the instructional materials and upon receipt of a written request from the parents or guardians.

§ 4.29(e). The Board proposes to amend § 4.29(e) to provide that school entities shall publicize that detailed curriculum and materials used for HIV/AIDS instruction are available to parents and guardians for review during normal school hours or at teacher-parent conferences.

§ 4.31(a) (relating to vocational technical education). The Board proposes to add language clarifying that students who complete vocational-technical education programs are to have their occupational competency assessed through the Pennsylvania Skills Certificate Program or by another assessment program approved by the Department. The Board also proposes to amend § 4.31(a) to require students to demonstrate proficiency in meeting State academic standards.

§ 4.31(c). The Board proposes to add language to § 4.31(c) to encourage vocational-technical education programs to adopt industry recognized skill standards when available.

§ 4.33(c) (relating to advisory committees). The Board proposes to amend § 4.33(c) to clarify that the occupational advisory committee shall have a majority of its members who are employees and employers in the occupation for which training is provided.

§ 4.51(a)(1) (relating to State assessment system). The Board proposes to amend § 4.51(a)(1) to expand the purpose of the State assessment to include providing students, parents, educators and citizens with an understanding of student and school performance consistent with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110, 115 Stat. 1425).

§ 4.51(b). The Board proposes to amend § 4.51(b) to clarify that State assessment instruments administered in grades 5, 8 and 11 for reading and mathematics, and in grades 6, 9 and 11 for writing, will be standards-based and include essay or open-ended responses in addition to other formats.

§ 4.51(d). The Board proposes to amend § 4.51(d) to require that the State assessment be administered in reading and mathematics in grades 3, 4, 5, 6, 7, 8 and 11; in writing in grades 6, 9 and 11; and in science in grades 4, 7 and 10.

§ 4.51(g)(1). The Board proposes to amend § 4.51(g)(1) to update the statutory reference to the Professional Educator Discipline Act (24 P. S. §§ 2070.1a—2070.18a).

§ 4.51(j). The Board proposes to amend § 4.51(j) to add a requirement that children with limited English proficiency be included in the State assessment as required by Federal law.

§ 4.52(c) (relating to local assessment system). The Board proposes to amend § 4.52(c) to clarify the requirements for when a school entity chooses to use a local assessment to determine whether a student is proficient for purposes of high school graduation. The proposed amendment would provide that the local assessment shall be described in the school entity's strategic plan, be comparable to the proficiency levels used for the State assessment, describe how an entity will be evaluated for compliance with the requirement and the consequence of any identified disparity between State and local proficiency levels.

§ 4.61(a) (relating to school profiles). The Board proposes to amend § 4.61(a) to align the requirements for school profiles with Federal and State law.

§ 4.83 (relating to implementation schedule). The Board proposes to delete the transitional provisions and implementation schedule that were needed when Chapter 4 was first promulgated in January 1999.

Affected Parties

The proposed rulemaking affects the student and professional employees of the public schools of this Commonwealth.

Cost and Paperwork Estimates

The proposed rulemaking will not result in added costs or savings to the Department or school entities since they clarify current requirements. One new report is required to be submitted to the Department by school entities that use local assessments to determine whether students are proficient in reading, writing and mathematics for purposes of graduation from high school. Any cost associated with the preparation and submission of this report is anticipated to be minimal.

Effective Date

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

Sunset Date

The Board will review the effectiveness of Chapter 4 every 4 years in accordance with the Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 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 House and Senate Committees on Education. 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 Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the Pennsylvania Bulletin.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Jim Buckheit at (717) 787-3787 or TDD (717) 787-7367.

JIM BUCKHEIT,
Executive Director

Fiscal Note: 6-295. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subchapter A. MISCELLANEOUS PROVISIONS

CHAPTER 4. ACADEMIC STANDARDS AND ASSESSMENT

GENERAL PROVISIONS

§ 4.3. Definitions.

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

* * * * *

Assessment—A valid and reliable measurement of student performance on a set of academic standards in a subject area that captures student understanding of the set as a whole and the central concepts, knowledge and skills of each content area.

* * * * *

Curriculum—A series of planned instruction aligned with the academic standards in each subject that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students [of specific knowledge and skills and the application of this knowledge].

* * * * *

Individuals with Disabilities Education Act—20 U.S.C.A. §§ 1400—148[5]2.

* * * * *

PSSA—Pennsylvania System of School Assessment.

Planned instruction—Instruction offered by a [school district or AVTS] school entity based upon a written plan to enable students to achieve the academic standards under § 4.12 (relating to academic standards) and additional academic standards determined in strategic plans under § 4.13 (relating to strategic plans).

Prekindergarten—

(i) A program operated by a school entity or under contract from a school entity that is open to children up to 2 years prior to the school entity's entry age for kindergarten.

(ii) The program shall provide a comprehensive program appropriate for the age, developmental level and individual needs of each child, based on how young children develop and learn, and include instruction to support each child's development in the following areas:

- (A) Approaches to learning.
(B) Creative expression.
(C) Language and literacy.
(D) Math, logic and science.
(E) Social-personal development.
(F) Physical development and health.

* * * * *

School entity—A local public education provider (for example, public school district, charter school, cyber charter school, AVTS or intermediate unit); provided, that this chapter applies to school entities only to the extent permitted by law.

* * * * *

World language—The study of the language, cultures, traditions and histories of different communities of people who communicate in languages other than English. In this Commonwealth, American sign language is a world language.

§ 4.4. General policies.

(a) It is the policy of the Board that the local curriculum be designed by school [districts (including charter schools) and AVTSs] entities to achieve the academic standards under § 4.12 (relating to academic standards) and additional academic standards designated in strategic plans under § 4.13 (relating to strategic plans).

(b) It is the policy of the Board that local school [districts (including charter schools) and AVTSs] entities have the greatest possible flexibility in curriculum planning consistent with providing quality education and in compliance with the School Code, including requirements for courses to be taught (24 P. S. §§ 15-1501 and 16-1605)[,]; subjects to be taught in the English language (24 P. S. § 15-1511)[,]; courses adapted to the age, development and needs of the pupils (24 P. S. § 15-1512)[,]; minimum school year of 180 days and minimum of 900 hours of instruction at the elementary level and 990 hours of instruction at the secondary level (24 P. S. §§ 15-1501 and 15-1504)[,]; employment of sufficient numbers of qualified professional [employes] employees (24 P. S. § 11-1106) and superintendents to enforce the curriculum requirements of State law (24 P. S. § 10-1005)[,]; and this part.

* * * * *

(d) School [districts (including charter schools), AVTSs and intermediate units] entities shall adopt policies to assure that parents or guardians have the following:

* * * * *

(3) The right to have their children excused from specific instruction [which] that conflicts with their religious beliefs, upon receipt by the school [district

(including charter schools), AVTS or intermediate unit] entity of a written request from the parents or guardians.

(4) The right of the parent or guardian to review the State assessments in the school entity, at least 2 weeks prior to their administration, during convenient hours for parents and guardians. Necessary security requirements to maintain the validity of the assessment shall be taken in accordance with the State assessment administration instructions.

(5) If upon inspection of State assessments parents or guardians find the assessments in conflict with their religious belief and wish their student be excused from the assessment, the right of the parents or guardians will not be denied upon written request to the applicable school district superintendent or AVTS director.

[(5)] (6) Opportunity for involvement in the strategic planning process under § 4.13.

[(6)] (7) The right to have their children excluded from research studies or surveys conducted by entities other than [the] a school [district (including charter schools), AVTS or intermediate unit] entity unless prior written consent has been obtained.

[(7) The right of the parent or guardian to review the State assessments in the school district 2 weeks prior to their administration during convenient hours for parents and guardians. All necessary security requirements to maintain the validity of the assessment shall be taken in accordance with the State assessment administration instructions.]

ACADEMIC STANDARDS AND PLANNING

§ 4.11. Purpose of public education.

* * * * *

(g) Public schools provide instruction throughout the curriculum so that students may develop knowledge and skills in the following areas:

* * * * *

[(10) World languages.]

* * * * *

§ 4.12. Academic standards.

(a) School [districts (including charter schools) or AVTSs] entities may develop, expand or improve existing academic standards in the following content areas [until the Board adopts standards under subsection (g) and rescinds the description of the corresponding content areas]:

* * * * *

(8) [World languages. Ability to communicate in a language other than English, including the ability to understand and interpret written and spoken language on a variety of topics and to develop knowledge and understanding of other cultures.]

Reading, writing, speaking and listening.

(i) Reading. The application of phonemic awareness, phonics and word study, vocabulary, fluency and text comprehension in reading critically across subject areas; the interpretation and analysis of literary expression with analysis of the origins and

structures of the English language; and learning how to search a variety of texts to conduct research.

(ii) Writing. Narrative, informational and persuasive formal writing for an audience, including spelling and editing skills; and informal writing to capture and organize information for individual use.

(iii) Speaking and listening. Participation in conversation and formal speaking presentations.

(9) Mathematics. The understanding of fundamental ideas and the development of proficient mathematical skills in numbers, computation, measurement, statistics and data analysis, probability and predictions, algebra and functions, geometry, trigonometry and concepts of calculus. Using this content, students will learn to think, reason and communicate mathematically.

(b) In designing educational programs, school [districts (including charter schools) and AVTSs] entities shall provide for the attainment of the academic standards under subsections (a) and (c) and any additional academic standards [which] that they describe in their strategic plans under § 4.13(c) (relating to strategic plans). Attaining the academic standards in this section requires students to demonstrate the acquisition and application of knowledge.

(c) School [districts (including charter schools) and AVTSs] entities shall prepare students to attain academic standards in mathematics, reading, writing, speaking and listening as contained in Appendix A and incorporated here by reference and additional standards as may be adopted by the Board and promulgated as amendments to this chapter.

(d) A school [district's (including charter schools) or AVTS's] entity's curriculum shall be designed to provide students with planned instruction needed to attain these academic standards.

(e) School [districts (including charter schools) and AVTSs] entities shall apply academic standards for students in all areas described under subsections (a) and (c). The local assessment plan under § 4.52 (relating to local assessment system) shall include a description of how the academic standards will be measured and how information from the assessments is used to assist students having difficulty meeting the academic standards.

(f) School [districts (including charter schools) and AVTSs] entities shall assess the attainment of academic standards developed under subsections (a) and (c) and any other academic standards [which] that they develop and describe in their strategic plans under § 4.52(c) for purposes of high school graduation and strategies for assisting students to attain them. Plans for assessment developed by school [districts (including charter schools) and AVTSs will] entities must take into account that academic standards in subsections (a) and (c) may be attained by students in various ways and shall be assessed in various ways. Children with disabilities may attain the academic standards by completion of their Individualized Education Programs under the Individuals with Disabilities Education Act and this part.

(g) In [developing] planning any revision of the academic standards in subsection (a) content areas, the

Secretary will consult with educators, business and community leaders and parents. **[Academic standards in the following content areas will be developed by the Secretary and presented to the Board no later than the following schedule:**

- April, 1999** **Science and Technology, Environment and Ecology, Health Safety and Physical Education, Civics and Government**
- June, 1999** **Arts and Humanities**
- October, 1999** **Family and Consumer Sciences, Economics, Geography**
- September, 2000** **History, Career Education and Work, World Languages]**

(h) School **[districts (including charter schools) and AVTSs] entities** are responsible under subsections (a), (c)[,] and (g), and § 4.13(c)(5) for assessing individual student attainment of academic standards and for assisting those students having difficulty attaining them. Upon request by a school **[district (including charter schools) or AVTS] entity**, the Department will provide the requestor with technical assistance in the development of academic standards and assessments that are sufficient to assure that students are making progress toward the attainment of standards required for high school graduation under subsection (f) and those identified in the strategic plan under § 4.13(c)(3).

* * * * *

§ 4.13. Strategic plans.

(a) Every school district (including a charter **[schools] school**) shall develop and file with the Department a strategic plan once every 6 years **[and]**, review that plan for revision at the mid-point **and update the plan as necessary each year** according to an implementation schedule developed by the Department **[under § 4.83 (relating to implementation schedule)]**. A school district plan shall incorporate appropriate components of the plan submitted under subsection (b) by an AVTS in which the district participates. In the development of a strategic plan, a school district (including a charter **[schools] school**) will, upon request, receive technical assistance from the Department. **The plan shall be developed by a schedule to be determined by the Department.**

(b) Every AVTS, in conjunction with and with the approval of the majority of its participating school districts, shall develop and file with the Department a strategic plan once every 6 years **[and]**, review that plan at the mid-point **and update the plan each year** according to an implementation schedule developed by the Department **[under § 4.83]**. The strategic plan shall incorporate appropriate components of the strategic plan submitted under subsection (a) by participating districts. In the development of the strategic plan, an AVTS will, upon request, receive technical assistance from the Department.

(c) The strategic plan shall be based upon an analysis of internal and external needs, leading to the specifications of priorities for action and action plans. **The analysis of needs and the specifications of priorities shall address student achievement; the school entity's core purpose; the quality of teaching and learning; the quality of leadership; the use of infrastruc-**

ture; and, continuous professional learning and education. The requirement in subsections (a) and (b) to develop plans every 6 years and revisions every 3 years does not limit a school **[district's (including charter schools) or AVTS's] entity's** ability to conduct a continuous strategic planning process. **Each plan, as received and filed by the Department, becomes an extension of this chapter uniquely adapted to each school entity and can only be changed by the strategic planning committee approved by the local school board.** The plan shall include the following components in addition to others the school **[district (including charter schools) or AVTS] entity** determines to include:

- (1) **[A mission statement.**
- (2) **A listing of the school district's (including charter schools) or AVTS's educational and organizational goals as they relate to student achievement and high school graduation requirements.**
- (3) **A description of academic standards for student achievement which shall be consistent with those under § 4.12 (relating to academic standards).**
- (4) **The planned instruction to be offered and the instructional and assessment practices to be used to strive for the academic goals and attain academic standards under paragraph (3) and the high school graduation requirements under § 4.24 (relating to high school graduation requirements).**
- (5) **An assessment plan under § 4.52 (relating to local assessment system) to determine the degree to which students are achieving academic standards under paragraph (3) including descriptions of methods and measures used to determine achievement, how information from the assessments shall be used to assist students who have not demonstrated attainment of the academic standards at a proficient level or higher and how information from the assessments shall be made available to the public.**
- (6) **A plan for improving students' achievement, including specific, measurable goals for student growth and plans (including those listed in this section) that are designed to attain students' achievement goals. Achievement goals shall demonstrate a connection to the academic standards under § 4.12 including but not limited to annual improvement goals for student scores on State and local assessments.**
- (7) **The professional development plan under section 1205.1 of the School Code (24 P. S. § 12-1205.1) and § 49.17 (relating to continuing professional development) and the induction plan under § 49.16 (relating to approval of induction plans).**
- (8) **A description of the school district's (including charter schools) or AVTS's organization and organizational goals and their relationship to differing student needs within the school district's (including charter schools) or AVTS's goals under paragraph (2) and the attainment of academic standards under paragraph (3).**
- (9) **A description of the professional personnel, school library, classroom and other resources the school district (including charter schools) or AVTS plans to devote to the attainment of academic standards.**

(10) A brief description of the process used to develop the strategic plan, including a list of persons involved in its development.

