

PROPOSED RULEMAKING

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 405]

Keystone Educational Accountability Best Management Practices Standards

The Secretary of Education (Secretary) proposes to add Chapter 405 (relating to keystone educational accountability standards and indicators) to read as set forth in Annex A. The Secretary is acting under the authority of Article XXV-A of the Public School Code of 1949 (code) (24 P. S. §§ 25-2501-A—25-2511-A), specifically sections 2504-A(e) and 2505-A of the code (24 P. S. §§ 25-2504-A(e) and 25-2505).

Purpose

Chapter 405 sets forth best management practices standards and indicators to serve as measures of improvement in the operation of school districts. These standards and indicators are necessary components of Keystone Educational Accountability (KEA) and are required to be developed under section 2504-A(e) of the act. The purpose of KEA is to put into place an assessment system aimed at improving school district management practices and use of resources. KEA is also intended to identify potential cost savings, by providing for the establishment of a series of standards and related indicators covering a broad range of school district administrative and operational areas that will be reviewed for compliance on a 6-year cycle. Districts that operate consistently with these standards will be certified for 6 years. Districts that do not must develop a 3-year action plan to meet the standards in which they were found to be deficient.

Requirements of the Regulations

The regulations, in and of themselves, do not require anything. However, consistent with the statute, they apply to all 501 school districts in this Commonwealth. The statute requires each district to conduct a self-assessment of its compliance with the regulations and to subsequently be the subject of an external compliance review arranged by the Department of Education (Department) on a 6-year cycle. During both reviews, the district's policies and procedures in areas such as management structures, educational service delivery, personnel systems, facilities maintenance and food service operations are measured against the indicators in the regulation so that a determination can be made of whether each of the ten standards is being achieved. If a district is determined to be in noncompliance it will have to prepare an action plan detailing how it will come into compliance in 3 years and form a local financial management advisory team to implement the plan.

Affected Parties

The proposed rulemaking applies to and affects all 501 school districts in this Commonwealth.

Cost and Paperwork Estimates

The KEA legislation requires that all 501 school districts in this Commonwealth be reviewed for compliance with the standards and indicators on a 6-year cycle. Approximately 25 districts will be reviewed in 2006-07, the first year of the program, and approximately 95 districts will be reviewed each year for the next 5 fiscal years, starting in 2007-08.

The potential costs that may stem from these standards are those that a district incurs to achieve a standard with which it is not in compliance. Estimation of these costs is difficult because the facts in each district will be unique and these facts will not be known until after the district's self-assessment comparing its own management practices to the standards. Areas in which districts are in noncompliance will require varying degrees of time and resources to develop needed policies and procedures or to institute new practices. The costs incurred by individual school districts will vary depending on the current quality of district management and operations.

Effective Date

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

Sunset Date

The regulations will be subject to sunset review by the Department on December 31, 2011, to determine their effectiveness in implementing the statute.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 20, 2006, the Secretary 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 Department, 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 Shawn Farr, Special Assistant to the Secretary of Education, Department of Education, 333 Market Street, 10th Floor, 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 Shawn Farr at (717) 214-4391.

GERALD L. ZAHORCHAK, D.Ed.,
Secretary

Fiscal Note: 6-300. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XVI. STANDARDS

CHAPTER 405. KEYSTONE EDUCATIONAL ACCOUNTABILITY STANDARDS AND INDICATORS

Sec.	Purpose.
405.1.	Purpose.
405.2.	Management structures standards
405.3.	Performance accountability standards.
405.4.	Cost control systems standards.
405.5.	Administrative and instructional technology standards.
405.6.	Personnel systems and benefits standards.
405.7.	Facilities construction standards.
405.8.	Facilities maintenance standards.
405.9.	Transportation standards.
405.10.	Food service operations standards.
405.11.	Safety and security standards.
405.12.	Educational service delivery standards.

§ 405.1. Purpose.

(a) The chapter establishes best management practices standards for the purposes of assessing Keystone Educational Accountability (KEA), under Article XXV-A of the Public School Code of 1949 (24 P. S. §§ 25-2501-A—25-2511-A). The purpose of KEA is to establish an assessment system aimed at increasing public confidence in and support for school districts that demonstrate efficient use of taxpayer resources; identifying and encouraging cost savings; linking financial planning and budgeting to district priorities, including student performance; and improving school district management and use of resources. Districts conduct a self-assessment and then are subsequently evaluated by external reviewers every 6 years. Based upon that external review, a district that is deemed to be in compliance with the standards in this chapter will be certified as Keystone Districts by the Secretary. The reviews shall occur under Article XXV-A of the Public School Code of 1949.

(b) The indicators set forth in each best practices management standard in this chapter are to help assess whether a district is meeting each standard. The indicators represent the kinds of activities a district would be undertaking if the district were using a particular best practice. The indicators listed in this chapter are not exclusive, and literal compliance with each is not required to qualify for Keystone certification.

§ 405.2. Management structures standards.

A school district will be deemed in compliance with the standards for management structures if:

(1) The roles and responsibilities of the board and superintendent have been clearly delineated, and policies and procedures are in place to ensure that the board and the superintendent can effectively and efficiently work together. Indicators of compliance include, but are not limited to, the following:

(i) The board has adopted written policies that clearly delineate the responsibilities of the board and the superintendent.

(ii) Board members receive orientation and ongoing training in board/district operations and school law.

(iii) The board and the superintendent follow established procedures that direct how board members are to access district staff or direct staff to respond to constituent inquiries.

(iv) The board has established a process for self-evaluation, and evaluates its performance under that process annually.

(v) The board regularly evaluates the superintendent's performance by using agreed upon criteria, including student achievement data.

(vi) The superintendent regularly reviews the dates of major events and actions needed to meet legal requirements and ensures that these matters are placed on the board agenda in a timely manner.

(vii) Board meetings are scheduled at a time and place that allows the public to attend.

(viii) The board receives an agenda with appropriate relevant supplementary materials in sufficient time prior to board meetings to allow for a thorough review.

(ix) The board routinely updates its policies and procedures for relevancy and completeness.

(x) Board policy includes statements on ethics and conflicts of interest.

(xi) The district staff has reasonable access to and is able to use policies and procedures in performing their duties.

(2) The district obtains appropriate legal services as necessary. Indicators of compliance include, but are not limited to, the following:

(i) The board has an attorney (either in-house or on contract) who is responsible for advising the board, reviewing policy and reducing the risk of lawsuits.

(ii) The district procures legal services using policies and procedures that conform to accepted practices for obtaining the services.

(iii) Procedures exist for the board, superintendent, staff and other stakeholders to obtain information on legal matters when appropriate.

(iv) The district retains outside counsel (counsel other than the board attorney) as necessary.

(3) The district's organizational structure has clearly defined lines of authority to deliver services effectively and efficiently. Indicators of compliance include, but are not limited to, the following:

(i) The district has clearly defined the responsibilities of each organizational unit within the district and communicated these responsibilities to staff and stakeholders.

(ii) The district annually reviews its organizational structure and operating procedures and implements changes when appropriate to improve effectiveness and efficiency.

(iii) The district periodically assesses staffing levels using appropriate measures, stakeholder input and considering compliance requirements.

(iv) The board, superintendent and staff adhere to established policies and procedures and are held accountable for achieving Federal, State, district and school educational goals.

(4) The district's financial condition and resources are effectively overseen. Indicators of compliance include, but are not limited to, the following:

(i) Board members receive training in school district budgeting and finance.

(ii) The board is provided a proposed budget in a clear, concise and understandable format.

(iii) The board is informed about the short and long-term fiscal implications and impact on fund balance of proposed budgets or budget amendments.

(iv) The board and district management receive, review and make available to the public, monthly and annual financial reports. These reports contain monthly and year-to-date budgeted amounts, as compared to the actual amounts expended. Also included in the reports is other financial information that effectively summarizes the district's financial operations and financial condition in a clear, concise and understandable format.

(v) The board is informed in a timely manner by district administrators of changes in or concerns about the district's financial condition.

(vi) The board has established policies for spending authority and purchasing practices.

(vii) The district pursues alternative revenue sources such as partnering options and obtaining private, State and Federal grants.

(viii) The district takes advantage of opportunities to improve management structures, increase effectiveness and efficiency and minimize costs.

(5) The district actively informs and seeks the involvement of stakeholders. Indicators of compliance include, but are not limited to, the following:

(i) The district uses a variety of effective and efficient means of communication to provide timely information to stakeholders.

(ii) The district effectively communicates with stakeholders in languages other than English as appropriate.

(iii) Information on school policies and programs is distributed annually to parents in a clear and understandable format.

(iv) Information on school policies and programs is distributed as needed to students in a clear and understandable format.

(v) Information on student performance and measurements of cost versus performance are made available to stakeholders.

(vi) Annual parent/teacher conferences and open houses are conducted.

(vii) The district has active parent teacher associations/parent faculty organizations and other effective methods of involving and encouraging parent leadership and participation.

(viii) The district actively seeks the involvement of business partners, community organizations and local institutions of higher education to improve educational programs.

(ix) The district has researched the feasibility of establishing a nonprofit supports foundation with a board of directors that reflects a wide variety of interests.

§ 405.3. Performance accountability standards.

A school district will be deemed in compliance with the standards for performance accountability if:

(1) The district has a multiyear strategic plan with annual goals and measurable objectives. Indicators of compliance include, but are not limited to, the following:

(i) The plan provides vision and direction for the district's efforts and clearly delineates the district's goals and objectives, including:

(A) Student performance.

(B) Strategies to be used to reach the goals and objectives.

(C) The performance measures and standards to be used to assess progress toward meeting the goals and objectives.

(D) The areas/staff responsible for implementing the strategies.

(E) The time frames for implementation.

(ii) In developing the plan, the board identifies and adopts a limited number of improvement-focused priorities to guide the district's strategies and major financial and program decisions.

(iii) In the budget and financial planning process, the district focuses its resources on achieving the identified goals and objectives.

(iv) The district reviews the plan annually and assesses the progress made toward achieving its goals and objectives.

(v) The plan is amended as necessary to reflect changes in student population, educational priorities, funding, community expectations or board direction.

(2) The district formally evaluates its programs and presents reports on performance and cost-effectiveness to the board and stakeholders. Indicators of compliance include, but are not limited to, the following:

(i) The district compares the performance of its programs to appropriate benchmarks as available, including past performance, the performance of comparable districts and business sector standards.

(ii) The district uses the evaluation results and data driven decision-making to improve the performance and cost-effectiveness of its programs.

(iii) The district annually makes available the evaluation results and actions to improve performance and cost-effectiveness to the board and stakeholders.

(iv) The district receives comments from stakeholders and responds appropriately.

§ 405.4. Cost control systems standards.

A school district will be deemed in compliance with the standards for cost control systems if:

(1) The district reviews the structure, staffing and procedures governing its financial operations to ensure effective and efficient delivery of financial management systems. Indicators of compliance include, but are not limited to, the following:

(i) Financial staff receives appropriate training and professional development.

(ii) The district adheres to the *Manual of Accounting and Financial Reporting for Pennsylvania Public Schools*.

(iii) The district has established and periodically reviews internal controls.

(2) The district has adequate financial information and subsidy-related data systems that provide useful, timely, and accurate information. Indicators of compliance include, but are not limited to, the following:

(i) The financial accounting system has integrated financial software components that minimize manual processes.

(ii) District staff analyze financial accounting and reporting procedures to minimize or eliminate duplication of effort.

(iii) The accounting system facilitates accountability for restricted sources of funds through fund/grant/project accounting.

(iv) The district provides timely and accurate data for use in subsidy related calculations.

(v) The district analyzes expenditures for control and reviews unusual fluctuations.

(3) The district develops and adopts an annual budget that supports the strategic plan and provides useful and understandable information to stakeholders. Indicators of compliance include, but are not limited to, the following:

(i) The district uses appropriate revenue-estimating practices when developing budget sources for appropriation.

(ii) The district has established a budget planning process and timeline that is clearly communicated to all of the involved stakeholders.

(iii) The district has established guidelines for maintaining appropriate levels of unreserved fund balance.

(iv) The district has a process for funding activities and projects that meet strategic plan objectives.

(v) The district has established appropriate procedures for adopting budget amendments.

(4) The district undergoes an annual external audit and uses the audit to improve its operations in a timely and appropriate manner. Indicators of compliance include, but are not limited to, the following:

(i) The district ensures that required information is available in a timely manner to complete the district's audit.

(ii) The district responds to audit comments in a timely and appropriate manner.

(5) The district has policies and procedures for cash management and investment activities. Indicators of compliance include, but are not limited to, the following:

(i) The district has appropriate policies and procedures for cash management, maintains its cash deposits in qualified public depositories, and has cash forecasting processes that ensure adequate liquidity throughout the year.

(ii) The district has appropriate policies and procedures for the investment of public funds that in part address risk level versus expected return, and periodically reports to the board the results of its investing activities.

(6) The district has policies and procedures for the effective management of capital assets. Indicators of compliance include, but are not limited to, the following:

(i) The district has implemented procedures to ensure purchases are capitalized in accordance with established capital asset thresholds.

(ii) The district maintains detailed subsidiary records of capital assets.

(iii) The district physically safeguards and periodically inventories capital assets.

(7) The district has policies and procedures for effective debt management. Indicators of compliance include, but are not limited to, the following:

(i) The district tracks debt service requirements and ensures timely payment.

(ii) The district complies with debt service financial reporting requirements in a timely manner.

(iii) The district evaluates debt capacity prior to issuing debt.

(iv) As part of issuing debt, the district adheres to the requirements of the Sarbanes-Oxley Act of 2002, the act of July 30, 2002 (Pub. L. No. 107-204, 116 Stat. 745), if applicable, and maintains compliance.

(v) The district evaluates the advantages and disadvantages of various financing alternatives when acquiring major capital assets.

(8) The district has policies and procedures to ensure compliance with applicable laws and regulations concerning effective risk management. Indicators of compliance include, but are not limited to, the following:

(i) The district has adequate insurance coverage and analyzes current insurance plans including deductible amounts, co-insurance levels and types of coverage provided.

(ii) The district has procedures to evaluate and identify relevant risk exposures and provides for a comprehensive approach to reducing the potential for loss.

