

RULES AND REGULATIONS

Title 37—LAW

COMMISSION ON CRIME AND DELINQUENCY

[37 PA. CODE CHS. 191 AND 411]

Crime Victims Compensation

The Commission on Crime and Delinquency (Commission) deletes Chapter 191 (relating to general provisions) and adopts Chapter 411 (relating to crime victims compensation) to read as set forth in Annex A.

Purpose and Authority

This final-form rulemaking deletes Chapter 191 and replaces it with regulations specific to the Office of Victims' Services (OVS). The new regulations will be adjoining other regulations pertaining to the Commission or its other offices. The final-form rulemaking reflects the substantial statutory changes that have occurred since 1989 when regulations affecting the Crime Victims Compensation Program were most recently amended. New regulations are needed to conform to the new requirements of the section 312(13) of the Crime Victims Act (act) (18 P. S. § 11.312(13)). The final-form rulemaking will simplify or clarify many of the OVS's claims processing and determination and appeal procedures. In addition, this rulemaking incorporates the Schedule of Compensation Limits and Reimbursement Rates (Schedule) for the Crime Victims Compensation Program (Program) published as a statement of policy at 32 Pa.B. 4489 (September 14, 2002).

This final-form rulemaking is adopted under the authority of the act (18 P. S. §§ 11.101—11.5102). Section 312(3) of the act, empowers the OVS to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Chapter 7." Section 312(13) of the act also empowers the OVS to "establish compensation limits and reimbursement rates for the purpose of carrying out the provisions of Chapter 7."

Comments and Response

Notice of proposed rulemaking was published at 34 Pa.B. 5032 (September 11, 2004) with a 30-day comment period. During the 30-day comment period, comments were received from the Crime Victim Center of Erie County, Inc; Victim Witness Services of South Philadelphia; Victim Services Division of the Cumberland County District Attorney's Office; Network of Victim Assistance (Bucks County); Lancaster County Victim/Witness Services; Pennsylvania Coalition Against Domestic Violence; House Judiciary Committee (Committee); and the Independent Regulatory Review Commission (IRRC).

The Crime Victim Center of Erie County, Inc., wrote in support of the proposed regulations in particular a definition of "immediate need" relative to relocation.

The Pennsylvania Coalition Against Domestic Violence wrote in support of the proposed rulemaking highlighting the following areas of 37 Pa. Code:

Section 411.11(g). Filing procedures. When a Protection From Abuse (PFA) is withdrawn or denied—"Although victims of domestic violence file approximately 50,000 Protection From Abuse cases annually, we recognize that many victims choose to withdraw their orders in order to secure safety. Studies show that victims are most at risk

for retaliation or abuse when they separate from the perpetrator of abuse. The Commission's decision to include specific guidelines for justification of this safety choice will help many survivors of domestic violence."

Section 411.15(h). Determining Primary Aggressor. "Unfortunately many victims of domestic violence are forced to use physical means to protect themselves when a perpetrator attacks them. These situations sometimes result in a confusing situation for law enforcement to assess. The aforementioned provision allowing for a determination of primary aggressor permits OVS to consider factors that are relevant to many victims of domestic violence. We applaud the inclusion of this section in the proposed regulations."

Section 411.15(g). Failure to Cooperate. "Many victims of domestic violence are forced to choose between their future safety and cooperation with law enforcement when a charge or complaint is filed. While this failure to cooperate may seem arbitrary to law enforcement, it is clear that these proposed regulations grant credibility to victims who make the choice to protect themselves rather than cooperate."

Section 411.42(f). Reimbursement for Relocation Expenses. "There is a cost to safety. The cost of safety includes relocation or acquiring temporary housing. The meaningful and substantial resource that the proposed regulations permit will save lives, encourage victims of domestic violence to seek help and move our culture closer to the goal of ending domestic violence. We are grateful that the relocation expenses include both temporary and permanent relocation. This allows flexibility for victims."

The Coalition supports this priority and general tone in the proposed regulations that accepts the complex choices and options victims of domestic violence face everyday.

Following is a summary of the comments and the Commissions response to those comments:

§ 411.2 (relating to definitions)

Comment: IRRC recommended that the definition of "dependent child" be clarified by replacing "Eighteen years of age or younger" with "Under 18 years of age" to remain consistent with the act.

Response: The Commission concurs and revised the definition. In addition, to remain consistent with the act, "19" was deleted and replaced with "18."

Comment: The Committee and IRRC expressed concerns about the clarity of the proposed amendment regarding the definitions of "loss of earnings," "stolen benefit cash" and "cash equivalent."

Response: The Commission concurs and deleted the definition of "loss of earnings," as it was already defined in the act. The Commission deleted the definition and any reference to "stolen benefit cash," as it is an internal processing term used to describe a specific type of claim. The Commission also deleted the definition for "cash equivalent," as it was clarified in § 411.43 of this final-rulemaking.

The statute references the ability to consider an award when a victim of crime is unable to work as a result of the injury versus a victim of crime who has had money stolen or defrauded and whose primary source of income is derived from a fixed source such as social security,

pension, etc. This is delineated in the act under the definition of loss of earning as well as section 707 of the act (18 P. S. § 11.707). Since there are two different ways for a crime victim to be compensated for lost income with specific monetary limits for each, the Commission opined it was important to delineate the different eligibility requirements as well as the required documentation.

Under § 411.43(a) (relating to loss of earnings), the Commission replaced the term "direct victim" with "victim" to be consistent with the statutory definition.

In addition, to provide clarity on the allowable reimbursement limit, the Commission added, "in no instance would payment exceed the amount stolen."

Comment: Lancaster County Victim/Witness Services and Victim Witness Services of South Philadelphia expressed concern that the definition of "immediate need" be changed to provide a longer period than 30 days from the date of the crime or change in circumstance or indicator of danger. It was suggested that this 30 day time frame was not an adequate amount of time to provide for the complications victims incur in those 30 days, which inhibit them from moving. These complications may include: the need to find a new place to live, relocation of children who may be subject to custody orders or school changes, pending legal proceedings, or raising sufficient moneys to make the initial move. Many victims can find a temporary hiding place with family or friends, but when they find a place to seek a permanent refuge, it may be too late to apply.

Response: The term "immediate need" is included under the definition of "out-of-pocket loss" in the act. It states, in part: "(4) expenses resulting from the temporary or permanent relocation of a direct victim and individuals residing in the household of the direct victim due to the incident forming the basis of the victim's claim when there is an immediate need to protect the safety and health of the victim and individuals residing in the household, as verified by a medical provider, human services provider or law enforcement."

The intent focused on victims whose lives were in danger because of the crime, and had the desired result of meeting the victim's immediate needs to protect their safety and health. Adding this benefit by statute was never intended to cover or address all aspects of the need for victims to relocate. OVS is cognizant of the unique circumstances that victims face and has the authority to consider delays past the 30-day time period. Specifically, § 411.42(f)(3) states that "OVS may consider a delay past the prescribed immediate need time period to be justified when the direct victim, intervenor or claimant is mentally or physically incapacitated, there is a fear of retaliation, or other circumstances where good cause is shown by the claimant."

§ 411.11 (relating to filing procedures)

Comment: IRRC commented that this section does not include time frames for filing claims for compensation with OVS or time frames for reporting the crime to proper authorities.

Response: The Commission concurs and included a reference to the act that outlines requirements for timely filing and reporting. See sections 702(b) and 707(a)(3) of the act (18 P. S. §§ 11.702(b) and 11.707(a)(3)).

Comment: IRRC recommended that § 411.11(a) (relating to filing procedures) also reference § 411.3(a) (relating to persons eligible for compensation)

Response: The Commission has revised this section to add the suggested reference.

Comment: The Committee expressed concern that the list contained in subsection (f)(1) may deter a direct victim or intervenor with a legitimate claim from filing an application for compensation. The Committee suggests that this paragraph be amended to clearly indicate that this list is not exclusive and that OVS retains the authority to determine on a case-by-case basis, whether a direct victim or intervenor reported the occurrence of the crime to a "proper authority."

Response: The Commission reviewed this list and determined that the Commission does not require further discretion in this area. However, the Commission has included United States Postal Inspection Service, which is the law enforcement arm of the postal service. As is with the FBI, they investigate and refer cases to the United States Attorney's Office for possible prosecution.

Comment: The Committee suggested that a definition of "the occurrence of the crime" be included in the final-form rulemaking so that the time period for filing does not begin to run until the crime is actually discovered. The Committee believes that a definition would be consistent with the intent of the act, that is the restoration of crime victims to their precrime status and a definition would treat all eligible claimants in a uniform manner.

Response: On November 19, 2004, Governor Rendell signed legislation H.B. 2396. This legislation became effective on January 19, 2005, and amended the filing time for a compensation claim. The amendment states in part, "A claim must be filed no later than two years after the discovery of the occurrence of the crime upon which the claim is based." OVS has incorporated this amendment into § 411.11 (g) of the final rulemaking.

Comment: The Committee was concerned that the three requirements for not utilizing an insurance plan for medical or counseling may not suffice in all cases. The Committee recommends that OVS retain the authority to decide on a case-by-case basis whether a victim or intervenor had legitimate justification for not utilizing their insurance plan.

Response: The Commission concurs and has revised § 411.11(k)(1) and (5).

Comment: IRRC and the Committee suggest the Commission add requirements that would justify a victim not utilizing their homeowner's or renter's insurance.

Response: Claimants have a choice whether to access their insurance. They do not have to provide written justification to OVS as to why they did not access their insurance. § 411.16(i) (relating to reductions, offsets and limitations) states, "In claims involving stolen benefit cash or crime scene clean-up, if a claimant chooses not to access any of his homeowner's or renter's insurance, OVS will apply as an offset any amount that the claimant would have been paid by the insurance company."

Exceptions to insurance usage for financial decisions are not supported by the OVS.

Comment: IRRC recommended that the Commission clarify what information is required for a claimant who witnesses the crime for the purpose of seeking reimbursement for counseling expenses.

Response: The Commission has clarified the requirements under § 411.11(k)(5).

Under § 411.11(h) OVS has replaced "OVS will ask the claimant to submit confirmation of the issuance of a final

PFA order” with “OVS will confirm the disposition of a final PFA order.” In some instances, the Commission has the ability to access this information directly and would not need to require this information from the claimant.

§ 411.12 (relating to review)

Comment: The Pennsylvania Coalition Against Domestic Violence requested that § 411.12(d) be amended to ensure that OVS will not request or review records or files of domestic violence counselor/advocates. The term “domestic violence counsel/advocate” is limited to the definition provided in 23 Pa.C.S. (relating to domestic relations). As such, no subpoena or subpoena duces tecum should be issued to any domestic violence counselor or advocate.

Response: The Commission did not amend this section. The Commission’s intent is to uphold any statutory provisions that protect privileged and confidential information for victims of crime. Section 709 of the act states in part, “All reports, records or other information obtained or produced by the bureau during the processing or investigation of a claim shall be confidential and privileged, shall not be subject to subpoena or discovery, shall be used for no purpose other than the processing of a claim.” In addition, domestic violence programs have their own statutory privilege as outlined in 23 Pa.C.S. § 6116 (relating to confidentiality).

It is also important to note that OVS may not request or review counseling notes of mental health service providers. OVS will request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime. Counseling may only be considered as a reimbursable expense when the service is provided by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker. OVS could not provide reimbursement to domestic violence counselor/advocates, therefore OVS would have no statutory authority to request counseling records from them.

Comment: The Committee is of the opinion that the intent of the statutory provision upon which § 411.12(a) (relating to review) is based is to ensure that the OVS conducts an examination of each claim and any supporting documentation to prevent fraud. The proposed regulation and statute both state in relevant part that the OVS investigation shall include “an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.” The Committee is of the opinion that it is not the legislative intent of the statutory provision to require that an investigation into every claim require that each of the referenced items be examined, but rather that OVS examine such records and reports as necessary in order to ensure that a claim is legitimate. For example, it is the opinion of the Committee that a claim based upon the abuse of a child according to the official records of a county child protective services agency as reported to police should not be denied because the police department who received the complaint has not provided OVS with a copy of the police record or report further confirming the complaint. The Committee suggests that this section clarifies this point.

Response: The Commission has added language to address this concern. It is the Commission’s intent, in the case of a child or a vulnerable adult, to accept a crime report to law enforcement or to a child or adult protective services agency from a mandated reporter.

§ 411.13 (relating to closing of claims)

Comment: Bucks County indicated that the closing of claims is confusing. Specifically, they asked if subsection (e) overrides subsections (c) and (d)? In addition, they indicated that the 5 year case closure for cases with no out-of-pocket expenses is unrealistic for child sexual assault and other PTSD cases, all of which may result in counseling needs several years beyond the crime or reporting of the crime.

Response: Section 411.13(e) does not override the deadline established in subsections (c) and (d). Rather, it provides OVS with a mechanism to reopen claims when additional information is received that would contradict a prior decision.

The Commission concurs that eligible claims where no verifiable out-of-pocket expense or loss has been received by OVS within 5 years from the date of the filing of the claim with no further right of appeal, is not appropriate where the direct victim is a minor. Section 411.13(e) has been added for clarification.

§ 411.14 (relating to determinations)

Comment: Bucks County, members of the Committee and IRRC commented on the clarity and reasonableness of subsection (a). This subsection states “a claimant may provide additional information or clarification on the claim post-marked no later than 30 days from the date of OVS’s initial determination . . .” Does this mean the date on which the claimant receives notice of the initial determination?

Response: It has been a long standing practice (for more than 15 years) to use 30 days from the date of the determination. It is fairly rare for a claimant to not be able to file a request for reconsideration or a request for a hearing within 30 days. However OVS did add justification to accept a delay past the prescribed time frame under §§ 411.31(b) and 411.32(d) (relating to reconsideration; and hearing).

Comment: Members of the Committee and IRRC commented on subsection (c) which outlines a list of individuals that may receive a copy of OVS’s final determination. It was suggested that the district attorney having jurisdiction where the crime occurred be added to this list. Section 1106(c)(4) of the act (18 P. S. § 11.1106(c)(4)) requires district attorneys to make recommendations to the sentencing court for the amount of restitution. Notice from OVS regarding a claim determination will assist the district attorney in meeting this requirement.

Response: The Commission has revised § 411.14(c) to indicate that the prosecutor of the county where the crime occurred may be copied on the final decision.

§ 411.15 (relating to actions affecting awards)

Comment: Bucks County and IRRC recommended that this section be amended to more closely relate to the conduct of the direct victim or intervenor. Both commentors expressed concern with the standard that the direct victim or intervenor used poor judgment resulting in the placement of a situation likely to result in injury. It was relayed that the term “poor judgment” is subjective and open to broad interpretation.

Response: The Commission has deleted the term “poor judgment” and revised § 411.15(a) and (f) providing clarification in determining whether the conduct of a direct victim or intervenor contributed to the injury.

Comment: IRRC recommended that the proposed language of § 411.15(c) be revised to clarify intent.

Response: The Commission has revised the language to clarify the intent.

In addition, the Commission has revised the language of § 411.15(f) to clarify the circumstances of OVS's denial of a claim for failure to fully cooperate with law enforcement agencies. The claimant is required to cooperate with law enforcement agencies throughout the entire proceeding. OVS has discovered that in some instances, once a claimant receives a payment from OVS they refuse to assist the prosecution further in the case. In these instances, OVS has a policy to deny future awards as well as require repayment of a prior award. Accordingly, the following language "will require repayment of a prior award," has been added in order to put all claimants on notice of this practice and to codify existing practice.

Comment: IRRC requested clarification in that subsection (g) states OVS may consider a failure to cooperate with law enforcement and OVS justified when a number of situations occur. IRRC questioned if minors are able to cooperate with OVS?

Response: The Commission has included language under § 411.15(g) that "OVS may consider failure to cooperate with law enforcement and OVS . . . when the victim is a minor." This type of decision would be made on a case-by-case basis taking into consideration the circumstances of the crime and the age of the victim.

§ 411.16 (relating to reductions, offsets and limitations)

Comment: The Committee commented on § 411.16(a) that any decision by OVS to reduce, offset or limit an award to a claimant should only be made after first considering the ability of the Board to exercise its right to subrogation and restitution. IRRC agreed.

Response: The Commission concurs and has revised this section.

Comment: IRRC recommends for clarity that the Commission reference the sections that deal specifically with Medicare reimbursement allowances as a result of a motor vehicle incident under § 411.16(e).

Response: The Commission included the appropriate cite.

Comment: The Victim Services Division, Cumberland Co. District Attorney's Office recommended that in the cases of homicide, the survivors should not have to use life insurance coverage before they can apply for compensation.

Response: This would require an amendment to section 707(e) of the act.

Comment: Lancaster County Victim/Witness Services requested that § 411.16(e) be clarified to consider the payment to have the notice of the time and place of the funeral listed in the paper.

Response: The Commission concurs and clarified this subsection.

Comment: Lancaster County Victim/Witness Services requested consideration to lower the amount of \$10,000 to \$5,000 in the cases where the direct victim or intervenor has no financial means to order needed services or equipment. In these cases, OVS will assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers.

Response: The Commission concurs and has revised § 411.16(h) to reduce the amount from \$10,000 to \$5,000.

§ 411.31 (relating to reconsideration)

Comment: IRRC expressed several concerns with subsection (a) which allows a claimant to contest OVS's determination "by submitting a written request for reconsideration postmarked no later than thirty (30) days from the date of determination."

First, how will the claimant know when the 30 day period began? Section 704(d) of the act requires OVS to promptly notify the claimant of its final decision. IRRC also noted that the 30 day period for judicial review under section 705 of the act begins 30 days after the claimant receives a copy. The regulation should specify that the claimant has 30 days from receipt of OVS' determination.

Second, the requirement of a postmark would limit the method of filing. This subsection should be amended to be similar to § 411.11(c), which allows several methods of filing, including electronic means.

Response: It has been a long standing practice (more than 15 years) to use 30 days from the date of the determination. It is fairly rare for a claimant not to file a request for reconsideration or a request for a hearing within 30 days. However, OVS did add justification to accept a delay past the prescribed time frame.

For clarification, the 30 day period for judicial review under section 705 of the act refers to the final decision prior to appealing to Commonwealth Court. The Commission inadvertently included a reference to the Commonwealth Court under § 411.32(b) and has removed this reference.

Also, the Commission has removed the reference to a "postmark" in §§ 411.14(a), 411.31(a) and 411.32(c), allowing for several methods of filing, including electronic means.

§ 411.32 (relating to hearings)

Comment: IRRC and the Committee suggested that § 411.32(h) be amended to clarify whether the submission of a list of documentary exhibits will satisfy the requirements imposed, or if the actual documentary exhibits must be provided. This section also requires that the claimant must provide a list of witnesses and documentary exhibits to OVS counsel and the hearing examiner. The Committee suggests that this duplication of effort not be required.

Response: The Commission has revised this section to clarify the requirements of the claimant and also who the claimant must respond to. The claimant will not need to provide required information to OVS counsel and the hearing examiner.

Comment: IRRC expressed concern that a hearing will not be rescheduled more than once. IRRC questioned the hearing examiners flexibility to review the reason the claimant did not attend and, based on that information, make a determination on whether another hearing should be scheduled.

Response: The Commission has revised this section to provide OVS with discretion to allow a hearing to be rescheduled if there is a showing of good cause.

Comment: The Committee and IRRC recommended that if it is the intent that a claimant may subpoena for the attendance of witnesses or for the production of documentary evidence, this subsection should clarify intent and procedures for requesting and obtaining these subpoenas.

Response: The Commission has revised this section to clarify the claimants ability to subpoena for attendance of witness or for the production of documentary evidence.

§ 411.33 (relating to final decision after hearing)

Comment: IRRC expressed concern that this section does not contain any time frame for the hearing officer to deliver the report or for OVS action on the report.

Response: Consistent with 1 Pa. Code § 35.202 (relating to proceedings in which proposed reports are prepared) and other Commonwealth agency regulations, OVS does not see the need to add a time frame within which the hearing officer must deliver the hearing report. While we recognize there are at least three other agencies' regulations requiring a time frame, we are not inclined at this time to add this requirement.

§ 411.41 (relating to amount)

Under § 411.41(2), OVS inadvertently revised what the \$1,000 limit includes. This section was revised to remain consistent with the act and statement of policy.

Comment: Bucks County expressed a concern that the limit on crime scene clean up is low for its geographical area.

Response: The Commission conducted a comparison of the amount of bills submitted for crime scene cleanup versus the amount the OVS has paid. The analysis was completed in the fall of 2004. OVS paid 13 claims since the inception of this benefit. Of those claims, eight were paid at 100%, three were paid at 75% or higher, one paid between 25% and 49%, and one paid between 0% and 24%.

Also, of the 13 claims, only 5 requested more than \$500. Based on the review, OVS, at this time, cannot justify increasing the cap for crime scene cleanup.

Comment: Victim Services Division of the Cumberland County District Attorney's Office expressed a concern that the \$200 amount for the loss of eyeglasses in § 411.42(d)(1) is too low. Crime victims should be able to replace their exact glasses that they had at the time of the crime and this might (in many cases) exceed the \$200.

Response: This limit applies to the replacement of personal health-related items damaged or stolen as a result of a crime. The \$200 applies only to the frames. Lenses are not a part of the \$200 limit.