(11) A plan for additional instructional opportunities for students not achieving at the proficient level including identification procedures, alternate instructional strategies, monitoring of assessment procedures and opportunities for extended learning time.]

(1) *Core purpose.* A summary of the school entity's mission statement, educational vision and shared values.

(2) *Results for students.* A listing of the school entity's educational and organizational goals as they relate to student achievement including high school graduation requirements and for having students meet or exceed proficiency levels established for State academic standards in § 4.12 (relating to academic standards).

(3) *Academic standards.* A description of academic standards for student achievement, which must be consistent with those under § 4.12.

(4) *Measurable annual improvement targets.* A plan for improving students' achievement, including specific, measurable goals for student growth and plans (including those listed in this section) that are designed to attain students' achievement goals. Achievement goals shall demonstrate a connection to the academic standards under § 4.12, including, but not limited to, annual improvement goals for student scores on State and local assessments.

(5) *Curriculum, instruction and instructional materials.* A plan for providing all students access to a rigorous education program, including: curriculum that is aligned to the academic standards; the planned instruction to be offered and the instructional practices and instructional materials to be used to strive for the academic goals and attain academic standards under paragraph (3) and the high school graduation requirements under § 4.24 (relating to high school graduation requirements).

(6) *Assessments and public reporting.* An assessment plan that describes the local assessment system as required under § 4.52 (relating to local assessment system), including methods and measures used to determine the degree to which students are achieving academic standards under paragraph (3). The plan must include descriptions of methods and measures used to determine achievement; how information from the assessments shall be used to assist students who have not demonstrated attainment of the academic standards at a proficient level or higher; how all students as well as significant student subgroups are achieving as compared to the standards and annual improvement targets; and how information from the assessments shall be made available to the public and the parents or guardians of each student. This plan must address how assessment data, including value-added assessment data provided under § 403.3(d)(1)(iii) (relating to assessments), is shared with and used by district-level administrators, school administrators and professional educators to change instructional practice in order to address the learning needs of students.

(7) *Targeted assistance for struggling students.* A plan for additional instructional opportunities for students not achieving at the proficient level, including identification procedures, alternative instructional strategies, monitoring of assessment procedures and opportunities for extended learning time (including tutoring). This plan must describe how grade-level learning plans for students who have not achieved proficiency in reading and mathematics during their primary grades (K–3) under § 4.21(j) (relating to elementary education: primary and intermediate levels) have been implemented and specify the instructional opportunities for students who have not achieved proficiency in reading and mathematics by the end of grade 5 under § 4.21(k).

(8) *Qualified, effective teachers and capable instructional leaders.* A description of the school entity's goals, strategies and performance measures regarding provision of teachers and school leaders designed to ensure that all students attain the academic standards at a proficient level or higher. This description must specifically address how the school entity deploys its most effective and highly qualified teachers to meet the learning needs of students who are below proficiency or are at risk of not graduating.

(9) *Continuous professional education.* A professional education plan, including:

(i) Requirements under section 1205.1 of the School Code (24 P. S. § 12-1205.1) and § 49.17 (relating to continuing professional education).

(ii) The induction plan under § 49.16 (relating to approval of induction plans).

(iii) Professional education programs linked to the academic standards under § 4.12.

(iv) How to promote professional collaboration regarding continuous improvement of instruction and student achievement.

(10) *Organization and goals.* A description of the school entity's organization and organizational goals and their relationship to differing student needs within the school entity's goals under paragraph (2) and the attainment of academic standards under paragraph (3).

(11) *Utilization of resources.* A description of the resources the school entity plans to devote to the attainment of academic standards, including professional personnel, school library, classroom materials, educational technology, school facilities, budget and other resources available to the school entity.

(12) *Parent and community participation.* A description of the school entity's approaches for involving parents or guardians, community groups, businesses and institutions of higher education in the learning process, as appropriate.

(13) *Support for struggling schools.* A description of the school district's or area vocational technical school with multiple campuses' process for assisting schools that do not meet the annual student achievement improvement targets and school experiencing other challenges that deter student attainment of the academic standards at a proficient level or higher.

(14) **Milestones of progress.** A listing of the specific goals, tasks and initiatives that must be accomplished by a specified date within each year of the planning cycle. The goals, tasks and initiatives must be derived from the priorities described in the strategic plan, as locally appropriate benchmarks that ensure consistent monitoring and midcourse correction.

(15) **Planning process.** A brief description of the process used to develop the strategic plan, including a list of persons involved in its development.

(16) **Coordination with other programs.** A description of how the school district will accomplish coordination with the following before or after school programs and services for all grade levels, including prekindergarten, if offered, through 12:

- (i) Child care.
- (ii) After school programs.
- (iii) Youth workforce development programs.
- (iv) Tutoring.

(d) Strategic plans, the 6-year plan, mid-term review report, annual updates and all other revisions to the plan, shall be developed through active participation by parents, students, school directors, teachers from elementary schools, middle/junior high schools, senior high schools and AVTS, educational specialists (for example, school nurses, guidance counselors), school administrators, other school personnel, and business and community representatives. Teacher representatives shall be chosen by teachers[, and]; educational specialists shall be chosen by educational specialists; administrative representatives shall be chosen by the administrative personnel[,]; and school director representatives shall be chosen by the board of the school district or AVTS.

(e) Prior to its approval by the board of directors, the strategic plan and revisions of it shall be made available for public inspection in the school district's or AVTS's offices, on the entity's web site and nearest public library until the next regularly scheduled board meeting or a minimum of 28 days whichever comes first. The plan shall be filed with the Department after it is recommended by the school superintendent of record and is approved by the school district's or AVTS's board of directors. If the board of directors alters the proposed strategic plan developed under subsection (d), it shall consult with the committee which developed it to reach the greatest possible consensus prior to its submission and shall include any minority report which is developed.

* * * * *

(g) As an extension of this chapter, the locally approved strategic plan shall be administered in the school entity under the authority of a commissioned officer, AVTS administrative director or cyber charter school chief executive officer and readily available to the public.

CURRICULUM AND INSTRUCTION

§ 4.21. Elementary education: primary and intermediate levels.

(a) The primary program shall ordinarily be completed by children who are approximately 8 years of age and may include prekindergarten. School districts shall provide opportunities for individualized rates of learning

and social and emotional development that reflect differing rates of development and learning styles of young children.

(b) Curriculum and instruction in the primary program [shall] must be standards-based and focus on introducing young children to formal education, developing an awareness of the self in relation to others and the environment, and developing skills of communication, thinking and learning. Literacy skills, including phonemic awareness, phonological awareness, fluency, vocabulary and comprehension and developmental writing will begin in prekindergarten and kindergarten, if offered, and developed appropriately for the primary grade level.

* * * * *

(d) [Curriculum] Standards-based curriculum and instruction in the intermediate level [shall continue the development of communication, thinking and learning skills and shall begin to focus on learning specific subject matter content] must enable all students to reach the proficient level on the local assessment system and the Statewide assessment system. Academic standards will guide the focus on learning specific subject matter content.

(e) Planned instruction aligned with academic standards in the following areas shall be provided to every student every year in the primary program. Planned instruction may be provided as separate course or other interdisciplinary activity.

* * * * *

(6) Health, safety and physical education, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, [physical] the prevention of alcohol, chemical and tobacco abuse, knowledge and practice of lifetime physical activities, personal fitness, basic movement skills and concepts, motor skill development, principles and strategies of movement, and safety practices in physical activity settings [and the prevention of alcohol, chemical and tobacco abuse].

* * * * *

(f) Planned instruction in the following areas shall be provided to every student every year in the intermediate level program. Planned instruction may be provided as a separate course or as an instructional unit within another course or other interdisciplinary instructional activity:

* * * * *

(3) Science and technology, including[, when appropriate,] instruction about agriculture and agricultural science.

(4) Environment and ecology, including[, when appropriate,] instruction about agriculture and agricultural science.

* * * * *

(8) Health, safety and physical education, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, [physical] the prevention of alcohol, chemical and tobacco abuse, knowledge and practice of lifetime physical activities, personal fitness, basic movement skills and concepts, motor skill development, principles and strategies of movement, and safety practices in

physical activity settings [**and the prevention of alcohol, chemical and tobacco abuse**].

(g) Planned instruction **aligned with academic standards** in the following areas shall be provided to every student at least once by the end of elementary school. Planned instruction may be provided as a separate course or as an instructional unit within another course or other interdisciplinary instructional activity. See section 1511 of the School Code (24 P. S. § 15-1511).

* * * * *

(h) This section does not preclude the teaching of other planned instruction designed to achieve a school [**district's, including charter schools,**] **entity's** mission, goals and academic standards.

* * * * *

(j) [**Beginning in the 2001-2002 school year, students**] **Students** who have not achieved proficiency in reading and mathematics during their primary grades (K—3), as determined by the school [**district, (including charter schools)**] **entity,** shall be afforded additional instructional opportunities through a grade-level learning plan developed by the school [**district (including charter schools)**] **entity.** The plan will assist the student in acquiring the knowledge and skills necessary to achieve at the proficient level. Assessments to measure proficiency shall be described in the local assessment system under § 4.52 (relating to local assessment system).

(k) [**Beginning in the 2001-2002 school year, students**] **Students** who have not achieved proficiency in reading and mathematics by the end of grade 5 as determined on State assessments under § 4.51 (relating to State assessment system) shall be afforded instructional opportunities to develop knowledge and skills necessary to achieve the proficient level.

§ 4.22. Middle level education.

(a) The middle level [**program ordinarily**] **planned instruction aligned with academic standards** serves children who are approximately 11—14 years of age. School [**districts, including charter schools,**] **entities** may modify the grouping of students based upon student needs identified in their strategic plans under § 4.13 (relating to strategic plans).

(b) Curriculum and instruction in the middle level program shall **be standards-based and** focus on mastery of academic subjects, the development of critical and creative thinking, information literacy, good health and encourage active participation in the school and community.

(c) Planned instruction **aligned with academic standards** in the following areas shall be provided to every student in the middle level program. Planned instruction may be provided as a separate course or as an instructional unit within a course or other interdisciplinary instructional activity:

* * * * *

(3) Science and technology, which involves active learning experiences and which may include laboratory experiments and [**, when appropriate,**] instruction in agriculture and agricultural science.

* * * * *

(5) Environment and ecology, including social, political and economic aspects of ecology, and [**when appropriate,**] instruction in agriculture and agricultural science.

* * * * *

(d) This section does not preclude the teaching of other planned instruction designed to achieve a school [**district's, including charter schools,**] **entity's** academic standards.

(e) School [**districts, including charter schools,**] **entities** shall determine the most appropriate way to operate their middle level programs to achieve the purposes under subsection (b) and the academic standards in their strategic plans under § 4.13.

§ 4.23. High school education.

* * * * *

(b) Curriculum and instruction in the high school shall **be standards-based and** provide all students opportunities to develop the skills of analysis, synthesis, evaluation and problem-solving, and information literacy.

(c) Planned instruction **aligned with academic standards** in the following areas shall be provided to every student in the high school program. Planned instruction may be provided as a separate course or as an instructional unit within a course or other interdisciplinary instructional activity:

* * * * *

(9) Family and consumer science, including principles of consumer behavior and basic knowledge of child health [**and**], child care [**skills**] and **early literacy skill development.**

* * * * *

(f) This section does not preclude the teaching of other planned instruction designed to achieve a school [**district's, including charter schools,**] **entity's** academic standards.

(g) School [**districts, including charter schools,**] **entities** shall determine the most appropriate way to operate their high school programs to achieve the purposes under subsection (a) and the academic standards in their strategic plans under § 4.13 (relating to strategic plans).

§ 4.24. High school graduation requirements.

(a) Each school [**district, including charter schools,**] **entity** shall specify requirements for graduation in the strategic plan under § 4.13 (relating to strategic plans). Requirements shall include course completion and grades, completion of a culminating project and results of local assessments aligned with the academic standards. Beginning in the 2002-2003 school year, students shall demonstrate proficiency in reading, writing and mathematics on either the State assessments administered in grade 11 or 12 or local assessment aligned with academic standards and State assessments under § 4.52 (relating to local assessment system) at the proficient level or better to graduate. The purpose of the culminating project is to assure that students are able to apply, analyze, synthesize and evaluate information and communicate significant knowledge and understanding.

* * * * *

(d) Each school [**district, including charter schools,**] **entity** shall describe in its strategic plan

under § 4.13 how its planned instruction is designed to prepare students to meet the requirements of subsection (a).

* * * * *

§ 4.25. Languages.

(a) World language programs must prepare students to be proficient in meeting the World Language Standards issued by the Department. Every school district shall provide planned instruction in at least two languages in addition to English, at least one of which shall be a modern language, and at least one of which shall be offered in a minimum 4-year sequence in the secondary program (middle level and high school).

(b) World language planned instruction under subsection (a) may be offered beginning at any grade level, including the elementary grades.

(c) World Language Standards issued by the Department will address the ability of students to communicate in a language other than English, including the ability to understand and interpret written and spoken language on a variety of topics and to develop knowledge and understanding of other cultures.

§ 4.27. Physical education and athletics.

* * * * *

(b) The physical education program must be adapted for students who are medically unable to participate in the regular physical education program.

* * * * *

§ 4.29. HIV/AIDS and other life-threatening and communicable diseases.

(a) [Instruction] Planned instruction aligned with the academic standards for health regarding the prevention of human immunodeficiency virus (HIV) infection[/], acquired immunodeficiency syndrome (AIDS) and other life-threatening and communicable diseases shall be [given for] provided to every student in the primary, intermediate, middle school and high school [education] levels and shall follow the requirements of subsections (b) [and], (c), (d) and (e).

(b) Educational materials and instruction shall be determined by the local school district [and be appropriate to the age group being taught] in accordance with subsections (c), (d) and (e). [The program of instruction shall include information about the nature of the diseases, treatments and cures, methods of transmission and how infection can be prevented. The school district may omit instruction in the elementary grades on transmission of disease through sexual activity. Programs discussing transmission through sexual activity shall stress that abstinence from sexual activity is the only completely reliable means of preventing sexual transmission. Programs shall stress that avoidance of illegal drug use is the only completely reliable means of preventing transmission of disease through shared drug paraphernalia.]