(iii) The district periodically analyzes alternatives for providing insurance coverage.

(9) The district has established policies and procedures to take full advantage of competitive bidding, volume discounts, and special pricing agreements. Indicators of compliance include, but are not limited to, the following:

(i) The district conducts its purchasing program in accordance with established policies.

(ii) The district periodically evaluates purchasing practices to maximize the cost-effectiveness of the purchasing function.

(iii) The district utilizes procedures outlining the preparation and processing of purchases.

(iv) The district utilizes competitive bidding as required by statutes, regulations and standards.

(v) The district has established a policy to govern the acceptance of gifts and gratuities by staff and board members.

(10) The district has policies and procedures to provide for the effective management of inventories of supplies and equipment. Indicators of compliance include, but are not limited to, the following:

(i) The district has an effective method of monitoring usage of its inventories.

(ii) The district consistently monitors usage of its inventories.

(iii) Inventory storage areas are reasonably safeguarded to prevent unauthorized access and protect inventory items from physical deterioration.

(iv) The district periodically identifies and evaluates the costs to maintain inventories.

§ 405.5. Administrative and instructional technology standards.

A school district will be deemed in compliance with the standards for administrative and instructional technology if:

(1) The district has a board-approved technology plan that provides direction for making decisions regarding administrative and instructional technology. Indicators of compliance include, but are not limited to, the following:

(i) The district's technology plan is compatible with State reporting requirements and aligned with Federal initiatives.

(ii) The objectives in the technology plan are measurable and reflect the desired outcomes for educational and operational programs.

(iii) The district's annual budget provides funds for technology initiatives as reflected in the plan.

(iv) The district takes advantage of opportunities to improve technology operations, increase effectiveness and efficiency and reduce costs.

(v) The district has identified any individuals responsible for implementing and updating the technology plan.

(vi) The district collaborates with other educational, governmental, private sector and nonprofit organizations concerning technology and takes advantage of consortium opportunities.

(vii) The district periodically assesses the progress it has made toward achieving its technology plan objectives and reacts appropriately.

(2) The district acquires technology in accordance with its technology plan and in a cost-effective manner that will best meet its instructional and administrative needs. Indicators of compliance include, but are not limited to, the following:

(i) The district bases its technology acquisitions on identified needs in its technology plan.

(ii) The district uses the results of research and evaluations of previous decisions to identify technology that will best meet instructional and administrative needs.

(iii) The district has policies for acquiring hardware, software and related instructional materials for administrative and instructional use.

(iv) The district provides procedures for stakeholders to preview, evaluate and recommend acquisition of technology strategies, software and instructional materials.

(v) The district makes decisions regarding major technology acquisitions based on Total Cost of Ownership (TCO) analysis.

(vi) The district has an upgrade policy that establishes a strategy for quantifying the impact of various time frames for technologies to be upgraded.

(vii) The district has a repair and replacement policy that establishes a strategy for quantifying the impact of various time frames for technologies to be repaired and replaced.

(3) The district provides technical support and training that enables educators and district staff to implement technology in the workplace. Indicators of compliance include, but are not limited to, the following:

(i) The district budgets for costs associated with the installation and support of its technology.

(ii) The district appropriately assigns technical support responsibilities to specific personnel at both the district and the school level.

(iii) The district establishes service levels and provides timely technical support in accordance with its service priorities.

(iv) The district continuously evaluates the quality and timeliness of the technical support provided in relationship to its service levels.

(v) The district provides appropriate professional development to district staff that is based on feedback from stakeholders.

(vi) The district budgets for and adequately funds technology training and professional development.

(vii) The district makes efforts to secure funds from available sources for technology training and professional development.

(viii) The district provides a variety of opportunities in terms of time, location and delivery mode for educators and other district staff to obtain technology training and professional development.

(4) The district maintains a dependable technological infrastructure based on industry standards that meet its network and Internet access needs. Indicators of compliance include, but are not limited to, the following:

(i) The district employs practices that provide a consistently available and fully operational network that supports effective instruction, management and communication.

(ii) The district has network and computer protection software and update procedures in place.

(iii) The district protects systems from unauthorized users by using safeguards such as room locks, passwords, firewalls, and other needed means as conditions warrant.

(iv) The district has in place controls and processes that limit access to confidential and sensitive data, prevent the unauthorized release of data and determine the source of any unauthorized release.

(v) The district effectively maintains hardware and software systems.

(vi) The district timely and effectively repairs hardware and software systems necessary for operations and educational/curricular requirements.

(vii) The district timely addresses network and Internet service outages.

(5) The district uses technology to improve communication. Indicators of compliance include, but are not limited to, the use of available technologies in an effective and efficient manner to improve and enhance communication with and among staff, teachers, students, parents and other stakeholders.

(6) The district has written policies that apply safe, ethical, legal and appropriate use practices. Indicators of compliance include, but are not limited to, the following:

(i) The district provides guidelines to staff, teachers, students and parents describing appropriate and inappropriate uses of technology.

(ii) The district implements policies and procedures to prevent access to inappropriate material.

(iii) The district provides staff, teachers, students and parents with guidelines describing legal uses of digital materials, both instructional and noninstructional.

(iv) A district that engages a third party to process transactions on its behalf executes appropriate agreements with the service provider and establishes appropriate control procedures.

§ 405.6. Personnel systems and benefits standards.

A school district will be deemed in compliance with the standards for personnel systems and benefits if:

(1) The district effectively and efficiently recruits, hires and retains qualified personnel. Indicators of compliance include, but are not limited to, the following:

(i) The district completes pre-employment background and reference checks for new employees; verifies any required qualifications or certifications, or both; and conducts its employment procedures in a manner that assures equal opportunity in accordance with applicable statutes.

(ii) The district maintains up-to-date, clear, concise and readily accessible position descriptions that accurately identify the duties of each position and the education, experience, knowledge, skills and abilities required.

(iii) The district's recruiting practices are designed to generate qualified applicants to fill vacant positions in a timely manner, and are effective and efficient in doing so.

(iv) The district takes steps to identify and remedy factors that adversely affect the working environment.

(v) The district maintains clear and effective channels of communication with its employees.

(2) The district provides a comprehensive staff development program. Indicators of compliance include, but are not limited to, the following:

(i) The district conducts training, orientation or mentoring programs for new employees, and has a professional development program that meets the requirements of statutes, regulations and standards.

(ii) Professional development is planned and implemented in a cost-effective manner based on an ongoing analysis of student and district needs aligned to statutes, regulations and standards.

(iii) The district provides training and orientation for substitute teachers.

(iv) The district solicits employee feedback on professional development activities and uses this feedback to evaluate the quality and effectiveness of the training.

(3) The district has a system for evaluating employee performance. Indicators of compliance include, but are not limited to, the following:

(i) The district has established and implemented criteria and procedures to evaluate on a regular basis the performance of instructional personnel in accordance with relevant statutes, regulations and standards and non-instructional personnel in accordance with district policy.

(ii) Employees not meeting the district's performance criteria are informed in writing and the employee is provided with clear direction for improvement.

(iii) The district provides training for supervisors on how to appropriately evaluate and document unsatisfactory performance and the procedures and issues associated with working with employees needing improvement.

(iv) The district has established and implemented policies regarding drug and alcohol testing in accordance with statutes, regulations and standards.

(v) The district has procedures with which the administration and board members are familiar for discipline and due process as necessary.

(4) The district uses cost control practices for its employee benefits programs. Indicators of compliance include, but are not limited to, the following:

(i) The district reviews and evaluates its employee benefits to ensure it is attaining appropriate value.

(ii) The board is informed as to the short and long-term fiscal impact of changes to the district's benefit package prior to approval of employee contracts.

(iii) The district evaluates both the short and long-term fiscal impact of early retirement proposals.

(iv) The district reviews and evaluates workers' compensation claims and payments, and uses the results in an effort to reduce the number and cost of claims.

(5) The district's human resource functions are managed effectively and efficiently. Indicators of compliance include, but are not limited to, the following:

(i) The goals and objectives for the human resource function are aligned with the district's strategic plan.

(ii) The district's staffing levels are reasonable based on applicable comparisons or benchmarks, or both.

(iii) The district considers the use of automation, technology and outsourcing to enhance the effectiveness and efficiency of delivering human resource services.

(iv) The district maintains personnel and confidential records in accordance with applicable statutes, regulations and standards.

(v) The district provides for cross training and succession planning as appropriate.

(6) The district maintains an effective employment/labor relations program and conducts effective labor contract negotiations. Indicators of compliance include, but are not limited to, the following:

(i) The district assigns responsibility for employment/labor relations and labor contract negotiations to individuals and groups with appropriate experience and knowledge.

(ii) The district has established procedures to deal with employee complaints.

(iii) The district has established appropriate labor meet and discuss procedures.

(iv) The district establishes labor contract negotiating teams well in advance of negotiations and clearly defines the roles and responsibilities of the team and individual members.

(v) Labor contract negotiating teams have access to an attorney with appropriate knowledge and experience.

(vi) Labor contract proposals developed and presented by the district are aligned with the goals and objectives contained in the district's strategic plan.

(vii) The district estimates the short and long-term costs and considers the advantages and disadvantages of each labor contract proposal item that is developed by the district or presented to the district.

§ 405.7. Facilities construction standards.

A school district will be deemed in compliance with the standards for facilities construction if:

(1) The district has an effective long-range planning process for construction of new facilities. Indicators of compliance include, but are not limited to, the following:

(i) The district has established a long-range facilities work plan that addresses the needs of the district, including future expansion, and generally covers a period of 3 to 5 years, or longer.

(ii) When developing a long-range facilities work plan that includes new construction, the district evaluates alternatives including building reuse to minimize the need for new construction.

(iii) The long-range facilities work plan includes budgetary plans and priorities.

(iv) The district considers the most effective and practical sites for current and anticipated needs in the context of municipal and county land use policies.

(v) The district has established authority and assigned responsibilities for facilities planning.

(vi) The district evaluates facilities and site needs based upon relevant demographic data and projections that are regularly updated as part of a feasibility analysis.

(vii) The district routinely assesses facilities for physical condition, educational suitability and technology readiness.

(viii) The district effectively prioritizes construction needs.

(2) The district ensures responsiveness to the community through open communication about construction projects and the long-range planning process. Indicators of compliance include, but are not limited to, the following:

(i) The district holds public meetings at which information regarding the long-range plan is provided.

(ii) The district provides information about a construction project in a format that allows for public comment.

(iii) The district has effective channels for considering input from stakeholders in determining facilities construction needs.

(3) The district develops construction projects based upon building, site and educational specifications. Indicators of compliance include, but are not limited to, the following:

(i) The district maintains a process for selecting and retaining qualified and experienced planning, design and construction professionals.

(ii) The architectural design fulfills the building and educational specification needs as determined by the district.

(iii) The educational specifications address educational program components and include staff input regarding teaching strategies and instructional methods.

(iv) New construction, remodeling and renovations incorporate safety and security features.

(v) Facilities are designed to be adaptable to changes and innovations in education and incorporate the use of technology.

(4) The district minimizes construction, maintenance and operations costs through the use of cost-effective designs and construction practices. Indicators of compliance include, but are not limited to, the following:

(i) The district evaluates and compares the costs of construction, maintenance and operation for various designs, including green building designs.

(ii) The district evaluates the advantages and disadvantages of various financing alternatives for construction projects.

(iii) The district uses analysis of costs in making determinations regarding facilities construction.

(5) The district has effective management processes for construction projects. Indicators of compliance include, but are not limited to, the following:

(i) The district has given the authority and responsibility to keep major facilities construction projects within budget and on schedule to an individual or individuals with the appropriate credentials and construction-related experience.

(ii) A construction schedule that coordinates and minimizes disruptions of instruction is developed and the district analyzes progress against the schedule and takes appropriate action as necessary.

(iii) The board receives financial updates during the design and construction process.

(iv) The district controls project costs by minimizing changes to project designs after final working drawings are initiated and properly substantiates and authorizes change orders.

(v) Construction projects meet applicable building code requirements with a final inspection conducted and a certificate of occupancy issued following the completion of construction.

(6) The district follows generally accepted contracting procedures. Indicators of compliance include, but are not limited to, the following:

(i) The district uses legal counsel to review construction related contracts, including documentation required of the contractor, before execution.

(ii) An authorized official of the district executes construction related contracts.

(iii) The district has a system of internal controls to ensure that timely payments are made only after the design professional's approval of the completed work and with the concurrence of the district official in charge of the project.

(7) The district conducts an orientation for staff of completed projects and regular facility evaluations to determine the efficiency and effectiveness of the construction program. Indicators of compliance include, but are not limited to, the following:

(i) The district conducts a comprehensive orientation of completed projects for staff and maintenance personnel prior to use.

(ii) The district conducts regular comprehensive facility evaluations that assess facility use, operating costs and performance.

(iii) An evaluation of major facility systems and equipment is conducted before the end of the first year of occupancy or prior to end of warranty.

(iv) Evaluation results are used to make changes as necessary to the district's construction program for future projects.

§ 405.8. Facilities maintenance standards.

A school district will be deemed in compliance with the standards for facilities maintenance if:

(1) The facilities operations and maintenance department has defined goals and objectives and is operated in an effective and efficient manner. Indicators of compliance include, but are not limited to, the following:

(i) The operations and maintenance department uses performance benchmarks and cost-effectiveness measures.

(ii) District operated and contracted services are regularly evaluated to determine cost-effectiveness and to explore alternatives.

(iii) Feedback from stakeholders and maintenance staff is used to improve the effectiveness and efficiency of the operations and maintenance department.

(iv) Facilities are maintained to create an atmosphere conducive to student learning and work productivity.

(2) The facilities operations and maintenance department has operational procedures and staff performance standards, and provides for appropriate training and professional development. Indicators of compliance include, but are not limited to, the following:

(i) The operations and maintenance department has procedures that provide for effective procurement and use of personnel and resources.

(ii) Operational procedures are up to date and accessible to department staff.

(iii) Operations and maintenance performance standards are regularly updated to consider new technology and procedures.

(iv) Facilities maintenance staff is provided with the tools, equipment and training required to accomplish assigned tasks.