Comment: Bucks County expressed a concern that the \$35,000 limit is not realistic when medical bills and loss of support or earnings are involved. Although the reimbursement reduction to 70% of medical costs certainly helps, several Bucks County victims have lost work time or support and had surgical procedures that have easily totaled more than \$35,000. This has become even more prevalent with the astonishing increases in health care costs in the past few years. IRRC noted that several commentators have indicated that current monetary limits, such as funeral expenses and the overall \$35,000 cap are not sufficient and that OVS should explain how the dollar amounts were derived, and why they are reasonable.

Response: There are several methods that may be utilized to determine a monetary limit. The National Association of Crime Victim Compensation Boards (NACVCB) is a national repository for data provided by the 50 member states, the District of Columbia, Puerto Rico and the Virgin Islands. Through the NACVCB, statistics such as funding sources, eligibility require-

ments, procedures, benefits and compensable costs are available. Prior to considering a change, the NACVCB data is factored into the equation to see how Pennsylvania compares to other states. OVS has found this data method to be reasonable and an accurate outlet for comparison purposes. Also, OVS staff query data sets from our existing DAVE System database to see, for example, what the actual payouts for a particular benefit type are during a set time period. Depending on the situation, VCAP staff may also contact providers in predetermined geographic areas of this Commonwealth to determine what the "going rate" is for a particular service to see if our method and amount of compensation is high, low, or proper for the service rendered. In addition, the solvency of the fund is always taken into consideration when adding or amending a monetary limit.

Comment: Bucks County requested that this regulation include preapproval of dental care, plastic surgery, vision or eye care, prosthetics and pharmacy costs because victims are denied nonemergency care when they cannot guarantee payment. In addition, IRRC inquired whether there was a way for a victim to demonstrate need for nonemergency medical care before the procedure is done and can a provider be paid directly?

Response: Section 411.16(g) allows OVS to assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers when a victim does not have the financial means to order needed services or equipment that exceeds \$5,000. In addition, OVS must pay providers directly for services rendered when the bill has not been paid by the claimant.

Comment: Bucks County expressed a concern that dentists, orthodontists, optometrists and doctors of physical medicine rely on outside vendors to make glasses, crowns and prosthetic devices, and the 70% reimbursement is not acceptable to them. Therefore, in its experience, many victims go without this care.

Response: Section 708(b) of the act states in part, "Medical expenses, except as otherwise provided, shall be paid to a hospital or other licensed health care provider on behalf of the victim at a rate set by the Office of Victims' Services."

This final-form rulemaking defines "licensed health care provider" to include any individual authorized by a licensing board or agency of the Commonwealth or equivalent governmental entity to practice the science and skill of diagnosis and treatment of ailments of the human body. The term includes "medical doctor," "osteopathic physician," "chiropractor," "dentist," "registered nurse," "optometrist," "pharmacist," "physical therapist," "podiatrist," "psychologist," "licensed professional counselor" and "licensed social worker."

If a provider of service was to be granted an exemption to the 70% reduction, it would require an amendment to the act.

Comment: The Committee commented that travel expenses for funeral arrangements should be allowed as an out-of-pocket loss, but should also be required to be "reasonable and necessary." IRRC agreed with this comment.

Response: The Commission concurs and has revised § 411.42(g).

Comment: Bucks County expressed concern that the definitions on what constitutes crime scene clean up are too restrictive. In a recent case, a bloody mattress was covered for cleaning, but not for replacement. It would

have been less expensive to replace the mattress and, as the victim said, "who would want to keep the mattress where someone had been stabbed?" In another case, a wounded victim left his house and escaped in his car. Though both needed cleaning, only the house was covered; this was hard to explain to the victim.

Response: Currently, the act does not allow for reimbursement of out-of-pocket losses for property damage, except as otherwise provided within the law. Replacing property that has been stained as a result of the crime injury would require an amendment to act.

It is also important to note that the OVS receives 60% reimbursement from the Federal government for each State dollar spent for eligible reimbursements to victims of crime. The Federal guidelines state that states may not include property replacement or repair cost, except for replacement of locks and windows, and replacement of bedding and clothing held as evidence, in their annual certification of payments. If a statutory change occurred and OVS were to pay for replacement costs, the Crime Victim's Compensation Fund would bear 100% of cost.

In addition, the regulations could not include the clean up of a car. Section 103 of the act (18 P.S. § 11.103) under the definition of "out-of-pocket loss" specifically states, "costs of cleaning the crime scene of a private residence." The cleaning of a car that has been stained as a result of the crime injury would also require amendment to the act.

Comment: The Committee and IRRC suggested that the statutory definition of "cleaning" be included in the regulations and that language be included in the regulatory definition to clarify for claimants the types of stains for which compensation will be made to cover the cost of their cleaning. The Committee believes that the intent of the General Assembly in enacting the statutory authorization to pay claims to cover the cost of crime scene clean up was to ensure that payment may be made to cover the cost associated with the clean up of blood and stains caused by other bodily fluids as a direct result of the crime, or other dirt and debris caused by the processing of the crime scene. Stains deliberately caused by acts of vandalism and other intentional acts are property damage and are expressly excluded from the definition of "out of pocket loss" contained in the act.

Response: The Commission has added language to § 411.42(h) specifically adding subparagraphs (iii) and (iv) to clarify these concerns.

§ 411.43 (relating to loss of earnings)

Comment: Victim Witness Services of South Philadelphia acknowledged that the funeral expenses section is wonderful and helps a number of families pay for a funeral. However, this agency suggests that more can be done for loss of earnings in the case of a homicide. At this time, OVS only covers up to 1 week of loss of earnings per claim. This Program has worked with a number of parents whose children have been murdered, and they are unable to return to work right away because of the trauma. It is understood that there need to be limits, but 1 week is inadequate. If the claimants are able to show documentation from a doctor that they are unable to work, this should allow for additional time, with perhaps a cap of up to 3 months. This would give parents, and other family members, a chance to get back on their feet without their finances being totally depleted. Loss of earnings should also be made available to both parents. In many cases, the parents of the slain child are not living in the same household and may be supporting two

separate families. Loss of earnings should not be awarded to one parent just because they filed their claim quicker than the other. Both parents should be entitled to the same funds.

Response: OVS recognized the inequity in allowing only one individual to file for loss of earnings in homicide cases. The final rule allows for each eligible claimant to file for up to 2 weeks net loss of earnings in connection with the death, not to exceed the average weekly wage, if the claimant was not otherwise reimbursed for the loss.

Under § 411.43(c)(1) OVS inadvertently added "as certified by a physician or psychologist." This reference is misplaced. Section 411.11(f)(3) sufficiently delineates the requirements to process a claim for loss of earnings.

Comment: Bucks County expressed concern with the fact that the use of sick, vacation and personal time, often occurs in the early aftermath of the crime when victims are unaware of the availability of compensation. They are then left with little or no paid time for an unrelated illness or vacation. If they had taken the initial time to deal with crime related matters as unpaid, they would have been eligible for compensation. Many victims feel this is unfair.

Response: In the calculation of loss of earnings, the final rule requires OVS to offset the award by "other benefits received" which include employer-paid-leave.

This requirement is mandated under section 707(b)(2) of the act. It states in part, "an award made for loss of earnings or support shall, unless reduced under other provisions of this chapter, be in an amount equal to the actual loss sustained." If the victim utilizes another source to compensate his time off from work, there would be no actual loss that OVS could reimburse.

To clarify § 411.43(e)(3), OVS replaced "bereavement pay" with "employer-paid-leave," which is a more accurate term when describing sources of leave available from an employer.

Comment: Lancaster County Victim/Witness Services expressed concern with § 411.43(a), specifically, the rationale to include any language concerning the average weekly wage when there seems to be no correlation between stolen benefit cash and the average weekly wage. Since this provision is already limited by a 1 month entitlement, regardless of the amount of the loss, it should not further be limited by the average weekly wage.

Response: This section has been reviewed and deleted as a provision for further limiting the amount a crime victim may be eligible to receive when the victim is on a fixed income. A determination has been made that the reference to the average weekly wage, as determined annually by the Department of Labor and Industry through its Unemployment Compensation Law (73 P.S. §§ 751—914), is clearly referencing income or wages earned by active employment for all persons covered by this act. This reference should not be applied to victims who are on a fixed income.

§ 411.44 (relating to loss of support)

Section 411.44(k) has been amended to correct a typographical error. The proposed rule making referenced a 3-year or 5-year payment plan for the disbursement of loss support payments. The final rulemaking states a 3-year to 5-year payment plan.

§ 411.51 (relating to subrogation)

Section 411.51(c) has been amended to charge OVS with the discretion of removing the sole responsibility from the Director.

In addition, in reviewing the areas of discretion afforded, OVS inadvertently omitted a long-standing practice wherein, in certain circumstances, it is fiscally prudent to compromise a lien amount. There are circumstances where victims suffer major traumatic injuries and their expenses far exceed the amount that can be reimbursed by the Program; when their expenses will continue into the future and exceed the amount of the civil settlement; and when an attorney will decline to pursue civil remedies on behalf of a claimant unless OVS is able to reduce its lien amount. An attorney may decline to pursue a civil remedy because the settlement amount offered would not sufficiently cover the attorney fees, OVS awards, or future expenses incurred by the victim. It is important for OVS to have discretion to negotiate a settlement that is acceptable to all parties involved.

§ 411.53 (relating to prohibitions)

Under § 411.53(a), OVS inadvertently omitted the term "claimant." The subsection should read: "Providers who write off bills to a direct victim or intervenor may not at any point following the write off seek reimbursement from OVS, direct victim, claimant or intervenor."

Comment: IRRC has noted that there are several sections in the proposed rulemaking that provide discretion to allow OVS to consider other circumstances deemed appropriate or other factors that OVS deems relevant. What other circumstances or factors will OVS consider?

Response: The act is clear in its intent to allow for discretion. Where the act implies this discretion, OVS attempted to articulate the exceptions for why a claimant may not be able to meet a specific requirement.

For example: Section 411.11(f) requires that the direct victim or intervenor report the crime to proper authorities within a prescribed time period. This section also provides that OVS may consider a delay to be justified when one of the following circumstances exist: 1) the direct victim, intervenor or the claimant is mentally or physically incapacitated; 2) the victim is a minor; 3) there is a fear of retaliation; 4) the occurrence of the crime is not readily apparent; or 5) other circumstances where good cause is shown by the claimant.

These exceptions represent 98% of the reasons why a direct victim or intervenor may not have reported within the prescribed time frame. However, OVS didn't want to write it in a manner that would disallow an otherwise eligible victim to be provided compensation. Discretion is required for unusual circumstances which may include: a direct victim whose child was hospitalized for an unrelated event and needed constant attention or a language barrier that may exist with a tourist or possibly a crime victim who is on a visa and is detained and unable to meet the reporting requirement. Since victimization and the circumstances surrounding the crime are unique to each crime victim, OVS requires this discretion to ensure that fairness and equity are part of the decision process in easing the financial hardship imposed upon them.

*Final Proposed Rulemaking**Affected Parties*

Victims of crimes, as defined in the act, benefit by having clear and up-to-date regulations regarding eligibility, compensation, and procedures. Additionally, the pro-

posed rulemaking is intended to provide further guidance and direction to healthcare providers and hospitals in regard to their eligibility and reimbursement under the act.

Under the authority of act of June 28, 2002 (P. L. 496, No. 85) (Act 85), there is now a 70% reimbursement rate for medical expenses set by the OVS which may adversely affect a variety of providers, because they will not receive as much reimbursement as previously received, when they were paid in full to the extent of the maximum of \$35,000 under the act. However, paying at 100% was the exception to the rule, and the setting of a percentage reimbursement rate has conformed to the practice of other third-party payors.

Fiscal Impact and Paperwork Estimates

The final-form rulemaking provides guidance in implementing a program that is already in effect, for which funding has been appropriated. Therefore, there is no new significant fiscal impact.

The fiscal impact to the Commission from all reimbursement rates set by the OVS under Act 85 will consist of an estimated annual net savings of \$664,888. This calculation takes into account the savings to the Commission resulting from the Office's setting of a 70% reimbursement rate to providers (\$1,453,052) and the estimated costs to the Commission from new or increased benefits (\$788,164).

The final-form rulemaking does not affect existing reporting, recordkeeping or other paperwork requirements.

Effective Date

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

Sunset Date

No sunset date has been assigned.

Contact Person

The official responsible for information on the final form rulemaking is Lynn Shiner, Manager of the Victims Compensation Assistance Program, Office of Victims' Services, PCCD, P. O. Box 1167, Harrisburg, PA 17108, (717) 783-0551, Ext. 3210.

Regulatory Review

On August 26, 2004, copies of the proposed rulemaking were delivered to IRRC and the Majority and Minority Chairpersons of the House and Senate Judiciary Committees. Notice of the proposed rulemaking was published at 34 Pa.B. 5032 (September 11, 2004) It provided for a 30-day public comment period. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), OVS provided IRRC and the Committees with copies of all comments received during the public comment period, as well as other documents if requested. In preparing the final-form rulemaking, OVS considered all comments received from IRRC, the House Judiciary Committee and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. 745.5a(j.2)), this final-form rulemaking was deemed approved by the House and Senate Judiciary Committees on November 15, 2006. Under section 5.1a(e) of the

Regulatory Review Act, IRRC approved the final-form rulemaking on November 16, 2006. The Attorney General approved the final form Rulemaking on December 4, 2006.

Findings

The Commission finds that:

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

(2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC and the Senate and House Committees.

(3) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Commission, 37 Pa. Code Chapter 411 are amended, by deleting §§ 191.1—191.15 and adding §§ 411.1—411.3, 411.11—411.18, 411.31—411.33, 411.41—411.44 and 411.51—411.53 to read as set forth in Annex A.

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

(c) The Commission shall submit this order, Annex A and a Regulatory Analysis Form to IRRC and the House and the Senate Committees for their review and action as required by law.

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

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

MICHAEL J. KANE,
Executive Director

(Editor's Note: For the text of the order of the Regulatory Review Commission relating to this document see 36 Pa.B. 7353 (December 2, 2006).)

Fiscal Note: 35-29. (1) Crime Victims Reimbursements restricted revenue account within the General Fund; (2) Implementing Year 2006-07 is \$1,446,000; (3) 1st Succeeding Year 2007-08 is \$1,590,000; 2nd Succeeding Year 2008-09 is \$1,590,000; 3rd Succeeding Year 2009-10 is \$1,590,000; 4th Succeeding Year 2010-11 is \$1,590,000; 5th Succeeding Year 2011-12 is \$1,590,000; (4) 2005-06 Program—\$12,464,000; 2004-05 Program—\$9,711,000; 2003-04 Program—\$10,030,000; (7) Crime Victims Reimbursements; (8) recommends adoption. Federal reimbursements are expected to cover a portion of the costs of these services (approximately 60%). Savings generated from the decrease in the medical reimbursement rate offset a portion of the additional payments to crime victims.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart J. [Reserved]

CHAPTER 191. [Reserved]

§§ 191.1—191.15. [Reserved].

PART VI. COMMISSION ON CRIME AND DELINQUENCY

CHAPTER 411. CRIME VICTIMS COMPENSATION GENERAL PROVISIONS

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GENERAL PROVISIONS

§ 411.1. Scope.

Except as otherwise provided, this chapter applies to claims for compensation relating to crimes occurring on or after August 27, 2002.

§ 411.2. Definitions.

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

Act—The Crime Victims Act (18 P. S. §§ 11.101—11.5102).

Average weekly wage—The amount designated for persons covered by Articles I and II of the Unemployment Compensation Law (43 P. S. §§ 751—771) in this Commonwealth as determined periodically by the Department of Labor and Industry.

Dependent child—The child of a direct victim or inter-venor on whose behalf regular payments are received for the purpose of whole or partial support and who is one of the following:

(i) Under 18 years of age, including an unborn child for the purposes of this chapter only as defined by 18 Pa.C.S. § 3203 (relating to definitions).

(ii) Eighteen years of age or older but under 23 years of age and currently attending secondary school or is a full-time student in a postsecondary educational institution.

(iii) Eighteen years of age or older but unable to provide for his own support due to a physical or mental disability.

Final decision—An OVS determination of a claim that may be appealed by the claimant as provided in 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action).

Guardian—A person appointed by a court for the care and management of a person or estate of a minor or incapacitated person, or designated by a parent of a minor to perform that role.

Health care provider—

(i) An individual authorized by a licensing board or agency of the Commonwealth or equivalent governmental entity to practice the science and skill of diagnosis and treatment of ailments of the human body.

(ii) The term includes medical doctor, osteopathic physician, chiropractor, dentist, registered nurse, optometrist, pharmacist, physical therapist, podiatrist, psychologist, licensed professional counselor and licensed social worker.

Human services provider—Social workers, children and youth caseworkers, Area Agency on Aging, victim service providers (system and community based advocates) and other social service professionals, including mental health, substance abuse and medical social work.

Immediate need—Thirty days from the date of the crime or 30 days from the date the victim is threatened by any change of circumstance or indicator of danger and a move or relocation is necessary to become or remain safe.

Medical care—Diagnostic, treatment or rehabilitative services performed in a health care facility regulated by the Commonwealth or equivalent governmental entity or performed by a health care provider or person under the direct supervision of a health care provider.

OVS—The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

PFA—Protection From Abuse Order issued under 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

Pigeon drop—The act of approaching a person and asking that person if he would like to share an amount of found money. In order to share the money, the person shows a good faith effort by willingly providing a specified amount of money with the expectation of receiving part of the "found" money.

Primary source of income—Fifty percent or more of the direct victim's gross annual income.

Principal support—Fifty percent or more of a claimant's living expenses.

Private residence—Includes a house, apartment, condominium, mobile home or other personal living space.

(b) The definitions in section 103 of the act (18 P. S. § 11.103) are incorporated by reference.

§ 411.3. Persons eligible for compensation.

(a) *General rule.* Except as otherwise provided in the act, the following persons are eligible for compensation:

- (1) A direct victim.
- (2) An intervenor.
- (3) A surviving spouse, parent or child of a deceased direct victim or intervenor.

(4) Other persons dependent for principal support upon a deceased direct victim or intervenor.

(5) A person who assumes the obligation or who pays for the crime scene cleanup, funeral or burial expenses incurred as a direct result of the crime.

(6) Hospitals or other licensed health care providers.

(7) Persons eligible for counseling.

(b) *Exception.* A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person is not eligible to receive compensation with respect to the claim. A member of the family of the individual who committed the crime is not eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

CLAIMS

§ 411.11. Filing procedures.

(a) A claim may be filed by a person eligible under the act and § 411.3(a) (relating to persons eligible for compensation).

(b) A claim shall be filed within the prescribed time frame under section 702(b) of the act (18 P. S. § 11.702(b)).

(c) A claimant may request compensation by completing and submitting OVS's official claim forms to OVS.

(d) A claim may be filed by mail, in person or electronically. If filed by mail, a claim is deemed filed on the date it is postmarked. If filed by electronic means or in person, it is deemed filed on the date received by OVS.

(e) When OVS receives a claim, a claim number is assigned and the data is entered into OVS's records.

(f) In determining whether the direct victim or intervenor complied with the act's requirement of reporting the crime to proper authorities within the prescribed time period after the occurrence of the crime, the following apply:

(1) Proper authorities may include a law enforcement officer; district attorney or other applicable prosecutorial authority; district justice; military police; campus police; United States Postal Inspection Service; appropriate hospital security; probation and parole officer; child protective services; adult protective services or, in the case of a PFA order, the prothonotary or equivalent authority. If the crime occurs in a foreign country, a proper authority includes the United States consulate.

(2) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

- (i) The direct victim, intervenor or claimant is mentally or physically incapacitated.
- (ii) The victim is a minor.
- (iii) There is a fear of retaliation.
- (iv) The occurrence of the crime is not readily apparent.
- (v) Other circumstances when good cause is shown by the claimant.

(g) In making the determinations discussed in subsections (b) and (f) for claims where the occurrence of the crime is not readily apparent, OVS may deem the prescribed time periods to begin to run on the date and time

that the person with the obligation to report the crime or file the claim has knowledge that a crime occurred.

(h) Claimants do not have to wait until a PFA becomes final to file a claim. In the process of verifying a claim, OVS will confirm the disposition of a final PFA order.

(i) If a temporary PFA order is issued and the claimant chooses not to pursue a final order, OVS will consider the PFA order withdrawn and deny the claim unless OVS determines the withdrawal to be justified. OVS may consider the withdrawal of a PFA justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) There is a fear of retaliation.

(3) Other circumstances when good cause is shown by the claimant.

(j) Subsections (h) and (i) only cover the filing of an initial PFA. If there is a violation of a PFA involving an otherwise eligible crime, the crime shall be reported within the prescribed time frame shall set forth under section 707(a)(3) of the act (18 P. S. § 11.707(a)(3)) in a timely manner to the proper authorities, which may include filing of a private criminal complaint, to be considered for compensation payments.

(k) When requested by OVS, the claimant shall submit copies of documents that are needed to process the particular type of claim, which include the following:

(1) *Medical treatment expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service, type of service performed and the amount charged for each service.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a medical provider or receipts for any medical bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or Medical Assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, travel considerations or other circumstances when good cause is shown by the claimant.

(2) *Funeral expenses.*

(i) Certified death certificate.

(ii) Itemized funeral bills in the name of the claimant for which the claimant is responsible.

(iii) Canceled checks, receipts or verification from a provider for funeral bills relating to the death that were paid by claimant.

(iv) Statements for benefits or payments received by the claimant as a result of the death of the direct victim or intervenor, such as life insurance or Social Security death benefits.