(c) The program of instruction must include information about the nature of the diseases, treatments and cures, methods of transmission and how infection can be prevented. It is recommended that the school district's age appropriate planned curriculum conform to the "Guidelines for Effective School

Health Education to Prevent the Spread of AIDS," issued by the United State Centers for Disease Control and Prevention or other science-based guideline. The school district may omit instruction in the elementary grades (K-6) on transmission of disease through sexual activity. Programs discussing transmission through sexual activity shall stress that abstinence from sexual activity is the only completely reliable means of preventing sexual transmission. Programs must stress that avoidance of illegal drug use is the only completely reliable means of preventing transmission of disease through shared drug paraphernalia.

(d) A school [district, including charter schools,] entity shall excuse a pupil from HIV/AIDS instruction when, based upon an inspection of the instructional materials, the parents or guardians find that the instruction conflicts with [the] their religious beliefs [or principles of the pupil or parent or guardian of the pupil and when excusal is requested in writing], and the parents or guardians have delivered a written request for excusal to the school entity. [Prior to the commencement of instruction, a school district shall publicize that detailed curriculum outlines and curricular materials used in conjunction with the instruction are available to parents and guardians during normal school hours or at teacher-parent conferences.] Curricular materials, if practical, shall be made available by the school [district] entity for home instructional use by a parent or guardian [of a] if the student has been excused from the [district's] school entity's HIV/AIDS instruction.

(e) Before beginning HIV/AIDS instruction, a school entity shall publicize that detailed curriculum outlines and curricular materials used in conjunction with the planned instruction are available to parents and guardians for review during normal school hours or at teacher-parent conferences.

VOCATIONAL-TECHNICAL EDUCATION

§ 4.31. Vocational-technical education.

(a) Vocational-technical education courses shall be developed in the planned instruction format and shall be accessible to all high school students attending those grades in which vocational-technical education courses are offered. All students and their parents or guardians shall be informed of the students' rights to participate in vocational-technical education programs and courses. Students who complete approved vocational-technical education programs shall have their occupational competency assessed by completion of the appropriate assessment under the Pennsylvania Skills Certificate Program or by completion of another occupational competency assessment approved by the Department. Students shall also demonstrate proficiency in meeting academic standards as required under § 4.24(a) (relating to high school graduation requirements).

* * * * *

(c) Vocational-technical education programs shall consist of a series of planned academic and vocational-technical education courses that are articulated with one another so that knowledge and skills are taught in a systematic manner. When appropriate, vocational-technical education programs must adopt, in program areas for which they are available, industry recog-

nized skills standards and may also include cooperative vocational-technical education and participation in vocational student organizations to develop leadership skills.

* * * * *

§ 4.33. Advisory committees.

* * * * *

(c) An occupational advisory committee shall be established for each vocational-technical education program or cluster of related programs offered by a school district or AVTS. The committee shall be appointed by the board of directors, and a majority of the members of the committee shall be employees and employers in the occupation for which training is provided. The committee shall meet at least [once] twice each year to advise the board, administration and staff on curriculum, equipment, instructional materials, safety requirement, program evaluation and other related matters and to verify that the programs meet industry standards and, if appropriate, licensing board criteria and that they prepare students with occupation related competencies.

ASSESSMENT

§ 4.51. State assessment system.

(a) The State assessment system shall be designed to serve the following purposes:

(1) Provide students, parents, educators and citizens with an understanding of student and school performance consistent with the No Child Left Behind Act of 2001, the act of January 8, 2002 (Pub. L. 107-110, 115 Stat. 1425).

* * * * *

(3) Provide results to school [districts, including charter schools, and AVTSs] entities for consideration in the development of strategic plans under § 4.13 (relating to strategic plans).

* * * * *

(6) Provide results to school [districts, including charter schools, and AVTSs] entities based upon the aggregate performance of all students, for students with an Individualized Education Program (IEP) and for those without an IEP.

(b) [All] State assessment instruments administered in reading and mathematics in grades 5, 8 and 11 and in writing in grades 6, 9 and 11 will be standards-based and criterion referenced and include essay or open-ended response items in addition to other item formats. The proportion of type of items will vary by grade level. Neither State assessments nor academic standards under § 4.12 [shall] may require students to hold or express particular attitudes, values or beliefs. The Department will make samples of assessment questions, instrument formats, and scoring guides available to the public after each administration of State assessments. The criteria for judging performance on State assessments are as follows:

* * * * *

(2) Performance on State mathematics assessments shall be demonstrated by students' responses to questions about grade-appropriate content and by the quality of their responses to questions [which] that require a written solution to a problem.

* * * * *

(d) The State assessments shall be administered annually and [shall] include assessments of the State academic standards in mathematics and reading at grades 3, 4, 5, 6, 7, 8 and 11 [and]; in writing at grades 6, 9 and 11; and in science at grades 4, 7 and 10. The purpose of State assessments administered in [1999] 2005 is to validate assessment instruments and to provide initial information to teachers and schools to guide the redesign of curricula and instructional strategies to enable all students to achieve at the proficient level on the academic standards.

* * * * *

(f) [Expansion] The Board will authorize the expansion of the State assessment system [will be authorized by the Board] through a revision of this chapter.

(g) The Department will implement provisions for security of the State assessment system, including the following provisions:

(1) Action by a professional [employee] employee or commissioned officer [which] that is willfully designed to divulge test questions, falsify student scores or in some other fashion compromise the integrity of the State assessment system as determined by the school [district] entity shall be subject to disciplinary action under [sections 1259—1267 of the School Code (24 P. S. §§ 12-1259—12-1267)] the Professional Educator Discipline Act (24 P. S. §§ 2070.1a—2070.18a).

* * * * *

(i) The Secretary will report each September to the Board and the General Assembly information and pertinent data relating to the State assessment system. The Secretary will also provide each school [district (including charter schools) and AVTS] entity information and pertinent data for the school [district or AVTS] entity and its students.

(j) Children with disabilities and children with limited English proficiency shall be included in the State assessment system as required by Federal law, with appropriate accommodations, [where] when necessary. As appropriate, the Commonwealth will develop guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in the State assessment as determined by each child's Individualized Education Program team under the Individuals with Disabilities Education Act and this part.

§ 4.52. Local assessment system.

(a) Each school [district, including charter schools, and AVTS] entity shall design an assessment system to do the following:

(1) Determine the degree to which students are achieving academic standards under §§ 4.12 and 4.13(c)(3) (relating to academic standards; and strategic plans). The school [district (including charter schools) or AVTS] entity shall provide assistance to students not attaining academic standards at the proficient level or better and the assistance to be provided shall be indicated in the strategic plan under § 4.13.

* * * * *

(c) [The local assessment system shall be described in the district's (including charter schools) or AVTS's strategic plan under § 4.13(b)(5).] If a school entity chooses to use a local assessment to determine whether a student is proficient as outlined in § 4.24(a) (relating to high school graduation requirements), the local assessment must be described in the school entity's strategic plan and adhere to the following:

(1) Local assessments may be a single exam or a combination of assessment strategies, including, but not limited to:

- (i) A Nationally recognized standardized assessment.
- (ii) A locally developed standardized assessment.
- (iii) A portfolio assessment.

(2) The proficient level on the local assessment shall be comparable to the proficient level on the PSSA.

(3) The Department will determine whether a school entity is meeting the requirements of paragraph (2). School entities that use one or more local assessments for the purpose of determining whether a student is proficient as outlined in § 4.24(a) shall submit an annual report on a form and in a manner determined by the Department certifying the comparability or alignment between the PSSA and the local assessment or assessments and providing data specified by the Department to support the certification. The existence of significant numbers of students not achieving proficiency on the PSSA who are deemed proficient by a local assessment will raise an inference that the local assessment is not aligned with the PSSA or the PSSA's meaning of proficient. A school entity whose certification is rejected by the Department shall use the PSSA for the purposes of § 4.24(a) until the school entity receives Department approval that a local assessment or assessments meets the requirements of paragraph (2).

(4) If the report and certification are not submitted as required, or if the Secretary is not satisfied with the form or accuracy of the report and certification that have been submitted by the school entity, the Secretary will exercise the powers under section 2552 of the School Code (24 P. S. § 25-2552) regarding withholding State appropriations, in a manner that is consistent with law, until the Secretary is satisfied that the school entity is in compliance with this chapter.

(d) The local assessment system shall be described in the [district's (including charter schools) or AVTS's] school entity's strategic plan under § 4.13 (b)(5), including industry certifications earned by vocational-technical students, Pennsylvania skill certificates earned by vocational technical education students, and projects completed by vocational-technical education students which demonstrate their occupational competency.

[(d)] (e) * * *

* * * * *

SCHOOL PROFILES

§ 4.61. School profiles.

(a) School profiles developed by the Secretary will include [the following] information as required un-

der Federal and State law[, in addition to other information the Secretary deems appropriate:

(1) Results of State assessments under § 4.51 (relating to State assessment system).

(2) Results of local assessments under § 4.52 (relating to local assessment), which may not include student names, identification numbers or individually identifiable information.

(3) School performance improvement goals based on State assessment results under § 4.13 (relating to strategic plans).

(4) Class size.

(5) Information about the instructional program.

(6) Percentages of students who graduate or who drop out and the status of graduates the year after they leave high school.

(7) Student attendance.

(8) Teacher attendance.

(9) Information about fiscal support of the school, school district or AVTS] .

(b) In compiling school profiles under this chapter, the Department will provide school entities interpretive information to assist in using the profiles for strategic planning under § 4.13 (relating to strategic plans).

* * * * *

ENFORCEMENT AND IMPLEMENTATION

§ 4.81. Allegations of deficiencies.

(a) The Secretary will receive and investigate allegations of curriculum deficiencies from professional [employees] employees, commissioned officers, parents of students or other residents of a school [district or AVTS] entity.

(b) The Secretary will notify the school [district or AVTS] entity's superintendent or chief executive of allegations and may require the superintendent or chief executive to submit one or more of the following:

* * * * *

(c) If the Secretary determines that a curriculum deficiency exists, the school [district or AVTS] entity shall be required to submit to the Secretary for approval a plan to correct the deficiency.

(d) Within 1 year of the implementation of a corrective action plan under subsection (c), the Secretary will review the actions taken to correct the deficiency. If the deficiency remains uncorrected, the Secretary will send a formal notice of deficiency to the governing board of the school [district or AVTS board of school directors] entity, and the notice shall be announced at the [school board] meeting of the school entity's governing board immediately following its receipt.

(e) If the school [district or AVTS] entity does not take appropriate actions to correct the deficiency after the notice of deficiency is announced, the Secretary will take action under State law.

§ 4.82. Exceptions.

(a) The Secretary may grant exceptions to specific provisions of this chapter when it is necessary to adapt them to the curriculum needs of individual school [dis-

tricts or AVTSs] entities or to facilitate transition to the revised provisions of this chapter. Specific exception may be made for school [districts (including charter schools) and AVTSs which] entities that develop or implement academic standards that are comparable to or exceed those found in § 4.12 (relating to academic standards). Exceptions may be granted under the following conditions:

* * * * *

§ 4.83. [Implementation schedule] (Reserved).

[(a) The strategic plans under § 4.13 (relating to strategic plans) shall be developed by a schedule to be determined by the Department. Plans addressing the requirements of this chapter shall be on file with the Department by September 30, 2002.

(b) In the school year in which a school district (including charter schools) or AVTS submits its initial strategic plan under § 4.13, it shall implement professional development, curriculum development and assessment development activities identified in the strategic plan and shall receive technical assistance from the Department.]

[Pa.B. Doc. No. 05-2021. Filed for public inspection November 4, 2005, 9:00 a.m.]

[22 PA. CODE CH. 4]

Academic Standards and Assessment for Career Education and Work

The State Board of Education (Board) proposes to amend Chapter 4 (relating to academic standards and assessment) to add academic standards for Career Education and Work to read as set forth in Annex A. The statutory authority for this proposed rulemaking is the Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

Purpose

The proposed rulemaking will add academic standards for Career Education and Work. The purpose of adding these requirements is to specify academic standards to be achieved by students enrolled at various grade levels in the public schools of this Commonwealth.

The Board previously published proposed academic standards for Career Education and Work at 33 Pa.B. 1847 (April 12, 2003). However, the Board chose not to submit final regulations within the 2-year time frame required by the Regulatory Review Act (71 P. S. §§ 745.1—745.15) to permit the Board to consider emerging new policy initiatives that would affect high schools and career and technical education. A committee composed of Department of Education (Department) staff, representatives of business and schools and State education and business associations developed the revised academic standards for career education and work.

Requirements of the Regulations

Proposed amendments to Chapter 4 define the academic standards for Career Education and Work to be achieved by students enrolled at various grade levels in the public schools of this Commonwealth. Academic standards for Career Education and Work are organized into four areas: (1) career awareness and preparation; (2) career acquisition (getting a job); (3) career retention and advancement; and (4) entrepreneurship. Specific stan-

dards describe what students should know and be able to do by the end of third, fifth, eighth and eleventh grade.

Affected Parties

The proposed rulemaking affects the students and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools and cyber charter schools).

Cost and Paperwork Estimates

Costs to implement this proposed rulemaking may include curriculum development and the professional development of teachers. These costs may vary by school district. Curriculum development is an ongoing activity for schools and is typically part of their normal budgeting. Costs associated with aligning curricula with these standards at the local level will be minimized by technical assistance in curriculum development provided by Department and Intermediate unit staff using existing resources.

Professional development of teachers is an ongoing activity for schools and is addressed in the normal budgeting of school districts and the Department. Specific programs designed to support the implementation of these standards will minimize any financial impact on school districts.

Professional development is provided through the Governor's Institutes for Teachers and is included within current year appropriations. In addition, the act of November 23, 1999 (P. L. 529, No. 48) (Act 48) establishes a requirement for all educators to engage in continuing professional education. Act 48 also requires the Department to provide 40 hours of professional development annually at no cost to teachers. Online professional development courses may be developed on the Career Education and Work academic standards.

Effective Date

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

Sunset Date

In accordance with the terms and provisions of § 4.12(i) (relating to academic standards), the effectiveness of these academic standards will be reviewed by the Board every 3 years. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 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 House and Senate Committees on Education. 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 Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed

rulemaking to Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Jim Buckheit at (717) 787-3787 or TDD (717) 787-7367.