(v) Professional development is provided to remain current with maintenance issues, new technology, equipment, materials and procedures.

(3) The district develops an annual facilities maintenance and operations budget and capital expenditures budget. Indicators of compliance include, but are not limited to, the following:

(i) The budget for facilities maintenance and operations is developed using historical and benchmark data.

(ii) A preventative maintenance program is budgeted and implemented to reduce long-term facilities maintenance costs and service outages.

(iii) The facilities maintenance and operations budget includes funds to correct deficiencies identified in periodic safety or insurance inspections, or both.

(iv) Actual facilities maintenance and operations expenditures are routinely evaluated as compared to the costs budgeted for those expenditures.

(v) The district maintains a financial contingency plan for emergency capital repairs.

(4) The facilities maintenance and operations department identifies and implements energy management strategies to contain energy costs. Indicators of compliance include, but are not limited to, the following:

(i) The district uses energy efficiency benchmarks and implements actions to increase cost-efficiency.

(ii) The facilities maintenance and operations department regularly monitors energy consumption.

(iii) Plans have been developed to address corrective actions in facilities where the energy management is inefficient.

(5) An efficient work order system is used to register, acknowledge, prioritize and assign work orders. Indicators of compliance include, but are not limited to, the following:

(i) Work order reports are routinely produced and analyzed to meet the information and tracking needs of the district.

(ii) The facilities maintenance and operations department prioritizes maintenance needs based on prioritization guidelines developed by the Department of Education, and completes maintenance repairs accordingly.

§ 405.9. Transportation standards.

A school district will be deemed in compliance with the standards for transportation if:

(1) The district coordinates planning and budgeting for student transportation. Indicators of compliance include, but are not limited to, the following:

(i) An assessment of the district's transportation requirements and priorities is conducted annually.

(ii) Information on the district's transportation program and related costs is developed as part of the annual budget process and presented to the school board.

(iii) A process is in place to provide sufficient vehicles and drivers to meet the district's transportation needs.

(2) The district maintains accurate transportation data. Indicators of compliance include, but are not limited to, the following:

(i) The district provides timely submission of required data to multiple agencies of the Commonwealth.

(ii) The district has established an effective and efficient method of collecting and maintaining data related to the district's transportation program.

(3) The district reviews and updates routes, stops and staffing to provide effective, efficient and safe transportation services for eligible students. Indicators of compliance include, but are not limited to, the following:

(i) The district annually reviews and updates bus routes, bus stops and designated walking routes to be effective and efficient without compromising safety.

(ii) The district evaluates hazardous walking routes and submits documentation to the Department of Transportation.

(iii) Bus routes and activity trips are operated in accordance with established guidelines.

(iv) Transportation services are provided in an effective and efficient manner for eligible students, in compliance with statutes, regulations and standards.

(v) Proper vehicle maintenance is performed.

(vi) Drivers are properly licensed and certified, and receive training in compliance with State and Federal requirements.

(vii) The district is responsive to inquiries parents and other stakeholders pertaining to transportation.

(viii) The district considers input from parents and other stakeholders in evaluating routes, stops and staffing of transportation program.

(4) Appropriate student behavior is maintained on buses, with students being held accountable for misbehavior during transportation. Indicators of compliance include, but are not limited to, the following:

(i) The district has established standards and policies related to student behavior on buses with the goal of promoting safe, effective and efficient transportation to and from schools.

(ii) Parents and students are informed of district policy and procedures involving misbehavior during transportation and the related consequences.

(iii) Drivers follow established policies and procedures to report disciplinary infractions.

(iv) Drivers are held accountable for failure to comply with the established policies and procedures of the district.

(v) Students are held accountable for failure to comply with the established standards and policies of the district.

§ 405.10. Food service operations standards.

A school district will be deemed in compliance with the standards for food service operations if:

(1) The food services program has an approved operational plan and budget that is consistent with the district's strategic plan. Indicators of compliance include, but are not limited to, the following:

(i) A budget is prepared that is based on the food services program's plan, goals and objectives, and not limited to, historical, incremental increases.

(ii) The district's food services plan and budget are reviewed annually to reflect changes in Federal and State law, industry standards, and financial and demographic data within the district.

(iii) The district integrates technology, updated equipment and facilities renovation needs into its food services plans and budgets.

(iv) The district solicits and considers input from food service facilities when designing and planning for new and existing school facilities.

(2) The district has procedures and training programs designed to meet the needs of the food services program. Indicators of compliance include, but are not limited to, the following:

(i) The district has developed and keeps current a food services program procedures manual for staff that is consistent with overall district policy.

(ii) The district assesses the needs of new and existing staff and develops comprehensive training plans.

(iii) The district has effective and efficient training program for new food services program staff members.

(iv) The district has effective and efficient plan for training staff on new policies and procedures that are implemented according to the food services program plan.

(v) The district monitors training of food services staff on a regular basis.

(vi) Staff is held accountable for violations of the food services program's established policies and procedures.

(3) The district maintains an effective and efficient food services program and continually reviews and evaluates its performance. Indicators of compliance include, but are not limited to, the following:

(i) The district adheres to good cash and account management practices and files State and Federal reimbursement requests in a timely manner.

(ii) The district utilizes an array of food and supply procurement procedures, including USDA commodities, to provide quality products in a cost-effective manner.

(iii) The pricing of meals and a la carte items are periodically reviewed to determine if the rates are appropriate and meeting the budget.

(iv) The program has a reporting system that provides accurate and timely information to management.

(v) Program staffing levels are appropriate considering information such as the number of meals served, serving periods, student participation and other relevant factors.

(vi) The district uses menu costs, trends, production, and wasted food from school sites to evaluate food and labor costs.

(vii) Periodic reviews are conducted to determine that the program is in compliance with district policies and procedures as well as Federal, State and local rules and regulations.

(viii) The district has established a preventive maintenance and long-range equipment replacement program.

(ix) The district identifies barriers to student participation and develops strategies to address.

(x) The district has an effective system that readily accepts and ensures the consideration of suggestions.

(4) The food services program complies with Federal, State and district policies to meet nutrition requirements. Indicators of compliance include, but are not limited to, achieving passing results in the district's most recent Coordinated Review Effort (CRE) and School Meal Initiative for Healthy Children (SMI) review.

§ 405.11. Safety and security standards.

A school district will be deemed in compliance with the standards for safety and security if:

(1) District policies and procedures provide for the safety and security of students, employees and visitors while under the responsibility of the district. Indicators of compliance include, but are not limited to, the following:

(i) The district periodically reviews and updates its safety and security policies and procedures to determine if they are appropriate for the current conditions.

(ii) The district works with and integrates its safety and security program with the local/county/regional homeland security and emergency response programs.

(iii) The district completes drills required by the State, including fire drills and bus evacuations and tests emergency preparation for other conditions.

(iv) The district has a plan to address school violence.

(v) Individuals are held accountable when they fail to comply with district policies regarding school violence.

(vi) The district has guidelines for what is appropriate conduct for students, teachers and staff.

(vii) District procedures include a plan of how to communicate important information effectively to parents and the general public under all types of emergency situations, including adverse situations caused by weather, the environment and human events.

(viii) District procedures include a plan to address the care and shelter of students and employees as necessary during emergency situations and under adverse conditions.

(2) District policies and procedures address the health and safety condition of facilities and the district complies with Federal, State and local requirements for its facilities. Indicators of compliance include, but are not limited to, the following:

(i) The district has established health and safety guidelines.

(ii) Evaluations are made and documented for the health and safety conditions of district facilities in accordance with Federal, State and local requirements.

(iii) The district has a corrective action plan for identified facility health and safety deficiencies.

(iv) The district takes timely corrective action when it identifies health and safety deficiencies in district facilities.

(v) The district participates in and documents voluntary efforts regarding facility health and safety conditions.

(vi) The district has an emergency response plan.

(vii) The district periodically evaluates the physical building security.

§ 405.12. Educational service delivery standards.

A school district will be deemed in compliance with the standards for educational service delivery if:

(1) The district's strategic plan includes strategies to improve teaching, learning and student performance in a cost-effective manner. Indicators of compliance include, but are not limited to, the following:

(i) District monitoring of the implementation of its strategic plan.

(ii) District evaluation of the impact of the strategic plan on student performance.

(iii) District initiation of actions consistent with the plan and the results of the monitoring and evaluation thereof.

(2) The district uses both academic and nonacademic data to guide it in making decisions about improving teaching and learning. Indicators of compliance include, but are not limited to, the following:

(i) The district reviews and evaluates student assessment results disaggregated by subgroups to improve teaching and learning.

(ii) The district considers input from stakeholders in making decisions about improving teaching and learning.

(iii) The district considers industry trends and effective policies in similar districts in making decisions about improving teaching and learning.

(iv) The district considers information in current industry literature in making decisions about improving teaching and learning.

(v) The district complies with Federal and State standards in making decisions about improving teaching and learning.

(3) The district provides effective and efficient instructional programs for its students. Indicators include, but are not limited to, the following:

(i) The district analyzes the needs of its students in determining instructional programs.

(ii) The district periodically evaluates the effectiveness and efficiency of its instructional programs.

(iii) The district complies with Federal and State standards of improvement of teaching and learning.

(4) The district provides effective and efficient instructional programs for students with disabilities, English language learners and at risk students. Indicators of compliance include, but are not limited to, the following:

(i) The district reviews and evaluates disaggregated student assessment results and other performance measures as available to improve the performance of students with disabilities, English language learners and at-risk students.

(ii) The district provides teachers with appropriate support and training to assist them in developing and implementing strategies to improve the performance of students with disabilities, English language learners and at-risk students.

(5) The district allocates adequate resources to properly support instruction and promote effective teaching and learning. Indicators of compliance include, but are not limited to, the following:

(i) The district periodically evaluates staffing levels at individual schools and between schools to determine optimal utilization and allocation of resources to meet the educational needs of students in the district.

(ii) Schools have an adequate supply of up-to-date instructional materials to accommodate students and teachers in an effective and efficient manner.

(iii) Instructional technology is utilized in the classroom as appropriate to enhance the curriculum and improve teaching and learning.

[Pa.B. Doc. No. 06-1205. Filed for public inspection June 30, 2006, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 168]

Child Care

The Department of Public Welfare (Department), under the authority of Articles II and IV of the Public Welfare Code (62 P.S. §§ 201—211 and 401—493), proposes to amend Chapter 168 (relating to child care) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The purpose of this proposed rulemaking is to establish consistent child care policies within the Office of Income Maintenance (OIM) and the Office of Child Development (OCD) that best meet the needs of all families receiving subsidized child care and improve child care services to families receiving Temporary Assistance for Needy Families (TANF), General Assistance (GA) and Food Stamp benefits. This proposed rulemaking also makes this chapter applicable to food stamps recipients who qualify for subsidized child care. The Department's goal is to establish for cash assistance and food stamps recipients a "user-friendly" child care system that is accessible to eligible families who need help finding and paying for quality child care that is responsive to their needs.

The proposed rulemaking supports families and children by promoting the following goals: family self-sufficiency by giving parents reliable child care so they can work or improve their skills and earning potential through education or training, while working; and parent choice by providing parents with a broad range of child care options and empowering them to make their own decisions on the child care that best meets the needs of the child and the family.

Requirements

The proposed rulemaking benefits children and families receiving TANF, GA and Food Stamp benefits by allowing easier access to affordable, quality child care. Improvements include: incorporating the eligibility requirements

for families receiving GA and Food Stamp child care with the eligibility requirements for families receiving TANF child care; establishing consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care; clarifying co-payment requirements for families receiving TANF benefits; making the regulations easier to read; simplifying regulatory language to make the eligibility and payment process easier to understand and simplifying verification requirements to make it easier for families to apply and qualify for subsidized child care.

The proposed rulemaking establishes more verification options, allows self-certification by the parent or caretaker for certain factors and eliminates certain verification requirements. The proposed rulemaking makes it easier for parents and caretakers to document eligibility.

Following is a summary of the major proposed amendments.

The proposed rulemaking includes amendments or deletions in terminology throughout the chapter as follows:

“CAO (County Assistance Office)” is amended to “Department.”

“Work-related activities” is amended to “work activities.”

“LMA (Local Management Agency)” is deleted.

“Individual,” “person,” “participant,” “client,” “parent/caretaker,” “biological or adoptive parent,” “specified relative,” “legal guardian,” “caretaker,” “applicant” and “recipient” are amended to “parent.”

“Budget group” is amended to “family” or “TANF budget group.”

“Fee” is amended to “co-payment.”

“Special allowance” and “allowance” are amended to “payment.”

“Documented” and “documentation” are amended to “verified” and “verification.”

“Overdue” is amended to “delinquent.”

“Handicap” is amended to “injury or impairment” or “disability.”

§ 168.1. Policy on payment of child care.

The Department added cross-references to §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program) in subsection (a) to make the regulation easier to read and to avoid duplication of requirements. The Department also included a provision for families receiving GA and Food Stamp benefits who qualify for child care. This amendment allows incorporation of child care requirements for all families receiving TANF, GA and Food Stamp child care.

The Department clarified in subsection (b) that a recipient of GA or Food Stamp benefits who is in need of child care will be notified of the services providers offer, in addition to the types and locations of child care providers.

The Department added a cross-reference in subsection (b)(3)(i) to § 165.42 (relating to advance payment of special allowances for supportive services) to clarify that the Department will make an exception to the provisions which limit advance payment to instances in which the provider requires it, and which restrict advance payment for providers enrolled in the child care vendor payment system for a TANF budget group determined prospec-

tively ineligible as a result of starting new employment under § 168.71(1)(ii) (relating to monthly payment determination).

The Department clarified in subsection (b)(3)(ii) that it will make an advance payment to cover the period from the first day of employment until the date of TANF discontinuance if the information regarding new employment is verified through a collateral contact consistent with § 168.41(4) (relating to verification requirements).

The Department added cross-references in subsection (c) to § 165.25 (relating to RESET participation requirements following an exemption) and § 165.31 to make the regulation easier to read and avoid duplication of information.

The Department clarified the cross-reference in subsection (f) to Chapter 3041, Appendix B (relating to co-payment chart, family co-payment scale) to reference the name of the appendix.