(3) *Loss of earnings.*

(i) *Stolen money.*

(A) Statements for the month of the crime of payments such as Social Security, retirement, pension, disability, court-ordered child support or court-ordered spousal support.

(B) Federal tax returns as filed, including all schedules if applicable, for the years requested or a signed statement that the claimant is not required to file a tax return.

(C) Documentation of the homeowner's or renter's insurance coverage.

(ii) *Loss of wages.*

(A) Pay stubs or other earnings records for periods immediately prior to the loss. If not obtainable, withholding statements and Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that Federal tax returns were not filed.

(B) Full name and complete address of claimant's employer.

(C) Full name and complete address of a physician or psychologist who will certify the existence, duration and cause of the disability.

(4) *Loss of support.*

(i) Certified death certificate.

(ii) Full name and complete address of employer of the deceased.

(iii) Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that Federal tax returns were not filed. If unavailable, pay stubs, withholding statements or other earnings records for periods immediately prior to the injury.

(iv) Statements for benefits received as a result of the death of the direct victim or intervenor, such as life insurance, Social Security, veterans' benefits or survivor benefits.

(v) Documents that demonstrate financial dependency, including birth certificates, support orders or Federal tax returns as filed.

(vi) Guardianship papers, when applicable.

(5) *Counseling expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service and the amount charged.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a provider or receipts for any counseling bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or Medical Assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, travel considerations or other circumstances where good cause is shown by the claimant.

(v) The following information establishing the claimant's relationship to the direct victim, the claimant witnessing the crime or the claimant's discovery of the homicide victim:

(A) *Witness.* If the witness is not listed in the police report obtained by OVS, a written statement provided by someone who could substantiate that the witness was at the scene, preferably written by someone named in the police report.

(B) *Relative of direct victim.* A copy of a birth certificate, if applicable, or other identifiable information acknowledging the relationship to the direct victim.

(C) *Individual engaged to the direct victim.* An engagement announcement or a copy of the application for a marriage license. If either is unavailable, a written statement from the engaged individual plus a written statement from a family member acknowledging the intent of the union.

(D) *Shared household.* A copy of a document, such as a bill or lease or mortgage agreement that indicates the same address for the direct victim and the victim or claimant filing for counseling expenses.

(E) *Individual who discovers homicide body.* A police report.

(F) *Individual responsible for the direct victim's welfare.* Foster parent documentation, guardianship papers or other documentation showing that the claimant filing for counseling is an individual responsible for the direct victim's welfare.

(6) *Crime-scene cleanup expenses.*

(i) Itemized bills and receipts in the name of the claimant related to the crime scene cleanup for which the claimant is responsible.

(ii) Cancelled checks, receipts or verification from a provider for bills related to the crime scene cleanup.

(iii) Documentation of homeowner's or renter's insurance coverage.

(7) *Relocation expenses.*

(i) Itemized bills and receipts related to the relocation for which the claimant is responsible.

(ii) Cancelled checks, receipts or verification from a provider for bills related to the relocation.

(iii) A verification letter from a human service agency, law enforcement or medical provider explaining the immediate need for relocation.

(8) *Miscellaneous expenses.*

(i) Itemized bills and receipts in the name of the claimant for which the claimant is responsible related to the miscellaneous expense.

(ii) Cancelled checks, receipts or verification from a provider for bills related to the injury.

(l) The claimant shall provide OVS with information pertaining to payments received or to be received by another source as a result of the injury, including restitution payments, workers compensation, insurance benefits or awards or settlements in a civil action.

(m) If a minor or incapacitated person has more than one guardian, OVS will determine the appropriate party for filing a claim on behalf of the minor or incapacitated person.

(n) If the direct victim or intervenor dies while a nonhomicide claim relating to that direct victim or intervenor is being processed, OVS may substitute the executor or administrator of the direct victim or intervenor and complete the processing of the claim. A claim may not be filed by the estate of a direct victim or intervenor.

(o) The claimant may request a supplemental award by submitting additional out-of-pocket expenses or losses at any time after the initial claim, provided that the claimant has not received the maximum award payable by law. OVS will verify out-of-pocket expenses and losses submitted for a supplemental award to determine that they directly relate to the original crime.

§ 411.12. Review.

(a) OVS will review the claim and supporting documents and investigate the validity of the claim. OVS will conduct a comprehensive investigation of the claim including, as necessary, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(b) If additional information is needed to determine the eligibility or validity of a claim, or to substantiate the degree of loss, OVS may ask the claimant for that information or request it directly from outside entities to the extent permitted by law.

(c) OVS may issue subpoenas and subpoenas duces tecum, either on its own instance or upon written application of a party. Subpoenas and subpoenas duces tecum must comply with 231 Pa. Code (relating to rules of civil procedure). Their issuance must depend upon a showing of necessity. OVS, on its own motion or on the application of the claimant, will, whenever necessary, and upon the terms and conditions as OVS may determine, take or cause to be taken affidavits and depositions of witnesses residing within or outside this Commonwealth.

(d) OVS may not request or review counseling notes of mental health service providers. OVS will request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime.

(e) OVS, at its expense, may direct an examination of the direct victim or intervenor by a health care provider designated by OVS. The direct victim or intervenor's failure to appear for the examination may result in OVS's denial of the applicable portion of the claimant's request for reimbursement.

(f) OVS will investigate and determine claims regardless of whether the alleged criminal has been apprehended, prosecuted or adjudicated for the criminal incident which is the basis for the claim.

§ 411.13. Closing of claims.

(a) OVS will close a claim when a determination has been made and written notification has been given to the claimant.

(b) When OVS has requested additional information under § 411.12(b) (relating to review) and the information is not provided within 60 days of the request, OVS will close the claim file until the requested information is received.

(c) If sufficient information is not provided to OVS to determine eligibility within 2 years from the date of the filing of the claim, the claim will be closed with no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(d) Eligible claims in which no verifiable out-of-pocket expense or loss has been received by OVS within 5 years from the date of the filing of the claim will be closed with no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(e) Subsection (d) does not apply when the direct victim was a minor at the time the crime was committed.

(f) OVS may reopen a claim at any time for further investigation.

§ 411.14. Determinations.

(a) If OVS is able to make a determination that the claim does not meet the basic eligibility requirements or

the action of the direct victim, intervenor or claimant affects the award, the claim will be denied in writing as a statutory denial or denial for cause.

(b) OVS will determine whether to grant an award, increase or decrease an award or deny the claim based on the supporting documents, the report of the investigation and staff recommendations.

(c) OVS will promptly notify the claimant of its determination in writing. OVS may also send a copy of the determination to all appropriate individuals, including the State Treasurer, court personnel, the prosecutor of the county where the crime occurred, victim advocate or the claimant's attorney of record.

§ 411.15. Actions affecting awards.

(a) Except as provided in the act, OVS may deny a claim or reduce the amount awarded if it finds that the conduct of the direct victim or intervenor contributed to the injury. The conduct of the direct victim or intervenor will be deemed to have contributed to the injury if the direct victim or intervenor did one of the following:

(1) Initiated, provoked or prolonged a verbal or physical confrontation with the offender.

(2) Participated in an illegal act that was causally related to the injuries sustained.

(3) Acted in a manner that placed the direct victim or intervenor into a situation likely to result in injury.

(4) Entered, knowingly and willingly, into a vehicle driven by someone under the influence.

(5) Sought retaliation against the offender.

(6) Entered into a physical altercation by mutual consent.

(7) Was charged by law enforcement with criminal conduct as a result of the crime.

(b) In determining whether the conduct of a direct victim or intervenor warrants a denial or reduction of the award, OVS may consider evidence indicating that the direct victim or intervenor was acting with legal justification as defined in 18 Pa.C.S. (relating to the Crimes Code) or other evidence of mitigation that the claimant asks OVS to consider.

(c) OVS may assess a contribution amount or deny in auto-related crimes when the victim is the driver of the vehicle and the victim does not have a valid license or the victim's driver's license has been revoked or was under suspension at the time of the crime.

(d) OVS will assess a \$5,000 contribution for an award for medical expenses, or the current amount of medical benefits coverage required under Pennsylvania law, if a direct victim or intervenor was injured while driving his own car without insurance.

(e) Stolen cash claims that are received and are eligible for an award will have a minimum 10% contribution assessed if they fall under the definition of "pigeon drop."

(f) OVS may deny a claim or reduce the amount awarded or require repayment of a prior award if it finds that a direct victim, intervenor or claimant has not cooperated fully with law enforcement agencies or OVS. Failure to cooperate includes one or more of the following:

(1) Failure to cooperate fully with a law enforcement agency in the investigation of the crime on which the claim is based.

(2) Failure to cooperate fully in the prosecution of the alleged offender of the crime on which the claim is based.

(3) Failure to provide truthful, complete and accurate information for OVS to determine the eligibility or validity of a claim or amount of an award.

(4) In crimes involving stolen or defrauded money, failure to implement personal crime prevention techniques recommended by the local police department, victim service programs or crime prevention programs at OVS's request when crimes are similar in nature and repeated.

(g) OVS may consider a failure to cooperate with law enforcement and OVS to be justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) There is a fear of retaliation.

(3) The victim is a minor.

(4) Other circumstances when good cause is shown by the claimant.

(h) If the crime involved is related to domestic violence, the conduct of the direct victim will not be considered unless the direct victim was the primary aggressor. In determining which party was the primary aggressor, OVS will consider the following:

(1) Prior acts of domestic violence.

(2) The relative severity of the injuries inflicted upon the persons involved in those prior acts of domestic violence.

(3) The likelihood of future injury.

(4) Whether, during the prior acts, one of the parties acted in self-defense.

(5) The totality of the circumstances surrounding the crime.

§ 411.16. Reductions, offsets and limitations.

(a) Except as otherwise provided in the act, an award made under the act and this chapter shall be reduced by the amount of any payments received or to be received as follows by the claimant as a result of the injury:

(1) From or on behalf of the individual who committed the crime.

(2) Under insurance or health and welfare programs, including those mandated by law.

(3) Under a contract of insurance wherein the claimant is the beneficiary.

(4) From public funds.

(5) As an emergency award under section 706 of the act (18 P. S. § 11.706).

(6) Under pension programs, including those providing for disability or survivor's benefits.

(7) Under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.

(b) Any decision by OVS to reduce, offset or limit an award to a claimant will only be made after first considering the ability of OVS to exercise its right to subrogation and restitution.

(c) Charitable donations specifically designated for a funeral expense or which appear on a funeral bill as a

direct payment and charitable donations specifically designated for an eligible expense or which appear on any bill as a direct payment will be used as an offset.

(d) In claims involving death or burial, OVS will reimburse travel expenses for the transport of a body or making funeral arrangements for no more than two persons, including a person designated by the family or person who pays for the funeral.

(e) In claims involving death or burial, reimbursement will not be made for alcoholic beverages, postage, thank you gifts and newspaper articles or paid advertisements relating to the death or burial, other than the obituary and notice of the time and place of the funeral or burial services.

(f) When an injury is the result of a motor vehicle incident and the injury is covered by liability or first party benefits, including under/insured and uninsured motorist coverages, a provider may not request payment in excess of reimbursement allowances applicable in this Commonwealth under the Medicare Program (see 75 Pa.C.S. § 1797(a) (relating to customary charges for treatment)) or their usual and customary charge, whichever is less.

(g) Medical, rehabilitation or other devices, including wheel chairs, chair lifts, ramps, van conversion equipment, therapy spas or special needs home remodeling that exceeds \$5,000 will need to have two bids unless good cause is shown. OVS will pay the lowest amount unless good cause is shown justifying the higher amount.

(h) If the direct victim or intervenor has no financial means to order the needed services or equipment that exceed \$5,000 listed in subsection (g), OVS will assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers.

(i) In claims involving stolen money or crime scene clean-up, if a claimant chooses not to access any of his homeowner's or renter's insurance, OVS will apply as an offset any amount that the claimant would have been paid by the insurance company.

§ 411.17. Emergency awards.

(a) If it appears to OVS that the claimant has an urgent financial need, OVS may make an emergency award to the claimant as a determination on the claim.

(b) An emergency award is solely for a claimant who incurs an undue hardship by paying medical expenses or funeral expenses out of his own pocket, or who incurred loss of earnings or support as a result of the crime incident.

(c) The total amount of an emergency award will not exceed \$1,500 per claim.

(d) OVS will expeditiously determine that the eligibility requirements have been met, review submitted documentation and process the request.

(e) OVS may reconsider an emergency award as a determination and may increase previous awards for emergency compensation up to \$1,500 per claim.

§ 411.18. Awards.

(a) If the losses payable by OVS for out-of-pocket loss and loss of support or loss of earnings exceed the overall monetary limitation in the act, or the overall limitation as reduced by a contribution assessed by OVS under § 411.15 (relating to actions affecting awards), OVS will allocate the award as follows:

(1) Out-of-pocket losses will be paid in full, followed by as much of the loss of support or loss of earnings as resources allow.

(2) If the total out-of-pocket losses exceed the overall limitation in the act, OVS will attempt to pay unpaid providers in full, followed by reimbursements to claimants for expenses already paid. OVS will attempt to satisfy the expenses of as many unpaid providers as feasible, to minimize the number of creditors seeking payment from the claimant.

(3) If more than one claimant files a claim for allowable expenses relating to the death of the victim or the intervenor, the award will be divided proportionately among the claimants when filed within the same time frame. In all other cases, awards are considered in the order that they are received.

(b) A claimant may not accept a portion of OVS's determination and reject another portion of the same determination. If a claimant desires to contest a portion of OVS's determination, the claimant shall contest the entire determination.

(c) OVS will reduce an award of compensation by the amount of any other payments received or to be received by the claimant as a result of the injury, as set forth in the act and under § 411.16 (relating to reductions, offsets and limitations).

(d) After OVS has made an award relating to an injury, a person who receives any amounts paid by another source as a result of the injury shall notify OVS about the payments.

(e) If a court has ordered an offender to pay restitution for the injury, but the order is not specific as to which components of the claimant's loss are to be reimbursed by the restitution payments, OVS will deem the restitution payments as being applied first to property losses incident to the crime that cannot be compensated under the act. Only after the property losses are fully paid will OVS use the restitution payments to offset for losses for which OVS has awarded or may award compensation.

(f) OVS may make a supplemental award to a claimant who previously received an award from OVS and who subsequently incurs an additional loss that is attributable to the original injury when the maximum award under the law has not been exceeded.

(g) If a claimant is liable for a bill incurred for out-of-pocket losses as a result of the crime injury but has not paid the balance, OVS will order payment to be made directly to the provider of the service.

(h) OVS may reimburse all medical copays and deductibles.

(i) If OVS makes an error in the amount of an award, OVS may seek repayment of the award.

(j) OVS retains the discretion to determine the priority of awards.

(k) In determining whether an injury is a direct result of a crime, OVS may consider a certification by a service provider.

APPEALS

§ 411.31. Reconsideration

(a) A claimant may contest OVS's determination by submitting a written request for reconsideration no later than 30 days from the date of the determination. If a

request for reconsideration is not filed within the time required, the determination becomes a final decision of OVS.

(b) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) Other circumstances when good cause is shown by the claimant.

(c) If requesting reconsideration, the claimant shall provide any additional information or clarification that would assist OVS in conducting its reconsideration.

(d) Based on further review and additional information or clarification that OVS receives, OVS will issue a reconsidered determination that either reaffirms or modifies the determination.

(e) OVS may issue the reconsidered determination as a final decision of the agency if it determines that the facts developed in the claims determination process establish that a particular determination is warranted as a matter of law.

§ 411.32. Hearing.

(a) If OVS is unable to determine if a claim is justified based upon supporting documents, it may direct a hearing before a hearing examiner designated by the OVS.

(b) Except for request for reconsideration falling under § 411.31(e) (relating to reconsideration), a claimant may appeal the reconsidered determination by OVS by requesting a hearing.

(c) A claimant may submit a written request for a hearing no later than 30 days after OVS issues its reconsidered determination. If a claimant fails to file the request for hearing within this time, the reconsideration determination becomes a final decision of OVS.

(d) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) Other circumstances when good cause is shown by the claimant.

(e) If requesting a hearing, the claimant shall provide a specific reason why the claimant asserts that OVS's determination is not correct.

(f) A hearing officer who has no previous involvement in any aspect of the claim will be assigned by OVS.

(g) Title 1 of the *Pennsylvania Code*, Part II (relating to the General Rules of Administrative Practice and Procedures) governs a hearing to the extent that its provisions are not inconsistent with this chapter.

(h) At least 30 days before the date of hearing, the claimant, the claimant's attorney and the victim's advocate will be provided written notice of the time, place and purpose of the hearing.

(i) The claimant shall provide written confirmation to OVS of the claimant's intent to attend the hearing, including documentary exhibits to be presented and a list of witnesses which must be received by OVS at least 10 days prior to the hearing date.

(j) Failure to comply with the confirmation requirements in subsection (i) may result in cancellation of the hearing.

(k) A cancelled hearing may be rescheduled if the claimant shows good cause for failure to comply with subsection (i). A hearing will not be rescheduled more than once, unless OVS deems it necessary.

(l) The attorney representing OVS may submit a prehearing memorandum to the hearing officer, with a copy to the claimant, outlining the legal and factual positions of OVS with respect to the claim and listing witnesses and documentary exhibits to be presented at the hearing. The attorney representing OVS may subpoena for attendance of witnesses or for production of documentary evidence.

(m) The claimant may subpoena for attendance of witnesses or for production of documentary evidence.

(n) Upon a showing of relevancy and materiality, the hearing officer may issue subpoenas for both the OVS and the claimant for attendance of witnesses or for the production of documentary evidence.

(o) In conducting the hearing, the hearing officer will liberally allow the admission of evidence that may not conform to the strict rules of evidence under common law or court rules. A stenographer or court reporter shall record the proceedings. Witnesses shall testify under oath.

(p) The claimant shall have the burden of proving entitlement to compensation by a preponderance of the evidence.

(q) Both OVS and the claimant may present testimony in support of their respective positions and cross-examine the opposing party's witnesses.

(r) Hearings generally will be open to the public except that the hearing may be held in camera in any of the following instances:

(1) Prosecution against the alleged perpetrator of the crime is pending.

(2) The welfare and safety of the direct victim, intervenor or his family or community may be adversely affected by a public hearing.

(3) To protect the rights and interests of a minor.

(s) A claimant may have support persons or victim advocates, or both, accompany him. The number of advocates and support persons may be limited by the hearing officer.

(t) Upon adjourning the hearing, the hearing officer will offer the claimant and OVS's attorney an opportunity to file posthearing briefs, to be filed after the transcript is issued, on a schedule to be determined by the hearing officer.

(u) Upon receipt of the transcript from the stenographer, notification will be sent by certified mail to the claimant that the transcript is available and can be purchased at the claimant's own expense.

(v) OVS will reimburse claimants \$20 per day for attendance at a hearing directed by OVS in connection with the claim. Additional expenses will be reimbursed as follows:

(1) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.

(2) Common carrier fares when preapproved by OVS.

(3) Lodging the night before or the night after a hearing session, to a daily maximum of \$75, if the claimant must travel at least 50 miles from home for the hearing.

§ 411.33. Final decision after hearing.

(a) The hearing officer will issue a report and recommendation which will be delivered to a designated Commission official acting on behalf of OVS who has no previous involvement in the claim.

(b) The designated Commission official will review the report and recommendation, the hearing transcript and the documentary exhibits. The designated Commission official may not have access to information not in the hearing record.

(c) The designated Commission official may not be advised in the hearing process by an attorney or any OVS staff member who has previous involvement with any aspect of the claim that is being heard. The designated Commission official may request the General Counsel of the Commonwealth to appoint an attorney who has no prior involvement to provide advice on the matter.

(d) Upon completing the review of the hearing officer's report and recommendation, the designated Commission official will do one of the following on behalf of OVS:

- (1) Adopt the hearing officer's report and recommendation as written as a final decision.
- (2) Modify the report and recommendation and issue the modified document as the final decision.
- (3) Reject the report and recommendation in its entirety and prepare and issue a final decision for OVS.
- (e) The designated Commission official will distribute the final decision to the claimant, the claimant's attorney, the victim's advocate and to OVS.
- (f) The claimant shall have the right of further appeal as set forth in the act or other applicable law.

SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS

§ 411.41. Amount.

An award made under the act and this chapter will be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from the injury. The total amount of an award may not exceed \$35,000 except for payment of the following:

- (1) Counseling, the maximum amount of which must be in accordance with section 707(b)(4.1) of the act. (18 P. S. § 11.707(b) (4.1))
- (2) Forensic rape examination and medications directly related to the sexual offense, the amount of which may not exceed \$1,000.
- (3) Reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which may not exceed \$500.

§ 411.42. Out-of-pocket loss.

(a) *General.* The following general provisions apply to reimbursement for out-of-pocket loss.

- (1) OVS may make a monetary award for an out-of-pocket loss as it is defined in the act.
- (2) OVS may pay the service provider directly or reimburse the claimant for amounts paid, as applicable.

(b) *Medical expenses.* The following provisions for payment of medical expenses apply:

- (1) OVS will pay a hospital or other licensed health care provider at the rate of 70% of the usual and customary charge for the service rendered.
- (2) Forensic rape examinations.
 - (i) OVS will reimburse a maximum of \$1,000 to a hospital or other licensed health care provider, or both, for a forensic rape examination and medications directly related to the sexual offense.
 - (ii) The reimbursement will not include expenses for analyzing collected evidence for DNA or presence of Rohypnol or other similar drugs.
 - (iii) Claims shall be filed with OVS no later than 1 year after the date of the crime.