JIM BUCKHEIT,
Executive Director

Fiscal Note: 6-296. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

CHAPTER 4. ACADEMIC STANDARDS AND ASSESSMENT

APPENDIX E

Academic Standards for Career Education and Work

Proposed Academic Standards for Career Education and Work

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- A. Abilities and Aptitudes
- B. Non-Traditional Workplace Roles
- C. Local Career Preparation Opportunities
- D. Career Selection Influences
- E. Preparation for Careers
- F. Career Plan Components

Career Acquisition (Getting a Job) 13.2.

- A. Interviewing Skills
- B. Resources
- C. Career Acquisition Documents
- D. Career Planning Portfolios
- E. Career Acquisition Process

Career Retention and Advancement..... 13.3.

- A. Work Habits

- B. Cooperation and Teamwork
- C. Group Interaction
- D. Budgeting
- E. Time Management
- F. Workplace Changes
- G. Lifelong Learning

Entrepreneurship..... 13.4.

- A. Risks and Rewards
- B. Character Traits
- C. Business Plan

Glossary XXXIX.

XXXVIII. INTRODUCTION

The Academic Standards for Career Education and Work reflect the increasing complexity and sophistication that students experience as they progress through school. Career Education and Work Standards describe what students should know and be able to do at four grade levels (3, 5, 8 and 11) in four areas:

- 13.1 Career Awareness and Preparation
- 13.2 Career Acquisition (Getting a Job)
- 13.3 Career Retention and Advancement
- 13.4 Entrepreneurship

Pennsylvania’s economic future depends on having a well-educated and skilled workforce. No student should leave secondary education without a solid foundation in Career Education and Work. It is the rapidly changing workplace and the demand for continuous learning and innovation on the part of the workers that drive the need to establish academic standards in Career Education and Work.

Through a comprehensive approach, Career Education and Work Standards complement all disciplines and other academic standards. If Pennsylvania’s students are to succeed in the workplace, there are certain skills that they need to obtain prior to graduation from high school. These skills have been identified in the Career Education and Work Standards, but it is up to individual school districts to decide how they are to be taught. Districts can implement integration strategies within existing disciplines or can implement stand-alone courses to specifically address these standards.

A glossary is included to assist the reader in understanding terminology contained in the standards.

13.1. Career Awareness and Preparation			
13.1.3. GRADE 3	13.1.5. GRADE 5	13.1.8. GRADE 8	13.1.11. GRADE 11
<i>Pennsylvania's public schools shall teach, challenge and support every student to realize his or her maximum potential and to acquire the knowledge and skills needed to:</i>			
<p>A. Recognize that individuals have unique interests.</p> <p>B. Recognize that the roles of individuals at home, in the workplace and in the community are constantly changing.</p> <p>C. Identify the range of jobs available in the community.</p> <p>D. Describe the work done by school personnel and other individuals in the community.</p> <p>E. Explore how people prepare for careers.</p>	<p>A. Describe the impact of individual interests and abilities on career choices.</p> <p>B. Relate the impact of change to both traditional and nontraditional careers.</p> <p>C. Describe the range of career training programs in the community such as, but not limited to:</p> <ul style="list-style-type: none"> • Two-and-four year colleges • Career and technical centers • CareerLinks • Community/recreation centers • Faith-based organizations • Local industry training centers • Military • Registered apprenticeship • Vocational rehabilitation centers • Web-based training <p>D. Describe the factors that influence career choices, such as, but not limited to:</p> <ul style="list-style-type: none"> • Geographic location • Job description • Salaries/benefits • Work schedule • Working conditions <p>E. Investigate people's rationale for making career choices.</p>	<p>A. Relate careers to individual interests, abilities, and aptitudes.</p> <p>B. Explain how both traditional and nontraditional careers offer or hinder career opportunities.</p> <p>C. Explain the relationship of career training programs to employment opportunities.</p> <p>D. Analyze the economic factors that impact employment opportunities, such as, but not limited to:</p> <ul style="list-style-type: none"> • Competition • Geographic location • Global influences • Job growth • Job openings • Labor supply • Potential advancement • Potential earnings • Salaries/benefits • Unemployment <p>E. Analyze the relationship of school subjects, extracurricular activities and community experiences to career preparation.</p>	<p>A. Relate careers to individual interests, abilities, and aptitudes.</p> <p>B. Analyze how the changing roles of individuals in the workplace relate to new opportunities within career choices.</p> <p>C. Evaluate school-based opportunities for career awareness/preparation, such as, but not limited to:</p> <ul style="list-style-type: none"> • Career days • Career portfolio • Community service • Cooperative education • Graduation/senior project • Internship • Job shadowing • Part-time employment • Registered apprenticeship • School-based enterprise <p>D. Justify the selection of a career.</p> <p>E. Analyze the relationship between career choices and career preparation opportunities, such as, but not limited to:</p> <ul style="list-style-type: none"> • Associate degree • Baccalaureate degree • Certificate/licensure • Entrepreneurship • Immediate part/full time employment • Industry training • Military training • Professional degree • Registered apprenticeship • Tech Prep

13.1. Career Awareness and Preparation			
13.1.3. GRADE 3	13.1.5. GRADE 5	13.1.8. GRADE 8	13.1.11. GRADE 11
<i>Pennsylvania's public schools shall teach, challenge and support every student to realize his or her maximum potential and to acquire the knowledge and skills needed to:</i>			
F. Explain why education and training plans are important to careers.	F. Identify the components of a career plan, such as, but not limited to: <ul style="list-style-type: none"> • Beginnings of career portfolio • Career goals • Individual interests and abilities • Training/education requirements and costs 	F. Create an individualized career plan including, such as, but not limited to: <ul style="list-style-type: none"> • Assessment and continued development of career portfolio • Career goals • Cluster/pathway opportunities • Individual interests and abilities • Training/education requirements and financing 	F. Assess the implementation of the individualized career plan through the ongoing development of the career portfolio.

13.2. Career Acquisition (Getting a Job)			
13.2.3. GRADE 3	13.2.5. GRADE 5	13.2.8. GRADE 8	13.2.11. GRADE 11
<i>Pennsylvania's public schools shall teach, challenge and support every student to realize his or her maximum potential and to acquire the knowledge and skills needed to:</i>			
A. Identify appropriate speaking and listening techniques used in conversation. B. Discuss resources available in researching job opportunities, such as, but not limited to: <ul style="list-style-type: none"> • Internet • Magazines • Newspapers C. Compose a personal letter.	A. Apply appropriate speaking and listening techniques used in conversation. B. Identify and review resources available in researching job opportunities, such as, but not limited to: <ul style="list-style-type: none"> • Internet • Magazines • Newspapers C. Compose and compare a business and a personal letter.	A. Identify effective speaking and listening skills used in a job interview. B. Evaluate resources available in researching job opportunities, such as, but not limited to: <ul style="list-style-type: none"> • CareerLinks • Internet (i.e. O-NET) • Networking • Newspapers • Professional associations • Resource books (that is <i>Occupational Outlook Handbook, PA Career Guide</i>) C. Prepare a draft of career acquisition documents, such as, but not limited to: <ul style="list-style-type: none"> • Job application • Letter of appreciation following an interview • Letter of introduction • Request for letter of recommendation • Resume 	A. Apply effective speaking and listening skills used in a job interview. B. Apply research skills in searching for a job. <ul style="list-style-type: none"> • CareerLinks • Internet (that is O-NET) • Networking • Newspapers • Professional associations • Resource books (that is <i>Occupational Outlook Handbook, PA Career Guide</i>) C. Develop and assemble, for career portfolio placement, career acquisition documents, such as, but not limited to: <ul style="list-style-type: none"> • Job application • Letter of appreciation following an interview • Letter of introduction • Postsecondary education/training applications • Request for letter of recommendation • Resume

13.2. Career Acquisition (Getting a Job)			
13.2.3. GRADE 3	13.2.5. GRADE 5	13.2.8. GRADE 8	13.2.11. GRADE 11
<i>Pennsylvania's public schools shall teach, challenge and support every student to realize his or her maximum potential and to acquire the knowledge and skills needed to:</i>			
<p>D. Identify the importance of developing a plan for the future.</p> <p>E. Discuss the importance of the essential workplace skills, such as, but not limited to:</p> <ul style="list-style-type: none"> • Dependability • Health/safety • Team building • Technology 	<p>D. Identify individualized career portfolio components, such as, but not limited to:</p> <ul style="list-style-type: none"> • Achievements • Awards/recognitions • Career exploration results • Career plans • Community service involvement/projects • Interests/hobbies • Personal career goals • Selected school work • Self inventories <p>E. Apply to daily activities, the essential workplace skills, such as, but not limited to:</p> <ul style="list-style-type: none"> • Commitment • Communication • Dependability • Health/safety • Personal initiative • Scheduling/time management • Team building • Technical literacy • Technology 	<p>D. Develop an individualized career portfolio including components, such as, but not limited to:</p> <ul style="list-style-type: none"> • Achievements • Awards/recognitions • Career exploration results • Career plans • Community service involvement/projects • Interests/hobbies • Personal career goals • Selected school work • Self inventories <p>E. Explain, in the career acquisition process, the importance of the essential workplace skills/knowledge, such as, but not limited to:</p> <ul style="list-style-type: none"> • Commitment • Communication • Dependability • Health/safety • Laws and regulations (that is Child Labor Law, Fair Labor Standards Act, OSHA, Material Safety Data Sheets) • Personal initiative • Scheduling/time management • Team building • Technical literacy • Technology 	<p>D. Analyze, revise, and apply an individualized career portfolio to chosen career path.</p> <p>E. Demonstrate, in the career acquisition process, the application of essential workplace skills/knowledge, such as, but not limited to:</p> <ul style="list-style-type: none"> • Commitment • Communication • Dependability • Health/safety • Laws and regulations (that is Child Labor Law, Fair Labor Standards Act, OSHA, Material Safety Data Sheets) • Personal initiative • Scheduling/time management • Team building • Technical literacy • Technology

13.3. Career Retention and Advancement			
13.3.3. GRADE 3	13.3.5. GRADE 5	13.3.8. GRADE 8	13.3.11. GRADE 11
<i>Pennsylvania's public schools shall teach, challenge and support every student to realize his or her maximum potential and to acquire the knowledge and skills needed to:</i>			
<p>A. Identify attitudes and work habits that contribute to success at home and school.</p> <p>B. Identify how to cooperate at both home and school.</p>	<p>A. Explain how student attitudes and work habits transfer from the home and school to the workplace.</p> <p>B. Explain the importance of working cooperatively with others at both home and school to complete a task.</p>	<p>A. Determine attitudes and work habits that support career retention and advancement.</p> <p>B. Analyze the role of each participant's contribution in a team setting.</p>	<p>A. Evaluate personal attitudes and work habits that support career retention and advancement.</p> <p>B. Evaluate team member roles to describe and illustrate active listening techniques:</p> <ul style="list-style-type: none"> • Clarifying • Encouraging • Reflecting • Restating • Summarizing

13.3. Career Retention and Advancement			
13.3.3. GRADE 3	13.3.5. GRADE 5	13.3.8. GRADE 8	13.3.11. GRADE 11
<i>Pennsylvania's public schools shall teach, challenge and support every student to realize his or her maximum potential and to acquire the knowledge and skills needed to:</i>			
<p>C. Explain effective group interaction terms, such as, but not limited to:</p> <ul style="list-style-type: none"> • Compliment • Cooperate • Encourage • Participate <p>D. Explain how money is used.</p> <p>E. Discuss how time is used at both home and school.</p> <p>F. Identify changes that occur at both home and school.</p> <p>G. Define and describe the importance of lifelong learning.</p>	<p>C. Identify effective group interaction strategies, such as, but not limited to:</p> <ul style="list-style-type: none"> • Building consensus • Communicating effectively • Establishing ground rules • Listening to others <p>D. Explain budgeting.</p> <p>E. Develop a personal schedule based on activities and responsibilities at both home and school.</p> <p>F. Describe the impact of changes at home, school and work.</p> <p>G. Describe how personal interests and abilities impact lifelong learning.</p>	<p>C. Explain and demonstrate conflict resolution skills:</p> <ul style="list-style-type: none"> • Constructive criticism • Group dynamics • Managing/leadership • Mediation • Negotiation • Problem solving <p>D. Analyze budgets and pay statements, such as, but not limited to:</p> <ul style="list-style-type: none"> • Charitable contributions • Expenses • Gross pay • Net pay • Other income • Savings • Taxes <p>E. Identify and apply time management strategies as they relate to both personal and work situations.</p> <p>F. Identify characteristics of the changing workplace and explain their impact on jobs and employment.</p> <p>G. Identify formal and informal lifelong learning opportunities that support career retention and advancement.</p>	<p>C. Evaluate conflict resolution skills as they relate to the workplace:</p> <ul style="list-style-type: none"> • Constructive criticism • Group dynamics • Managing/leadership • Mediation • Negotiation • Problem solving <p>D. Develop a personal budget based on career choice, such as, but not limited to:</p> <ul style="list-style-type: none"> • Charitable contributions • Fixed/variable expenses • Gross pay • Net pay • Other income • Savings • Taxes <p>E. Evaluate time management strategies and their application to both personal and work situations.</p> <p>F. Evaluate strategies for career retention and advancement in response to the changing global workplace.</p> <p>G. Evaluate the impact of lifelong learning on career retention and advancement.</p>

13.4. Entrepreneurship			
13.4.3. GRADE 3	13.4.5. GRADE 5	13.4.8. GRADE 8	13.4.11. GRADE 11
<i>Pennsylvania's public schools shall teach, challenge and support every student to realize his or her maximum potential and to acquire the knowledge and skills needed to:</i>			
<p>A. Define entrepreneurship.</p>	<p>A. Identify the risks and rewards of entrepreneurship.</p>	<p>A. Compare and contrast entrepreneurship to traditional employment, such as, but not limited to:</p> <ul style="list-style-type: none"> • Benefits • Job security • Operating costs • Wages 	<p>A. Analyze entrepreneurship as it relates to personal career goals and corporate opportunities.</p>

13.4. Entrepreneurship			
13.4.3. GRADE 3	13.4.5. GRADE 5	13.4.8. GRADE 8	13.4.11. GRADE 11
<i>Pennsylvania's public schools shall teach, challenge and support every student to realize his or her maximum potential and to acquire the knowledge and skills needed to:</i>			
<p>B. Describe the character traits of successful entrepreneurs, such as, but not limited to:</p> <ul style="list-style-type: none"> • Adaptability • Creative thinking • Ethical behavior • Leadership • Positive attitude • Risk-taking <p>C. Describe age-appropriate entrepreneurial opportunities, such as, but not limited to:</p> <ul style="list-style-type: none"> • Bake sale • Crafts • Lemonade stand • Pet care 	<p>B. Discuss the entrepreneurial character traits of historical or contemporary entrepreneurs.</p> <p>C. Discuss the steps entrepreneurs take to bring their goods or services to market, such as, but not limited to:</p> <ul style="list-style-type: none"> • Marketing • Production • Research and development • Selection of goods and services 	<p>B. Evaluate how entrepreneurial character traits influence career opportunities.</p> <p>C. Identify and describe the basic components of a business plan, such as, but not limited to:</p> <ul style="list-style-type: none"> • Business idea • Competitive analysis • Daily operations • Finances/budget • Marketing • Productive resources (human, capital, natural) • Sales forecasting 	<p>B. Analyze entrepreneurship as it relates to personal character traits.</p> <p>C. Develop a business plan for an entrepreneurial concept of personal interest and identify available resources, such as, but not limited to:</p> <ul style="list-style-type: none"> • Community Based Organizations (that is chambers of commerce, trade/technical associations, Industrial Resource Centers) • Financial institutions • School-based career centers • Small Business Administration services (that is SCORE, Small Business Development Centers, Entrepreneurial Development Centers) • Venture capital

Academic Standards for Career Education Work

XXXIX. GLOSSARY

Aptitudes:	Capacity to learn and understand.
Associate degree:	A postsecondary degree typically earned within a 2-year time frame.
Baccalaureate degree:	A postsecondary degree, also known as a bachelor's degree, typically earned within a 4-year time frame from a college or university.
Benefits:	Something of value that an employee receives in addition to a wage or salary. Examples include health and life insurance, vacation leave, retirement plans, and the like.
Budget:	A financial plan that summarizes anticipated income and expenditures over a period of time.
Business plan:	A prepared document detailing the past, present, and future of an organization.
Career and technical centers:	Schools that educate secondary students and adults through academic instruction, job preparation and acquisition of occupational skills leading to credentials or employment, or both, in specific industries. The centers also provide opportunities for transition to postsecondary education and continuing education.
Career cluster:	A grouping of related occupations, which share similar skill sets.
Career days:	Special events that allow students to meet with employers, career development specialists, community-based organization representatives and postsecondary educators. Events are designed to encourage students to gain information about careers and job opportunities.