The Department clarified in subsection (g) that a parent may receive help in finding and selecting a child care provider, including information about how to identify high quality providers.

§ 168.2. Definitions.

“AMR” is defined because the term is used throughout the chapter.

“Budget group” is defined as set forth in § 183.2 (relating to definitions). The Department changed this definition to incorporate by reference the definition in § 183.2.

“CAO—County Assistance Office” is defined because the term is used throughout the chapter. The Department defined this term as the local office of the Department responsible for the determination of eligibility in the Cash Assistance, Food Stamp and Medical Assistance programs.

In the definition of “CCIS—Child Care Information Services Agency,” the Department deleted the reference to LMA because the term is no longer used.

The Department deleted the definition of “child care vendor file” because the term is obsolete.

“Co-payment” is amended to reflect that the amount the family pays for subsidized child care is due weekly rather than monthly.

“Co-payment sliding fee scale” is amended to clarify the cross-reference to Chapter 3041, Appendix B to reference the name of the appendix.

The Department defined “disability” to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care and to add clarity. The Department defined “disability” as a physical or mental impairment that precludes a parent’s ability to participate in work, education or training.

The Department defined “family” for clarity. The Department defined “family” as a budget group or a household requesting help in paying child care costs.

The Department deleted the definition of “full-time employment” because the definition in § 165.31 applies. In addition, if the eligibility requirements in Chapter 165 (relating to Road to Economic Self-sufficiency through Employment and Training (RESET) Program) change, it will not be necessary to amend this chapter.

The Department defined "household" for clarity. The Department defined household as the term as defined in 7 CFR 273.1(a)(2) (relating to household concept).

The Department defined "in-home care" for clarity. The Department defined "in-home care" as child care provided by an individual who is specifically exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; family child day care homes) and who cares for a child in the child's home.

The Department deleted the definition of "LMA—Local Management Agency" because the term is no longer used.

The Department added the acronym "MCCA" to the definition of "maximum child care allowance" because the acronym is commonly known. The Department also deleted surplusage.

The Department revised the definition of "nontraditional hours" as hours of child care provided to a child whose parent works on Saturday, Sunday or between the hours of 6 p.m. and 6 a.m.

The Department defined "parent" for clarity. The Department defined "parent" as a TANF specified relative as defined in § 151.42 (relating to definitions), the GA payment name as defined in § 171.21(b)(2) (relating to policy) or a responsible member of the food stamp household as defined in 7 CFR 273.1(d).

The Department clarified the definition of "preexpenditure approval" to include individuals who receive GA or Food Stamp benefits.

The Department defined "provider agreement" for clarity. The Department defined "provider agreement" as a document signed by the child care provider in order to participate in the Department's subsidized child care program.

The Department revised the definition of "regulated care" as child care provided by a child day care center certified under Chapter 3270, a group child day care home certified under Chapter 3280 or a family day care home registered under Chapter 3290. This amendment was made to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care.

The Department clarified the definition of "relative/neighbor care" as child care provided by an individual who is specifically exempt from certification or registration under Chapters 3270, 3280 and 3290 and who cares for three or fewer children unrelated to the caregiver in the caregiver's home to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care.

The Department defined "self-certification" to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care. The Department defined self-certification as a written statement provided by the parent for the purpose of establishing verification of a child's immunization or exemption from immunization.

The Department defined "service month" for clarity. The Department defined "service month" as the calendar month during which child care services were provided.

The Department revised the definition of "sleep-time" as care provided for a child whose parent's work shift ends between the hours of 12 a.m. and 9 a.m. to allow the parent to sleep. This amendment was made to establish

consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care.

The Department defined "unregulated care" for clarity. The Department defined "unregulated care" as relative/neighbor and in-home care.

The Department revised the definition of "vendor payment" as a child care payment made by the Department directly to a child care provider who has signed the provider agreement. This amendment was made to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care.

§ 168.3. Child abuse reporting.

The Department moved the requirement that an agency authorized by the Department to administer subsidized child care report suspected child abuse to a separate section.

§ 168.4. Authority to administer subsidized child care.

The Department added a provision authorizing the delegation of the responsibilities of the Department in this chapter to the Child Care Information Services (CCIS) agency or another approved entity. This enables the Department to delegate authority to an entity that is familiar with local needs and resources. In addition, this amendment supports a single, seamless system that will serve all families receiving subsidized child care.

§ 168.11. General requirements.

The Department amended the language in subsection (a)(1)—(5) to mirror the language in § 3041.13(a) (relating to parent choice) to provide clarity and to be consistent with the OCD policies regarding types of child care for which subsidy is available.

The Department clarified in subsection (b) that a parent may choose from any provider who meets the requirements of this chapter and who meets the Department's standards for provider participation.

§ 168.17. Eligible children.

The Department added a provision to include a child who is considered a mandatory food stamp household member as specified in 7 CFR 273.1(b). As mentioned earlier, this proposed rulemaking makes the provisions of this chapter applicable to food stamps recipients who qualify for subsidized child care.

The Department also amended the language to reflect the requirement that a child shall be under 13 years of age or shall be 13 years of age or older but under 19 years of age and incapable of caring for himself as verified by a physician or licensed psychologist. The Department made this amendment to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care. The Department made this amendment to conform OIM policy with OCD policy, which requires this standard.

The Department also amended language to reflect the requirement that a child must be age appropriately immunized unless the parent objects to immunizations on religious grounds or the child's medical condition contraindicates immunizations. The Department made this amendment to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care. The Department also clarifies that if the child does not have

age-appropriate immunizations and is not exempt from immunization, the parent has 90 days to obtain immunizations for the child.

§ 168.18. Need for child care.

The Department added cross-references in subsections (a) and (b)(2) to §§ 165.31 and 501.6 to make the regulation easier to read and avoid duplication of requirements. The Department also clarified that a family may receive subsidized child care when an unemployed parent is in the home as long as the parent is participating in an education program for pregnant or parenting youth that is approved by the Department.

The Department deleted subsection (b)(3) to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care. This chapter is not intended to include provisions regarding the provision of subsidized child care as it relates to child protective services. Children in a protective services situation can receive child care under purchase of service agreements between child care providers and county Children and Youth Agencies.

The Department added cross-references in subsection (c) to §§ 165.31 and 501.6 to make the regulation easier to read and to avoid duplication of information. The Department also clarified that child care will be considered as needed for entry into or during breaks in approved work activities for up to 30 days.

The Department amended subsection (d) to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care. The Department mirrored the language in § 3041.16(c) (relating to subsidy limitations).

The Department added a condition in subsection (e) that subsidized child care may not be used as a substitute for a publicly funded educational program, such as kindergarten or a specialized treatment program to establish consistent child care policies within the OIM and the OCD. The Department mirrored the language in § 3041.16(b).

The Department added a condition in subsection (f) that a parent shall attend a face-to-face interview no later than 30 calendar days following the request for care. The Department added a provision that the 30-day time frame may be extended if a parent claims hardship due to conflicts with the parent's working hours, transportation problems or illness of the parent or another family member. At the time the parent claims hardship, the Department may grant an additional 30 days from the date the hardship is claimed for the interview. This amendment was made to establish consistent child care policies within the OIM and the OCD. The Department also added a provision that a telephone contact may be substituted for a face-to-face interview if a face-to-face interview cannot be scheduled without the parent having to take time off from work.

The Department added a condition in subsection (g) that a parent is ineligible for subsidized child care if he does not select an eligible child care provider and enroll the child within 30 calendar days following the date the Department notifies the parent that the child may be enrolled or that the family's current child care provider is ineligible to participate in the subsidized child care program. This amendment was made to establish consistent child care policies within the OIM and the OCD. The Department mirrored the language in § 3041.16(e).

§ 168.19. Child care arrangements.

To establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care, the Department clarified in paragraph (1)(i) that a child care provider must comply with the Department's standards for provider participation.

§ 168.20. Child care co-payment.

The Department clarified in subsection (a) that the employed TANF budget group shall pay the required co-payment toward the cost of child care. In establishing consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care, it is necessary to clarify that co-payment requirements are applicable only for an employed TANF budget group.

The Department added language in subsections (b)—(e) to clarify when a co-payment is due, when a co-payment is decreased, when a co-payment is increased and when a family is ineligible for subsidized child care because the co-payments for 1 month exceed the monthly payment for care with that provider. The Department added the language to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care.

§ 168.21. Ineligibility for failure to pay co-payment.

The Department clarified in subsection (a) that the employed TANF budget group shall pay the required co-payment toward the cost of child care on the first day of the service week and that when the co-payment is not paid by the last day of the service week the employed TANF budget group is ineligible until delinquent co-payments are paid or satisfactory arrangements are made to pay the delinquent co-payments. In establishing consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care, it is necessary to clarify that co-payment requirements are applicable only for an employed TANF budget group.

The Department added language in subsections (b)—(d) to clarify when a co-payment is delinquent. The Department will provide the employed TANF budget group with advance written notice that action will be taken to terminate subsidized child care on the day the provider reports the co-payment is delinquent. The Department will also notify the budget group that when a co-payment is delinquent the first payment made during a week is applied to the current week's co-payment and that subsequent payment during a week is applied to the delinquent co-payment.

§ 168.41. Verification requirements.

The Department added cross-references in paragraph (1)(i) to §§ 165.31 and 501.6 to make the regulation easier to read and avoid duplication of requirements.

To establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care and reduce verification requirements for parents, in paragraph (3), the Department deleted the requirement that the parent obtain a signed written statement from the provider to verify child care costs. Verification of child care costs is a responsibility of the provider. The provider must monthly submit verification of child care costs on a form specified by the Department.

§ 168.45. Verification of suspected child abuse.

The Department deleted the requirement that a parent provide verification of suspected child abuse to establish consistent child care policies within the OIM and the OCD.

§ 168.49. Verification of payment of co-payment for the employed budget group.

The Department deleted the requirement that the provider verify to the Department that a co-payment is paid timely. The provider shall report when a co-payment is delinquent on the last day of the service week and when the delinquent co-payment has thereafter been paid or satisfactory arrangements for payment of the delinquent co-payment have been made.

§ 168.51. Verification of age-appropriate immunizations.

The Department amended the verification requirement, allowing a parent to provide self-certification indicating that the child has received age-appropriate immunizations or that the child is exempt from immunization on the basis of religious grounds or a medical condition which contraindicates immunizations. The Department amended this language to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care and reduce verification requirements for parents.

§ 168.61. Reporting requirements.

The Department clarified that a parent must report changes to child care arrangements within 10 calendar days from the date the change occurred and deleted the requirement that a parent report child care costs monthly. The Department amended this language to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care and reduce reporting requirements for parents. Reporting child care costs is a responsibility of the provider. The provider must monthly submit verification of child care costs on a form specified by the Department. The Department also clarified that documentation of child care payment shall be retained in the case record for the period of time set forth in § 3041.85 (relating to record retention).

§ 168.71. Monthly payment determination.

The Department clarified in paragraph (1) that the allowable child care payment is the rate the provider charges to the general public or the maximum child care allowance established by the Department, whichever is less. The Department amended this language to establish consistent child care policies within the OIM and the OCD that best meet the needs of all families receiving subsidized child care.

The Department added cross-references in paragraph (1)(i) to §§ 165.31 and 501.6 to make the regulation easier to read and avoid duplication of requirements. The Department also amended the language to reflect the amendments to paragraph (1).

The Department also added cross-references in paragraph (1)(ii) to §§ 165.31 and 501.6 and amended the cross-reference to reflect the amended definition of "co-payment." This amendment is beneficial to families because it allows families to pay a co-payment weekly rather than monthly.

The Department clarified in paragraph (1)(ii)(A) and (B) the co-payment waiver provisions for a TANF budget group determined prospectively ineligible or eligible for TANF benefits.

§ 168.72. Determining monthly child care costs.

The Department clarified in paragraph (1) that child care must occur during the hours of the work activity, including travel time and sleep-time and added a cross-reference to §§ 165.31 and 501.6. The Department also deleted "for third shift employment" to reflect the amended definition of "nontraditional hours."

The Department deleted "levied" and "vacation, and the like" in paragraph (2). The Department also added language to clarify that subsidized child care costs include a charge for up to 10 consecutive days on which the child was not in attendance due to illness.

§ 168.74. Determining weekly child care co-payment for the TANF budget group.

The Department amended the language to provide that co-payments are due weekly rather than monthly. This amendment is beneficial to families because it allows families to spread payment of their co-payment each week rather than have a single, larger co-payment at the end of the month.

§ 168.81. Payment methods.

The Department deleted the language regarding specific payment methods and added language to clarify that payment is made to the provider in accordance with the provisions of the provider agreement, except that payment is made to the parent when care is provided in the child's home and when the parent requires reimbursement for child care costs incurred during retroactive periods of eligibility.

§ 168.82. Time frames for authorization of payment.

The Department added this section to clarify the requirements and time frames associated with the authorization of payment.

§ 168.91. Restitution.

The Department clarified in subsection (a) that Chapter 255 (relating to restitution) applies to a parent that has received a child care payment except that the provision for recoupment of an overpayment does not apply.

§ 168.101. Appeal and fair hearing.

The Department deleted all references to adverse action notices and replaced it with the term "advance written notice of adverse action."

Affected Individuals and Organizations

The proposed rulemaking affects approximately 47,000 children who receive subsidized child care, 27,650 families who apply for or receive subsidized child care and 158 agencies authorized by the Department to administer subsidized child care, including the 59 CCIS agencies to whom the Department intends to delegate authority.

Children and families are affected by the requirements in the proposed rulemaking that specify the eligibility conditions, verification and reporting requirements that they must meet to access subsidized child care. Providers are affected by the simplified requirements that apply to the families receiving child care services. Agencies authorized by the Department to administer subsidized child care are affected since the proposed rulemaking changes the process and requirements related to the eligibility determination procedures and child care payment.

The Department has worked closely with families who access the subsidized child care program, child development and community service advocates, providers, agencies authorized by the Department to administer subsi-

dized child care and other interested stakeholders to listen and respond to the needs, concerns and suggestions of each of these groups. The proposed rulemaking is the result of an ongoing, inclusive process between the child care community and the Department.