(c) *Funeral expenses.* Except as otherwise set forth in this subsection, OVS will reimburse for expenses relating to a funeral of a direct victim or intervenor. The total reimbursement amount for funeral expenses will not exceed \$5,000. Additionally, within that \$5,000 monetary limitation, reimbursement will be subject to the following limitations:

- (1) Four thousand eight hundred dollars for funeral services, including the following:
 - (i) Cremation.
 - (ii) Interment.
 - (iii) Body preparation including embalming.
 - (iv) Grave opening and closing.
 - (v) Cemetery plot, tent and chairs.
 - (vi) Mausoleum.
 - (vii) Viewing services and facilities.
 - (viii) Automotive equipment, such as the hearse, limousine and flower car.
 - (ix) Death announcements, prayer cards, register book and thank you cards.
 - (x) Casket.
 - (xi) Minister, pastor, rabbi or other member of the clergy.

(xii) Other miscellaneous expenses, including organist, programs, death certificates, obituary notice and notice of the time and place of the funeral or burial services.

- (2) Nine hundred dollars for a monument.
- (3) Three hundred dollars for floral arrangements.
- (4) Three hundred dollars for funeral or memorial meal.
- (5) One hundred and seventy-five dollars for clothing purchased for the deceased for the funeral or interment.

(d) *Replacement of personal health-related items damaged or stolen as a result of a crime.* Except as otherwise set forth in this subsection, OVS will reimburse a claimant for costs for the replacement of each prosthetic device, wheelchair, cane, walker, hearing aid, eyeglasses or other corrective lenses, dental device or prescription medications. Reimbursement will not exceed \$1,000 and will be subject to the following limitations:

- (1) Two hundred dollars for eyeglass frames.
- (2) One thousand dollars for replacement of all combined prescription medications stolen or damaged in a single crime incident.

- (3) One hundred dollars for replacement of canes.
- (4) Two hundred fifty dollars for replacement for walkers.

(e) *Counseling.* OVS will pay expenses of counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker to claimants as follows:

(1) A maximum of \$10,000 in total expenses of a direct victim who was under 18 years of age upon the occurrence of the crime.

(2) A maximum of \$5,000 in total expenses of a direct victim who was 18 years of age or older upon the occurrence of the crime.

(3) A maximum of \$5,000 in total expenses of any of the following individuals affected by the homicide of a direct victim:

(i) An individual responsible for the welfare of the direct victim, which includes legal guardians and foster parents.

(ii) An individual related in the second degree of consanguinity or affinity to the direct victim.

(iii) An individual residing in the same household with the direct victim.

(iv) An individual engaged to be married to the direct victim.

(4) A maximum of \$2,500 in total expenses of any of the individuals described in paragraph (3) affected by a crime against a direct victim that is not a homicide.

(5) A maximum of \$1,500 in total expenses of an individual who:

(i) Is physically present at a crime scene and witnesses a violent crime.

(ii) Discovers the body in a homicide.

(6) For counseling expenses relating to a homicide, OVS may not reduce the amount of the award or deny the reimbursement due to the conduct of the direct victim.

(f) *Relocation expenses.* OVS will reimburse for expenses incurred by the temporary or permanent relocation of a direct victim and individuals residing in the direct victim's household when immediate relocation is necessary to protect their health and safety. This reimbursement will not exceed \$1,000 per household for each crime incident for the following:

(1) Relocation expenses to be reimbursed are as follows:

- (i) Lodging to a daily maximum of \$75.
- (ii) Rental of substitute living quarters.
- (iii) Utility connection fees, which do not include cable.
- (iv) Rental of a passenger vehicle for a total daily maximum of \$30.
- (v) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.
- (vi) Common carrier fares.
- (vii) Moving company charges or van rental.
- (viii) Tolls and parking expenses.
- (ix) Rental of post office box.
- (x) Charges for storage of personal belongings.
- (xi) Child care expenses.

(2) Reimbursement will be made only when a medical provider, human services provider or law enforcement representative, which may include a district attorney or other prosecutorial agency, verifies the immediate need for relocation.

(3) OVS may consider a delay past the prescribed immediate need time period to be justified when the direct victim, intervenor or claimant is mentally or physically incapacitated, there is a fear of retaliation or other circumstances when good cause is shown by the claimant.

(g) *Travel expenses.* OVS will reimburse expenses associated with travel necessary and reasonable as determined by OVS to obtain medical care or counseling and, in the case of an injury that results in death, for travel in connection with making the funeral arrangements and transport of the body as follows:

(1) Meals totaling no more than \$28 per day, with no more than \$6 for breakfast, \$6 for lunch and \$16 for dinner.

(2) Lodging to a daily maximum of \$75.

(3) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees.

(4) Vehicle rental to a daily maximum of \$30.

(5) Payment of a driver other than common carriers needed as result of a crime at maximum hourly rate of \$8.

(6) Common carrier fares in full.

(7) Tolls and parking expenses.

(8) Meals and lodging reimbursement, limited to trips of 50 miles or more from the eligible person's home.

(9) Containers or other necessary requirements to transport the body.

(10) In the case of an injury that results in death, for travel in connection with the transport of the body and making funeral arrangements not to exceed 5 days.

(h) *Crime scene clean up.* The cost of cleaning the crime scene of a private residence up to a maximum of \$500.

(1) Reimbursement will be limited to the cost of cleaning supplies purchased for the purpose of cleaning the scene, the cost of any necessary equipment purchased or rented and the cost of professional labor for the purpose of cleaning the crime scene.

(2) Multiple private residences may each be considered for crime scene cleanup if the sites are identified in the police report. The maximum award amount for each crime scene cleanup is \$500.

(3) Cleaning means to remove or attempt to remove blood and stains caused by other bodily fluids as a direct result of the crime or other dirt or debris caused by the processing of the crime scene.

(4) Stains deliberately caused by acts of vandalism and other intentional acts are property damage which is expressly excluded from the definition of "out of pocket loss" contained in the act.

(i) *Miscellaneous expenses.* OVS may reimburse a claimant for other services reasonably necessary, including the following:

(1) The purchase or rental of nonmedical remedial care or products that are needed to assist in normal, daily life functions and are prescribed or recommended by a health care provider, such as a wheel chair ramp, lifts or other

special accommodations, including equipment or robotic devices needed to assist in normal, daily life functions.

(2) The cost of obtaining services needed as a result of the crime such as laundering, cleaning, child care, administration of medication, food shopping and meal preparation.

(i) Members of the family of the direct victim or intervenor engaged to perform the services will be paid their net loss of earnings not to exceed the average weekly wage and if not otherwise reimbursed for the loss of earnings.

(ii) Individuals engaged to perform services who are not family members will be paid a maximum hourly rate of \$8.

(3) At the discretion of OVS, telephone and television expenses incurred in connection with inpatient care of the direct victim or intervenor due to the injury.

(4) At the discretion of OVS, charges incurred for records, products or services including those for rehabilitation, rehabilitative occupational training, other remedial treatment and care, tutors and interpreters.

§ 411.43. Loss of earnings.

(a) OVS may make an award for the loss of cash equal to one month's net worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the victims income and the victim is deprived of the money as a direct result of a crime. The actual amount stolen must be indicated in the police report. In no instance may payment exceed the amount stolen. Changes or amendments to the amount stolen must be made to the police within 2 weeks of the crime and subsequently documented by the police.

(b) OVS may make an award within the monetary limitations of the act to compensate a direct victim, intervenor or claimant for loss of earnings attributable to the injury not to exceed the average weekly wage if the claimant was not otherwise reimbursed for the loss. A loss of earnings must be definitely ascertainable at the time of the injury and may not include a loss that is conditioned upon future events.

(c) In claims involving the death of a direct victim or intervenor, OVS may pay up to 2 week's net loss of earnings in connection with the death not to exceed the average weekly wage if the claimant was not otherwise reimbursed for the loss. The loss is limited to that suffered by a claimant who incurred a loss of earnings as a result of one of the following:

- (1) Trauma.
- (2) Making funeral arrangements.
- (3) Accompanying the deceased to the place of interment.
- (d) The following formula will be used to calculate loss-of-earnings for wage earners:

$$\text{Loss of Earnings} = \text{Gross Earnings} - \text{Estimated Tax Obligations} - \text{Other Benefits Received}$$

(e) For purposes of the formula in subsection (d), the following apply:

(1) "Gross earnings" include taxable and nontaxable income that was terminated or reduced as a result of injury. Overtime may be included if the claimant demon-

strates a history of regular overtime pay or provides verification that overtime is a condition of employment.

(2) Estimated tax obligations include Federal, State and local taxes.

(3) "Other benefits received" include disability payments, employer paid leave, cash assistance, food stamps, workers' compensation, restitution or awards or settlements from a civil action or insurance payment.

(f) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year in which the crime occurred or the most recent tax year that ended prior to the year of the crime.

(g) As a condition for continuing receipt of loss of earnings benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled and which could be an offset to the loss of earnings award.

(h) For a claimant who is self-employed and who continues to operate his business during the period of disability, OVS may compensate the claimant for the amount paid to other persons hired to perform the services usually performed by the claimant.

(i) For a claimant whose unemployment compensation benefits are suspended as a result of the injury, OVS may make an award to replace the suspended benefits.

(j) If the claimant was unemployed at the time of the injury and provides OVS with an affidavit from the employer on company letterhead stating the beginning date of employment, the hours per week to be worked, and the pay rate along with the employer's Federal Identification Number (FID#) certifying that the claimant was unable to begin because of the injury, OVS may measure loss of earnings based on anticipated earnings that would have been received in the new position.

(k) If the claimant was self-employed for less than a year prior to the injury and the tax records consequently provide a questionable measure of the claimant's earning potential, OVS may measure gross earnings by using the claimant's earnings as an employee for the period immediately prior to the start of the claimant's business.

(l) If a claimant is self-employed and is unable to fulfill a contract negotiated and signed prior to the crime due to the injury, OVS may consider the lost net income.

§ 411.44. Loss of support.

(a) OVS may make an award within the monetary limitations of the act to compensate an eligible person or persons who, as a consequence of the injury causing the death of a direct victim or intervenor, is deprived of the financial support that the direct victim or intervenor had been required by court order to provide or had actually been providing at the time of the injury that caused the death. When a court-ordered support obligation is in effect at the time of an injury causing the death, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(b) For purposes of the formula in subsection (a), the following apply:

(1) "Support" includes annual support based on obligation specified in the order plus any amount in arrears due to the claimant at time of death.

(2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(c) When no court-ordered support obligation is in effect at the time of an injury causing the death of a direct victim or intervenor, the following formula will be used to calculate loss of support:

Loss of Support = Support – Other Benefits Received

(d) For purposes of the formula in subsection (c), the following apply:

(1) "Support" includes the gross earnings less estimated tax obligations multiplied by 80%. Gross earnings include all taxable and nontaxable income that terminated at time of death such as wages, business income, retirement payments, Social Security payments and other benefits.

(2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(3) Loss of support must be definitely ascertainable at the time of the injury that caused the death and may not include a loss that is conditioned upon future events.

(e) In applying the formula in subsection(c), the following conditions apply:

(1) A surviving spouse or dependent child will be allocated up to 80% of the net annual earnings of the victim or intervenor.

(2) A surviving parent will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(3) Any other person dependent upon the direct victim or intervenor for principal support will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(f) When calculating loss of support, OVS may consider as applicable, the life expectancy or labor force participation expectancy of the direct victim or intervenor, or the age of the dependent.

(g) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year in which the crime occurred or the most recent tax year that ended prior to the year of the crime.

(h) If the direct victim or intervenor was not employed at the time of the crime, OVS may use employment history up to the 3 years immediately preceding the crime to estimate potential support that would have been provided to an eligible person.

(i) If more than one person is eligible for a loss of support award, OVS will allocate each a share of the total annual amount based on OVS's determination of fairness and equity under the circumstances of the claim.

(j) If the total uncompensated loss of support for two or more eligible persons exceeds the monetary limitations in the act, the limited resources will be distributed at the discretion of OVS proportionately among the eligible persons.

(k) OVS may provide a lump sum or accelerated payments for loss of support. The calculated maximum can be dispersed in one lump sum if extenuating circumstances necessitate, or under lesser conditions, paid out in a 3-year to 5-year payment plan. Also, if the total projected award is of a lesser amount, and extended yearly payments are impractical, the award will be paid in total in a single sum. In claims in which OVS make protracted payments into the future, the claimant is subject to a continuing obligation to provide information that OVS requests. Failure to provide this information

when requested may result in the suspension of future, payments or may require repayment of prior accelerated payments.

(l) The claimant or the recipient of a loss of support award has a continuing obligation to report to OVS any change in circumstances, such as if the recipient obtains a new source of support. In these circumstances, OVS may terminate or reduce protracted payments made under the original award.

(m) When an award for loss of support is paid to a person for the benefit of another person, OVS may require the payee to file a periodic accounting of OVS's payments or take other action as OVS may determine necessary and appropriate for the benefit of the beneficiary.

(n) As a condition for continuing receipt of loss of support benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled to offset the loss of support benefits.

(o) At any time, OVS may reconsider and modify a future loss of support award previously issued or a protracted payment if another eligible person qualifies for a loss of support award.

(p) Gifts of property or money bestowed upon the dependent on special occasions may not be considered in making a determination of dependency.

MISCELLANEOUS

§ 411.51. Subrogation.

(a) Payment of an award made under the act shall subrogate the Commonwealth, to the extent of any payment, to any right of action against any person accruing to the claimant, the direct victim or the intervenor to recover losses resulting from the crime with respect to which the award is made. In such a case, the Commonwealth will be entitled to bring an action against the person causing or otherwise liable for the personal injuries or death for which the payment was made. Money recovered under this section shall be deposited in the Crime Victim's Compensation Fund established under the act.

(b) If an amount greater than that paid under the act is recovered and collected in such an action, the Commonwealth will pay the balance to the claimant. The Attorney General shall enforce any subrogation. A claimant who fails to notify OVS of the receipt of funds from another claim or award arising out of the crime shall forfeit and pay to the Commonwealth an amount equal to all awards paid by OVS to the claimant or on the claimant's behalf.

(c) The OVS has the discretion to settle subrogation claims for an amount less than the award. Unless good cause is shown by the claimant or claimant's attorney, under no circumstances will OVS settle subrogation claims for an amount that is less than 75% of the original award to the claimant. OVS reserves the right to assert further subrogation on additional recovery by the claimant. If the direct victim or intervenor incurs additional expenses related to the injury, the claimant must exhaust the actual insurance or civil recovery as well as the amount OVS reduced prior to receiving further payments from OVS.

§ 411.52. Representation by attorney.

(a) Title 1 of the *Pennsylvania Code*, Part II (relating to General Rules of Administrative Practice and Proce-

dures) applies to the representation of a claimant by an attorney before OVS or in a hearing related to a claim submitted to OVS.

(b) If an attorney has filed a notice of appearance on behalf of the claimant, the notice shall remain in effect until one of the following occurs:

(1) The claimant files with OVS a written revocation of the authority of the attorney.

(2) The attorney files with OVS a written statement of withdrawal from the case.

(3) The attorney makes a statement of withdrawal from the case on the record at a hearing.

(4) OVS receives notice of the license suspension or revocation or the death of the attorney.

(c) During the period in which a notice of appearance filed under this section remains in effect, OVS may communicate with the attorney instead of the claimant. Service upon the attorney shall be deemed effective service upon the claimant.

(d) An attorney who represents a claimant before OVS may receive a fee for that representation only under the act. After OVS makes an award, the attorney may request that OVS pay attorney's fees and costs by filing with OVS an affidavit of services, listing the nature of each service rendered and the amount of time spent in rendering the service, plus an itemized list of costs incurred in the preparation, procuring and filing of record papers regarding the claim.

(e) In evaluating applications for attorney's fees, OVS will consider the following factors:

- (1) The time and labor required.
- (2) The novelty and difficulty of the questions.
- (3) The skill needed to perform the legal service properly.
- (4) Awards in similar claims.

(f) A payment for attorney's fees shall be in addition to the award made to the direct victim, claimant or intervenor, but may not exceed 15% of that award. OVS may not reduce an award to a direct victim on account of payment of attorney's fees.

(g) OVS may award no more than \$75 per hour to an attorney in the preparation and presentation of a claim that is awarded.

(h) It is unlawful for an attorney to contract for or receive a sum larger than the amount allowed.

(i) OVS may deny or reduce an award for attorney's fees if an attorney asserts a false claim as to the time spent on a matter concerning OVS or asserts a false claim as to the services rendered to a claimant. OVS may refer the matter to the Disciplinary Board of the Pennsylvania Supreme Court, the Attorney General or other appropriate authorities.

§ 411.53. Prohibitions.

(a) Providers who write off bills to a direct victim or intervenor may not at any point following the write off seek reimbursement from OVS, direct victim, claimant or intervenor.

(b) A funeral director who assumes the obligation to pay for funeral expenses may not seek reimbursement from the direct victim or intervenor's family.

(c) A person who assumes the obligation for crime scene clean up may not seek reimbursement from the direct victim or intervenor's family.

[Pa.B. Doc. No. 06-2509. Filed for public inspection December 22, 2006, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties

The Commissioner of Professional and Occupational Affairs (Commissioner) amends Chapter 43b (relating to Commissioner of Professional and Occupational Affairs) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission regarding the conduct or operation of a business or facility licensed by a board or commission.

C. Background and Purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented. Act 48 citations have become an important part of the Bureau's enforcement efforts, with approximately 30% of the sanctions imposed by boards and commissions being accomplished through the Act 48 citation process.

The final-form rulemaking sets forth amendments to the civil penalty schedules of the State Board of Barber Examiners (Barber Board), the State Real Estate Commission (Commission), the State Board of Vehicle Manufacturers, Dealers and Salespersons and the State Architects Licensure Board (Architects Board).

D. Summary of Comments to Proposed Rulemaking and the Commissioner's Responses

Notice of proposed rulemaking was published at 34 Pa.B. 5552 (October 9, 2004). There was a 30-day public

comment period, during which time the Commissioner received comments from the Pennsylvania Association of Realtors (PAR), the American Institute of Architects Pennsylvania Chapter (AIAPA) and a licensee of the Architects Board. Following the close of the public comment period, the boards received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The following summarizes the comments received and provides the boards' responses.

No comments were received with respect to the schedule of civil penalties for the Barber Board.

With respect to the schedule of civil penalties for the Commission, the HPLC asked for the rationale behind lowering the civil penalty for the offense of failing to include the business name and phone number in at least equal size on an advertisement. The Commission determined that the offense was a relatively minor one and that the existing civil penalty was excessive when compared with other offenses on the schedule. The HPLC and IRRC also asked for a clarification as to what "in at least equal size" means. Prior to amendments to § 35.305 (relating to business name on advertisements) in 2000, the requirement was that the name and telephone number of the advertising licensee's broker be given greater prominence than the name of the advertising licensee in the advertising. In 2000, this requirement was altered to require the broker's name and phone number to be at least equal in size as the name and phone number of the advertising licensee. See 30 Pa.B. 5954 (November 18, 2000). Therefore, this final-form rulemaking has been amended to clarify this intent.

PAR commented that after careful review of the proposed amendments to the schedule of civil penalties regarding the Commission, PAR had no suggested modifications to the schedule of civil penalties, but encouraged the Commission to continue employing due diligence when preparing citations and levying penalties.

With respect to the schedule of civil penalties for the State Board of Vehicle Manufacturers, Dealers and Salespersons, the HPLC and IRRC asked for an explanation regarding the difference in the severity of the penalty for an auction permitting an unlicensed, revoked or suspended dealer to buy, sell or represent a vehicle at an auction, and a dealer permitting a revoked or suspended salesperson to buy, sell or represent a vehicle at an auction. Although similarly worded, these are two different violations. A dealer is subject to discipline for permitting a revoked or suspended salesperson to represent the dealership at an auto auction. Salespersons are licensed to work for one, and only one, dealership. It is the dealer's responsibility to verify the licensure status of salespersons representing the dealership at an auction. On the other hand, an auction is subject to discipline for permitting a revoked or suspended dealer to buy or sell at the auction. The dealers are entirely independent from the auctions. Due to the large number of dealerships represented at any given auction, the State Board of Vehicle Manufacturers, Dealers and Salespersons and the Commissioner determined that the civil penalty schedules should reflect this difference. Essentially, the schedules give the auction one violation with a lesser civil penalty before following the same schedule as that applied to dealers.

With regard to the civil penalty schedules for the Architects Board, the AIAPA raised several objections to the civil penalty schedules. First, the AIAPA objected to the imposition of a civil penalty against a firm for

untimely payment of the annual registration renewal fee. The AIAPA pointed out that a disciplinary action, whether it be through a civil penalty under Act 48 or through formal disciplinary action, causes a "black mark" on a firm's record that can severely affect a firm's ability to compete for public contracts. In response to this comment, the Architects Board and the Commissioner agreed to remove the proposed civil penalty from the schedule.

The AIAPA also commented regarding the civil penalty schedules regarding the unauthorized practice of architecture. The AIAPA asked the Architects Board and the Commissioner to consider whether the existing schedules and the proposed rulemaking account for the critical difference between untrained and unlicensed individuals practicing architecture and architects who are practicing on an expired license. The AIAPA pointed out that the civil penalty schedules apply the same penalty to these two vastly differing situations. In response to these comments, the Architects Board and the Commissioner have agreed to revise the civil penalty schedules to provide for the maximum \$1,000 civil penalty for practice by wholly unlicensed individuals, while adopting a schedule for practicing on an expired license based on the length of the lapse. In addition, the schedules have been revised to reflect the difference between an architect practicing on a revoked or suspended license, as compared to one practicing on an expired license. The Architects Board and the Commissioner agree that practicing in the face of a lawful order of the Architects Board suspending or revoking an architect's license is a more egregious violation than practicing after one's license has expired and the amended civil penalty schedules now reflect that fact.