Career plan:	A document developed by the student that identifies a series of educational studies and experiences to prepare them for postsecondary education or work, or both, in a selected career cluster or area.
Career portfolio:	An ongoing, individualized collection of materials (electronic or hard copy) that documents a student's educational performance, career exploration and employment experiences over time. While there is no standard format that a career portfolio must take, it typically includes a range of work, containing assignments by the teacher/counselor and selections by the student. It serves as a guide for the student to transition to postsecondary education or the workplace, or both.
Career retention and advancement:	Career retention is the process of keeping a job. Career advancement is the process of performing the necessary requirements to progress in a career.
CareerLinks:	A cooperative system that provides one-stop delivery of career services to job seekers, employers and other interested individuals.
Certificate/licensure:	A document, issued by associations, employers, educational institutions, government, and the like, confirming that one has fulfilled the requirements and is able to perform to a specified level of proficiency within a career field.
Child Labor Laws:	Legislation governing the employment of children under 18 years of age.
Competitive analysis:	A tool that allows a business to identify its competitors and evaluate their respective strengths and weaknesses.
Cooperative education:	A structured method of instruction whereby students alternate or coordinate their high school studies with a job in a field related to their academic or career objectives.
Entrepreneurs:	Individuals who engage in the process of organizing, managing and assuming the risk of a business or enterprise.
Entrepreneurship:	The process of organizing, managing, and assuming the risks of a business or enterprise.
Fair Labor Standards Act:	A Federal law that defines overtime and wage requirements (26 U.S.C.A. §§ 201—219).
Fixed/variable expenses:	Fixed expenses are regular in their timing and amount, and include such things as rent, mortgage, car payment, and insurance. Variable expenses are irregular in their timing and amount, and include such things as food, clothing, home and car maintenance, entertainment and gifts.
Global influences:	Political and cultural changes, which impact the world and its economy.
Gross pay:	The amount earned before deductions, such as taxes, insurance and retirement/pension plan.
Industrial resource centers:	Nonprofit corporations, which provide assistance to improve the competitive position of small-to-medium sized manufacturers.
Internship:	A work experience with an employer for a specified period of time to learn about a particular industry or occupation, which may or may not include financial compensation. The workplace activities may include special projects, a sample of tasks from different jobs or tasks from a single occupation.
Job shadowing:	Typically as part of career exploration activities in late middle and early high school, a student follows an employee for one or more days to learn about a particular occupation or industry. Job shadowing is intended to help students explore a range of career objectives and to possibly select a career pathway.
Labor supply:	The number of persons either working or unemployed and actively seeking work.
Marketing:	The process or technique of promoting, selling, and distributing a product or service.
Material Safety Data Sheets:	Federally mandated listings of all hazardous materials that will impact the health and safety of the workers and that are required to be posted in the workplace.
Mediation:	Third-party intervention between conflicting parties to promote reconciliation, settlement or compromise.
Net pay:	The amount remaining after deductions, such as taxes, insurance and retirement/pension plan.
Networking:	The act of exchanging information, contacts and services.
Non-traditional careers:	Fields of work for which individuals from one gender comprise less than 25% of the individuals employed in those occupations or fields of work.
O•NET:	Occupational Information Network—A free public access online web-based system provided by the United States Department of Labor, which includes comprehensive up-to-date occupational information including skills, knowledge, abilities and tasks for more than 950 occupations.

Operating costs:	The funds necessary to operate a business, not including the cost of goods sold. This is also referred to as overhead.
OSHA:	Occupational Safety and Health Administration—A National agency with representatives in each state who monitor health and safety issues in the workplace.
Professional associations:	Organizations of people having common interests.
Professional degree:	A title conferred on students by a college, university or professional school upon completion of a program of study.
Registered apprenticeship:	A formal program registered with the United States Department of Labor's Bureau of Apprenticeship and Training and with the Pennsylvania Apprenticeship Council. This program must follow strict guidelines as to the types of training and amount of training time an apprentice receives and leads directly into occupations requiring that training for entry.
Resume:	A summary of one's personal qualifications, education/training and employment experience.
Salaries/benefits:	Financial compensation paid regularly for services (See "benefits" for definition).
Sales forecasting:	Predicting the number of services or units likely to be sold over a specified period of time.
School-based career centers:	Specialized areas in schools equipped with resources and materials used to research postsecondary and occupational opportunities.
School-based enterprise:	The production of goods or services as part of a school program.
SCORE:	Service Corps of Retired Executives—A Small Business Administration Federally-sponsored program to assist small-to-medium sized companies.
Self inventories:	Evaluations of an individual's strengths, weaknesses and interests, as it relates to career planning.
Tech Prep:	The name given to programs that offer at least 4 years of sequential course work at the secondary and postsecondary levels to prepare students for technical careers. The curricula are designed to build student competency in academic subjects, as well as to provide broad technical preparation in a career area.
Technical literacy:	The ability of individuals to use existing and emerging technologies, equipment, language, materials and manuals to participate intelligently in performing tasks related to everyday life, school or job.
Time management strategies:	Scheduling techniques used to effectively and efficiently direct or control activities.
Traditional careers:	Fields of work for which individuals from one gender comprise more than 25% of the individuals employed in those occupations or fields of work.
Unemployment:	Measurement of the number of people who are not working and who are actively seeking work.
Venture capital:	Public or private funds invested in a potentially profitable business enterprise despite risk of loss.
Vocational rehabilitation centers:	Educational facilities that provide life skills and occupational training services for individuals with special needs.
Wages:	Payments of money for labor or services according to contract and on an hourly, daily or piecework basis.
Web-based training:	Instruction that is available online.
Work habits:	Acquired behaviors that individuals regularly perform in completing tasks related to chores, school or job.
Working conditions:	The environment in which an individual is employed.

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STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18] Physician Assistants

The State Board of Medicine (Board) proposes to amend §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification examination and registration fees) and §§ 18.121, 18.122, 18.131, 18.141—18.145, 18.151—18.159, 18.161, 18.162, 18.171, 18.172 and 18.181 pertaining to physician assistants (PA) and their supervising physicians to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

Section 13 of the Medical Practice Act of 1985 (act) (63 P. S. § 422.13) authorizes the Board to promulgate regulations that define the services and circumstances under which a PA may perform a medical service and which define the supervision and personal direction required by the standards of acceptable medical practice embraced by the medical doctor community in this Commonwealth.

C. *Background and Purpose*

Since the PA regulations were last amended in 1993, experience in the application of the regulations has demonstrated the need for amendments that reflect the current state-of-the-art of medical practice as can also be observed in the American Medical Association (AMA) guidelines for PAs. The existing regulations prevent the effective use of PAs to the full extent of their training. The Board notified the regulated community that it intended to propose updating its PA regulations and sought predraft input. Numerous medical doctors and physician organizations wrote to support the proposed amendments, noting that the current regulations are, in many ways, overly and unnecessarily restrictive.

D. *Description of the Proposed Rulemaking*

There are extensive revisions proposed to these regulations. Some of the amendments are in the nature of editorial changes, mostly to conform the regulatory language to the 2002 amendments to the act. Other changes are more substantive in nature.

The following is a section-by-section summary of the proposed rulemaking by category.

The proposed rulemaking amends the term “physician assistant supervisor” to “supervising physician” in § 18.121 (relating to purpose) and at all other places it appears in Chapters 16 and 18. The amendment emphasizes that the PA’s supervisor must be a physician and eliminates the confusion that sometimes surrounded the term “physician assistant supervisor.”

Proposed § 18.122 (relating to definitions) would delete the definition of “direct supervision.” The term “direct supervision” is found only in § 18.162 (relating to emergency medical services), which the Board proposes to amend by deleting the requirement that PAs provide emergency services only under the direct supervision of the supervising physician.

The definition of “supervision” would also be amended to more accurately reflect how PAs are actually super-

vised and more clearly reflect the important responsibility that the PA assumes when serving in this role. The amendments primarily ease the need for the physical presence and intervention of the physician in oversight of the PA. The amended definition reiterates that the constant physical presence of the supervising physician is not required so long as the supervising physician and PA are or can easily be in contact with one another by radio, telephone or other telecommunication device.

Under examples of the “appropriate degree of supervision,” § 18.122(iii) would be amended to eliminate the requirement for weekly review of patient charts. The proposed amendment more closely aligns with the practicality of a physician’s practice. Current requirements of chart review and counter-signature of all PA charts are cumbersome and ineffective. A review of selected charts which have specific diagnoses or complex medical management would support a more effective use of physician time and promote quality assurance.

The definition of “medical regimen” would be changed to a therapeutic, corrective or diagnostic measure undertaken or ordered by a physician or PA acting within the PA’s scope of practice and in accordance with the written practice agreement between the supervising physician and the PA. Currently, the text reads that a medical regimen is ordered only by the supervising physician which is for the management of a specific condition and which is incorporated into the written agreement between the supervising physician and PA.

The proposed amendments would define “order” as “an oral or written directive for a therapeutic, corrective or diagnostic measure, including a drug to be dispensed for onsite administration in a hospital, medical care facility or office setting.” This new language would provide clarity as to the parameters of an order and provide a comprehensive foundation which lends itself to the expanded definition of a medical regime.

Proposed amendments to § 18.131 (relating to recognized educational programs) would change approval of PA training programs to recognition of those programs to more accurately reflect that the Board does not approve programs but rather recognizes those that are accredited, as mandated by section 36(b) of the act (§ 422.36(b)).

This proposed rulemaking updates the reference to the training program approvals for PAs by the AMA’s Committee on Allied Health Education and Accreditation (CAHEA), Commission for Accreditation of Allied Health Educational Programs (CAAHEP), Accreditation Review Commission (ARC-PA) or any successor organization. In 1994, the AMA made CAHEA, its accreditation body, independent and changed its name to CAAHEP. In 2000, ARC-PA was created due to the overwhelming growth of PA programs and the difficulties that developed in trying to evaluate them appropriately. The AMA and other physician groups remain active in the accreditation process and occupy seats on the committee.

Section 18.142(a)(2) (relating to written agreements) would be amended so the written agreement will no longer be specific as to the requirement for describing how the PA will assist each physician. The section would be amended to state that the agreement list functions that will be delegated to the PA, deleting the requirements that it also describe how the PA will assist each named physician and the details of how the supervising physician will be assisted. The amendments would also have the agreement signed only by each physician acting as a supervising physician or a substitute supervising

physician instead of by each physician and the PA. It would also describe how the PA "works with" instead of "assists" each physician. Currently, the regulations specify that the agreement contain procedures selected from the list in § 18.151 (relating to role of physician assistant), all other delegated tasks, instructions for use of the PA in the performance of delegated tasks and medical regimens to be administered or relayed by the PA. This requirement inhibits the effective utilization of PAs. In addition, it forces the Board to become more directly involved in the approval of practice guidelines for physicians and PAs rather than credentialing health care professionals.

Proposed amendments to §§ 18.144 and 18.155 (relating to responsibility of primary physician assistant supervisor; and satellite locations) eliminate the requirement for the supervising physician to see each patient on every third visit or at least once a year. The Board proposes in § 18.44(4) to require that the physician determine the need to see each patient based upon the patient's individual needs or at the patient's request. The amendment recognizes that the involvement of the supervising physician should be predicated on factors such as the practice type, site and the condition of the patient. This would also apply to satellite facilities. Because the existing requirement applies to all patients who are treated by a PA it includes within its application situations in which it is virtually impossible for a physician to meet. For example, if a patient is seen by a PA for a minor problem and does not return within a year to be seen by the physician, the physician cannot comply with the requirement. Attempts to meet the requirements of the existing regulation result in inefficient use of resources. The PA can easily manage a patient with a well-controlled chronic problem who is checked periodically to see if all is well. However, if the patient is checked only once annually, a physician must be involved due to the requirements of the existing regulation. Experience has demonstrated that the existing regulation is counter-productive. The option remains for the patient to request to be seen by the supervising physician.

The Board also proposes to amend § 18.151. This section currently includes a list of tasks that the PA can perform (subject to the proviso that the list is not all-inclusive). The list of tasks PAs can perform in the current regulations is somewhat limiting. Although the regulation states that the list is not intended to be all-inclusive, the Board is prohibited by court rulings from rendering advisory opinions. Therefore, one is left to speculate as to whether or not a given task not on the list, but critical to a particular practice, is permitted. The proposed rulemaking would replace the list with statements that the PA may practice medicine with physician supervision and perform duties as delegated by the physician. As amended, this section would establish as a baseline standard that the PA should be authorized to perform any medical service delegated by the physician.