Accomplishments and Benefits

The proposed rulemaking benefits approximately 47,000 children and 27,650 families of low-income by allowing easier access to affordable, quality child care. The proposed rulemaking simplifies the verification requirements to make it easier for families to apply and qualify for child care.

Fiscal Impact

The proposed rulemaking will result in no additional costs to parents receiving subsidized child care or providers. During a phase-in period in the first year, the estimated net cost is \$3.526 million for additional staff and related operating costs.

Paperwork Requirements

There are no changes in paperwork requirements as a result of the proposed rulemaking.

Effective Date

This proposed rulemaking is effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Robert Frein, Director, Bureau of Subsidized Child Care Services, Office of Child Development, Room 521, Health & Welfare Building, P. O. Box 521, Harrisburg, PA 17105 within 30 calendar days after the date of publication in the *Pennsylvania Bulletin*. Reference Regulation No. 14-505 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 19, 2006, 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 Health and Human Services and the Senate Committee on Public Health and Welfare. 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.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-505. (1) General Fund;

	Cash Grants	Child Care Services
(2) Implementing Year 2005-06 is	\$0	\$0
(3) 1st Succeeding Year 2006-07 is	\$.62 million	\$3.91 million
2nd Succeeding Year 2007-08 is	\$3.17 million	\$6.14 million
3rd Succeeding Year 2008-09 is	\$3.97 million	\$6.33 million
4th Succeeding Year 2009-10 is	\$4.76 million	\$6.52 million
5th Succeeding Year 2010-11 is	\$5.55 million	\$6.71 million
	Child Care Services (State)	Cash Grants (State)
(4) 2004-05 Program—	\$80.21 million	\$377.33 million
2003-04 Program—	\$60.88 million	\$384.19 million
2002-03 Program—	\$59.68 million	\$330.77 million

(7) Cash Grants, Child Care Services; (8) recommends adoption. Funds have been included in the 2005-2006 budget for this purpose. Funds have been included in the Governor's requested 2005-2006 budget. This action will result in savings to the General Fund for County Assistance Offices estimated at \$1 million in 2006-2007 and \$5.81 million in each year thereafter.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 168. CHILD CARE

GENERAL PROVISIONS

§ 168.1. Policy on payment of child care.

(a) To the extent funds are available, payment for child care will be made to enable the [**parent/caretaker**] parent to participate in [**work-related**] work activities as defined in §§ 165.31 and 501.6 (relating to **RESET participation requirements; and employment and training program**).] To qualify for a child care payment the [**individual must be eligible to receive cash assistance, including persons who do not receive a cash payment due to the minimum monthly check requirement or due to a month of zero cash payment. Child care payments are considered a reimbursement for past or future child care expenses for food stamp eligibility purposes.**] parent shall be eligible to receive food stamps or cash assistance. This includes parents who do not receive a cash payment due to the minimum monthly check requirement or due to a month of zero cash payment.

(b) The [**CAO**] Department will promptly inform a recipient of food stamps or cash assistance who is in need of child care about the following:

(1) The types and locations of child care providers and the services the providers offer.

(2) The services available from the [**Local Management Agency (LMA)**], also known as the **Child-Care**

Child Care Information Services (CCIS) Agency] CCIS, for help in finding and selecting a child care provider.

(3) Child care payments will be paid in advance of the date that payment is required by the provider, consistent with the requirements and time frames in § 165.42 (relating to advance payment of special allowances for supportive services), to ensure that the [**participant] parent** will have access to the child care provider of the [**participant's] parent's** choice. The advance payment requirement does not apply to vendor payments for child care. [**Advance payments are considered a reimbursement of future child care expenses for food stamp eligibility purposes.]**

(i) The Department will make an exception to the provisions which limit advance payment to instances in which the provider requires it, and which restrict advance payment for providers enrolled in the child care vendor payment system as set forth in § 165.42 (relating to advance payment of special allowances for supportive services) for a TANF budget group determined prospectively ineligible as a result of starting new employment under § 168.71(1)(ii) (relating to monthly payment determination).

(ii) The [**CAO] Department** will make an advance payment to cover the period from the first day of employment until the date of TANF discontinuance if the information regarding new employment is verified through a collateral contact consistent with § 168.41(4) (relating to verification requirements).

(c) At application, reapplication and whenever the [**agreement of mutual responsibility is developed or revised, the CAO will inform applicants and recipients] AMR is developed or revised as specified in §§ 165.25 and 165.31 (relating to RESET participation requirements following exemption; and RESET participation requirements), the Department will inform parents in writing and orally of the availability of child care allowances.**

* * * * *

(f) The [**CAO] Department** will discuss the maximum child care allowances and the co-payment sliding fee scale in Chapter 3041, Appendix B (relating to co-payment chart, family co-payment scale), whenever the [**Agreement of Mutual Responsibility (AMR)] AMR** is developed or revised and reflects a need for child care. The [**CAO] Department** will advise [**clients] parents** that copies of the maximum child care allowances and the co-payment sliding fee scale are available upon request [**at the CAO]**.

(g) The [**CAO] Department** will [**refer the client to the LMA/CCIS whenever help is needed] provide help** in finding and selecting a child care provider, including providing information about how to identify high quality providers.

§ 168.2. Definitions.

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

AMR—Agreement of Mutual Responsibility.

Budget group—[**A group of persons receiving TANF. A child receiving SSI benefits and for whom**

child care payments are requested is included in the budget group.] As defined in § 183.2 (relating to definitions).

CAO—County Assistance Office—The local office of the Department responsible for the determination of eligibility in the Cash Assistance, Food Stamp and Medical Assistance Programs.

CCIS—Child Care Information Services Agency—A public or private agency with which the Department has a contract to manage the subsidized child care program in part of a county, a county or several counties. [**The subsidized child care program is for families not receiving TANF. This agency is also known as an LMA.**

Child care vendor file—A listing of regulated child care providers who have signed the required agreement to receive a vendor payment from the Department.]

Co-payment—The [**monthly] weekly** amount the family pays for child care that is subsidized.

Co-payment sliding fee scale—A scale based on family [**sizes] size** and income from which a determination of the child care co-payment is made as set forth in Chapter 3041, Appendix B (relating to co-payment chart, family co-payment scale).

Disability—A physical or mental impairment that precludes a parent's ability to participate in work, education or training.

Family—A budget group or a household requesting help in paying child care costs.

* * * * *

[**Full-time employment—**Employment which averages at least 30 hours per week in a calendar month.]

Household—As defined in 7 CFR 273.1(a)(2) (relating to household concept).

In-home care—Child care provided by an individual who is specifically exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes) and who cares for a child in the child's home.

[**LMA—Local Management Agency—**A public or private agency with which the Department has a contract to manage the subsidized child care program for families who are not receiving TANF. This agency may be known as a CCIS agency of part of a county, a county or several counties.]

MCCA—Maximum child care allowance—The ceiling set by the Department for payment of child care services [**to budget groups eligible for child care payment]**.

Nontraditional hours—Hours of child care [**which include evening, night, early morning, holiday or weekend hours] provided to a child whose parent works on Saturday, Sunday or between the hours of 6 p.m. and 6 a.m.**

Parent—A TANF specified relative as defined in § 151.42 (relating to definitions), the General Assistance payment name as defined in § 171.21(b)(2) (relating to policy) or a responsible member of the

food stamp household as defined in 7 CFR 273.1(d) (relating to household concept).

* * * * *

[Pre-expenditure] Preexpenditure approval—Approval by [a person] an individual specified by the Department prior to the [recipient's] recipient of food stamps or cash assistance incurring an expense for child care.

Provider agreement—A document signed by the child care provider in order to participate in the Department's subsidized child care program.

Regulated care—[Child care given by a person or entity which is licensed by or registered with the Department or approved by the Department of Education] Child care provided by a child care center certified under Chapter 3270, a group child day care home certified under Chapter 3280 or a family child day care home registered under Chapter 3290.

Relative/neighbor care—[Care given by a person who is exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes)] Child care provided by an individual who is specifically exempt from certification or registration under Chapters 3270, 3280 and 3290 and who cares for three or fewer children unrelated to the [caregiver] provider in the provider's home.

* * * * *

Satisfactory arrangement—[The plan made by the budget group to pay overdue fees which are] The plan made by the parent to pay an overdue copayment which is acceptable to the child care provider.

Self-certification—A written statement provided by the parent for the purpose of establishing verification of a child's immunization or exemption from immunization.

Service month—The calendar month during which child care services were provided.

* * * * *

Sleep-time—[Hours of care following third shift employment when the parent/caretaker has an eligible child in the home and needs care for the child in order] Care provided for a child when the parent's work shift ends between the hours of 12 a.m. and 9 a.m. to allow the parent time to sleep.

* * * * *

Unregulated care—Relative/neighbor care and in-home care.

Vendor payment—A child care payment made by the Department directly to a [regulated] child care provider who has signed [the Child Care Vendor Program Enrollment Request Agreement and is enrolled in the child care vendor payment system] a Provider Agreement.

§ 168.3. Child abuse reporting.

Suspected child abuse shall be reported in accordance with 23 Pa.C.S. Chapter 63 (relating to the

Child Protective Services Law) and Chapter 3490 (relating to child protective services).

§ 168.4. Authority to administer subsidized child care.

The Department may delegate to another approved entity, such as the CCIS, the responsibilities set forth in this chapter for the purpose of administering subsidized child care.

ELIGIBILITY REQUIREMENTS

§ 168.11. General requirements.

(a) [Special allowances] Payment for child care [are] is available for the following types of [child care] providers:

(1) [Center-based] A child day care center certified under Chapter 3270 (relating to child day care centers).

(2) [Group home] A group child day care home certified under Chapter 3280 (relating to group child day care homes).

(3) [Family] A family child day care home registered under Chapter 3290 (relating to family child day care homes).

(4) [Relative/neighbor care] A relative or neighbor provider specifically exempt from certification or registration under Chapters 3270, 3280 and 3290.

(5) [In-home care] An in-home provider specifically exempt from certification or registration under Chapters 3270, 3280 and 3290.

(b) The [parent/caretaker shall have the right to] parent may choose from any [type of] child care provider that is a type of provider available under this chapter [and the right to choose any child care provider] who meets the requirements of this chapter and who meets the Department's standards for provider participation.

(c) [Pre expenditure] Preexpenditure approval is required unless the child care is for a job interview and the [client] parent documents that he was unable to contact the worker prior to the scheduled interview.

§ 168.17. Eligible children.

To be eligible for a child care payment, the [budget group] family shall include a child who meets the following criteria[. The child meets the following conditions]:

* * * * *

(2) [Meets one of the following conditions:

(i) Is under 13 years of age.

(ii) Is 13 years of age or older and meets one of the following conditions:

(A) Is under 19 years of age and not physically capable of caring for himself as verified by a physician.

(B) is under 19 years of age with a developmental age of less than 13 years of age as verified by a physician or licensed psychologist.] Is considered a

mandatory food stamp household member as specified in 7 CFR 273.1(b) (relating to household concept).

(3) [Is age appropriately immunized. If the child does not have age-appropriate immunizations, the parent/caretaker has 90 days to obtain and document immunizations for the child unless one of the following applies:

(i) The parent/caretaker objects to immunizations on religious grounds.

(ii) The child's medical condition contraindicates immunizations as verified by a physician.] Meets one of the following conditions:

(i) Is under 13 years of age.

(ii) Is 13 years of age or older but under 19 years of age and is incapable of caring for himself as verified by a physician or licensed psychologist.

(4) Is age-appropriately immunized unless one of the following applies:

(i) The parent/caretaker objects to immunizations on religious grounds.

(ii) The child's medical condition contraindicates immunization.

(iii) If the child does not have age-appropriate immunizations and is not exempt from immunization, the parent has 90 days to obtain immunizations for the child.

§ 168.18. Need for child care.

(a) Child care must be needed to enable a [member of the budget group] parent to participate in a [work-related] work activity as defined in §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program).

(b) Child care services will not be considered as needed when an unemployed [parent/caretaker] parent of the child is in the home, unless one of the following applies:

(1) The [parent/caretaker] parent is physically or mentally incapable of providing child care, as verified by a physician or licensed psychologist.

(2) The [parent/caretaker] parent is involved in [work-related] work activities as defined in §§ 165.31 and 501.6, or the custodial parent is participating in [a Department of Education Pregnant and Parenting Youth Program] an education program for pregnant or parenting youth that is approved by the Department.

[(3) The child is at risk because of suspected child abuse.]

(c) Child care will be considered as needed for entry into or during breaks in approved [work-related] work activities as defined in §§ 165.31 and 501.6 for [one of the following:

(1) Up to 2 weeks.

(2) Up to 30 days when it is verified that the child care arrangements would otherwise be lost in the interim] up to 30 days.

(d) [Child will not be considered as needed when the biological or adoptive parent, specified relative or legal guardian of the child is the owner/operator of a child is the owner/operator of a child care business where care is available for the child] When a parent is the operator of a child day care center, group child day care home or family child day care home as specified in Chapter 3270, Chapter 3280 or Chapter 3290 (relating to child day care centers; group child day care homes; and family child day care homes) or is the operator of a home that is exempt from certification or registration under section 1070 of the Public Welfare Code (62 P. S. § 1070) and when space is available to enroll the parent's child at the facility operated by the parent, that child is not eligible to receive subsidized child care.

(e) Subsidized child care may not be used as a substitute for a publicly funded educational program, such as kindergarten or a specialized treatment program.

(f) A parent is ineligible for subsidized child care if he does not attend a face-to-face interview no later than 30 calendar days following the request for care. The Department may extend the 30-day time frame for the face-to-face interview if, on or before the 30th calendar day, the parent claims hardship due to conflicts with the parent's working hours, transportation problems or illness of the parent or another family member. At the time the parent claims hardship, the Department may grant an additional 30 days from the date the hardship is claimed for the interview. The Department may substitute a telephone contact for a face-to-face interview if a face-to-face interview cannot be scheduled without the parent having to take time off from work.

(g) A parent is ineligible for subsidized child care if he does not select an eligible child care provider and enroll the child within 30 calendar days following the date the Department notifies the parent that the child may be enrolled or that the family's current child care provider is ineligible to participate in the subsidized child care program.