Throughout the months since the proposed rulemaking was published, the Architects Board has spent a considerable amount of time working to develop schedules that fairly reflect the severity of each infraction. The AIAPA has provided welcomed input throughout this process. With regard to the civil penalties regarding expired licenses, it is the Board's intent that these schedules represent the exclusive action taken against an individual for practicing architecture or impressing an architect's seal on documents during a lapse in license. However, this does not prevent the Board from instituting disciplinary action for any other violation of the act or regulations of the Board that may occur during the period of lapse.

Robert J. Shusterman, a licensee of the Architects Board, objected to imposing a penalty on a firm for failing to submit its registration fee noting that it would place firms in this Commonwealth at a disadvantage to out-of-State individuals and firms. He also objected to the imposition of a penalty for failing to obtain prior Architects Board approval for a firm name. The amendments made to the final-form rulemaking should alleviate these concerns. Mr. Shusterman also suggested that the Architects Board should defer consideration of these civil penalty schedules and direct its attention to more pressing concerns of the profession including "electronic file transfer versus plan stamping, multi-state practice, mandatory continuing education and clarification of the scope of the profession of architecture." However, the Architects Board believes that its disciplinary function and regulatory functions are equally important in protecting consumers of architecture services in this Commonwealth. These civil penalty schedules are a part of that effort.

E. Description of Amendments

State Board of Barber Examiners

The final-form rulemaking amends the schedule of civil penalties of the Barber Board in § 43b.4 (relating to schedule of civil penalties—barbers and barber shops) by increasing amount of the civil penalties across the board. The Barber Board has participated in the Act 48 citation program from its inception in 1996 and the civil penalties have not increased since they were originally promulgated. The Barber Board has historically had the most lenient civil penalty schedule and the Barber Board and the Commissioner have determined that it is necessary to increase the civil penalties to improve their deterrent effects. In addition, the final-form rulemaking increases the civil penalties for continuing violations based on the length of the violation. For example, the penalty for practicing on a lapsed or expired license would increase depending on the length of the lapse. The final-form rulemaking also amends the description of the violation under section 562 of the Barber Law (63 P. S. § 562) to track recent amendments made by the act of December 22, 2005 (P. L. 446, No. 84), which now require that a barber shop must be supervised by a designated manager-barber or other licensee in charge. In addition, technical corrections have been made to the sections of the law cited as authority for two of the violations.

State Real Estate Commission

The civil penalty schedule for the Commission in § 43b.8 (relating to schedule of civil penalties—real estate and cemetery brokers, real estate schools) is amended to add increased penalties for second offenses and continuing violations. These amendments also add civil penalties for violations of §§ 35.286(a), 35.292(a)(6), 35.305(b) and 35.334. Also, the amendments increase certain existing civil penalties to enhance their deterrent effect. The final-form rulemaking includes amendments required to make the civil penalty schedules consistent with recent amendments the Commission made to §§ 35.245, 35.304 and 35.305 (relating to display of licenses in office; and disclosure of licensure when advertising own real estate).

State Board of Vehicle Manufacturers, Dealers and Salespersons

The final-form rulemaking amends the civil penalty schedule in § 43b.9 (relating to schedule of civil penalties—vehicle manufacturers, dealers and salespersons) to add civil penalties for additional violations of the Board of Vehicles Act (act) (63 P. S. § 818.1—818.37). Specifically, the final-form rulemaking adds civil penalties to its schedule for unlicensed practice violations by dealers, auctions, manufacturers, distributors, factory representatives and distributor representatives under section 5 of the act (63 P. S. § 818.5). Additionally, owing to an increasing number of complaints involving activities at vehicle auctions within this Commonwealth, the final-form rulemaking seeks to take advantage of the efficiencies of the citation process for violations of sections 19(29), (30) and (38) of the act (63 P. S. § 818.19 (29), (30) and (38)), regarding vehicle auctions.

State Architects Licensure Board

The civil penalty schedule for the Architects Board in § 43b.11a (relating to schedule of civil penalties—architects) is amended to delete the existing civil penalty for an architect impressing a seal or knowingly permitting it to be impressed on drawings, specifications or other design documents which were not prepared by the architect or under the architect's personal supervision. This violation does not lend itself to the Act 48 process and, to the Board's knowledge, has not served as the

basis of the issuance of any citations since its adoption. As previously noted, the final-form rulemaking also deletes the violation for delinquent payment of annual renewal fees by architecture firms. In addition, in the final-form rulemaking a distinction has been made between improper use of an architect's seal while the architect's license is expired, as compared to when the license is suspended or revoked. The Board believes that any type of practice on an expired license is a less egregious violation than practicing while one's license is suspended or has been revoked by the Board. For that reason, the civil penalty schedule for improper use of an architect's seal while the architect's license is expired has been adjusted to impose civil penalties that increase with the length of the lapse. Similarly, a distinction has been made in the final-form rulemaking between the civil penalty to be imposed for practicing without ever having received a license, and that for practicing on an expired or lapsed license. Again, with regard to expired licenses, the civil penalty has been adjusted to increase based on the length of the lapse.

F. Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for violations subject to the Act 48 citation process.

G. Sunset Date

Professional licensure statutes require each board and commission to be self-supporting. Therefore, boards and commission continually monitor the effectiveness of regulations affecting their operations. As a result, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 29, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 5552, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 21, 2006, this final-form rulemaking was approved by the HPLC. On November 29, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 30, 2006, and approved the final-form rulemaking.

I. Contact Person

Further information may be obtained by contacting Cynthia K. Montgomery, Regulatory Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649.

J. Findings

The Commissioner finds that:

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

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

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

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 5552.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this preamble.

K. Order

The Commissioner, acting under section 5(a) of Act 48, orders that:

(a) The civil penalty schedules promulgated by the Commissioner, 49 Pa. Code Chapter 43b, are amended by amending §§ 43b.3, 43b.4, 43b.8, 43b.9 and 43b.11a to read as set forth in Annex A.

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

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

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

BASIL L. MERENDA,
Commissioner

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7777 (December 16, 2006).)

Fiscal Note: Fiscal Note 16-32 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.3. Procedures.

(a) *Inspections/investigations.* Authorized agents may conduct inspections and investigations for the purpose of ascertaining compliance with statutory provisions and

regulations of licensing boards and commissions relating to required licensure and the conduct or operation of a business or facility.

(b) Citations.

(1) If an inspection reveals a violation of a statute or a regulation for which a civil penalty has been established under the schedules in this chapter, the authorized agent may prepare a citation indicating the violations found and the penalties imposed. A copy of the citation will be provided to the respondent.

(2) The citation shall be made on a form approved by the Bureau.

(3) Within 10 days of the date of the issuance of the citation, the respondent shall enter one of the following:

(i) A plea to admit to the violation and remit payment of the civil penalty to the Bureau.

(ii) A plea to deny the violation and request a hearing to contest the imposition of a civil penalty.

(4) Failure to respond to the citation in the manner specified in paragraph (3) within 10 days will result in the entry of a default judgment against the respondent for the full amount of the civil penalty and may result in additional disciplinary action.

(5) The civil penalties shall be paid by certified check or cashier's check or money order and made payable to the "Commonwealth of Pennsylvania," and mailed to: Commonwealth of Pennsylvania, Department of State, Complaints Office—Citations, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649.

(c) Citation hearings.

(1) Citation hearings shall be conducted by a hearing examiner in compliance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

(2) If a violation is found, the hearing examiner shall impose the full amount of the civil penalty as charged in the citation and as authorized by the schedules in this chapter.

(d) *Appeals.* A decision by a hearing examiner may be appealed by any party by filing an application for review with the appropriate licensing Board within 20 days of the mailing date of the order. An application for review shall set forth with specificity the grounds for appeal. The Board will review the record established before the hearing examiner and in its discretion receive additional evidence.

(e) *Miscellaneous.* This section supplements 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedures).

§ 43b.4. Schedule of civil penalties—barbers and barber shops.

STATE BOARD OF BARBER EXAMINERS

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 551	Practicing without a license	1st offense—\$500 2nd offense—Formal action
Section 558	Availability of current license on premises	1st offense—\$150 2nd offense—\$500

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 558	Practicing on a lapsed or expired license	1st offense—Up to 90 days—Warning; 90 days to 1 year—\$250; 1 year to 2 years—\$500; over 2 years—\$1,000 2nd offense—Formal action
Section 562(a)(2)	Operating a business or facility on a lapsed or expired permit or license	1st offense—Up to 90 days—Warning; 90 days to 1 year—\$250; from 1 year to 2 years—\$500; over 2 years—\$1,000 2nd offense—Formal action
Section 559	Failure to employ licensed persons	1st offense—\$500 for each individual unlicensed barber 2nd offense—Formal action
Section 560	Opening shop for business before shop inspected and approved	1st offense—\$200 2nd offense—Formal action
Section 560	Failure to file application when taking over as owner of existing shop	1st offense—\$500 2nd offense—Formal action
Section 562	Operating an establishment without supervision of designated manager barber or other designated licensee	1st offense—\$250 2nd offense—Formal action
Section 560	Operating a business or facility without a permit or license	1st offense—\$500 2nd offense—Formal action
Section 563(a)	Licensee practicing in place other than licensed shop	1st offense—\$500 2nd offense—Formal action

**Violation Under
49 Pa. Code
Chapter 3**

	Title/Description	Civil Penalty
Section 3.51(a)	Failure to obtain new shop license when shop moves	1st offense—\$500 2nd offense—Formal action
Section 3.51(b)	Failure to register trade name	1st offense—\$100 2nd offense—Formal action
Section 3.54	Failure to meet minimum equipment requirements	1st offense—\$100 2nd offense—Formal action
Section 3.55	Failure to meet minimum maintenance and sanitation requirements	1st offense—\$100 2nd offense—Formal action
Section 3.85	School equipment does not meet requirements	1st offense—\$100 2nd offense—Formal action
Section 3.86	School maintenance and sanitation requirements not met	1st offense—\$250 2nd offense—Formal action
Section 3.89	School advertising requirements not met	1st offense—\$250 2nd offense—Formal action

§ 43b.8. Schedule of civil penalties—real estate and cemetery brokers, real estate schools.

STATE REAL ESTATE COMMISSION

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 455.301	Acting in capacity of cemetery broker or cemetery salesperson without a license	1st offense—\$250 per violation 2nd offense—\$500 per violation
Section 455.601(a)	Failure of licensee to notify Commission of change of location of office of broker or cemetery broker within 10 days	1st offense—\$125 2nd offense—\$250
Section 455.601(a)	Failure of broker or cemetery broker to maintain sign with licensed name outside office	1st offense—\$250 2nd offense—\$500
Section 455.603	Failure of licensee to notify Commission of change of employing broker within 10 days	1st offense—\$125 2nd offense—\$250
Section 455.604(a)(4)	Use of any trade name or insignia or membership in any real estate association or organization of which the licensee is not a member	1st offense—\$250 2nd offense—\$500
Section 455.604(a)(8)	Placing a “for sale” or “for rent” sign or advertising property without the written consent of the owner	1st offense—\$250 2nd offense—\$500

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 455.604(a)(16)	Failure to exercise adequate supervision of licensed salesperson or associate broker (when subordinate violates § 455.601(a), 455.603 or 455.604(a)(21))	Same as penalty for underlying offense by subordinate
Section 455.604(a)(21)	Failure of licensee to have current license when performing licensed activity	1st offense—\$250 per month up to \$1,000 2nd offense—Formal action
Section 455.604(a)(26)	Failure to include right-of-cancellation information in a time share or campground membership	1st offense—\$500 2nd offense—\$1,000
Section 2205(b)(2)	Aiding and abetting cemetery or real estate sales activities by unlicensed individuals	1st offense—\$250 per individual 2nd offense—\$500 per individual

Violation Under 49 Pa. Code Chapter 35	Title/Description	Civil Penalty
Section 35.242(a)	Failure of broker or cemetery broker to devote office to transaction of real estate business in privacy	1st offense—\$125 2nd offense—\$250
Section 35.242(b)	Failure of broker or cemetery broker to maintain separate entrance to office located in private residence	1st offense—\$125 2nd offense—\$250
Section 35.242(c)	Failure of broker or cemetery broker to display business name prominently and in permanent fashion outside office	1st offense—\$250 2nd offense—\$500
Section 35.243(a)	Failure of broker or cemetery broker to obtain license before opening branch office	1st offense—\$250 2nd offense—\$500
Section 35.245(a)	Failure of broker, cemetery broker or rental listing referral agent to maintain the current license of employed or affiliated licensees at main office	1st offense—\$125 2nd offense—\$250
Section 35.245(b)	Failure of associate broker, salesperson, associate cemetery broker or cemetery salesperson to conspicuously display current license at office out of which licensee works	1st offense—\$100 2nd offense—\$250
Section 35.245(c)	Failure of broker or cemetery broker to maintain a list of licensees employed or affiliated with the broker or cemetery broker at the branch office out of which each licensee works	1st offense—\$125 2nd offense—\$250
Section 35.285	Failure to provide Commission or its representative with information regarding a franchisor, network or other parent real estate company with which the licensee is or may become affiliated	1st offense—\$250 2nd offense—\$500
Section 35.286(a)	Failure of broker to retain a copy of the written estimate of reasonably foreseeable expenses required under 49 Pa. Code § 35.334 (relating to statements of estimated cost and return)	1st offense—\$250 2nd offense—\$500
Section 35.286(a)(1)	Failure of broker, associate broker or salesperson to retain a copy of the acknowledgement portion of the Consumer Notice	1st offense—\$250 2nd offense—\$500
Section 35.286(b)	Failure of a licensed entity other than an individual to produce its corporate, partnership or association records for examination by the Commission or its authorized representative	1st offense—\$250 2nd offense—\$500
Section 35.290(b)	Failure of a licensee to notify the Commission of disciplinary action taken against the licensee by the real estate licensing authority of another jurisdiction within 30 days of receiving notice of the disciplinary action	1st offense—\$500 2nd offense—\$1,000
Section 35.292(a)(6)	Failure of broker, associate broker or salesperson to provide a copy of the Consumer Notice as required under 63 P. S. § 455.608 (relating to information to be given at initial interview)	1st offense—\$250 2nd offense—\$500
Section 35.301(a)	Advertising the sale or lease of real estate without the authority of the seller or lessor or its agent	1st offense—\$250 2nd offense—\$500
Section 35.301(b)	Publishing information about a rental property if the lessor or property manager expressly stated that the property was not to be included in lists prepared by rental listing referral agents	1st offense—\$250 2nd offense—\$500
Section 35.304	Failure of a licensee who sells or leases his own real estate to disclose in ads for the property that he is a licensee	1st offense—\$250 2nd offense—\$500

Violation Under 49 Pa. Code Chapter 35	Title/Description	Civil Penalty
Section 35.305(a)	Failure of broker, cemetery broker or rental listing referral agent to advertise or hold himself out to public under business name designated on license	1st offense—\$250 2nd offense—\$500
Section 35.305(b)	Advertising or using a nickname that has not been registered with the Commission	1st offense—\$250 2nd offense—\$500
Section 35.305(c)	Failure of salesperson or associate broker to include the business name and telephone number of the broker in at least equal size as the salesperson's or associate broker's name and telephone number on an advertisement	1st offense—\$250 2nd offense—\$500
Section 35.334	Failure of broker to provide a written estimate of reasonably foreseeable expenses	1st offense—\$250 2nd offense—\$500
Section 35.361(a)	Failure of real estate school to prominently display certificate of approval at main location and copy at satellite location	1st offense—\$125 2nd offense—\$250
Section 35.361(b)	Failure of real estate school to prominently display school's approved name outside each school location	1st offense—\$250 2nd offense—\$500
Section 35.361(c)	Failure of real estate school to prominently display school director's letter of approval at main location and copy at each satellite location	1st offense—\$125 2nd offense—\$250
Section 35.361(d)	Failure of real estate school to prominently display alphabetical list of courses and instructors at each school location	1st offense—\$125 2nd offense—\$250

§ 43b.9. Schedule of civil penalties—vehicle manufacturers, dealers and salespersons.

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 818.5(a)	Person or entity engaging in business of vehicle dealer, auction, manufacturer or distributor without license or acting as broker	Each offense—\$1,000
Section 818.5(a)	Person engaging in business as a factory representative or distributor representative without a license	1st offense—\$100 2nd offense—\$500 3rd offense—\$1,000
Section 818.5(a)	Individual working as unlicensed salesperson for dealership	1st offense—\$100 2nd offense—\$500 3rd offense—Formal action
Section 818.5(c)	Licensed salesperson working as salesperson for dealership other than for whom salesperson is licensed	1st offense—\$100 2nd offense—\$500 3rd offense—Formal action
Section 818.5(d)	Failure to display license in principal office	1st offense—\$100 2nd offense—\$500 3rd offense—Formal action
Section 818.5(h)	Vehicle auction not posting list of revoked/suspended licensees	1st offense—\$250 2nd offense—\$500 3rd offense—Formal action
Section 818.19(15)	Licensed dealer employing unlicensed salesperson	1st offense—\$500 2nd offense—\$1,000 3rd offense—Formal action
Section 818.19(29)	Wholesale auction permitting unlicensed or revoked or currently suspended dealer or vehicle business to buy, sell or represent vehicle at auction	1st offense—\$250 2nd offense—\$500 3rd offense—\$1,000 Subsequent offense—Formal action
Section 818.19(30)	Dealer permitting revoked or currently suspended salesperson to sell, represent or purchase vehicle at auction	1st offense—\$500 2nd offense—\$1000 3rd offense—Formal action
Sections 818.5(a) and 818.19(27)	Licensed dealer operating an unlicensed branch lot	1st offense—\$1,000 2nd offense—Formal action
Sections 818.5(f)(5), (g)(1) and 818.19(38)	Person with revoked or currently suspended dealer or salesperson license physically present during auctioning of vehicles	Each offense \$1,000

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 818.19(34)	Licensed dealer conducting its business under any name other than its licensed name	1st offense—\$250 2nd offense—\$500 3rd offense—Formal action
Section 818.19(37)	Licensed dealer failing to produce records to an authorized agent of the Board	1st offense—\$500 2nd offense—\$1,000 3rd offense—Formal action

Violations under 40 Pa. Code Chapter 19	Title/Description	Civil Penalty
Section 19.17	Broker or dealer business identity combined with other businesses	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(1)	Dealer does not have permanent enclosed building	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(2)	Dealership does not have private office	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(i)	Dealer display area for five vehicles or 5,000 square feet	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(ii)	Display lot not graded and surfaced with required material	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(iii)	Display area separated from adjacent parking area	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(iv)	Display area lighted if open evenings	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(5)	Dealer fails to maintain separate telephone line	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(6)	Business sign not permanent or visible to the public	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(7)	Dealership in violation of land use ordinances	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(9)	Failure to post business hours	1st offense—\$100 2nd offense—\$500

§ 43b.11a. Schedule of civil penalties—architects.

STATE ARCHITECTS LICENSURE BOARD

Violation under 63 P. S.	Violation under 49 Pa. Code Chapter 9	Title/Description	Civil Penalty
Section 34.12	N/A	Anyone impressing an architect's seal or knowingly permitting it to be impressed on drawings, specifications or other design documents after the architect's license has been revoked, annulled or suspended.	1st offense—\$1,000 2nd offense—Formal action
Section 34.12	§ 9.142(a)	An architect whose license has expired impressing the architect's seal or knowingly permitting the architect's seal to be impressed on drawings, specifications or other design documents after lapse or expiration of the license.	0 to 6 months' lapse—Warning 6 to 12 months' lapse—\$500 12 to 24 months' lapse—\$1,000 24 months' or greater lapse—Formal action
Section 34.13(j)	§ 9.163	Engaging in the practice of architecture as a professional association, partnership, professional corporation, limited liability company, limited liability partnership or business corporation without first receiving the written approval of the Board.	0 to 6 months—Warning 6 to 12 months—\$500 12 to 24 months—\$1,000 Over 24 months—Formal action

Violation under 63 P. S.	Violation under 49 Pa. Code Chapter 9	Title/Description	Civil Penalty
Section 34.18(a)	§ 9.171	An individual engaging in the practice of architecture or offering to engage in the practice of architecture in this Commonwealth, or using any title, sign, card or device implying that the individual is competent to engage in the practice of architecture without ever having obtained a license to practice architecture in this Commonwealth.	1st offense—\$1,000 2nd offense—Formal action
Section 34.18(a)	§ 9.103	An individual engaging in the practice of architecture or offering to engage in the practice of architecture in this Commonwealth, or using any title, sign, card or device implying that the individual is competent to engage in the practice of architecture during a period when the individual's license issued by the Board is lapsed or expired.	0 to 6 months' lapse—Warning 6 to 12 months' lapse—\$500 12 to 48 months' lapse—\$1,000 48 months' or greater lapse—Formal action

[Pa.B. Doc. No. 06-2510. Filed for public inspection December 22, 2006, 9:00 a.m.]