Currently, § 18.152 (relating to prohibitions) prohibits a PA from pronouncing death. The amendments proposed to §§ 18.151 and 18.152 would allow a PA to pronounce a patient dead and also allow a PA to authenticate with his signature any form related to pronouncing death. PAs who practice in long term care facilities, hospital wards, hospice care or in hematology/oncology, among other specialties, encounter circumstances when they may be the only medical care provider available at the time of a patient's death. Allowing delegation of the pronouncement of death simplifies procedures for the patient's family at a difficult time. The amendment allows only pronouncement of death. Certification as to the cause of death

continues to be reserved for the supervising physician or a coroner as set forth in section 502 of the Vital Statistics Law of 1953 (35 P. S. § 450.502).

Amended § 18.151 would also allow the PA to sign any form that otherwise requires a physician's signature as permitted by the supervising physician, state or Federal law and facility protocol, if applicable. This will relieve the physician of much routine paperwork such as signing forms for school physicals.

Among the list of those things in § 18.152 that a PA may not do is the performance of a medical service without physician supervision as set forth in the written agreement.

The proposed amendments to § 18.153 (relating to executing and relaying medical regimens) change the 12-hour requirement for the PA to relate all medical regimens executed or relayed while the physician was not present to the supervising physician to 36 hours. This is also reflected in § 18.158 (relating to prescribing and dispensing drugs) for all medications prescribed or dispensed and is applicable to prescribing or dispensing "in accordance with the written agreement." The 12-hour time frame in both aspects of the current regulations proved to be overly restrictive. It is not uncommon that a treatment for a minor illness done late in the day goes unreported until the start of the next business day, more than 12 hours later. For PAs taking weekend call, the reporting for minor problems would not occur until the following Monday.

The Board proposes to amend § 18.153(b) by extending the period for reporting to the supervising physician from 12 to 36 hours in § 18.155(b)(4) and the outside period for countersignature from 3 to 10 days as in § 18.153(c). For satellite facilities, the proposed amendments would also lengthen the time for counter-signature to 10 days. During predraft input, the medical doctor community advised the Board that the current 3-day counter-signature requirement is too restrictive and causes compliance problems. The regulation does not take into consideration weekends or a supervising physician's vacation schedules. This is particularly troublesome for satellite facilities. By expanding to a 10-day signature, compliance becomes more practical. This amendment is also incorporated into §§ 18.142 and 18.158.

Current § 18.157 (relating to administration of controlled substances and whole blood and blood components) provides that a PA may administer controlled substances as well as whole blood and blood components if that authority is addressed in the written agreement and is separately ordered by the supervising physician specifying a named drug for a named patient. The Board proposes to eliminate the requirement for the separate order of the supervising physician specifying the drug and patient and allowing it to be addressed only in the written agreement and be administered by the PA on that authority. The Board believes that the current language creates an unnecessary barrier to utilization of PAs in surgical, hematology/oncology, pain management and hospice care.

Section 18.158 currently includes a formulary of categories of drugs that a PA may prescribe if permission is granted in the written agreement. The supervising physician reviews this formulary and chooses those categories of drugs that he will allow the PA to prescribe or dispense. The list becomes a part of the written agreement that must be submitted to the Board. The amendment would eliminate the formulary. Instead, new subsec-

tions (a) and (b) state that the physician can delegate prescribing, dispensing and administration of drugs and therapeutic devices to the PA if the drug or device is permitted under the written agreement. The PA would be subject to the regulations of the Board and the Department of Health regarding dispensing standards, prescribing and labeling. The proposed rulemaking would have the written agreement only contain a list of categories of drugs that the PA may not prescribe. The existing formulary suffers from the same limitations noted with the list of tasks a PA can perform. The current formulary is out-of-date and places restrictions on common drugs used to treat patient problems routinely managed by PAs. For example, the management of warfarin sodium therapy for atrial fibrillation, deep venous thrombosis and mechanical heart valves has become commonplace in the family practice setting. PAs are routinely called upon to adjust medication levels. The proposed rulemaking would delete current restrictions on prescribing of blood formation or coagulation drugs.

Currently, § 18.158(a)(4) creates a 90-day waiting period after approval by the Food and Drug Administration (FDA) for a new drug or new uses for a drug before a PA can prescribe it. The proposed rulemaking eliminates that waiting period. The original purpose has been overcome by practice in recent years. Because physicians provide ongoing input and oversight in the treatment of patients by the PAs, delaying the prescribing for 90 days is overly restrictive.

The proposed rulemaking also deletes a statement in § 18.158(b)(4) specifying that the supervising physician assumes responsibility for all prescriptions and dispensing of drugs by the PA. However, § 18.144 requires the supervising physician to assume responsibility for the performance of the PA, so this amendment is editorial in that it simply eliminates redundancy.

The proposed rulemaking deletes subsection (g), which states that the PA may only prescribe or dispense drugs for a patient under the care of the supervising physician. PAs often provide care to patients in a practice that are new patients or regularly see one of the primary supervisor's partners. This section is also redundant and limiting because the supervising physician assumes ultimate responsibility for every patient seen by the PA as set forth in § 18.402(a)(6) (relating to delegation) and section 17(c) of the act (63 P. S. § 422.17(a)).

The Board proposes to delete a prohibition in § 18.158(c)(4)(i) preventing a PA from prescribing or dispensing a pure form or combination of drugs. The Board finds the prohibition is vague and unnecessary due to the current state of training received by PAs. Predraft input suggested that experience has demonstrated that PAs have the knowledge and skill to properly perform this function.

The amendments in § 18.158(c)(4)(iii) and (iv) eliminate the statement in that a PA may not prescribe or dispense drugs not approved by the FDA. Existing law already prevents anyone, including physicians, from prescribing or dispensing drugs not approved by the FDA.

The proposed rulemaking removes from § 18.158(c)(4)(v) the prohibition on a PA prescribing or dispensing parenteral drugs other than insulin or emergency allergy kits or other approved drugs. Comments provided in pre-draft input advised that this regulation is overly restrictive.

Section 18.158(c)(4)(viii) currently states that a PA may not issue a prescription for more than a 30-day supply of

medication except in cases of chronic illness where the PA can write for a 90-day supply. It also states that the PA can authorize refills up to 6 months from the original prescription. This proposed rulemaking seeks to eliminate these limitations. The existing limitation proved too restrictive. For example, it is not unusual to prescribe contraceptives for a year for healthy individuals or prescribe medications for the management of stable chronic conditions. The existing limitations can cause patients to incur additional costs for unnecessary office visits in order to continue receiving the medication.

Section 18.158(a)(5) is amended to add a provision authorizing the PA to receive, sign for and distribute drug samples. This provision will allow the PA to relieve the supervising physician of this duty and allow the PA to dispense samples of medications he is already authorized to dispense.

In addition, proposed § 18.158(a)(6) specifically mentions that the PA who will prescribe controlled substances must register with the Federal Drug Enforcement Administration (DEA). Proposed § 18.158(b)(2) also specifies that space on prescription blanks must be provided for the PA to record his DEA number. This amendment reminds the PA of the requirement to register and serves to bring the PA's practice into conformance with Federal law.

The current regulations do not allow PAs to prescribe or dispense Schedule I or II controlled drugs. Proposed § 18.158(a)(3) calls for allowing them to prescribe or dispense Schedule II controlled drugs for initial therapy up to a 72-hour dose and requires that they notify the supervising physician within 24 hours. It would also allow the PA to write a prescription for a Schedule II controlled drug for up to a 30-day supply if originally ordered and approved for ongoing therapy by the supervising physician. There are many physician and PA specialties that deal with chronic pain management. In specialties such as oncology, surgery, anesthesiology or in the family practice setting, PAs are an integral part of patient care. Managing the patients' pain in these settings often requires the ability to write prescriptions for Schedule II narcotics on both a short and long-term basis. At times, patients may require therapy or need to renew prescriptions when the physician is not immediately available but his PA is available. Also, there are many PAs that work in settings such as emergency rooms, walk-in clinics and industrial clinics. The inability to write a prescription for a Schedule II narcotic impedes the care of the patient in these settings. Allowing for a 72-hour supply of medicine until a physician sees that patient enhances the care rendered by the PA.

Current § 18.158(c)(4)(iii) does not allow PAs to prescribe medications for uses not approved by the FDA. This proposed rulemaking would no longer prohibit this "off-label" prescribing, but instead mandates that the PA follow the supervising physician's instructions and the written agreement. The FDA approves uses of medications for the purpose of marketing by the manufacturer, not for use by physicians. Off-label use may represent the best standard of care. The decision to use a medication for this purpose should be left to the clinician. The best example of an off-label use of a drug is the millions of prescriptions for aspirin after myocardial infarction. Off-label use of drugs is common in areas such as AIDS-related treatment, oncology and pediatrics. In pediatrics, as many as 80% of drugs are administered off-label because manufacturers are understandably reluctant to enroll young children in clinical trials of many drugs.

The amendments to § 18.158 also would delete the prohibition against a PA compounding ingredients when dispensing drugs except for adding water in paragraph (4)(vii). There are several medication mixtures that are commonly used in practice. One is the mixture of Benadryl, viscous Lidocaine and Maalox in the treatment of stomatitis secondary to chemotherapy. Pediatric groups will typically combine decongestants and cough suppressants in other doses than commercially available.

Section 18.161(b) (relating to physician assistant employed by medical care facilities) currently calls for the PA to only be responsible to a maximum of three supervising physicians. The proposed amendment to § 18.161 allows supervising physicians to make that determination by deleting this requirement. Health professional regulations should allow for flexible and creative innovation and appropriate use of all members of the health care workforce. Medical facilities should be allowed some flexibility in staffing and team deployment so long as they maintain proper supervisory arrangements. The current regulation restricts the ability of the PA to serve as house staff in a medical care facility for more than three physicians. This is particularly true in the surgical subspecialty setting. PAs may rotate as frequently as every month to different surgical subspecialties and be responsible to multiple surgeons in the process. The current regulations restrict this ability.

This proposed rulemaking adds § 18.162(b) to address the practice of PAs in emergency situations. The emergency situations addressed are those in a disaster situation and not in the normal course of a medical practice. The additions allow for the use of those licensed in other states to function without the usual requirements for themselves and the physicians working with them.

The amendments to § 18.171 (relating to physician assistant identification) maintain the requirement that a PA wear an identification tag bearing the term "physician assistant" but would modify the requirement for it to be in 16 point or larger type to being an easily readable type. The typeface for 16 point is excessively large, particularly for individuals with lengthy or hyphenated names. Finally, the amendments render the regulations gender neutral.

E. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivision or the private sector.

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 October 26, 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.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Gerald S. Smith, Board Counsel, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication for the proposed rulemaking in the *Pennsylvania Bulletin*.

CHARLES D. HUMMER, Jr., M. D.,
Chairperson

Fiscal Note: 16A-4916. 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 16. STATE BOARD OF MEDICINE-GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

* * * * *

(b) The following nonmedical doctor licenses [**and certificates**] are issued by the Board:

* * * * *

(2) Physician assistant [**certificate**] license.

(c) The following registrations are issued by the Board:

(1) Registration as a [**physician assistant supervisor**] **supervising physician** of a physician assistant.

* * * * *

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(c) *Physician Assistant* [**Certificate**] **License**

* * * * *

Registration, [**physician assistant supervisor**] **supervising physician**..... \$35

Registration of additional [**supervisors**] **supervising physicians** \$5

* * * * *

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter D. PHYSICIAN ASSISTANTS GENERAL PROVISIONS

§ 18.121. Purpose.

This subchapter implements section 13 of the act (63 P. S. § 422.13) pertaining to physician assistants and provides for the delegation of certain medical tasks to qualified physician assistants by [**physician assistant**

supervisors] supervising physicians when the delegation is consistent with the written agreement.

§ 18.122. Definitions.

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

* * * * *

[Direct supervision—The physical presence of the physician assistant supervisor on the premises so that the physician assistant supervisor is immediately available to the physician assistant when needed.]

* * * * *

Drug—A term used to describe a [drug] medication, device or agent which a physician assistant prescribes or dispenses under § 18.158 (relating to prescribing and dispensing drugs, pharmaceutical aids and devices).

* * * * *

Medical regimen—A therapeutic, corrective or diagnostic measure [ordered by a physician assistant supervisor which is required for the management of a specific condition and which is incorporated into the written agreement.] performed or ordered by a physician, or performed or ordered by a physician assistant acting within the physician assistant's scope of practice, and in accordance with the written agreement between the supervising physician and the physician assistant.

* * *

Order—An oral or written directive for a therapeutic, corrective or diagnostic measure, including a drug to be dispensed for onsite administration in a hospital, medical care facility or office setting.

* * * * *

Physician assistant—An individual who is [certified] licensed as a physician assistant by the Board.

Physician assistant examination—An examination to test whether an individual has accumulated sufficient academic knowledge to qualify for [certification] licensure as a physician assistant. The Board recognizes the certifying examination of the NCCPA.

Physician assistant program—A program for the training and education of physician assistants which is [approved] recognized by the Board and accredited by the Committee on Allied Health Education and Accreditation (CAHEA), Commission For Accreditation of Allied Health Educational Programs (CAAHEP), Accreditation Review Commission (ARC-PA) or any successor agency.

[Physician assistant supervisor—A physician who is identified as a supervising physician of a physician assistant in the written agreement and is registered with the Board as such.]

* * * * *

Primary [physician assistant supervisor] supervising physician—A [physician assistant supervisor] medical doctor who is registered with the Board and designated in the written agreement as having primary responsibility for directing and supervising the physician assistant.

Satellite location—A location, other than the primary place at which the [physician assistant supervisor] supervising physician provides medical services to patients, where a physician assistant provides medical services.

Substitute [physician assistant supervisor] supervising physician—A [physician assistant supervisor] supervising physician who is registered with the Board and designated in the written agreement as assuming primary responsibility for a physician assistant when the primary [physician assistant supervisor] supervising physician is unavailable.

Supervising physician—A physician who is identified in a written agreement as the physician who supervises a physician assistant.

Supervision—[The control and personal direction exercised by the physician assistant supervisor over the medical services provided by a physician assistant. Constant physical presence of the physician assistant supervisor is not required so long as the physician assistant supervisor and the physician assistant are, or can easily be, in contact with each other by radio, telephone or telecommunications. Supervision requires the availability of the physician assistant supervisor to the physician assistant.]

(i) Oversight and direction of, and responsibility for, the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and the physician assistant are, or can be, easily in contact with each other by radio, telephone or other telecommunications device.

(ii) An appropriate degree of supervision includes:

[(i)] (A) * * *

[(ii)] (B) Immediate availability of the [physician assistant supervisor] supervising physician to the physician assistant for necessary consultations.