§ 168.19. Child care arrangements.

Payment for child care will be made when the child care arrangements are as follows:

(1) The [person] individual or entity providing child care meets the following conditions:

(i) [Provides care in accordance with applicable standards of Federal, State and local law.] Complies with the Department's standards for provider participation.

* * * * *

(iii) Is [a person who is at least] 18 years of age or older.

(2) The [person or entity] individual providing child care may not be one of the following:

(i) The [biological or adoptive parent or legal guardian] parent of the child.

* * * * *

§ 168.20. Child care co-payment.

(a) The employed TANF budget group shall pay the required co-payment toward the cost of child care.

(b) The co-payment is due on the first day of the service week and each week thereafter, regardless of the day the child is enrolled.

(c) If the co-payment is decreased as the result of a redetermination, the employed TANF budget group shall begin paying the reduced co-payment on the first day of the service week following the date of the redetermination.

(d) If the co-payment is increased as the result of a redetermination, the employed TANF budget group shall begin paying the increased co-payment on the first service day of the week following the notification advising the budget group of the co-payment increase.

(e) If the co-payments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider.

§ 168.21. Ineligibility for failure to pay co-payment.

(a) Ineligibility for child care payment results when the TANF budget group is employed and fails to pay the required co-payment toward the cost of child care as specified in § 168.20(b) (relating to child care co-payment). The TANF budget group is ineligible until [overdue] delinquent co-payments are paid or satisfactory arrangements to pay [overdue] delinquent co-payments are made with the provider.

(b) A co-payment is delinquent if it is not paid by the last day of the service week.

(c) On the day the provider reports the co-payment is delinquent, the Department will notify the TANF budget group in writing, with advance notice, that action will be taken to terminate subsidized child care for the child.

(d) When a co-payment is delinquent, the first payment made during a week is applied to the current week's co-payment. Subsequent payment during a week is applied to the delinquent co-payment.

VERIFICATION

§ 168.41. Verification requirements.

The [applicant or recipient] parent is required, as a condition of eligibility, to cooperate in providing necessary information and verification to establish eligibility.

(1) Before authorizing the initial child care payment, the [CAO] Department will determine the following:

(i) Whether the child care is necessary to participate in a [work-related] work activity as defined in §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program).

* * * * *

(iii) The date the service is needed [by the participant].

* * * * *

(2) When the [parent/caretaker] parent provides verification to the [CAO] Department that indicates a change in eligibility, payment will be reduced, terminated or increased, as appropriate, upon issuance of appropriate

notice to the [parent/caretaker] parent, in accordance with §§ 133.4 and 168.101 (relating to procedures; and appeal and fair hearing).

(3) Child care costs shall be verified by the provider monthly on a form specified by the Department [or by a written statement signed by the provider] or by a collateral contact by the [CAO and] Department with the child care provider.

(4) A collateral contact will be used whenever necessary to ensure that payment is made in advance of the date that payment is required by the child care provider consistent with § 168.1(b)(3) (relating to policy on payment of child care). When a child care [allowance] payment is authorized based on a collateral contact with or by a written statement from the provider, verification of the charge for child care on a form specified by the Department shall be submitted to the [CAO] Department within 30 days of the first day child care costs were incurred. The [CAO] Department will assist the [client] parent, as needed, to obtain a completed verification form from the provider. Failure to provide verification within the specified time period could result in nonauthorization of the child care payment.

* * * * *

§ 168.43. Verification of [the disability of a child] a child's disability.

A written statement from a physician or licensed psychologist which confirms that the child has a physical or mental [handicap] injury or impairment which prevents the child from caring for himself is required.

§ 168.44. Verification of [the disability of a parent/caretaker] a parent's disability.

A written statement from a physician or licensed psychologist which confirms that the [biological or adoptive parent, specified relative or legal guardian has a physical or mental handicap] parent has a disability which prevents the [person] parent from providing child care is required.

§ 168.45. [Verification of suspected child abuse] (Reserved).

[The statement of the parent/caretaker, case-worker or other professional is acceptable evidence to verify suspected child abuse. Suspected child abuse will be reported in accordance with 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) as defined in Chapter 3490 (relating to protective services).]

§ 168.49. Verification of payment of co-payment for the employed budget group.

[A signed, written statement from the child care provider on a Department form which confirms that the child care co-payment has been paid for a specified month is required. If co-payments are owed, a signed, written statement by the child care provider that the overdue co-payments have been paid or that satisfactory arrangements for payment have been made is acceptable.] The provider is not required to report to the Department if a co-payment is paid timely. The provider shall report to the Department when a co-payment is delinquent on the last day of the service week, when a delin-

quent co-payment has thereafter been paid and when satisfactory arrangements for payment of a delinquent co-payment have been made.

§ 168.51. Verification of age-appropriate immunizations.

[The parent/caretaker shall provide a signed, written statement on a form specified by the Department to verify that the child has received age-appropriate immunizations, or that the parent/caretaker objects to immunizations on the basis of religious grounds, or documentation from a physician to verify that the child's medical condition contraindicates immunizations.] The parent shall provide self-certification indicating that the child has received age-appropriate immunizations or that the child is exempt from immunization on the basis of religious grounds or a medical condition which contraindicates immunizations. Self-certification is a written statement provided by the parent for the purpose of establishing verification.

REPORTING REQUIREMENTS

§ 168.61. Reporting requirements.

The [budget group] parent shall report changes to child care arrangements [and child care costs monthly consistent with Chapter 142 (relating to monthly reporting) and § 125.24(d) (relating to responsibility for reporting changes)]. Documentation will be retained in the case record to support the determination of the payment, including child care costs. These documents are retained in accordance with cash assistance case record retention policies] within 10 calendar days from the date the change occurred. Documentation of child care payment shall be retained in the case record in accordance with § 3041.85 (relating to record retention).

PAYMENT DETERMINATION

§ 168.71. Monthly payment determination.

The amount of the child care payment is determined for each month.

(1) The allowable child care payment is the [lowest of the actual child care costs, the rate charged the general public or the maximum allowance] rate the provider charges to the general public or the MCCA established by the Department, whichever is less.

(i) For [participants] parents in unpaid [work-related] work activities as defined in §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program), payment is [made for the actual costs of child care up to the maximum allowance] the rate the provider charges to the general public or the MCCA established by the Department [or the rate charged the general public], whichever is less.

(ii) For [participants] parents in paid [work-related] work activities as defined in §§ 165.31 and 501.6, payment is made for the actual costs of child care up to the maximum allowance established by the Department or the rate charged the general public, whichever is less, minus the family co-payment as determined in § 168.74 (relating to determining [monthly] weekly child-care [co-payments] co-payment for the employed TANF budget group).

(A) A TANF budget group determined prospectively ineligible for TANF benefits as a result of starting employment will have the co-payment waived from the first day of employment until the date of discontinuance of the TANF benefits in accordance with § 183.105 (relating to increases in income), if the budget group has reported timely in accordance with § 125.24(d) (relating to responsibility for reporting changes).

(B) A TANF budget group determined prospectively eligible for TANF benefits as a result of starting employment will have the co-payment waived from the first day of employment until the last day of the calendar month in which the first pay is received, provided the TANF budget group has reported timely in accordance with § 125.24(d).

(2) When the month of child care eligibility is not a full calendar month, the child care payment is prorated for the number of calendar days for which the TANF budget group is eligible.

[(3) Corrective or delayed payments are issued consistent with the requirements in Chapters 175 and 227 (relating to allowances and benefits; and central office disbursement).]

§ 168.72. Determining monthly child care costs.

The actual child care costs reported and verified as paid or incurred in the month are considered. Actual child care costs include the following:

(1) A charge for child care [reasonably related to] during the hours of the [work-related] work activity as defined in §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program), including travel time and sleep-time [for third shift employment].

(2) A charge [levied] for up to 10 consecutive days on which the child was not in attendance due to illness[, vacation, and the like].

* * * * *

§ 168.74. Determining [monthly] weekly child care co-payment for the employed TANF budget group.

The co-payment is determined [for a month,] weekly based upon gross monthly income and [budget group] family size, using the co-payment sliding fee scale in Chapter 3041, Appendix B. Gross monthly income is determined based on anticipated or actual amounts as determined in accordance with Chapter 183 (relating to income).

* * * * *

CHILD CARE PAYMENT METHODS

§ 168.81. Payment methods.

The Department will make a child care payment for child care expenses paid or incurred in a month [as one of the following]:

(1) A direct check to the client when the child care provider is not enrolled in the Department's child care vendor payment system.

(2) A vendor payment to the child care provider when the provider is regulated and enrolled in the Department's child care vendor payment system except when it is verified that the client has paid the enrolled provider directly. Payment will then be issued directly to the client.

(3) A restricted endorsement check made payable to the client and the child care provider when it has been demonstrated that the client failed to use a prior child care payment for its intended purpose]. Payment is made to the provider in accordance with the provisions of the provider agreement with the following exceptions:

(1) Payment is made to the parent when care is provided in the child's home.

(2) Payment is made to the parent when the parent requires reimbursement for child care costs incurred during retroactive periods of eligibility.

§ 168.82. Time frames for authorization of payment.

(a) When verification of child care costs as specified in § 168.41(3) (relating to verification requirements) is obtained or received by the Department within 5 calendar days following a request for child care payment, the Department will authorize payment no later than 10 calendar days following the date of request.

(b) When verification of child care costs as specified in § 168.41(3) is obtained or received by the Department more than 5 days following a request for child care payment, the Department will authorize payment no later than 5 calendar days after receipt of the verification.

(c) When the last day for authorization of payment falls on a weekend or holiday, the Department will authorize payment on or before the working day immediately preceding the weekend or holiday.

(d) Authorization of payment shall include actually processing the data needed to issue a check, including completing required forms and performing data entry.

(e) The Department will issue the written decision approving child care payment within the time frame for authorization of payment in this section.

(f) The Department will use the method of payment, such as a county or central issuance, that is best calculated to provide child care payment to the parent or provider in advance of the date that payment is required by the provider.

RESTITUTION

§ 168.91. Restitution.

The cash assistance provisions of Chapter 255 (relating to restitution) apply to a [recipient of] parent that has received a child care payment except that the provision for recoupment of an overpayment does not apply.

APPEAL AND FAIR HEARING

§ 168.101. Appeal and fair hearing.

The cash assistance provisions of Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) apply to an applicant or recipient of a child care payment with one exception[;]: the requirement for an advance written notice of adverse action will not apply to a change in the method of payment, unless the change would result in a discontinuance, suspension, reduction or termination of benefits or would force a change in child care arrangements. If the [parent/ caretaker] parent files an appeal within 10 days of the

date of the advance written notice of adverse action, subsidy continues at the prior level until a final decision is made by the Bureau of Hearings and Appeals except when the adverse action is based solely on Federal or State law, regulations or policy or changes in Federal or State law, regulations or policy, or the Department lacks funding to continue the subsidy.

[Pa.B. Doc. No. 06-1206. Filed for public inspection June 30, 2006, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 457]

Prequalification of Bidders

The Department of Transportation (Department), under section 404.1 of the State Highway Law (act) (36 P. S. § 670-404.1), proposes to amend Chapter 457 (relating to prequalification of bidders) to read as set forth in Annex A.

Purpose of this Chapter

The purpose of this chapter is to provide a method and manner, determined to be desirable by the Secretary of Transportation, to prequalify all contractors and subcontractors who seek to perform highway project work in this Commonwealth.

Purpose of this Proposed Rulemaking

The purpose of this proposed rulemaking is to amend the table in § 457.5 (relating to classification) by deleting the specific classification for Rest Area Structures and Buildings.

This proposed rulemaking is necessary because work associated with the N Work Classification Code (rest area structures, buildings) is not traditionally performed by highway construction contractors. Contractors who have expertise in this work are generally not prequalified by the Department. To attract a greater number of competent bidders, this type of work should be classified as miscellaneous work.

Persons and Entities Affected

This proposed rulemaking will affect contractors who wish to perform project work regarding the construction of rest area structures and buildings along highways in this Commonwealth.

Fiscal Impact

This proposed rulemaking will have little or no fiscal impact on contractors. The Commonwealth may realize cost savings in the construction of rest area structures and buildings in the availability of a greater number of contractors able to bid on this work.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 21, 2006, 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 and Senate Transportation Committees. 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.

Sunset Provisions

The Department is not establishing a sunset date for this regulation, since this regulation is needed to administer provisions required under the act. The regulations will be continuously monitored for effectiveness by the Department and the affected industry.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Joseph F. Cribben, P.E., Contract Evaluation Engineer, Contract Management Division, Bureau of Construction and Materials, P. O. Box 2855, Harrisburg,

PA 17105-2855 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-407. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart B. NONVEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

CHAPTER 457. PREQUALIFICATION OF BIDDERS

§ 457.5. Classification.