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

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

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) amends §§ 47.32—47.37, 47.39 and 47.41 and adds §§ 47.36a, 48.31—48.42 and 49.31—49.42 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

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

Background and Purpose

With the enactment of the act of December 21, 1998 (P. L. 1017, No. 136), the Board now licenses marriage and family therapists, clinical social workers and professional counselors along with social workers. The Board's current regulations provide for continuing education as a condition of biennial renewal of social workers and clinical social workers. This final-form rulemaking amends the provisions pertaining to continuing education for social workers in Chapter 47 to recognize the two classes of social work licenses, social worker and clinical social worker, and adds similar provisions in Chapters 48 and 49 to include continuing education requirements for marriage and family therapists and professional counselors, respectively. The amendments to Chapters 48 and 49 require licensed marriage and family therapists and professional counselors to complete 30 clock hours during the preceding biennial period to renew a license. The continuing education requirement will apply to renew a license with the renewal period beginning March 1, 2009.

Summary of Comments and Responses on Proposed Rule-making

Notice of the proposed rulemaking was published at 35 Pa.B. 2640 (April 30, 2005). The Board received comments from the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC), Fresenius Medical Care, Pennsylvania Society for Clinical Social Work (PSCSW), Pennsylvania Alliance of Counseling Professionals and the Pennsylvania Chapter of the National Association of Social Workers (NASW). The Board also received comments from 15 individuals. The comments and the Board's responses are as follows.

§§ 48.32 and 49.32. Requirement for biennial renewal.

IRRC and the HPLC expressed concern that licensees who currently do not have a continuing education requirement may not have received adequate notice of the new requirement and may have difficulty obtaining the requirements for the 2007-09 renewal period. The Board has revised the language to require that the continuing education must be completed during the biennial renewal period beginning March 1, 2007, to renew a license for the March 1, 2009, renewal period.

§§ 47.33, 48.33 and 49.33. Acceptable continuing education courses and programs.

The HPLC and the PSCSW commented that proposed subsection (d) which would allow licensees to receive credit for up to 20 of the 30 required hours by home study, or 2/3 of the required hours, was too large. The Board considered this concern but believes that home study courses are as valuable as classroom courses. The Board recognizes that home study is critical to licensees in rural areas. The Board, therefore, has decided not to decrease the number of allowable credits of home study.

The HPLC and IRRC noted an inconsistency in proposed language in §§ 47.33(a), 48.33(a) and 49.33(a) in that § 48.33(a) allowed a licensee to accrue up to 20 of the required clock hours in home study courses offered by approved providers if the home study course has specific learning objectives which the provider evaluates to assure that learning has taken place. Sections 47.33(a) and

49.33(a) did not include the work "course." The Board noted the error and added the word "course" in both subsections.

The HPLC noted that proposed §§ 47.33(a), 48.33(a) and 49.33(a) stated "only courses or programs offered by Board approved providers will be accepted for continuing education credit" whereas §§ 47.36a, 48.37 and 49.37 (relating to other sources of continuing education) stated that credit will be given on a case-by-case basis for other experiences. The HPLC recommended that these provisions be reconciled by adding the phrase "except as otherwise provided" to §§ 47.33(a), 48.33(a) and 49.33(a). The Board agreed and amended the language accordingly.

The HPLC and IRRC also recommended replacing the phrase "practice building" with the phrase "marketing the practice" in subsection (c). The Board agrees and has changed the language accordingly.

Also, these proposed provisions allow licensees to accrue credits using home study courses if the home study course has specific learning objectives which the provider evaluates to assure that learning has taken place. The HPLC and IRRC asked how evaluations of home study courses would be implemented and asked the Board to provide examples. The Board, in response, notes that many home study courses require the successful completion of an examination after the completion of the course. The provider requires a particular percentage of correct answers for the student to receive credit for completing the course.

§ 47.36. Preapproved providers of continuing education courses and programs for social workers and clinical social workers.

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

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

Several individual commentators offered several additions or corrections to the lists of preapproved providers in §§ 47.36(a), 48.36(a) and 49.36(a). The Board reviewed these lists and made appropriate corrections and additions.

Many commentators also raised the concern that the Board was deleting § 47.36(c), which allowed the Board to approve participation in other continuing education courses so long as the licensee submits, prior to attendance, an application. The Board agreed that this provision should be retained. Accordingly, § 47.36(c) has been retained in final-form rulemaking and similar provisions have been added to Chapters 48 and 49. Many commentators also asked the Board to allow individuals to apply for continuing education credit after attending a program. The Board considered this comment but decided against implementing this change because it would render prior approval meaningless. In addition, allowing individuals to apply for approval after already taking the course would be inordinately time consuming and costly to the administration of the Board and of little value to licensees who, having paid for and taken a course in reliance on the supposition that it would be approved, would have to find a replacement once the course was disapproved. Also, the Board notes that under subsection (c), a licensee will be able to take a course not previously approved so long as the licensee applies at least 1 day prior to taking the course.

§§ 47.37, 48.38 and 49.38. Reporting by licensee of hours spent in continuing education.

The HPLC and IRRC expressed confusion with the proposed amendment to subsection (a) pertaining to "certified statement" which would delete the requirement that an applicant use "forms approved by the Board." The Board agrees that the amendment could be confusing and has added a sentence clarifying that the certification statement will be provided on the Board's application form for renewal of licensure.

IRRC also noted that proposed subsection (b)(7) required the licensee to provide "the Board approval number assigned to the course or program" and asked whether all preapproved organizations have an approval number for each course or program. The Board recognizes that not all preapproved organizations have an approval number. Accordingly the Board has amended this subsection to require a Board approval number unless the provider is preapproved.

§§ 47.36a, 48.37 and 49.37. Other sources of continuing education.

IRRC noted that proposed subsection (a)(3) allowed consideration of clock hours for publications of articles, books and research regarding the practice of social work or clinical social work and that the clock hours should be related to the practice of marriage and family therapy and professional counseling respectively. The Board agrees and has made the appropriate changes to these sections.

The HPLC noted a drafting error with respect to the phrase "services as a teacher (first-time experience only)" in §§ 47.36a(a)(2), 48.37a(a)(2) and 49.37(a)(2) and recommended that the phrases be rewritten to remove the parentheses. The Board agreed and made the changes in final-form rulemaking.

§§ 47.39, 48.40 and 49.40. Exemption and waiver.

The HPLC noted that §§ 47.39, 48.40 and 49.40 provide for waiver of continuing education for individuals applying for licensure for the first time. The HPLC did not object to these provisions, noting that there are sound reasons to have these policies. However, the HPLC noted that section 18 of the act does not expressly authorize the Board to grant waivers or to exempt first time licensees from the continuing education requirements. To resolve this conundrum, the HPLC suggested that the Board recommend to the Legislature that the act be amended to authorize the Board to grant waivers and an exemption. The Board will look into this suggestion.

The Pennsylvania Alliance of Counseling Professionals asked that, in addition to granting a waiver of all or part of a continuing education requirement, the Board allow for the granting of time extensions for completing continuing education for good cause. The Board agrees with this request and has amended §§ 47.39, 48.40 and 49.40 accordingly.

Miscellaneous issues

One commentator asked the Board to reduce the deadline for a sponsor to submit an application for approval as provider of a course or program in § 47.34 (relating to registration of continuing education providers who offer one course or program) from 90 days to 60 days. However, the Board and Board staff need 90 days to review applications and request additional information if necessary. Accordingly, the Board has determined that the 90-day deadline is necessary.

A member of the Philadelphia Center for Psychoanalytic Education questioned whether it could become a preapproved provider. The Board notes that under § 47.36(a)(6)(ix) (relating to preapproved providers of continuing education courses and programs for social workers and clinical social workers), it would be approved under The American Psychological Association. The commentator also asked if sponsors and participants could apply for course approval on the Internet. The Board decided against this suggestion because necessary supporting documents could not be submitted on the Internet.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 20, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 2640, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 21, 2006, the final-form rulemaking was approved by the HPLC. On November 29, 2006, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 30, 2006, and approved the final-form rulemaking.

Contact Person

Interested persons may obtain information regarding the final-form rulemaking by contacting Beth Sender Michlovitz, Board Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2659, Harrisburg, PA 17105-2649, bmichlovit@state.pa.us.

Findings

The Board finds that:

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

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

(3) The amendments to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 2640.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the act.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapters 47—49, are amended by amending §§ 47.32—47.37, 47.39 and 47.41 and adding §§ 47.36a, 48.31—48.42 and 49.31—49.42 to read as set forth in Annex A.

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

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

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

RONALD HAYS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7777 (December 16, 2006).)

Fiscal Note: Fiscal Note 16A-6912 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

CONTINUING EDUCATION

§ 47.32. Requirement for biennial renewal.

(a) The Board requires, as a condition of biennial renewal of a social worker's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs in social work offered by approved providers. Excess clock hours may not be carried over to the next biennium. Effective with the 2009 renewals and thereafter, at least 3 of the required 30 clock hours must be related to ethical issues.

(b) The Board requires, as a condition of biennial renewal of a clinical social worker's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs in social work offered by approved providers. Effective with the 2009 renewals and thereafter, at least 3 of the required 30 clock hours must be in ethical issues. Excess clock hours may not be carried over to the next biennium.

§ 47.33. Acceptable continuing education courses and programs.

(a) Only courses or programs offered by Board approved providers will be accepted for continuing education credit, except as provided in § 47.36a (relating to other sources of continuing education).

(b) Continuing education courses and programs must be appropriate for the master's level practitioner and

pertain to the practice of social work or clinical social work as defined in section 3 of the act (63 P. S. § 1903).

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

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

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

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

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

(c) The application must include the following information:

- (1) The full name and address of the applicant.
- (2) The title of the course or program and core subjects covered.
- (3) The dates and location of the course or program.
- (4) The instructors' names, titles, affiliations and degrees.
- (5) The schedule of the course or program-syllabus, lecturer, time allocated and the like.
- (6) The total number of clock hours requested.
- (7) The method of certifying attendance.
- (8) The objectives.
- (9) The course or program coordinator.
- (10) The instruction and evaluation methods.
- (11) Evidence of meeting the standards in § 47.35 (relating to standards for courses and programs).

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

(e) Upon approval as a qualified provider of a course or program, a Board approval number will be assigned and must be listed on the certificate of attendance. Approval is limited to the biennial period in which the course is given.

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

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

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

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

§ 47.35. Standards for courses and programs.

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

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

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

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

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

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

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

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

§ 47.36. Preapproved providers of continuing education courses and programs for social workers and clinical social workers.

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

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

(2) The Association of Social Work Boards.

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

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

(5) Graduate programs accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP).

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

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

(ii) The Clinical Social Work Association (CSWA) and its state and local affiliates.

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

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

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

- (vi) The American Art Therapy Association (AATA).
 - (vii) The American Dance Therapy Association (ADTA).
 - (viii) The National Association for Drama Therapy (NADT).
 - (ix) The American Psychological Association (APA).
 - (x) The Approved Continuing Education (ACE) Program developed by the Association of Social Work Boards.
 - (xi) The American Nurses Credentialing Center (ANCC).
- (7) The following groups and their regional, state and local affiliates:
- (i) The Child Welfare League of America.
 - (ii) The National Association of Black Social Workers.
 - (iii) The Family Service Association of America.
 - (iv) The Clinical Social Work Association (CSWA).
 - (v) The American Association for Marriage and Family Therapy (AAMFT).
 - (vi) The American Family Therapy Association (AFTA).
 - (vii) The National Council on Family Relations (NCFR).
 - (viii) The Council of Nephrology Social Workers.
 - (ix) The American Association of Sex Educators, Counselors and Therapists (AASECT).
 - (x) The American Association of Pastoral Counselors (AAPC).
 - (xi) The American School Counselor Association (ASCA).
 - (xii) The American Counseling Association (ACA).
 - (xiii) The American Mental Health Counselors Association (AMHCA).
 - (xiv) The National Rehabilitation Counseling Association (NRCA).

(b) The Board will consider for approval, as preapproved providers, other organizations who offer multiple courses and programs for social workers and clinical social workers. The request for approval shall be submitted to the Board in writing along with a rationale as to why the organization should be included as a preapproved provider.

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

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

§ 47.36a. Other sources of continuing education.

- (a) Clock hours may be granted on a case-by-case basis for the following:
 - (1) Participation in clinical conferences, clinical rounds or training under a preceptor provided through hospitals, medical centers, schools and universities.
 - (2) First-time experience as a teacher.
 - (3) Publications of articles, books and research relating to the practice of social work or clinical social work.

(4) Services as a preceptor, lecturer or speaker.

(b) A licensee who wishes to obtain clock hours for credit under subsection (a)(1), (2) or (4) shall submit, prior to participating in the event, an application for approval along with a fee as provided by § 47.34(b) (relating to registration of continuing education providers who offer one course or program). A licensee seeking to obtain clock hours for a publication under subsection (a)(3), shall submit, after the publication of the article, book or research, an application for approval along with a fee as provided by § 47.34(b).

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

(a) Applicants for license renewal shall provide a signed statement certifying that the continuing education requirements have been met. The certification statement will be included on the application form for renewal of licensure.

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

- (1) The date attended.
- (2) The clock hours claimed.
- (3) The title of course or program and description of content.
- (4) The school, hospital, medical center or organization which sponsored the course or program.
- (5) The instructor.
- (6) The location of course or program.
- (7) The Board approval number assigned to the course or program unless the provider is preapproved under § 47.36(a) (relating to preapproved providers of continuing education courses and programs for social workers and clinical social workers).

§ 47.39. Exemption and waiver.

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

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

§ 47.41. Disciplinary action authorized.

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

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

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

CONTINUING EDUCATION

§ 48.31. Definitions.

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

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

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

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

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

§ 48.32. Requirement for biennial renewal.

For 2009 renewals and thereafter, the Board will require, as a condition of biennial renewal of a marriage and family therapist's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs offered by approved providers which shall include at least 3 clock hours in ethical issues. Up to 20 clock hours may be obtained by home study. Excess clock hours may not be carried over to the next biennium.

§ 48.33. Acceptable continuing education courses and programs.

(a) Only courses or programs offered by Board approved providers will be accepted for continuing education credit, except as provided in § 48.37 (relating to other sources of continuing education).

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

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

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

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

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

(b) The application must include the following information:

- (1) The full name and address of the applicant.
- (2) The title of the course or program and core subjects covered.
- (3) The dates and location of the course or program.

(4) The instructors' names, titles, affiliations and degrees.

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

(6) The total number of clock hours requested.

(7) The method of certifying attendance.

(8) The objectives.

(9) The course or program coordinator.

(10) The instruction and evaluation methods.

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

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

(d) Upon approval as a qualified provider of a course or program, a Board approval number will be assigned and will be listed on the certificate of attendance. Approval is limited to the biennial period in which the course is given.

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

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

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

§ 48.35. Standards for courses and programs.

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

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

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

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

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

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

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

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

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

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

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

(2) The Association of Social Work Boards.

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

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

(5) Graduate programs accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP).

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

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

(ii) The Clinical Social Work Association (CSWA) and its state and local affiliates.

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

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

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

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

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

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

(ix) The American Psychological Association (APA).

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

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

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

(i) The Child Welfare League of America.

(ii) The National Association of Black Social Workers.

(iii) The Family Service Association of America.

(iv) The Clinical Social Work Association (CSWA).

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

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

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

(viii) The Council of Nephrology Social Workers.

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

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

(xi) The American School Counselor Association (ASCA).

(xii) The American Counseling Association (ACA).

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

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

(b) The Board will consider for approval, as preapproved providers, other organizations who offer multiple courses and programs for marriage and family therapists. The request for approval shall be submitted to the Board in writing along with a rationale as to why the organization should be included as a preapproved provider.

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

(d) The Board may approve participation in other continuing education courses or programs for credit so long as the licensee submits, prior to attendance, an application for program approval and supporting documentation provided in § 48.35, and upon completion of the course or program submits verification of attendance.

§ 48.37. Other sources of continuing education.

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

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

(2) First-time experience as a teacher.

(3) Publications of articles, books and research relating to the practice of marriage and family therapy.

(4) Services as a preceptor, lecturer or speaker.

(b) A licensee who wishes to obtain clock hours for credit under subsection (a)(1), (2) or (4) shall submit, prior to participating in the event, an application for approval along with a fee of \$45 as provided by § 48.34(a) (relating to registration of continuing education providers who offer one course or program). A licensee seeking to obtain clock hours for a publication under subsection (a)(3) shall submit, after the publication of the article, book or research, an application for approval along with a fee of \$45 as provided by § 48.34(a).

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

(a) Applicants for license renewal shall provide a signed statement certifying that the continuing education requirements have been met. The certification statement will be included on the application form for renewal of licensure.

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

(1) The date attended.

(2) The clock hours claimed.

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

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

- (5) The instructor.
- (6) The location of course or program.
- (7) The Board approval number assigned to the course or program unless the provider is preapproved under § 48.36(a) (relating to preapproved providers of continuing education courses and programs for marriage and family therapists).

§ 48.39. Retention of records.

The licensee shall retain documentation of completion of the prescribed number of clock hours for 4 years following the certification which shall be produced upon request by the Board or its auditing agents. The Board will utilize a random audit of renewals to determine compliance with the continuing education requirement.

§ 48.40. Exemption and waiver.

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

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

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

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

§ 48.42. Disciplinary action authorized.

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

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

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

CONTINUING EDUCATION

§ 49.31. Definitions.

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

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

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

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

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

§ 49.32. Requirement for biennial renewal.

For 2009 renewals and thereafter, the Board will require, as a condition of biennial renewal of a professional counselor's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs offered by approved providers which shall include at least 3 clock hours in ethical issues. Up to 20 clock hours may be obtained by home study. Excess clock hours may not be carried over to the next biennium.

§ 49.33. Acceptable continuing education courses and programs.

(a) Only courses or programs offered by Board approved providers will be accepted for continuing education credit except as provided in § 49.37 (relating to other sources of continuing education).

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

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

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

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

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

(b) The application must include the following information:

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

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

(d) Upon approval as a qualified provider of a course or program, a Board approval number will be assigned and

will be listed on the certificate of attendance. Approval is limited to the biennial period in which the course is given.

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

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

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

§ 49.35. Standards for courses and programs.

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

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

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

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

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

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

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

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

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

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

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

(2) The Association of Social Work Boards.

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

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

(5) Graduate programs accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP).

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

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

(ii) The Clinical Social Work Association (CSWA) and its state and local affiliates.

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

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

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

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

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

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

(ix) The American Psychological Association (APA).

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

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

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

(i) The Child Welfare League of America.

(ii) The National Association of Black Social Workers.

(iii) The Family Service Association of America.

(iv) The Clinical Social Work Association (CSWA).

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

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

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

(viii) The Council of Nephrology Social Workers.

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

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

(xi) The American School Counselor Association (ASCA)

(xii) The American Counseling Association (ACA).

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

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

(b) The Board will consider for approval, as preapproved providers, other organizations who offer multiple courses and programs for professional counselors. The request for approval shall be submitted to the Board in writing along with a rationale as to why the organization should be included as a preapproved provider.

(c) The approval given to providers is subject to reevaluation; however, a rescission of approval will be made

only in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(d) The Board may approve participation in other continuing education courses or programs for credit so long as the licensee submits, prior to attendance, an application for program approval and supporting documentation provided in § 49.35, and upon completion of the course or program submits verification of attendance.

§ 49.37. Other sources of continuing education.

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

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

(2) First-time experience as a teacher.

(3) Publications of articles, books and research relating to the practice of professional counseling.

(4) Services as a preceptor, lecturer or speaker.

(b) A licensee who wishes to obtain clock hours for credit under subsection (a)(1), (2) or (4) shall submit, prior to participating in the event, an application for approval along with a fee of \$45 as provided by § 49.34(a) (relating to registration of continuing education providers who offer one course or program). A licensee seeking to obtain clock hours for a publication under subsection (a)(3), shall submit, after the publication of the article, book or research, an application for approval along with a fee of \$45 as provided by § 49.34(a).

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

(a) Applicants for license renewal shall provide a signed statement certifying that the continuing education requirements have been met. The certification statement will be included on the application form for renewal of licensure.

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

(1) The date attended.

(2) The clock hours claimed.

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

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

(5) The instructor.

(6) The location of course or program.

(7) The Board approval number assigned to the course or program unless the provider is preapproved under § 49.36(a) (relating to preapproved providers of continuing education courses and programs for professional counselors).

§ 49.39. Retention of records.

The licensee shall retain documentation of completion of the prescribed number of clock hours for 4 years following the certification which shall be produced upon request by the Board or its auditing agents. The Board will utilize a random audit of renewals to determine compliance with the continuing education requirement.

§ 49.40. Exemption and waiver.

(a) An individual applying for licensure in this Commonwealth for the first time shall be exempted from the

continuing education requirement for the biennial renewal period following initial licensure.

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

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

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

§ 49.42. Disciplinary action authorized.

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

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

[Pa.B. Doc. No. 06-2511. Filed for public inspection December 22, 2006, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 63, 77 AND 79]

General Provisions; Fishing

The Fish and Boat Commission (Commission) amends Chapters 53 and 63 (relating to Commission property; and general fishing regulations), deletes Chapter 77 and adds Chapter 79 (relating to reptiles and amphibians). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking updates and improves the regulation of reptiles and amphibians to provide greater protection of these resources.