[(iii)] (C) Personal and regular [—at least weekly—] review by the [physician assistant supervisor] supervising physician of the patient records upon which entries are made by the physician assistant.

Written agreement—The agreement between the physician assistant and [physician assistant supervisor] supervising physician, which satisfies the requirements of § 18.142 (relating to written agreements).

PHYSICIAN ASSISTANT EDUCATIONAL PROGRAMS

§ 18.131. [Approved] Recognized educational programs/standards.

(a) The Board [approves] recognizes physician assistant educational programs [developed] accredited by the [accreditation review committee for the physician assistant, and accredited by the] American Medical Association's Committee on Allied Health Education and Accreditation (CAHEA) [of the American Medical Association], Commission for Accreditation of Allied Health Education Programs (CAAHEP), Accreditation Review Commission (ARC-PA) or any successor organization. Information

regarding approved programs may be obtained directly from CAHEA, 515 North State Street, Chicago, IL 60610. **Information regarding approved programs may be obtained directly from ARC-PA at its website www.arc-pa.org.**

(b) The criteria for **[certification] recognition** by the Board of physician assistant educational programs will be identical to the essentials developed by the various organizations listed in this section or other accrediting agencies approved by the Board.

[CERTIFICATION] LICENSURE OF PHYSICIAN ASSISTANTS AND REGISTRATION OF [PHYSICIAN ASSISTANT SUPERVISORS] SUPERVISING PHYSICIANS

§ 18.141. Criteria for **[certification] licensure** as a physician assistant.

The Board will approve for **[certification] licensure** as a physician assistant an applicant who:

(1) Satisfies the **[certification] licensure** requirements in § 16.12 (relating to general qualifications for licenses and certificates).

(2) Has graduated from a physician assistant program **[approved] recognized** by the Board.

* * * * *

§ 18.142. Written agreements.

(a) The written agreement required by section 13(e) of the act (63 P. S. § 422.13(e)) **[shall satisfy] satisfies** the following requirements. The agreement **[shall] must**:

(1) Identify and be signed by the physician assistant and **[each physician the physician assistant who will be assisting] each physician acting as a supervising physician.** At least one physician shall be a medical doctor.

(2) Describe the manner in which the physician assistant **[will be assisting each named physician] works with each supervising physician.** The description **[shall] must** list functions to be delegated to the physician assistant **[, including**:

(i) **Selected procedures enumerated in § 18.151 (relating to the role of the physician assistant) and other delegated tasks.**

(ii) **Instructions for the use of the physician assistant in performance of delegated tasks.**

(iii) **Medical regimens to be administered or relayed by the physician assistant]**.

* * * * *

(4) Designate one of the named physicians who shall be a medical doctor as the primary **[physician assistant supervisor] supervising physician.**

(5) **Require that the supervising physician shall countersign the patient record completed by the physician assistant within a reasonable amount of time. This time period may not exceed 10 days.**

(6) Identify the locations and practice settings where the physician assistant will serve.

(b) The written agreement shall be approved by the Board **[as satisfying the foregoing requirements in**

subsection (a) and as being consistent with relevant provisions of the act and regulations contained in this subchapter].

(c) A physician assistant or **[physician assistant supervisor] supervising physician** shall provide immediate access to the written agreement to anyone seeking to confirm the scope of the physician assistant's authority.

§ 18.143. Criteria for registration as **[physician assistant supervisor] a supervising physician.**

(a) The Board will **[approve for registration as] register** a **[physician assistant supervisor an] supervising physician** applicant who:

* * * * *

(2) Has **[submitted] filed** a completed **[application] registration form** accompanied by the written agreement (see § 18.142 (relating to written agreements)) and the required fee under § 16.13 (relating to licensure, certification, examination and registration fees). The **[application] registration** requires detailed information regarding the physician's professional background and specialties, medical education, internship, residency, continuing education, membership in American Boards of medical specialty, hospital or staff privileges and other information the Board may require.

(3) Includes with the **[application] registration**, a list, identifying by name and license number, the other physicians who are serving as **[physician assistant supervisors] supervising physicians** of the designated physician assistant under other written agreements.

(b) If the **[applicant] supervising physician** plans to utilize physician assistants in satellite locations, the **[applicant] supervising physician** shall provide the Board with supplemental information as set forth in § 18.155 (relating to satellite locations) and additional information requested by the Board directly relating to the satellite location.

(c) The Board will keep a current **[register of approved] list of** registered supervising physicians. The **[register] list** will include the physician's name, the address of residence, current business address, the date of **[approval] filing**, satellite locations if applicable, the names of current physician assistants under **[his] the physician's** supervision and the physicians willing to provide substitute supervision.

§ 18.144. Responsibility of primary **[physician assistant supervisor] supervising physician.**

A primary **[physician assistant supervisor] supervising physician** shall assume the following responsibilities. The supervisor shall:

* * * * *

(3) Arrange for a substitute **[physician assistant supervisor] supervising physician.** (See § 18.154 (relating to substitute **[physician assistant supervisor] supervising physician.**)

(4) **[See each patient in his office every third visit, but at least once a year.] Review directly with the patient the progress of the patient's care**

as needed based upon the patient's medical condition and prognosis or as requested by the patient.

* * * * *

(7) Accept full professional and legal responsibility for the performance of the physician assistant and the care and treatment of [his] the patients.

§ 18.145. Biennial registration requirements; renewal of physician assistant [certification] license.

* * * * *

(b) The fee for the biennial registration of a physician assistant [certificate] license is set forth in § 16.13 (relating to licensure, certification, examination and registration fees).

(c) To be eligible for renewal of a physician assistant [certification] license, the physician assistant shall maintain [his] National certification by completing current recertification mechanisms available to the profession and recognized by the Board.

(d) The Board will keep a current [register] list of persons [certified] licensed as physician assistants. The [register] list will include:

* * * * *

(4) The date of initial [certification] licensure, biennial renewal record and current [physician assistant supervisor] supervising physician.

PHYSICIAN ASSISTANT UTILIZATION

§ 18.151. Role of physician assistant.

[The physician assistant shall, under appropriate direction and supervision by a physician assistant supervisor, augment the physician's data gathering abilities in order to assist the physician in reaching decisions and instituting care plans for the physician's patients. Physician assistants may be permitted to perform the following functions. This list is not intended to be all-inclusive.

(1) Screen patients to determine need for medical attention.

(2) Review patient records to determine health status.

(3) Take a patient history.

(4) Perform a physical examination.

(5) Perform developmental screening examination on children.

(6) Record pertinent patient data.

(7) Make decisions regarding data gathering and appropriate management and treatment of patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition.

(8) Prepare patient summaries.

(9) Initiate requests for commonly performed initial laboratory studies.

(10) Collect specimens for and carry out commonly performed blood, urine and stool analyses and cultures.

(11) Identify normal and abnormal findings on history, physical examination and commonly performed laboratory studies.

(12) Initiate appropriate evaluation and emergency management for emergency situations, for example, cardiac arrest, respiratory distress, injuries, burns and hemorrhage.

(13) Perform clinical procedures such as:

(i) Venipuncture.

(ii) Intradermal tests.

(iii) Electrocardiogram.

(iv) Care and suturing of minor lacerations.

(v) Casting and splinting.

(vi) Control of external hemorrhage.

(vii) Application of dressings and bandages.

(viii) Administration of medications, except as specified in § 18.158 (relating to prescribing and dispensing drugs), intravenous fluids, whole blood and blood components except as specified in § 18.157 (relating to administration of controlled substances and whole blood and blood components).

(ix) Removal of superficial foreign bodies.

(x) Cardio-pulmonary resuscitation.

(xi) Audiometry screening.

(xii) Visual screening.

(xiii) Carrying out aseptic and isolation techniques.

(14) Provide counseling and instruction regarding common patient problems.]

(a) The physician assistant practices medicine with physician supervision. A physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing, and administration of drugs and medical devices, as well as the ordering, prescribing, and executing of diagnostic and therapeutic medical regimens, as directed by the supervising physician.

(b) The physician assistant may provide any medical service as directed by the supervising physician when the service is within the physician assistant's skills, forms a component of the physician's scope of practice, is included in the written agreement and is provided with the amount of supervision in keeping with the accepted standards of medical practice.

(c) The physician assistant may pronounce death, but not the cause of death, and may authenticate with his signature any form related to pronouncing death.

(d) The physician assistant may authenticate with his signature any form that may otherwise be authenticated by a physician's signature as permitted by the supervising physician, State or Federal law and facility protocol, if applicable.

(e) The physician assistant shall be considered the agent of the supervising physician in the performance of all practice-related activities including the ordering of diagnostic, therapeutic and other medical services.

§ 18.152. Prohibitions.

(a) A physician assistant may not:

* * * * *

(3) Maintain or manage a satellite location under § 18.155 (relating to satellite locations) unless **[approved by] the maintenance or management is registered with** the Board.

(4) Independently **practice or** bill patients for services provided.

* * * * *

(8) **[Pronounce a patient dead.**

(9) **] Perform a medical service without the supervision of a [physician assistant supervisor] supervising physician.**

(b) A **[physician assistant supervisor] supervising physician** may not:

* * * * *

§ 18.153. Executing and relaying medical regimens.

(a) A physician assistant may execute a **written or oral order for a** medical regimen or may relay a **written or oral order for a** medical regimen to be executed by a health care practitioner subject to the requirements of this section.

(b) **[The] As provided for in the written agreement, the** physician assistant shall report orally or in writing, to a **[physician assistant supervisor] supervising physician**, within **[12] 36** hours, **those** medical regimens executed or relayed by **[him] the physician assistant** while the **[physician assistant supervisor] supervising physician** was not physically present, and the basis for each decision to execute or relay a medical regimen.

(c) The physician assistant shall record, date and authenticate the medical regimen on the patient's chart at the time it is executed or relayed. The **[physician assistant supervisor] supervising physician** shall countersign the patient's record within a reasonable time not to exceed **[3] 10** days, unless countersignature is required sooner by regulation, policy within the medical care facility or the requirements of a third-party payor.

(d) A physician assistant or **[physician assistant supervisor] supervising physician** shall provide immediate access to the written agreement to anyone seeking to confirm the physician assistant's authority to relay a medical regimen or administer a therapeutic or diagnostic measure.

§ 18.154. Substitute **[physician assistant supervisor] supervising physician.**

(a) If the primary **[physician assistant supervisor] supervising physician** is unavailable to supervise the physician assistant, the primary **[physician assistant supervisor] supervising physician** may not delegate patient care to the physician assistant unless **[he has made]** appropriate arrangements for substitute supervision **are** in the written agreement and the substitute physician is registered as a **[physician assistant supervisor] supervising physician** with the Board.

(b) It is the responsibility of the substitute **[physician assistant supervisor] supervising physician** to ensure that supervision is maintained in the absence of the primary **[physician assistant supervisor] supervising physician.**

(c) During the period of supervision by the substitute **[physician assistant supervisor] supervising physician**, **[he] the substitute supervising physician** retains full professional and legal responsibility for the performance of the physician assistant and the care and treatment of the patients treated by the physician assistant.

(d) Failure to properly supervise may provide grounds for disciplinary action against the substitute **[physician assistant supervisor] supervising physician.**

§ 18.155. Satellite locations.

(a) **[Approval] Registration of satellite location.** A physician assistant may not provide medical services at a satellite location unless the supervising physician has **[obtained specific approval from] filed a registration with** the Board.

(b) **[Separate application requirement] Contents of statement.** A separate **[application] statement** shall be made for each satellite location. **[To obtain approval for each satellite location a physician assistant supervisor shall] The statement must** demonstrate that:

* * * * *

(2) There is adequate provision for direct communication between the physician assistant and the **[physician assistant supervisor] supervising physician** and that the distance between the location where the physician provides services and the satellite location is not so great as to prohibit or impede appropriate support services.

(3) **[The supervisor will see each patient every third visit, but at least once a year.] The supervising physician shall review directly with the patient the progress of the patient's care as needed based upon the patient's medical condition and prognosis or as requested by the patient.**

(4) The **[supervisor] supervising physician** will visit the satellite location at least weekly and devote enough time onsite to provide supervision and personally review the records of **[each patient] selected patients** seen by the physician assistant in this setting. **The supervising physician shall notate those patient records as reviewed.**

(c) *Failure to comply with this section.* Failure to maintain the standards required for a satellite location may result not only in the loss of the privilege to maintain a satellite location but also may result in disciplinary action against the physician assistant and the **[physician assistant supervisor] supervising physician.**

§ 18.156. Monitoring and review of physician assistant utilization.

(a) Representatives of the Board will be authorized to conduct scheduled and unscheduled onsite inspections of the locations where the physician assistants are utilized during the **[physician assistant supervisors'] supervising physician's** office hours to review the following:

(1) Supervision of the physician assistant. See §§ 18.144 and 18.154 (relating to responsibility of primary **[physician assistant supervisor] supervising**

physician; and substitute [physician assistant supervisor] supervising physician).

* * * * *

(5) Compliance with [certification] licensure and registration requirements. See §§ 18.141 and 18.145 (relating to criteria for [certification] licensure as a physician assistant; and biennial registration requirements; renewal of physician assistant [certification] license).

(6) Maintenance of records evidencing patient and supervisory contact by the [physician assistant supervisor] supervising physician.

(b) Reports shall be submitted to the Board and become a permanent record under the [physician assistant supervisor's] supervising physician's registration. Deficiencies reported [shall] will be reviewed by the Board and may provide a basis for loss of the privilege to maintain a satellite location and disciplinary action against the physician assistant and the [physician assistant supervisor] supervising physician.

(c) The Board reserves the right to review physician assistant utilization without prior notice to either the physician assistant or the [physician assistant supervisor] supervising physician. It is a violation of this subchapter for a [physician assistant supervisor] supervising physician or a physician assistant to refuse to comply with the request by the Board for the information in subsection (a).

* * * * *

§ 18.157. Administration of controlled substances and whole blood and blood components.

(a) [The] In a hospital, medical care facility or office setting, the physician assistant may order or administer, or both order and administer, controlled substances and whole blood and blood components if the authority to order and administer these medications and fluids is expressly set forth in the written agreement [and the administration of these medications and fluids is separately ordered by the physician assistant supervisor and the physician assistant supervisor specifies a named drug for a named patient].

(b) The physician assistant shall comply with the minimum standards for ordering and administering controlled substances specified in § 16.92 (relating to prescribing, administering and dispensing controlled substances).

§ 18.158. Prescribing and dispensing drugs, pharmaceutical aids and devices.

(a) [The Board adopts the American Hospital Formulary Service (AHFS) Pharmacologic—Therapeutic Classification to identify drugs which a physician assistant may prescribe and dispense subject to the restrictions specified in subsection (c).