(a) The contractor or subcontractor shall be classified according to the type of work and amount of work for which his experience and financial capacity will qualify him to bid. The types of work, as described in Department of Transportation Specifications, Publication 408, are listed as follows:

<i>WORK</i>	<i>CODE</i>	<i>SECT.</i>	<i>CLASSIFICATION</i>
EARTHWORK	A	200	CLEARING & GRUBBING
	B	200	BUILDING DEMOLITION
	C	200	EXCAVATING & GRADING
BASE COURSE	D	300	RIGID BASE COURSE
	E	300	FLEXIBLE BASE COURSE
PAVEMENT	F	400	BITUMINOUS PAVEMENT
	F1	400	BITUMINOUS PAVEMENT PATCHING AND REPAIR
	G	500	RIGID PAVEMENT
	G1	500	RIGID PAVEMENT PATCHING & REPAIR
	H	600	DRAINAGE, WATER MAIN, STORM SEWER
INCIDENTAL CONSTRUCTION	J	600	GUIDE RAIL, STEEL MEDIAN BARRIER, FENCES
	J1	600	CONCRETE MEDIAN BARRIER
	K	600	CURBS, SIDEWALKS, INLETS, MANHOLES, ETC.
	L	600	SLAPJACKING-SUBSEALING
ROADSIDE DEVELOPMENT	M	800	LANDSCAPING
	[N		REST AREA STRUCTURES, BUILDINGS]
TRAFFIC ACCOMMODATIONS AND CONTROL	O	900	PAVEMENT MARKINGS
	P	900	HIGHWAY/SIGN LIGHTING, SIGNAL CONTROL
	Q	900	MAINTENANCE AND PROTECTION OF TRAFFIC
	R	900	SIGN PLACEMENT (POST/STRUCTURE MOUNTED)
	R1	900	SIGN STRUCTURES
STRUCTURES	S	1000	CEMENT CONCRETE STRUCTURES

<i>WORK</i>	<i>CODE</i>	<i>SECT.</i>	<i>CLASSIFICATION</i>
	S1	1000	CULVERTS & SINGLE SPAN BRIDGES TO 80 FT
	S2	1000	REPAIR AND REHABILITATION OF STRUCTURES
	S3	1000	MODIFIED CONCRETE DECK OVERLAYS
	T	1050	ERECTION (STRUCTURAL MEMBERS)
	T1	1018	BRIDGE REMOVAL
	U	1005	PILE DRIVING
	V	1070	STEEL PAINTING (HIGH PERFORMANCE)
	V1	1071	STEEL PAINTING (CONVENTIONAL)
MISCELLANEOUS	Y		OTHERS
		* * * * *	

[Pa.B. Doc. No. 06-1207. Filed for public inspection June 30, 2006, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 127]

Nonattainment New Source Review; Comment Period Extension

Notice of the Environmental Quality Board's (Board) proposal to amend § 121.1 (relating to definitions) and Chapter 127, Subchapter E (relating to new source review) was published at 36 Pa.B. 1991(April 29, 2006).

The Board will now accept public comments until July 31, 2006.

Written comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be postmarked by July 31, 2006. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be postmarked by July 31, 2006. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by July 31, 2006. A subject heading of the proposal and a return name and address must be included in each transmission.

KATHLEEN A. MCGINTY,
Chairperson

[Pa.B. Doc. No. 06-1208. Filed for public inspection June 30, 2006, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 24, 2006, meeting, proposed to amend § 135.107 (relating to Middle Creek Wildlife Management Area).

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 January 24, 2006, meeting of the Commission. Comments can be sent, until April 14, 2006, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

Since September goose hunting was initiated, the resident Canada goose population on and in the vicinity of the Middle Creek Wildlife Management Area has declined dramatically. As added evidence of the population decline, hunter success rates in the controlled area at Middle Creek have dropped from 57% in 1996 to 16% in 2005. The Commission believes that it is absolutely necessary to reduce the harvest of resident geese at the Middle Creek Wildlife Management Area to sustain and recover Canada goose populations in the area and preserve the quality of the waterfowl hunting experience in the controlled management area.

An interdisciplinary group has met and recommended several administrative and regulatory changes to reduce goose harvests and improve hunting on the controlled area at Middle Creek. Enhanced hunter education and changes in the management of hunting blinds on the area will be part of the changes implemented for the 2006 season. Also recommended was a reduction from 4 to 3 days in the number of waterfowl shooting days at Middle Creek, eliminating Mondays. Therefore, the Commission is proposing to amend § 135.107 to redress evidence of dramatic Canada goose population declines on and in the

vicinity of the Middle Creek Wildlife Management Area by reducing the number of waterfowl shooting days at Middle Creek from 4 to 3 days by means of the elimination of Monday hunts.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations regarding the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment of § 135.107 was proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 135.107 to redress evidence of dramatic Canada goose population declines on and in the vicinity of the Middle Creek Wildlife Management Area by reducing the number of waterfowl shooting days at Middle Creek from 4 to 3 days by means of the elimination of Monday hunts.

3. Persons Affected

Persons wishing to hunt waterfowl at the Middle Creek Wildlife Management Area on Mondays will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should not result in any 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.

CARL G. ROE,
Executive Director

Fiscal Note: 48-233. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter F. SPECIAL WILDLIFE MANAGEMENT AREAS

§ 135.107. Middle Creek Wildlife Management Area.

(a) In addition to §§ 135.2 and 135.41 (relating to unlawful actions; and State game lands) and this subchapter, the following pertain to the Middle Creek Wildlife Management Area:

* * * * *

(4) Waterfowl hunting is permitted on [**Monday,**] Tuesday, Thursday and Saturday. Starting times conform [**with**] to State and Federal regulations. Shooting ends at 1:30 p.m.

* * * * *

[Pa.B. Doc. No. 06-1209. Filed for public inspection June 30, 2006, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 118a]

Property and Casualty Actuarial Opinion

The Insurance Department (Department) proposes to add Chapter 118a (relating to property and casualty actuarial opinion) to read as set forth in Annex A. The rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), regarding the general rulemaking authority of the Department; sections 320 and 655 of The Insurance Company Law of 1921 (40 P. S. §§ 443 and 815) regarding the authority of the Insurance Commissioner (Commissioner) to require insurance companies, associations and exchanges to file statements concerning their affairs and financial condition; sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.205 and 1600.206); and section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731) regarding, respectively, the specific regulatory and rulemaking authority of the Department regarding financial reporting by the Pennsylvania Fair Plan and the Pennsylvania Professional Liability Joint Underwriting Association.

Purpose

The purpose of this proposed rulemaking is to establish by regulation the requirements for statements of actuarial opinion and related documents filed by property and casualty insurers with the Department. Establishing these requirements by regulation for property/casualty insurers is consistent with the approach used to establish similar requirements for actuarial review of the reserves of life/health insurers under Chapter 84b (relating to actuarial opinion and memorandum). Section 320(a)(1) of The Insurance Company Law of 1921 requires insurers to file annual financial statements with the Department and additional statements concerning their affairs and financial condition as the Commissioner may, in the Commissioner's discretion, require. Section 320 of The Insurance Company Law of 1921 further requires insurers to adhere to the instructions and accounting practices and procedures prescribed by the National Association of Insurance Commissioners (NAIC) unless otherwise provided by law, regulation or order of the Commissioner. Under this authority, the Commissioner requires insurers to include statements of actuarial opinion with annual financial statements filed on or before the first day of March each year. The statements of actuarial opinion must be prepared as prescribed by the NAIC's annual statement instructions and include the actuary's opinion with respect to the proper establishment and adequacy of the insurer's reserves. If requested by the Department, domestic insurers shall also submit the supporting actuarial report and workpapers on or before the first day of May

each year. The Department reviews this information in conducting financial analyses and onsite financial examinations of domestic insurers.

Chapter 118a establishes requirements for the filing of an additional document, an actuarial opinion summary, on or before the 15th day of March each year. The actuarial opinion summary must also be prepared in accordance with the NAIC instructions, which will become effective for financial statements reporting an insurer's condition as year-end 2005. The new actuarial opinion summary will provide the Department with information needed to quickly identify insurers with potential reserving problems and then focus heightened solvency monitoring efforts on those insurers. Therefore, Chapter 118a will clarify and supplement the new NAIC instructions regarding actuarial opinions and related documents filed by property and casualty insurers, and strengthen the Department's financial regulation tools.

Explanation of Regulatory Requirements

Section 118a.2 (relating to definitions) defines terms for purposes of the chapter. The definitions of "domestic insurer," "insurer" and "foreign insurer" clarify the scope and application of the regulation with respect to the various types of insurers writing property/casualty insurance in this Commonwealth. The definitions of "appointed actuary" and "qualified actuary" establish the qualification requirements for individuals who prepare statements of actuarial opinion, actuarial opinion summaries and related documents required under the chapter.

Section 118a.3 (relating to statement of actuarial opinion and supporting documentation) establishes annual filing requirements, with required time frames, for statements of actuarial opinion and actuarial opinion summaries with respect to domestic and foreign insurers. Section 118a.3(c) requires the preparation, maintenance and availability of supporting actuarial reports and underlying workpapers. The definitional elements of statements of actuarial opinion, actuarial opinion summaries, actuarial reports and underlying workpapers are established/updated on an annual basis in the property and casualty annual statement instructions prescribed by the NAIC. Section 118a.3 requires these documents to be prepared in accordance with the NAIC instructions as provided under the Department's authority in section 320 of The Insurance Company Law of 1921.

Section 118a.4(a) (relating to general requirements) establishes requirements for requesting the Department's approval of an individual as a "qualified actuary" when the individual is not a member of the Casualty Actuarial Society or the American Academy of Actuaries. The Department has included provisions for approval of these individuals to provide the flexibility that may be needed to meet the particular needs of smaller domestic insurers. Section 118a.4(b) requires that the members of an insurer's board of directors be provided with the annual filings made under this chapter and that the receipt of these documents be documented in the board meeting minutes. Section 118a.4(c) establishes notification requirements when an actuary is replaced by an insurer's board of directors, including notice to the Department of any disagreements with the former actuary regarding the content of filings and other documents required under the chapter. Section 118a.4(d) establishes notice requirements when an error is discovered after a filing is made with the Department and defines what types of errors must be reported. Section 118a.4(e) establishes procedural requirements for reporting errors under § 118a.4(d), including time frames for providing the required notice. Section

118a.4(f) prescribes actions to be taken by an actuary and insurer when an actuary learns that data or other information relied upon in preparing filings under the chapter were factually incorrect and the actuary cannot immediately determine whether changes must be made in filings required under the chapter.

Section 118a.5 (relating to confidentiality) clarifies the distinction between public filings and related confidential work product and states the circumstances under which the Commissioner may share confidential information filed under the chapter.

Section 118a.6 (relating to effective date and exemption) requires compliance with the chapter beginning with annual financial statements for the year in which this proposed rulemaking becomes effective and provides for exemptions consistent with the NAIC instructions.

Section 118a.7 (relating to penalties) refers to the imposition of penalties as provided by law for failure to comply with the chapter.

External Comments

In drafting this proposed rulemaking, the Department requested comments from the Insurance Federation of Pennsylvania, Inc., the Pennsylvania Association of Mutual Insurance Companies, the Reinsurance Association of America and the Casualty Actuaries of the Mid-Atlantic Region. The comments received in response to the Department's request were considered in the development of this proposed rulemaking.

Fiscal Impact

State Government

This proposed rulemaking will clarify and strengthen existing requirements. Department costs in monitoring the financial condition of insurers will not increase as a result of this proposed rulemaking.

General Public

The proposed rulemaking has no fiscal impact on the general public.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of the proposed rulemaking.

Private Sector

The strengthened filing requirements in this proposed rulemaking are consistent with NAIC standards. The information needed for the new actuarial opinion summary due March 15 should be known to the insurer's appointed actuary when preparing the Statement of Actuarial Opinion due March 1. Therefore, the proposed rulemaking should impose no significant additional costs on insurers in obtaining annual actuarial reviews and required documents.

Paperwork

The proposed rulemaking will not impose significant additional paperwork on the Department. The additional paperwork required for insurers also would be minimal, since the information required in the new actuarial opinion summary should be included in the work done by actuaries in preparing actuarial reports and workpapers for the statements of actuarial opinion already required to be filed with insurers' annual financial statements.

Persons Regulated

The proposed rulemaking applies to insurers licensed to write property/casualty insurance in this Commonwealth.

Contact Person

Questions or comments regarding this proposed rulemaking should be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Special Projects Office, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 772-1969, psalvatore@state.pa.us within 30 days following publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 15, 2006, 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 Senate Banking and Insurance Committee and the House Insurance 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 Department, the General Assembly and the Governor of comments, recommendations or objections raised.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-225. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 31. INSURANCE****PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE****CHAPTER 118a. PROPERTY AND CASUALTY ACTUARIAL OPINION**

Sec.	Purpose.
118a.1.	Purpose.
118a.2.	Definitions.
118a.3.	Statement of actuarial opinion and supporting documentation.
118a.4.	General requirements.
118a.5.	Confidentiality.
118a.6.	Effective date and exemption.
118a.7.	Penalties.

§ 118a.1. Purpose.

This chapter sets forth requirements relating to statements of actuarial opinion and related documents filed under section 320 of The Insurance Company Law of 1921 (40 P. S. § 443) with the Commissioner by insurers licensed to transact property or casualty insurance, or both, in this Commonwealth.

§ 118a.2. Definitions.

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

Appointed actuary—A qualified actuary appointed by an insurer in accordance with the property and casualty annual statement instructions relating to actuarial opinions prescribed by the NAIC.

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

Domestic insurer—An insurer incorporated or organized under the laws of the Commonwealth.

Insurer—The term includes the following entities licensed to transact property or casualty insurance, or both, in this Commonwealth:

- (i) An insurance company, association or exchange.
- (ii) A reciprocal or interinsurance exchange.
- (iii) An employers' mutual liability insurance association.
- (iv) The Industry Placement Facility under The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.101—1600.502).
- (v) The Pennsylvania Professional Liability Joint Underwriting Association under section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731).

Foreign insurer—An insurer not incorporated or organized under the laws of the Commonwealth.

NAIC—The National Association of Insurance Commissioners, or successor organization.

Qualified actuary—An individual who meets the following requirements:

- (i) Is one or more of the following:
 - (A) A member in good standing of the Casualty Actuarial Society.
 - (B) A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

(C) Approved by the Commissioner as otherwise having demonstrated competency in loss reserve evaluation for property or casualty insurance, or both, to the Commissioner's satisfaction under § 118a.4(a), (relating to general requirements).

(ii) Has not been found by the Commissioner, following appropriate notice and hearing, to have done one or more of the following:

(A) Violated any provision of, or any obligation imposed by, this chapter or other laws or regulations in the course of the individual's dealings as a qualified actuary.

(B) Been found guilty of fraudulent or dishonest practices.

(C) Demonstrated incompetence, lack of cooperation or untrustworthiness to act as a qualified actuary.

(D) Prepared a statement of actuarial opinion or actuarial opinion summary that was submitted to the Commissioner during the past 5 years and rejected for failure to adhere to this chapter, including acceptable actuarial standards.

(E) Resigned or been removed as an actuary within the past 5 years as a result of acts or omissions identified in a report by the Department or other regulatory or law enforcement official of this Commonwealth or other jurisdiction pursuant to an investigation or examination, or as a result of failure to adhere to generally acceptable actuarial standards.