A. *Effective Date*

The final-form rulemaking goes into effect on January 1, 2007.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The amendments to §§ 53.7 and 63.7 (relating to use of firearms; and exceptions to limitations on devices) and §§ 79.1—79.3 and 79.8—79.13 are published under the statutory authority of section 2102 of the code (relating to rules and regulations). Sections 79.4—79.7 are published under the statutory authority of section 2102 of the code

and section 2904 of the code (relating to permits for protection and management of particular fish).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's reptile and amphibian regulations. The specific purpose of this final-form rulemaking is described in more detail under the summary of changes.

The Commission published proposed rulemakings soliciting public comments regarding its proposed reptile and amphibian regulations on three occasions. At its April 2005 meeting, the Commission approved the publication of the first proposed rulemaking containing extensive amendments to the regulations. The Commission also directed staff to solicit public comments for a period of at least 90 days and to assemble a workgroup of interested parties and stakeholders. A proposed rulemaking was published at 35 Pa.B. 5683 (October 15, 2005). As directed by the Commission, the staff assembled a diverse workgroup comprised of captive breeders, hobbyists, snake hunters, snake hunt sponsors, conservationists and academics. The workgroup met on three occasions, in August 2005, November 2005 and May 2006, and provided tremendous input on a variety of issues.

As a result of the August and November 2005 meetings of the workgroup, the Commission made numerous revisions and additions to the original proposed rulemaking published at 35 Pa.B. 5683. The Commission, at its January 2006 meeting, approved the publication of a second proposed rulemaking containing those changes and directed staff to solicit public comments for a period of 60 days. The second proposed rulemaking was published at 36 Pa.B. 1220 (March 18, 2006).

Upon closer review of the proposed rulemaking, the Commission determined that several issues required additional clarification. Those issues were artificial propagation and dealers of live reptiles and amphibians, introduction of native species and color morphs. At its April 2006 meeting, the Commission approved the publication of a third proposed rulemaking that contained provisions pertaining to those issues. The third proposed rulemaking was published at 36 Pa.B. 2724 (June 3, 2006).

E. Summary of Changes

The final-form rulemaking deletes Chapter 77 and adds Chapter 79 in its place. It also amends § 63.7 to change a reference from Chapter 77 to Chapter 79. Chapter 79 contains the following provisions:

(1) *Section 79.1.* Among the organizational changes is the inclusion § 79.1 (relating to definitions). The Commission adopted a more explicit definition of "hunt" and added definitions for "hunt," "native species," "snake hooks or tongs," "subcaudal scale" and "turtle hooks." The definitions in § 77.2 for "organized reptile and amphibian hunt" and "sacking contest," for the most part, were not changed and are included in § 79.1.

On final-form rulemaking, the Commission adopted § 79.1 to read as set forth in Annex A. A minor modification was made to the second proposed rulemaking to the definition of "organized reptile and amphibian hunt" so that it says "When one or more of the following factors are present, an event will be considered an organized reptile and amphibian hunt as the term is used in this chapter" instead of "may be considered."

(2) *Section 79.2.* The Commission combined various provisions pertaining to the taking of reptiles and amphibians that were found throughout Chapter 77 and

placed them in § 79.2 (relating to taking reptiles or amphibians). This section describes the means and the devices by which reptiles and amphibians may be lawfully taken and enumerates unlawful practices. It also makes it unlawful to take, catch or kill a reptile or amphibian through use of a firearm. For consistency, the Commission amended § 53.7 to remove the provision allowing the use of .22 caliber rimfire weapons with shotshell to take frogs during the open season unless otherwise posted on Commission owned or controlled property.

On final-form rulemaking, the Commission adopted § 79.2 to read as set forth in Annex A. An additional provision was added to the second proposed rulemaking making it unlawful, while hunting reptiles and amphibians, to possess chemicals, explosives, winches, jacks or other devices or materials that may disrupt, damage or destroy dens and their immediate surroundings.

(3) *Section 79.3.* This section pertains to season and daily possession limits addressed in § 77.6. Under Chapter 77, a sponsor of an organized reptile/amphibian hunt was permitted to possess more than the daily limit of timber rattlesnakes if the total number of timber rattlesnakes held in possession during each hunt and for not more than 48 hours thereafter did not exceed the daily limit for timber rattlesnakes times twice the number of persons engaged in the hunt. The final-form rulemaking reduces the number from two times the number of persons engaged in the hunt to one.

In addition, the final-form rulemaking reduces the daily and possession limits in § 77.6 for both bullfrogs and green frogs from 15 and 30 to 10 and 20, respectively. The new section also includes a prohibition against the taking of 23 species of reptiles and amphibians that are considered to be rare, declining or "at risk" by the Commission's Amphibian and Reptile Technical/Advisory Committee. These species have limited ranges in this Commonwealth, are threatened by development and collection pressure and are currently being studied by the Commission. Until these species are considered for formal listing as threatened or endangered species, the Commission has adopted a "no collection" approach (that is, no open season and daily and possession limits of 0) as a means of protecting them. Status assessment studies are underway for these species, which could lead to future management decisions.

The Commission adopted additional restrictions with regard to timber rattlesnakes. Under Chapter 77, a person was permitted to take, catch or kill one timber rattlesnake per calendar year and to possess one timber rattlesnake at a time. Under § 79.3 (relating to season and daily possession limits), it is unlawful for a person to take, catch, kill or possess a timber rattlesnake that is less than 42 inches in length, measured lengthwise along the dorsal surface from the snout to the tail, excluding the rattle, and that possesses less than 21 subcaudal scales. This section further prohibits a person to hunt timber rattlesnakes from the South Mountain population (west of Route 15 and south of Interstate 81 to the Maryland line), where there is no open season.

The timber rattlesnake is currently listed as a candidate species in this Commonwealth and it is listed as a protected species (threatened or endangered) or species of concern in neighboring states. Unlike most amphibians and reptiles in this Commonwealth, the timber rattlesnake is sought by hunters as a game species. Reptile collectors collect them for their variable coloration, large size and unique nature. People have been known to wantonly kill timber rattlesnakes due to their perceived threat to humankind. Despite former tightening of the

regulations on the collection of this animal (reduced to one possession limit in 1993, and one annual limit in 1996), preliminary results of the Commission's timber rattlesnake population study (2003—present) suggest that the timber rattlesnake is declining in the peripheral parts of its range in this Commonwealth due to development pressure, wanton killing and collecting. Adult female timber rattlesnakes need 8—10 years to reach reproductive maturity. Therefore, taking females out of the population is a threat to local populations and the larger Statewide population. A minimum length limit and minimum number of subcaudal scales were adopted to limit timber rattlesnake hunters interested in take/collection to favor collection of mature adult male snakes. This new regulation will help to protect adult and gravid (pregnant) females and enable their progeny to reach reproductive maturity. In addition, the Commission made the South Mountain population (portions of Adams, Cumberland, Franklin and York Counties) of timber rattlesnakes off-limits to hunting due to the documented decline in numbers in this specific area from hunting and human encroachment pressure and apparent isolation with the North Mountain and Maryland timber rattlesnake populations.

The final-form rulemaking further places a season and catch and possession limits on the northern copperhead. These regulations are needed because the status of the northern copperhead is uncertain. Although no comprehensive population studies have been conducted on this species, there is a consensus among herpetologists that the northern copperhead is declining across its range and in this Commonwealth. The Commission also adopted a permit requirement for northern copperheads similar to the timber rattlesnake permit requirement. The specifics of this permit requirement is discussed in paragraph (6). The permit requirement will enable the Commission to collect locational and harvest information to be used to assess the possible decline of northern copperheads in this Commonwealth. Ultimately, this information will be used for future management of the northern copperhead.

Finally, the final-form rulemaking reduces the daily and possession limits in § 77.6 for native species not listed in the regulation from two to one.

On final-form rulemaking, the Commission adopted § 79.3 to read as set forth in Annex A. The following changes were made to the second proposed rulemaking. Subsection (e) was added to clarify that the possession limits do not apply to animals that are artificially propagated in accordance with the Commission's regulations and are in the possession of registered artificial propagators and dealers. Instead of the minimum size limit of 38 inches for timber rattlesnakes that was in the second proposed rulemaking, the Commission adopted a minimum size limit of 42 inches. The Commission further clarified that the daily and possession limits of one snake do not apply to holders of provisional permits issued under § 79.7(f) and made minor housekeeping revisions to change the words "amphibians and reptiles" to "reptiles and amphibians" so that the language is consistent throughout § 79.3.

(4) *Section 79.4.* The Commission adopted § 79.4 (relating to possession permits for native species) as a result of the reductions in the daily and possession limits of some species. This section provides a "grandfathering" mechanism for persons possessing herptiles where daily and possession limits have been reduced. Specifically, this section creates a new possession permit that will "grandfather" animals possessed as of January 1, 2007, that meet possession limits in effect on December 31, 2006.

The permit will be required for the continued possession of the animal and will be required for the possession of native species regardless of origin. It will be a one-time permit and will cost \$10. Individuals must apply by June 30, 2007. If the permit holder gives the animal to another person, the permit may be transferred to the new owner upon completion of an application, surrender of the original permit and payment of a \$10 fee. There are exceptions to the permit requirement. Possession permits will not be required for animals that are covered by other permissions (such as the written permission of the Executive Director for zoos, educational institutions, rehabilitators, and the like) and that are covered by other permits (such as snake permits or scientific collector's permits).

On final-form rulemaking, the Commission adopted § 79.4 to read as set forth in Annex A. Subsection (e) of the second proposed rulemaking was changed so that a possession permit is not required for animals covered by permissions and other permits issued under Subpart B (relating to fishing). The second proposed rulemaking was limited to permissions and other permits issued under Chapter 79, which would not have included, for example, scientific collector's permits and special permits for the collection of threatened and endangered species.

(5) *Section 79.5.* In this section, the Commission adopted a new permit requirement for the taking of common snapping turtles by persons who intend to sell, barter or trade them. In many states across its range, the common snapping turtle is declining. The new permit will facilitate a better understanding of the numbers of turtles that are being taken for commercial use, where the hunting pressure exists and who is engaged in the activity. Information gleaned from the permit system will enable the Commission to make well-informed decisions about the future management of the snapping turtle.

On final-form rulemaking, the Commission adopted § 79.5 (relating to snapping turtle permits) to read as set forth in Annex A.

(6) *Section 79.6.* Section 79.6 (relating to venomous snake permits) addresses permit requirements for both the timber rattlesnake and the northern copperhead, making it unlawful to hunt, take, catch, kill or possess them without first procuring the necessary permit. The cost of the timber rattlesnake permit has remained at \$5 for the past 14 years. In the final-form rulemaking, the Commission increased the permit fee to \$25 for residents and \$50 for nonresidents to offset costs due to inflation and the costs of permit issuance, processing and data compilation. Fees collected from this permit can also be used as matching funds to obtain grants to perform additional management activities.

In this section, the Commission also included new tagging requirements for persons who hunt, take, catch, kill or possess timber rattlesnakes. Currently, the Commission issues well over 1,000 individual timber rattlesnake permits per year (1,181 permits issued in 2004 and 1,080 in 2005) and permit requests have increased approximately 200—300 each year since 1998. Approximately 15% of the hunters are reporting "take" (for harvest or as pets) of snakes. There is evidence to suggest that even more snakes are being taken than are being reported. The Commission adopted a tagging system to provide better accountability of hunters that decide to take timber rattlesnakes alive or dead. The information collected in this program will assist the Commission in the development of management units and associated bag limits for timber rattlesnakes.

On final-form rulemaking, the Commission adopted § 79.6 to read as set forth in Annex A. A clarification was made to the second proposed rulemaking so that the prohibition against hunting timber rattlesnakes after the possession tag has been detached from this permit does not apply to holders of provisional snake permits issued under § 79.7(f) (relating to organized reptile and amphibian hunt permits).

(7) *Section 79.7.* This section pertains to organized reptile and amphibian hunt permits previously addressed in § 77.2. Among the changes is an increase in the fee from \$25 to \$100. This increase was adopted to offset the changes in inflation, including the permit review and processing costs, and monitoring/permit compliance of hunts. Also adopted were reporting requirements and a provisional hunting permit. The provisional permit will allow permit holders to take, catch or possess one timber rattlesnake without tagging the snake during an organized snake hunt so long as the snake is returned unharmed to the point of capture following the event. The Commission will continue with its current practice of banning sacking contests utilizing native species and of allowing the use of nonnative species lawfully imported from other jurisdictions.

On final-form rulemaking, the Commission adopted § 79.7 to read as set forth in Annex A. No changes were made to the second proposed rulemaking with the exception of subsection (f) that deals with provisional hunt permits and allows permit holders to take, catch or possess one timber rattlesnake without tagging the snake during an organized snake hunt so long as the snake is returned unharmed to the point of capture following the event. The subsection, as proposed, placed the onus for returning the snake to the point of capture on the hunt sponsor. On final-form rulemaking, the Commission modified this subsection to place the burden on the individual hunter. The workgroup strongly endorsed this change. The Commission also modified the section to clarify that a snake entered into a hunt is the responsibility of the hunt sponsor until the snake is returned to the individual hunter; to clarify that a snake must be returned by the provisional permit holder to the point of capture by no later than sunset of the last day of the hunt, and to clarify that a provisional permit holder who wishes to retain possession of a snake caught under a provisional permit must tag the snake.

(8) *Section 79.8.* When 3 Pa.C.S. Chapter 42 (relating to the Aquaculture Development Law) (act) was enacted in 1998, responsibility for registering artificial propagators and dealers of live bait fish, fish bait and other live fish was transferred from the Commission to the Department of Agriculture (Department). The Department has been registering artificial propagators and dealers of several fish species and two frog species for several years. Propagation is limited to species of fish that have been approved for propagation by the Commission and each year the Commission provides the Department with an updated list.

Despite the fact that the definition of "fish" in the act mirrors the definition in the code and specifically includes "reptiles and amphibians," artificial propagators (except those raising Northern green frogs and bullfrogs) have not been registering with the Department. Commission staff met with Department staff and the agencies agree that the act covers reptiles and amphibians. They also agree that artificial propagators of reptiles and amphibians (except hobby breeders and pet stores) must register with the Department and propagation is limited to those species approved for propagation by the Commission.

Section 79.8 (relating to artificial propagation and dealers of live reptiles and amphibians) provides that except for hobby breeders and pet stores, it is unlawful to artificially propagate reptiles and amphibians without being registered with the Department. It further provides that the Commission will maintain two lists of species of reptiles and amphibians that are approved for artificial propagation: one containing species approved for open systems and another containing species approved for closed systems. Currently, bullfrogs and green frogs are on the list of species approved for open system propagation under Chapter 71 (relating to propagation and introduction of fish into Commonwealth waters) and will be approved for open system propagation under Chapter 79. Commission staff do not intend to recommend other native species of reptiles and amphibians for open system propagation. A list of species approved for closed system propagation will include all nonnative species except those specifically prohibited by the Commission and color morphs of certain native species. The list of color morphs will be developed with input from commercial propagators and hobby breeders.

On final-form rulemaking, the Commission adopted § 79.8 to read as set forth in Annex A. This final-form rulemaking adopts the third proposed rulemaking with changes to the subsection dealing with closed systems. The Commission modified this subsection to address the concerns of the workgroup that the definition of a closed system is inappropriate for certain reptiles and that the restrictions on waters discharged from closed systems are not reasonable for "nonfish." The workgroup commented that the provisions in the third proposed rulemaking appeared to have been written for fish and could conflict with accepted husbandry practices for reptiles and amphibians.

(9) *Section 79.9.* Section 79.9 (relating to sale of native species) addresses the sale of reptiles and amphibians previously in § 77.3. The Commission clarified this section to reflect the intent of the Commission to protect the native herptiles of this Commonwealth and their progeny. The demand for both wild caught and captive bred reptiles and amphibians, including several native to this Commonwealth, has increased considerably over the past several years. While the Commission's waterways conservation officers go through intense training on the identification of this Commonwealth's native species, it can be almost impossible to tell whether an individual animal is captive bred or wild caught. This is especially true for hatchling or juvenile animals, the preferred product for reptile and amphibian dealers. This section helps to eliminate the profit motive for both collection and sale of native species in this Commonwealth and the collection of animals in this Commonwealth for breeding stock for commercial propagation programs.

On final-form rulemaking, the Commission adopted § 79.9 to read as set forth in Annex A.

(10) *Section 79.10.* Section 79.10 (relating to transportation and importation of native species) makes it illegal to transport or import into or within this Commonwealth a native species as defined in Chapter 79 from another jurisdiction. It also makes it unlawful to receive a native species that was transported or imported into or within this Commonwealth from another jurisdiction. The section, however, does not apply to zoos or other accredited institutions that transport and import native species for scientific, educational or research purposes and Commission-recognized rehabilitators provided that they have received the written permission of the Executive Director or a designee under § 79.3(c).

On final-form rulemaking, the Commission adopted § 79.10 to read as set forth in Annex A.

(11) *Section 79.11.* Section 79.11 (relating to introduction) restates the provisions of § 77.7 and addresses the introduction of native species. Like propagation, introduction of native species is already addressed in the broad context of Chapter 71. However, for purposes of completeness, the Commission included provisions dealing with the introduction of native species of reptiles and amphibians in Chapter 79. This section provides that as a general rule, it is unlawful to reintroduce a native species taken from the wild into the natural environment of this Commonwealth except when certain enumerated conditions are met. The section further provides that it is unlawful to introduce or facilitate the introduction of a native species that has been artificially propagated except when certain enumerated conditions are met.

On final-form rulemaking, the Commission adopted § 79.11 to read as set forth in Annex A. The Commission revised this section to simplify the provisions dealing with the introduction of nonnative species and to clarify the provisions dealing with the introduction of native species. As a result of the workgroup's recommendations, the Commission modified the subsection regarding native species to extend the time period for acceptable release from May 1 to Labor Day to May 1 to September 30 and to prohibit the release of reptiles and amphibians that have been in physical contact with other reptiles or amphibians while in captivity. In addition, the Commission removed the provisions allowing Commission-recognized rehabilitators to release animals to a location other than the point of capture or to release them more than 30 days after capture. Both of these changes are the result of the workgroup's recommendations.

(12) *Section 79.12.* Section 79.12 (relating to color morphs of native species) addresses color morphs that are defined in § 79.1 as being "a distinct color variant form of a reptile or amphibian." For purposes of this section, the Commission has presumed that color morphs of certain native species that are held in captivity were not taken from the wild. The new section provides that the Commission will designate these color morphs by publishing a notice in the *Pennsylvania Bulletin* and certain provisions will apply to color morphs on the list provided they are not taken from the wild. Color morphs on the list will not be subject to possession limits, may be artificially propagated as long as they are propagated in a closed system meeting the requirements of § 79.8 and may be sold by registered artificial propagators and dealers. Commission staff intend to develop a list of color morphs with input from the workgroup.

On final-form rulemaking, the Commission adopted § 79.12 to read as set forth in Annex A. The third proposed rulemaking was modified to recognize that the captive breeding of color morphs approved for propagation may result in animals that have a normal color appearance (typical phenotype). The amended language allows for the sale of typical phenotype progeny of color morphs to be sold when certain conditions are met. These provisions were added largely to address the concerns of captive breeders.

(13) *Section 79.13.* Section 79.13 (relating to natural areas) restates the provisions in § 77.1. On final-form rulemaking, the Commission adopted § 79.13 to read as set forth in Annex A.

F. Paperwork

The final-form rulemaking increases paperwork and creates new paperwork requirements in that persons who

possess a live reptile or amphibian as of January 1, 2007, in compliance with the possession limits in effect on December 31, 2006, but not in compliance with the possession limits in effect on January 1, 2007, will be required to have a permit for the continued possession of the animal for the remainder of its life. Those persons will have to complete an application, and, if approved, the Commission will issue a possession permit. If a permit holder subsequently gives the animal to another person, the permit may be transferred to the new owner upon completion of an application, surrender of the original permit and issuance of a new permit by the Commission.

The final-form rulemaking also increases paperwork and creates new paperwork requirements in that persons who wish to hunt, take, catch or kill snapping turtles for the purpose of sale, barter or trade will be required to complete an application. If approved, the Commission will issue a permit to those persons. Holders of snapping turtle permits also will be required to furnish annual reports on a form prescribed by the Commission.

The final-form rulemaking may increase paperwork by requiring individuals who wish to hunt, take, catch or kill northern copperheads as well as timber rattlesnakes to apply for a permit. The Commission's prior permit covered timber rattlesnakes only and the Commission may receive additional applications from those individuals wishing to hunt northern copperheads. However, the Commission believes that the number of venomous snake permits that it will issue may actually decrease because of the increased fee. In addition, the final-form rulemaking may slightly increase paperwork in that timber rattlesnake and northern copperhead permittees will be required to meet annual reporting requirements by completing a form prescribed by the Commission. Timber rattlesnake permittees previously had to file catch reports each year. The final-form rulemaking also requires persons who take, catch, kill or possess a timber rattlesnake to complete a possession tag that is attached to the permit. This is a new requirement.

With regard to the organized reptile and amphibian hunt permit, the Commission does not expect an increase in paperwork or new paperwork requirements in that the Commission already requires a permit for organized hunts. Holders of these permits will continue to be required to furnish reports. These reports must be submitted on the form prescribed by the Commission.

The final-form rulemaking increases paperwork slightly in that the Commission will maintain two separate lists of species of reptiles and amphibians that are approved for artificial propagation: one containing species approved for open systems and another containing species approved for closed systems. The Commission already maintains a list of species approved for open system propagation under Chapter 71, which contains two frog species. The Commission may maintain separate lists for reptiles and amphibians.