(1) Categories from which a physician assistant may prescribe and dispense without limitations are as follows:

- (i) Antihistamines.
- (ii) Anti-infective agents.
- (iii) Cardiovascular drugs.

(iv) Contraceptives—for example, foams and devices.

(v) Diagnostic agents.

(vi) Disinfectants—for agents used on objects other than skin.

(vii) Electrolytic, caloric and water balance.

(viii) Enzymes.

(ix) Antitussives, expectorants, and nucleolytic agents.

(x) Gastrointestinal drugs.

(xi) Local anesthetics.

(xii) Serums, toxoids and vaccines.

(xiii) Skin and mucous membrane agents.

(xiv) Smooth muscle relaxants.

(xv) Vitamins.

(2) Categories from which a physician assistant may prescribe and dispense subject to exclusions and limitations listed:

(i) *Autonomic drugs.* Drugs excluded under this category: Sympathomimetic (adrenergic) agents.

(ii) *Blood formation and coagulation.* Drugs excluded under this category:

(A) Anti-coagulants and coagulants.

(B) Thrombolytic agents.

(iii) *Central nervous system agents.* Drugs excluded under this category:

(A) General anesthetics.

(B) Monoamine oxidase inhibitors.

(iv) *Eye, ear, nose and throat preparations.* Drugs limited under this category: Miotics and mydriatics used as eye preparations require specific approval from the physician assistant supervisor for a named patient.

(v) *Hormones and synthetic substitutes.* Drugs excluded under this category:

(A) Pituitary hormones and synthetics.

(B) Parathyroid hormones and synthetics.

(3) Categories from which a physician assistant may not prescribe or dispense are as follows:

(i) Antineoplastic agents.

(ii) Dental agents.

(iii) Gold compounds.

(iv) Heavy metal antagonists.

(v) Oxytocics.

(vi) Radioactive agents.

(vii) Unclassified therapeutic agents.

(viii) Devices.

(ix) Pharmaceutical aids.

(4) New drugs and new uses for drugs will be considered approved for prescribing and dispensing purposes by physician assistants 90 days after approval by the Federal Drug Administration unless excluded in paragraphs (2) and (3).

(b) If the physician assistant supervisor intends to authorize a physician assistant to prescribe or dispense drugs, the supervisor shall:

(1) Establish a list of drugs, based on the categories listed in subsection (a), which the physician assistant may prescribe or dispense. The physician assistant supervisor shall assure that the physician assistant is able to competently prescribe or dispense those drugs.

(2) Submit the list of drugs to the Board, in duplicate, on a form supplied by the Board, and signed by both physician assistant supervisor and the physician assistant. The list will become part of the physician assistant's written agreement if it is consistent with the approved classification.

(3) Notify the Board, in duplicate, on a form supplied by the Board, of an addition or deletion to the list of drugs. The amendment will become part of the physician assistant's written agreement if it is consistent with the approved classification.

(4) Assume full responsibility for every prescription issued and drug dispensed by a physician assistant under his supervision.

(5) Maintain a copy of the list of drugs submitted to the Board in his principal office and at all locations where the physician assistant practices under his supervision for review or inspection without prior notice by patients, the Board or its agents. The physician shall provide a pharmacy with a copy of the drug list upon request by the pharmacist.

(6) Immediately advise the patient, notify the physician assistant and, in the case of a written prescription, advise the pharmacy, if the physician assistant is prescribing or dispensing a drug inappropriately. The physician shall advise the patient and notify the physician assistant to discontinue using the drug, and in the case of a written prescription, shall notify the pharmacy to discontinue the prescription. The order to discontinue use of the drug or prescription shall be noted in the patient's medical record by the physician.

(c) Restrictions on a physician assistant's prescription and dispensation practices are as follows:

(1) A physician assistant may only prescribe or dispense a drug approved by the Board from the categories specified in subsection (a).

(2) A physician assistant may only prescribe or dispense a drug for a patient who is under the care of the physician responsible for the supervision of the physician assistant and only in accordance with the physician's instructions and written agreement.

(3) A physician assistant shall comply with the minimum standards for prescribing and dispensing controlled substances specified in § 16.92 (relating to prescribing, administering and dispensing controlled substances) and the regulations of the Department of Health relating to Controlled Substances, Drugs, Devices and Cosmetics, 28 Pa. Code §§ 25.51—25.58 (relating to prescriptions), and packaging and labeling dispensed drugs. See §§ 16.93 and 16.94 (relating to packaging; and labeling of dispensed drugs) and 28 Pa. Code §§ 25.91—25.95 (relating to labeling of drugs, devices and cosmetics).

(4) A physician assistant may not:

(i) Prescribe or dispense a pure form or combination of drugs listed in subsection (a) unless the drug or class of drug is listed as permissible for prescription or dispensation.

(ii) Prescribe or dispense Schedule I or II controlled substances as defined by section 4 of the Controlled Substances, Drug, Device, and Cosmetic Act (35 P. S. § 780-104).

(iii) Prescribe or dispense a drug for a use not permitted by the Food and Drug Administration.

(iv) Prescribe or dispense a generic or branded preparation of a drug that has not been approved by the Food and Drug Administration.

(v) Prescribe or dispense parenteral preparations other than insulin, emergency allergy kits and other approved drugs listed in subsection (a).

(vi) Dispense a drug unless it is packaged in accordance with applicable Federal and State law pertaining to packaging by physicians. See §§ 16.93 and 16.94.

(vii) Compound ingredients when dispensing a drug, except for adding water.

(viii) Issue a prescription for more than a 30-day supply, except in cases of chronic illnesses where a 90-day supply may be prescribed. The physician assistant may authorize refills up to 6 months from the date of the original prescription if not otherwise precluded by law.

(d) The requirements for prescription blanks are as follows:

(1) Prescription blanks shall bear the certification number of the physician assistant and the name of the physician assistant in printed format at the heading of the blank, and a space for the entry of the Drug Enforcement Administration registration number as appropriate. The physician assistant supervisor shall also be identified as required in § 16.91 (relating to identifying information on prescriptions and orders for equipment and service).

(2) The physician assistant supervisor is prohibited from presigning prescription blanks or allowing the physician assistant to use a device for affixing a signature copy on the prescription. The signature of a physician assistant shall be followed by the initials "PA-C" or similar designation to identify the signer as a physician assistant.

(3) The physician assistant may use a prescription blank generated by a hospital if the information in paragraph (1) appears on the blank.]

Prescribing, dispensing and administration of drugs.

(1) The supervising physician may delegate to the physician assistant the prescribing, dispensing and administering of drugs and therapeutic devices.

(2) A physician assistant may not prescribe or dispense Schedule I controlled substances as defined by section 4 of The Controlled Substances, Drug, Device, and Cosmetic Act (35 P. S. § 780-104).

(3) A physician assistant may prescribe a Schedule II controlled substance for initial therapy, up to a 72-hour dose. The physician assistant shall notify

the supervising physician of the prescription as soon as possible but in no event longer than 24 hours from the issuance of the prescription. A physician assistant may write a prescription for a Schedule II controlled substance for up to a 30-day supply if it was originally prescribed by the supervising physician and approved by the supervising physician for ongoing therapy.

(4) A physician assistant may only prescribe or dispense a drug for a patient who is under the care of the physician responsible for the supervision of the physician assistant and only in accordance with the supervising physician's instructions and written agreement.

(5) A physician assistant may request, receive and sign for professional samples and may distribute professional samples to patients.

(6) A physician assistant authorized to prescribe or dispense, or both, controlled substances shall register with the Drug Enforcement Administration.

(b) *Prescription blanks.* The requirements for prescription blanks are as follows:

(1) Prescription blanks must bear the license number of the physician assistant and the name of the physician assistant in printed format at the heading of the blank. The supervising physician shall also be identified as required in § 16.91 (relating to identifying information on prescriptions and orders for equipment and service).

(2) The signature of a physician assistant shall be followed by the initials "PA-C" or similar designation to identify the signer as a physician assistant. When appropriate, the physician assistant's DEA registration number must appear on the prescription.

(3) The supervising physician is prohibited from presigning prescription blanks.

(4) The physician assistant may use a prescription blank generated by a hospital provided the information in paragraph (1) appears on the blank.

(c) *Inappropriate prescription.* The supervising physician shall immediately advise the patient, notify the physician assistant and, in the case of a written prescription, advise the pharmacy, if the physician assistant is prescribing or dispensing a drug inappropriately. The supervising physician shall advise the patient and notify the physician assistant to discontinue using the drug, and in the case of a written prescription, shall notify the pharmacy to discontinue the prescription. The order to discontinue use of the drug or prescription shall be noted in the patient's medical record by the supervising physician.

[(e)] (d) *Recordkeeping requirements.* Recordkeeping requirements are as follows:

* * * * *

(2) When dispensing a drug, the physician assistant shall record [his] the physician assistant's name, the name of the medication dispensed, the amount of medication dispensed, the dose of the medication dispensed and the date dispensed in the patient's medical records.

(3) The physician assistant shall report, orally or in writing, to the [physician assistant supervisor] su-

pervising physician within [12] 36 hours, a drug prescribed or medication dispensed by [him] the physician assistant while the [physician assistant supervisor] supervising physician was not physically present, and the basis for each decision to prescribe or dispense in accordance with the written agreement.

(4) [The physician assistant supervisor shall countersign the prescription copy or medical record entry for each prescription or dispensation within a reasonable time, not to exceed 3 days, unless countersignature is required sooner by regulation, policy within the medical care facility or the requirements of a third-party payor.] The supervising physician shall countersign the patient record within 10 days.

(5) The physician assistant and the [physician assistant supervisor] supervising physician shall provide immediate access to the written agreement to anyone seeking to confirm the physician assistant's authority to prescribe or dispense a drug. The written agreement must list the categories of drugs which the physician assistant is not permitted to prescribe.

(e) *Compliance with regulations relating to prescribing, administering, dispensing, packaging and labelling of drugs.* A physician assistant shall comply with §§ 16.92, 16.93 and 16.94 (relating to prescribing, administering and dispensing controlled substances; packaging; and labeling of dispensed drugs) and Department of Health regulations in 28 Pa. Code §§ 25.51—25.58 (relating to prescriptions) and regulations regarding packaging and labeling dispensed drugs. See § 16.94 and 28 Pa. Code §§ 25.91—25.95 (relating to labeling of drugs, devices and cosmetics).

§ 18.159. Medical records.

The [physician assistant supervisor] supervising physician shall timely review the medical records prepared by the physician assistant to ensure that the requirements of § 16.95 (relating to medical records) have been satisfied.

MEDICAL CARE FACILITIES AND EMERGENCY MEDICAL SERVICES

§ 18.161. Physician assistant employed by medical care facilities.

* * * * *

(b) [The physician assistant may not be responsible to more than three physician assistant supervisors in a medical care facility.

(c) [This subchapter does not require medical care facilities to employ physician assistants or to permit their utilization on their premises. Physician assistants are permitted to provide medical services to the hospitalized patients of their [physician assistant supervisor] supervising physician if the medical care facility permits it.

§ 18.162. Emergency medical services.

(a) A physician assistant may only provide medical service in an emergency medical care setting if the physician assistant has training in emergency medicine, functions within the purview of his written agreement and is under the [direct] supervision of the [physician assistant supervisor] supervising physician.

(b) A physician assistant licensed in this State or licensed or authorized to practice in any other state of the United States who is responding to a need for medical care created by a declared state of emergency or a state or local disaster (not to be defined as an emergency situation which occurs in the place of one's employment) may render care consistent with relevant standards of care.

IDENTIFICATION AND NOTICE RESPONSIBILITIES

§ 18.171. Physician assistant identification.

(a) A physician assistant may not render medical services to a patient until the patient or the patient's legal guardian has been informed that:

* * * * *

(2) The physician assistant may perform the service required as the agent of the physician and only as directed by the [physician assistant supervisor] supervising physician.

* * * * *

(b) It is the [physician assistant supervisor's] supervising physician's responsibility to be alert to patient complaints concerning the type or quality of services provided by the physician assistant.

(c) In the [physician assistant supervisor's] supervising physician's office and satellite locations, a notice plainly visible to patients shall be posted in a prominent place explaining that a "physician assistant" is authorized to assist a physician in the provision of medical care and services. The [physician assistant supervisor] supervising physician shall display [his] the registration to supervise in [his] the office. The physician assistant's [certificate] license shall be prominently displayed at any location at which [he] the physician assistant provides services. Duplicate [certificates] licenses may be obtained from the Board if required.

(d) The physician assistant shall wear an identification tag which uses the term "Physician Assistant," in [16 point] easily readable type. The tag shall be conspicuously worn.

§ 18.172. Notification of changes in employment.

(a) The physician assistant is required to notify the Board, in writing, of a change in or termination of employment or a change in mailing address within 15 days. Failure to notify the Board in writing of a change in mailing address may result in failure to receive pertinent material distributed by the Board. The physician assistant shall provide the Board with [his] the new address

of residence, address of employment and name of registered [physician assistant supervisor] supervising physician.

(b) The [physician assistant supervisor] supervising physician is required to notify the board, in writing, of a change or termination of [his] supervision of a physician assistant within 15 days.

(c) Failure to notify the Board of changes in employment or a termination in the physician/physician assistant relationship is a basis for disciplinary action against the physician's license, [physician assistant supervisor] supervising physician's registration and the physician assistant's [certificate] license.

DISCIPLINE

§ 18.181. Disciplinary and corrective measures.

(a) A physician assistant who engages in unprofessional conduct is subject to disciplinary action under section 41 of the act (63 P. S. § 422.41). Unprofessional conduct includes the following:

(1) Misrepresentation or concealment of a material fact in obtaining a [certificate] license or a reinstatement thereof.

* * * * *

(7) Impersonation of a licensed physician or another [certified] licensed physician assistant.

* * * * *

(10) Continuation of practice while the physician assistant's [certificate] license has expired, is not registered or is suspended or revoked.

* * * * *

(12) The failure to notify the [physician assistant supervisor] supervising physician that the physician assistant has withdrawn care from a patient.

(b) The Board will order the emergency suspension of the [certificate] license of a physician assistant who presents an immediate and clear danger to the public health and safety, as required by section 40 of the act (63 P. S. § 422.40).

(c) The [certificate] license of a physician assistant shall automatically be suspended, under conditions in section 40 of the act.

(d) The Board may refuse, revoke or suspend a physician's [approval to supervise a physician assistant] registration as a supervising physician for engaging in any of the conduct proscribed of Board-regulated practitioners in section 41 of the act [(63 P. S. § 422.41)].

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