(iii) Has not failed to notify the Department of any action taken against the individual by a regulatory or law enforcement official of this Commonwealth or other jurisdiction relating to activities similar to those described in subparagraph (ii).

§ 118a.3. Statement of actuarial opinion and supporting documentation.

(a) *Statement of actuarial opinion.* Unless exempted by the Commissioner under § 118a.6 (relating to effective date and exemption), an insurer shall annually file with the Department an opinion of an appointed actuary entitled "Statement of Actuarial Opinion." Under section 320 of The Insurance Company Law of 1921 (40 P. S. § 443), the statement of actuarial opinion shall be prepared in accordance with the property and casualty annual statement instructions prescribed by the NAIC and filed as instructed by the Department on or before the first day of March.

(b) *Actuarial opinion summary.* A domestic insurer required to file a statement of actuarial opinion under subsection (a) shall annually file with the Department a document entitled "Actuarial Opinion Summary" written by the insurer's appointed actuary and supporting the statement of actuarial opinion. The actuarial opinion summary shall be prepared in accordance with the property and casualty annual statement instructions prescribed by the NAIC and filed as instructed by the Department on or before the 15th day of March. The Department may require a foreign insurer to file an actuarial opinion summary by providing 60 days' advance notice to the insurer.

(c) *Actuarial report and workpapers.* An actuarial report and underlying workpapers shall be prepared and maintained to support a statement of actuarial opinion as required by the property and casualty annual statement instructions prescribed by the NAIC and provided to the Department upon request.

§ 118a.4. General requirements.

(a) The following requirements apply to a request for the Commissioner's approval of an individual as a qualified actuary under § 118a.2 (relating to definitions):

(1) The insurer shall file a request with the Department for approval of an individual as a qualified actuary at least 90 days prior to the filing of the insurer's annual financial statement.

(2) Requests filed under paragraph (1) must contain the following:

(i) A properly completed biographical affidavit in the form adopted by the NAIC.

(ii) A list of the loss reserve opinions for property or casualty insurance, or both, issued by the individual in the past 3 years.

(iii) Other information that the Commissioner in the Commissioner's discretion may require to determine the individual's qualifications.

(b) The appointed actuary shall annually provide the insurer's board of directors with the statement of actuarial opinion and actuary opinion summary, and the receipt of these documents shall be recorded in the meeting minutes of the board of directors.

(c) If an actuary who was the appointed actuary for the immediately preceding filed statement of actuarial opinion is replaced by an action of the insurer's board of directors, the insurer shall:

(1) Notify the Department in writing within 5 business days of the board's action.

(2) Provide the Department with a separate written notice within 10 business days of providing notice under paragraph (1) stating whether, in the 24 months preced-

ing the appointed actuary's replacement, there were any disagreements with the former appointed actuary relating to the content of the statement of actuarial opinion, actuarial opinion summary, actuarial report or underlying workpapers on matters of the risk of material adverse deviation, required disclosures, scope, procedure or data quality. The disagreements required to be reported include both those resolved to the former appointed actuary's satisfaction and those not resolved to the former appointed actuary's satisfaction. The notice must include a written letter addressed to the insurer by the former appointed actuary stating whether the appointed actuary agrees with the statements in the insurer's notice and, if not, stating the reasons why the appointed actuary does not agree.

(d) The insurer shall require its appointed actuary to notify the insurer's board of directors or audit committee in writing within 5 business days after a determination by the appointed actuary that the statement of actuarial opinion or actuarial opinion summary filed with the Department was in error if:

(1) The error is as a result of reliance on data or other information (other than assumptions) that, as of the balance sheet date, were factually incorrect.

(2) The determination is made between the date the statement of actuarial opinion is issued and the balance sheet date for which the next statement of actuarial opinion will be issued.

(3) The statement of actuarial opinion or actuarial opinion summary would not have been issued or would have been materially altered had the correct data or other information been used; except that the statement of actuarial opinion or actuarial opinion summary will not be considered to be in error if it would not have been issued or would have been materially altered solely because of data or information concerning events subsequent to the balance sheet date or because actual results differ from those projected.

(e) Notification provided by an appointed actuary to an insurer under subsection (d) must include a summary of the appointed actuary's findings and an amended statement of actuarial opinion and actuarial opinion summary. The insurer shall forward a copy of the summary and amended statement of actuarial opinion and actuarial opinion summary to the Commissioner within 5 business days of receipt and provide the appointed actuary with a copy of the information forwarded to the Commissioner. If the appointed actuary does not receive a copy of the information forwarded to the Commissioner within the 5 business day period, the appointed actuary shall provide the Commissioner with the information within the next 5 business days, including a statement whether the Department should rely upon the statement of actuarial opinion or actuarial opinion summary filed under this chapter.

(f) If an appointed actuary learns that data or other information relied upon in rendering a statement of actuarial opinion or actuarial opinion summary under this chapter were factually incorrect, but the appointed actuary cannot immediately determine what, if any, changes are needed in the statement of actuarial opinion or actuarial opinion summary, the appointed actuary and the insurer shall take the actions necessary for the appointed actuary to make the determination. If the insurer does not provide the necessary data corrections and other support (including financial support) within 10 business days, the appointed actuary should provide the Commissioner with notice of the situation within the next 5 business days.

§ 118a.5. Confidentiality.

(a) The statement of actuarial opinion shall be filed with an insurer's annual statement in accordance with the property and casualty annual statement instructions prescribed by the NAIC and shall be treated as a public document.

(b) Documents, materials or other information in the possession or control of the Department that are considered an actuarial report, workpapers or actuarial opinion summary provided in support of the statement of actuarial opinion, and any other material provided by the insurer to the Commissioner in connection with the actuarial report, workpapers or actuarial opinion summary, shall be confidential by law and privileged, will not be subject to the act of June 21, 1957 (P. L. 390, No. 212), known as the Right to Know Law (65 P. S. §§ 66.1—66.4) and 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act), will not be subject to subpoena, and will not be subject to discovery or admissible in evidence in any private civil action.

(c) This section may not be construed to limit the Commissioner's authority to:

(1) Release the documents to the Actuarial Board for Counseling and Discipline (ABCD) if the material is required for the purpose of professional disciplinary proceedings and the ABCD establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents.

(2) Limit the Commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(d) Neither the Commissioner nor any individual or person who received documents, materials or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsections (b) and (c).

(e) The Commissioner may share confidential information received under this chapter with regulatory or law enforcement officials of this Commonwealth or other jurisdictions and the NAIC under sections 201-A and 202-A of The Insurance Department Act of 1921 (40 P. S. §§ 65.1-A and 65.2-A).

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information may occur as a result of disclosure to the Commissioner or as a result of sharing information under this section.

§ 118a.6. Effective date and exemption.

(a) Insurers shall comply with this chapter beginning with property and casualty annual statements filed for the year ending December 31, _____, and each year thereafter unless the Commissioner permits otherwise under this section. (*Editor's Note:* The blank refers to the year in which this proposed rulemaking becomes effective.)

(b) A domestic insurer may annually submit a written request to the Commissioner for approval of an exemption from the requirement to file a statement of actuarial opinion as provided in the property and casualty annual statement instructions prescribed by the NAIC.

(c) A foreign insurer exempt from filing a statement of actuarial opinion by the chief insurance regulatory official in its domiciliary jurisdiction in accordance with the

property and casualty annual statement instructions prescribed by the NAIC is exempt from this chapter, unless the Commissioner in the Commissioner's sole discretion requires otherwise.

§ 118a.7. Penalties.

Failure to file the statement of actuarial opinion, actuarial opinion summary and additional statements, letters, workpapers or reports required under this chapter will subject the insurer to the penalties provided by law.

[Pa.B. Doc. No. 06-1210. Filed for public inspection June 30, 2006, 9:00 a.m.]

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 36]

Foreign Corporation Standards

The State Board of Education (Board) proposes to amend Chapter 36 (relating to foreign corporation standards) 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 (code) (24 P. S. § 26-2603-B).

Purpose

The purpose of this proposed rulemaking is to update and clarify the regulations that establish requirements for the approval and operation of postsecondary degree-granting institutions in this Commonwealth.

Requirements of the Proposed Rulemaking

The proposed rulemaking addresses requirements for the corporate commitment, governance, curricula, faculty, admissions requirements, resources and facilities and evaluation and approval of degree-granting postsecondary institutions either operated or owned by a foreign corporation. A foreign corporation is an entity that is registered or chartered by another state or country.

The proposed rulemaking is designed primarily to align the regulations with section 2601-H of the code (24 P. S. § 26-2601-H), regarding power to confer degrees. This section authorized the operation of for-profit postsecondary degree granting institutions in this Commonwealth.

Affected Parties

The proposed rulemaking affects 2-year colleges, college and universities, specialized degree-granting institutions, professional schools and seminaries that are chartered out-of-State or out-of-country that have or seek legal authority to award college credits or grant degrees in this Commonwealth.

Cost and Paperwork Estimates

Since the proposed rulemaking clarifies current requirements, it does not impose any new costs or savings for the Department of Education or to postsecondary institutions.

Effective Date

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

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by the Board, every 4 years the Board will review the effectiveness of Chapter 36. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 19, 2006, 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, jbuckheit@state.pa.us 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: 6-302. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subchapter C. HIGHER EDUCATION

CHAPTER 36. FOREIGN CORPORATION STANDARDS

§ 36.2. [Institutional] Corporate commitment.

[The commitment of a] A foreign corporation [to an off-campus enterprise] having operations in this Commonwealth shall provide adequate support to ensure compliance with the requirements of an accrediting body recognized by the United States Department of Education and acceptable to the Pennsylvania Department of Education, as well as with applicable Pennsylvania statutes and regulations. The Commonwealth enterprise shall be consistent with [its] the statement of philosophy and objectives and [shall be] equivalent to [its] the commitment to similar programs conducted by the corporation on its main campus or as approved by the Department.

§ 36.3. Governance.

(a) The board of trustees shall have approved [off-campus endeavors] the Commonwealth enterprise

of the institution and shall have authorized the request for approval of an educational enterprise in this Commonwealth.

(b) Planning, administration and evaluation of [an off-campus enterprise] the Commonwealth enterprise shall be an integral and continuous part of the [institution's] corporation's normal procedures.

* * * * *

(d) Institutional policies that govern the Commonwealth [off-campus enterprises shall] endeavor must be in written form and, when applicable, shall have the approval of the education program advisory committee.

(e) Appropriately qualified, full-time administrative or supervisory personnel, or both, shall be employed and delegated responsibility for operating [off-campus enterprises] the Commonwealth enterprise in this Commonwealth. The [employees] employees, the number depending on the size of the operation, shall be available [on site] onsite for academic advisement and consultation with enrollees and prospective enrollees.

§ 36.4. Curricula.

* * * * *

(d) The quality of each program, course or offering shall be evaluated [annually] periodically, and at least once every 5 years, by the [institution] Commonwealth enterprise for compliance with [institutional objectives] Commonwealth approvals and regulations.

§ 36.5. Faculty.

* * * * *

(c) Full- and part-time faculty shall, in addition to classroom instruction, be available for academic advisement and interaction with students. Graduate programs shall be planned [jointly] by [the students and a] faculty [member] members and approved by a faculty committee. Guidance of thesis or dissertation studies shall be the responsibility of [a] faculty [member] members with appropriate specialization.

§ 36.6. Admissions requirements.

Admissions standards [shall] must be comparable to the standards for admissions [to the main campus of the parent institution] prescribed by § 31.31 (relating to admissions requirements).

§ 36.7. Resources and facilities.

(a) Appropriate physical facilities and instructional equipment shall be adequate to initiate and continue the program, course or offering. [Teaching space, seminar rooms, computer resources and other facilities shall be provided onsite either by the parent institution or by contract with a Commonwealth-based entity.]

(b) Library and research resources shall be provided onsite by [a foreign corporation] the Commonwealth enterprise or by contract [with a Commonwealth-based entity], or both, for each educational endeavor in accordance with standards of professional associations and learned societies.

(c) [**Books, periodicals, microfilms, microfiche, monographs and other collections shall**] **Library, learning and research resources must** be sufficient in quality, number and currency to serve the program, course or offering at the required level of instruction. Records of materials provided and usage statistics shall be maintained to determine the adequacy and accessibility of library resources.

§ 36.8. Evaluation and approval.

* * * * *

(d) During the first [**semester**] **year** of operation, a site visit shall be conducted by an evaluation committee in accordance with this chapter and this subpart.

* * * * *

(f) Department site visits [**will**] **may** be conducted [**independently of**] **jointly with** other accrediting or approving agencies [**and site**], **but decisions and recommendations must be arrived at independently by the Department evaluation committee. Site visit costs pertinent to the request of the applicant shall be borne by the applicant.**

(g) Following submission of the evaluation committee's report to the institution, the institution shall within 60-calendar days of the receipt of the report file its response with the Department. [**Final**] **Upon receiving a response satisfactory to the Department, the Department will publish in the *Pennsylvania Bulletin* its intent to approve the enterprise at least 30 days before the date of approval. The decision of**

the Secretary regarding approval of the enterprise [by the Secretary] will be rendered within [30] 60-calendar days of [receipt of the institution's response to the evaluation committee's report] publication in the *Pennsylvania Bulletin* if no protest or objection has been timely made to the application.

* * * * *

(i) If an institution is approved to operate an educational enterprise in this Commonwealth, it shall file periodic progress reports as deemed necessary by the Department. The educational enterprise may be evaluated for cause at any time and shall be reevaluated every 5 years in accordance with this subpart and this chapter. If the institution fails to maintain its enterprise according to this subpart and this chapter, authority to operate in this Commonwealth shall be revoked as provided [**in section 312C of the act of May 5, 1933 (P. L. 289, No. 105) (15 P. S. § 7312C)**] **by 24 Pa.C.S. § 6506(a) (relating to visitation of institutions and revocation of authority).**

(j) To withdraw from its approved enterprise in this Commonwealth, a foreign corporation shall have the approval of the Secretary and shall be in compliance with §§ 31.71 and 31.72 (relating to [**institutional closings**] **major corporate change**).

[Pa.B. Doc. No. 06-1211. Filed for public inspection June 30, 2006, 9:00 a.m.]