The final-form rulemaking creates no new paperwork requirements for artificial propagators or dealers of live reptiles and amphibians in that the requirement for registration with the Department as an artificial propagator or as a dealer of live aquatic animals is contained in the act, not the Commission's regulations. Under section 4220 of the act (relating to registration for artificial propagation), the Department may register applicants for artificial propagation upon receipt of a written application and payment of a registration fee of \$150. Section 4222 of the act (relating to registration for dealers of live aquatic

animals) provides that the Department may register applicants wishing to become dealers of live aquatic animals upon receipt of a written application and payment of a registration fee of \$50.

The final-form rulemaking, however, increases paperwork and creates new paperwork requirements for registered propagators and dealers that wish to sell typical phenotype progeny of color morphs. Under the final-form rulemaking, artificial propagators and dealers that intend to sell them must file an initial inventory on the form prescribed by the Commission that contains the numbers in possession as of December 31, 2006, and other information that the Commission requires. Artificial propagators and dealers selling them also must maintain a current inventory on the form prescribed by the Commission, showing their origin, numbers and other information that the Commission requires. Last, these artificial propagators and dealers must submit an annual report on the form prescribed by the Commission that includes changes in the numbers possessed (for example, gains and losses to the inventory) and other information that the Commission requires.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. Some of the costs to the Commission that are associated with the new or revised permit programs will be offset by the fees. The costs to the Commission that are associated with developing the forms for the initial inventory, current inventory and annual report for artificial propagators and dealers that sell typical phenotype progeny of color morphs are nominal. Similarly, the costs associated with the reviewing and compiling initial inventories and annual reports will be nominal.

The final-form rulemaking imposes new costs on the private sector and the general public in that the new possession permit fee is \$10. This is a one-time fee only and the final-form rulemaking requires affected persons to apply by June 30, 2007. The Commission estimates that it will issue approximately 2,500 possession permits during 2007, the first year that the permit is available. After the first year, the Commission expects that applications will level off and, for the most part, the persons who will apply will be new owners seeking to have a permit transferred to them. The fee to transfer a permit is also \$10.

The final-form rulemaking imposes new costs on the private sector and the general public in that the new snapping turtle permit has a fee of \$50 for residents and \$100 for nonresidents. The Commission estimates that it will issue approximately 200 snapping turtle permits during the first year that the permit requirement is in effect with the expectation that the number will increase each year thereafter.

The final-form rulemaking also imposes new costs in that the venomous snake permit will cost residents \$25 and nonresidents \$50. The cost of a timber rattlesnake permit has remained at \$5 for the past 14 years. The Commission issues well over 1,000 individual timber rattlesnake permits per year (1,181 permits issued in 2004 and 1,080 in 2005), and permit requests have increased approximately 200-300 each year since 1998. The Commission believes that it may issue fewer venomous snake permits annually because of the increase in the price of the permit.

In addition, the final-form rulemaking imposes additional costs on individuals wishing to obtain an organized

reptile and amphibian hunt permit. The Commission increased the fee associated with this permit from \$25 to \$100. The Commission issues approximately 10 organized hunt permits each year. The Commission estimates that it will continue to issue a similar number of organized hunt permits in the future.

With regard to the four permit types, the Commission will utilize the fees to offset the costs associated with permit issuance and processing and data compilation. The Commission hopes that in some instances it will be able to utilize fees that are collected as matching funds to obtain grants to perform additional management activities.

H. Public Involvement

As previously noted, the Commission published three separate proposed rulemaking regarding its revisions to its reptile and amphibian regulations. As a result of the proposed rulemakings, the Commission received over 1,300 public comments. The Commission prepared a summary of those public comments and a copy of the summary is available upon request. Copies of the public comments were provided to the Commissioners.

Also, as previously noted, the Commission convened a workgroup of interested parties and stakeholders to offer recommendations regarding the Commission's proposed rulemakings. That workgroup met on three occasions.

Findings

The Commission finds that:

- (1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided and the comments that were received were considered.
- (3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

- (a) The regulations of the Commission, 58 Pa. Code Chapters 53, 63, 77 and 79, are amended by amending §§ 53.7 and 63.7, deleting §§ 77.1—77.8 and adding §§ 79.1—79.13 to read as set forth in Annex A.
- (b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.
- (c) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order takes effect on January 1, 2007.

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

Fiscal Note: 48A-179. (1) Fish Fund; (2) Implementing Year 2006-07 is \$76,580; (3) 1st Succeeding Year 2007-08 is \$10,250; 2nd Succeeding Year 2008-09 is \$10,250; 3rd Succeeding Year 2009-10 is \$11,500; 4th Succeeding Year 2010-11 is \$12,750; 5th Succeeding Year 2011-12 is \$12,750; (4) 2005-06 Program—\$27,000*; 2004-05 Program—\$29,525*; 2003-04 Program—\$25,000*; (7) General Government Operations; (8) recommends adoption. It is

anticipated that a portion of the increased administrative costs to the Fish Fund would be offset by the fees collected.

*Timber rattlesnake permit.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.7. Use of firearms.

It is unlawful for any person to carry or use firearms on Commission owned or controlled properties except for persons:

(1) Engaged in lawful hunting and trapping under § 53.5 (relating to hunting and trapping).

(2) Licensed to carry firearms under 18 Pa.C.S. § 6109 (relating to licenses) or authorized to do so in conformance with 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license).

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.7. Exceptions to limitations on devices.

The limitations on fishing devices contained in this chapter do not:

(1) Prohibit the use of a gaff or landing net to assist in landing fish caught by a lawful device.

(2) Limit devices by which holders of artificial propagation licenses may remove artificially propagated fish at the licensed premises.

(3) Limit the means or devices by which fish may be taken under special permits issued under Chapter 29 of the code (relating to special licenses and permits), except trout/salmon permits.

(4) Apply to the taking, catching or killing of amphibians and reptiles—See Chapter 79 (relating to reptiles and amphibians).

(5) Apply to taking, catching or killing of blue crabs—See § 63.18 (relating to blue crabs—prohibited acts).

CHAPTER 77. (Reserved)

§§ 77.1—77.8. (Reserved).

CHAPTER 79. REPTILES AND AMPHIBIANS

Sec.	
79.1.	Definitions.
79.2.	Taking reptiles or amphibians.
79.3.	Season and daily possession limits.
79.4.	Possession permits for native species.
79.5.	Snapping turtle permits.
79.6.	Venomous snake permits.
79.7.	Organized reptile and amphibian hunt permits.
79.8.	Artificial propagation and dealers of live reptiles and amphibians.
79.9.	Sale of native species.
79.10.	Transportation and importation of native species.
79.11.	Introduction.
79.12.	Color morphs of native species.
79.13.	Natural areas.

§ 79.1. Definitions.

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

Color morph—A distinct color variant form of a reptile or amphibian.

Hunt—The act of pursuing reptiles or amphibians in an attempt to catch, take, kill or remove them, or to catch, take, kill or remove any reptile or amphibian from any waters of this Commonwealth or other areas within this Commonwealth by any means or method for any purpose whatsoever.

Native species—A reptile or amphibian species or subspecies, where applicable, that has not been introduced into this Commonwealth and occurs historically within the boundaries of this Commonwealth. The Commission will from time to time publish in the *Pennsylvania Bulletin* a list of reptile and amphibian species and subspecies, where applicable, that it has determined are native species.

Organized reptile and amphibian hunt—A hunt for reptiles or amphibians involving two or more persons acting in concert to seek, pursue, catch, take, kill or remove native species of reptiles or amphibians at an event where the reptiles or amphibians are hunted on a competitive basis. When one or more of the following factors are present, an event will be considered an organized reptile and amphibian hunt as the term is used in this chapter:

(i) The event is sponsored or promoted by a person or organization.

(ii) The event involves the award of trophies, prizes or other recognition to persons or groups for catching reptiles or amphibians.

(iii) The sponsors of the events or others publicize the event to encourage attendance of spectators.

(iv) The sponsors or organizers of the event have their own rules for the conduct of the hunt.

Sacking contest—A competition where participants place reptiles or amphibians in a sack, bag or similar container in a timed event.

Snake hooks or tongs—Implements used to grasp or lift snakes with minimal risk of injury to the animal.

Subcaudal scale—Large flat scales that are located on the rear ventral portion (underside) of a timber rattlesnake between the vent (anal scale) and the base of the rattle.

Turtle hooks—Hooks used for taking turtles that are at least 3 1/2 inches in total length with at least a 1 inch space between the point and the shank.

§ 79.2. Taking reptiles or amphibians.

(a) General.

(1) Except as otherwise provided in this section, reptiles and amphibians may only be taken by hand, hook and line, snake hooks or tongs, turtle hooks, traps and nets less than 4 feet square or 4 feet in diameter.

(2) It is unlawful to take, catch or kill a reptile or amphibian through use of a firearm.

(3) It is unlawful to take, catch or kill a reptile or amphibian through the use of chemicals, smoke, explosives, winches, jacks or other devices or materials or manually in a manner that may disrupt, damage or destroy dens or the immediate surroundings thereof. While hunting reptiles and amphibians, it is unlawful to possess chemicals, explosives, winches, jacks or other devices or materials that may disrupt, damage or destroy dens and their immediate surroundings. It is unlawful to alter or destroy habitat in the pursuit of a reptile or amphibian.

(4) It is unlawful to damage or disrupt the nest or eggs of a reptile or to gather, take or possess the eggs of any reptile.

(b) *Turtles.*

(1) It is unlawful to take, catch or kill a turtle by means of a hook other than a turtle hook as defined in § 79.1 (relating to definitions).

(2) It is unlawful for a person to leave a set line, turtle trap or other device for catching turtles unattended unless the device has attached a tag or other means of identification containing the name, address and telephone number of the owner or user of the device. Traps, nets or devices used for catching turtles must be of a floating or partially submerged design so as to allow for the release of untargeted turtles unharmed.

(c) *Frogs.*

(1) Frogs may be taken with long bows and arrow, including compound bows, crossbows, spears or gigs. Spears or gigs may not be mechanically propelled, may not have more than five barbed points and may not be used in approved trout waters.

(2) It is unlawful to take, catch or kill a frog by use of artificial light at night.

§ 79.3. Season and daily possession limits.

(a) Except as otherwise provided in subsections (b)—(e), it is unlawful for a person to take, catch or kill more than the daily limit specified in subsection (h) in 1 calendar day or to have in possession more than the possession limit, dead or alive, in whole or in parts, specified in subsection (g) or to hunt, take, catch or kill reptiles or amphibians during the closed season. A reptile or amphibian will not be considered to be in the possession of a person if, after it is taken or caught, it is immediately released unharmed to the exact location from which it was taken and is not confined to a sack, bag or other container.

(b) This section does not prohibit the sponsors of an organized reptile/amphibian hunt conducted under a permit issued under § 79.7 (relating to organized reptile and amphibian hunt permits) from possessing more than the daily limit of the species of reptiles or amphibians hunted if the total number of reptiles and amphibians held in possession during each hunt does not exceed the daily limit for the species hunted times the number of registered participants in the organized hunt. This subsection applies to possession limits only. It does not permit the sponsors of a hunt or individual hunters to take, catch or kill any number of reptiles and amphibians in excess of the daily limits.

(c) This section does not prohibit possession of numbers of reptiles and amphibians in excess of possession limits by zoos and other accredited institutions for scientific, educational or research purposes or licensed taxidermists for the purpose of mounting for properly permitted customers, Commission-recognized rehabilitators or licensed pest control agents with the written permission of the Executive Director or a designee. These persons and institutions shall maintain a current open inventory of and report annually changes in the number of reptiles and amphibians possessed. The Executive Director may limit the number of reptiles and amphibians that a person or institution may possess when the Executive Director or a designee issues permission under this subsection.

(d) This section does not prohibit possession of numbers of reptiles and amphibians in excess of possession limits by persons who have obtained a permit under § 79.4 (relating to possession permits for native species).

(e) This section does not prohibit possession of numbers of reptiles and amphibians artificially propagated in accordance with this chapter in excess of the possession limits by artificial propagators and dealers of live reptiles and amphibians registered with the Department of Agriculture in accordance with 3 Pa.C.S. Chapter 42 (relating to aquaculture development).

(f) In prosecutions for violations of the possession limits, when venomous reptiles have been killed in apparent violation of the limits, it shall be a defense that the person who killed the venomous reptiles acted under a reasonable apprehension of immediate death or bodily harm to himself or other persons in his immediate vicinity, if no more venomous reptiles are killed than necessary to protect life and limb and if the person reported the kills in writing to the Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616, within 5 business days after the kill. It is unlawful for a person to possess a venomous reptile, in whole or in parts, that was killed under this subsection.

(g) When season or annual limits apply, a season or annual limit has been reached once a reptile or amphibian, dead or alive, in whole or in parts, has not been immediately released to the exact location from which taken and is in the possession of a person.

(h) The following seasons, sizes, catch and possession limits apply to reptiles and amphibians except endangered and threatened species:

<i>SPECIES</i>	<i>SEASON</i>	<i>DAILY LIMIT</i>	<i>POSSESSION LIMIT</i>
Bullfrog (<i>Rana catesbeiana</i>)	July 1 to October 31	10 (combined species)	20 (combined species)
Green frog (<i>Rana clamitans</i>)	July 1 to October 31	10 (combined species)	20 (combined species)
Common snapping turtle (<i>Chelydra serpentina</i>)	July 1 to October 31	15	30
Blanding's turtle (<i>Emys blandingii</i>)	No open season	0	0
Spotted turtle (<i>Clemmys guttata</i>)	No open season	0	0
Wood turtle (<i>Glyptemys insculpta</i>)	No open season	0	0
Eastern box turtle (<i>Terrapene carolina carolina</i>)	No open season	0	0
Broadhead skink (<i>Eumeces laticeps</i>)	No open season	0	0
Northern coal skink (<i>Eumeces anthracinus</i>)	No open season	0	0

<i>SPECIES</i>	<i>SEASON</i>	<i>DAILY LIMIT</i>	<i>POSSESSION LIMIT</i>
Mudpuppy (<i>Necturus maculosus</i>)	No open season	0	0
Eastern hellbender (<i>Cryptobranchus alleganiensis alleganiensis</i>)	No open season	0	0
Marbled salamander (<i>Ambystoma opacum</i>)	No open season	0	0
Jefferson salamander (<i>Ambystoma jeffersonianum</i>)	No open season	0	0
Four-toed salamander (<i>Hemidactylium scutatum</i>)	No open season	0	0
Ravine salamander (<i>Plethodon richmondi</i>)	No open season	0	0
Northern cricket frog (<i>Acris crepitans crepitans</i>)	No open season	0	0
Mountain chorus frog (<i>Pseudacris brachyphona</i>)	No open season	0	0
Striped chorus frog complex (<i>Pseudacris feriarum feriarum</i> , <i>P. feriarum triseriata</i>)	No open season	0	0
Northern fence lizard (<i>Sceloporus undulatus</i>)	No open season	0	0
Queen snake (<i>Regina septemvittata</i>)	No open season	0	0
Shorthead garter snake (<i>Thamnophis brachystoma</i>)	No open season	0	0
Eastern ribbon snake (<i>Thamnophis sauritus</i>)	No open season	0	0
Mountain earth snake (<i>Virginia pulchra</i>)	No open season	0	0
Smooth earth snake (<i>Virginia valeriae</i>)	No open season	0	0
Smooth green snake (<i>Liochlorophis vernalis</i>)	No open season	0	0
Eastern hognose snake (<i>Heterodon platirhinos</i>)	No open season	0	0
Eastern worm snake (<i>Carphophis amoenus</i>)	No open season	0	0
Amphibian eggs and tadpoles	No closed season	15 (combined species)	15 (combined species)
Timber rattlesnake (<i>Crotalus horridus</i>)	Second Saturday in June to July 31*	1 annual limit** (must be at least 42 inches in length, measured lengthwise along the dorsal surface from the snout to the tail, excluding the rattle, and must possess 21 or more subcaudal scales.)	
Northern copperhead (<i>Agkistrodon contortrix</i>)	Second Saturday in June to July 31		1 annual limit**
Native species not listed in this subsection	No closed season	1	1

*It is unlawful for a person to hunt, take, catch or kill timber rattlesnakes west of Route 15 and south of Interstate 81 to the Maryland line where there is no open season.

**It is unlawful for a person to take, catch or kill more than one timber rattlesnake or northern copperhead per calendar year except as provided in § 79.7(f) (relating to organized reptile and amphibian hunt permits). It is unlawful for a person to possess more than one timber rattlesnake or northern copperhead at any time except as provided in § 79.7(f).

§ 79.4. Possession permits for native species.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for the protection and management of particular fish), that it is necessary for persons who possess a live reptile or amphibian as of January 1, 2007, in compliance with the possession limits in effect on December 31, 2006, but not in compliance with the possession limits in effect on January 1, 2007, to have a permit for the continued possession of the reptile or amphibian for the remainder of the animal's life. Application for a one-time permit under this section must be made on a form prescribed by the Commission, must be accompanied by the appropriate fee and must be made by no later than June 30, 2007. Permits may be obtained by applying to: Bureau of Law Enforcement, 1601 Elmerton Avenue, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. The fee is \$10.

(b) *Transfer.* If a permittee gives a reptile or amphibian covered by a permit under this section to another person, the permit may be transferred to the new owner upon

completion of an application on the form provided by the Commission, surrender of the original permit and payment of the appropriate fee. The new owner shall apply for transfer of the permit prior to taking possession of the animal. The fee to transfer a permit under this section is \$10.

(c) *Denial.* The denial of a permit under this section is appealable in the manner provided by §§ 51.41—51.46 (relating to permit procedures). A person who is denied a permit under this section shall surrender the reptile or amphibian to an officer authorized to enforce the code or provide proof that the animal was humanely euthanized or given to a person or organization that can lawfully possess it. Under no circumstances may a person who is denied a permit under this section release the animal into the wild.

(d) *Required permit.* It is unlawful to retain possession of a live reptile or amphibian possessed as of January 1, 2007, that is in compliance with the possession limits in effect on December 31, 2006, but not in compliance with

the possession limits in effect on January 1, 2007, without the required permit from the Commission. A permit is required for continued possession regardless of the animal's origin. A separate permit shall be obtained for each reptile or amphibian and shall be kept at the location where the animal is held. Upon request, the permit shall be presented to an officer authorized to enforce the code. Permittees shall comply with the terms and conditions of the permit. It is unlawful to alter, borrow or lend a permit under this section.

(e) *Exceptions.* This section does not apply to the possession of reptiles and amphibians that are covered by permissions and other permits issued under this subpart.

§ 79.5. Snapping turtle permits.

(a) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the common snapping turtle (*Chelydra serpentina*) that persons who hunt, take, catch or kill this species for the purpose of sale, barter or trade have an annual permit for the activity. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. The fee for residents is \$50 per year; the fee for nonresidents is \$100 per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

(b) It is unlawful to hunt, take, catch, kill or possess the common snapping turtle for purposes of sale, barter or trade without first procuring the required permit. The required permit shall be in possession of the permittee at all times while hunting. Permittees shall comply with the terms and conditions of the permit and furnish the reports required thereby. It is unlawful to alter, borrow, lend or transfer a permit under this section.

(c) It is unlawful to sell, barter, trade or offer for sale a common snapping turtle, dead or alive, in whole or in parts, taken from lands or waters of this Commonwealth without first procuring the permit required under this section.

§ 79.6. Venomous snake permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the timber rattlesnake (*Crotalus horridus*) and northern copperhead (*Agkistrodon contortrix*) that persons who hunt, take, catch or kill these species have a permit for the activity. Application for a permit must be made on a form prescribed by the Commission and accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. The fee for residents is \$25 per year; the fee for nonresidents is \$50 per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

(b) *Required permit.* It is unlawful to hunt, take, catch, kill or possess a timber rattlesnake or northern copperhead, in whole or in parts, without first procuring the required permit from the Commission. The required permit shall be in the possession of the permittee at all

times while hunting. Permittees shall comply with the terms and conditions of the permit and furnish the reports required thereby. It is unlawful to alter, borrow, lend or transfer a permit under this section.

(c) *Reporting.* Within 10 business days following the capture or kill, or if no snake is captured or killed, within 10 days of the conclusion of the season, the permittee shall complete a report on the form prescribed by the Commission and shall mail the report to the Commission's Natural Diversity Section, 450 Robinson Lane, Bellefonte, Pennsylvania 16823.

(d) *Tagging of timber rattlesnakes.*

(1) A person who takes, catches, kills or possesses a timber rattlesnake shall immediately complete the possession tag that is attached to his permit and detach the tag from the permit in the field. The possession tag shall be completed in accordance with the instructions printed on the tag, and the information to be provided includes, but is not limited to, the municipality and county where the snake was captured or killed, the date of capture or kill and a description of the snake, including color phase, sex, number of subcaudal scales and length in inches. The possession tag shall be kept in a safe location so that it can be presented along with the timber rattlesnake to which it pertains upon the request of an officer authorized to enforce the code.

(2) After the possession tag is detached from the permit, it is unlawful to take, catch, kill or possess another timber rattlesnake except as otherwise provided in this chapter.

(3) It is unlawful to alter, borrow, lend or transfer possession tags under this section.

(4) When presenting a timber rattlesnake to a taxidermist for mounting, the tag must remain with the rattlesnake while in the possession of the taxidermist.

(e) *Field dressing of timber rattlesnakes.* A permittee may field dress a timber rattlesnake so long as the head and tail remain intact.

(f) *Measurement of timber rattlesnakes.* Upon the request of an officer authorized to enforce the code, a permittee shall measure a timber rattlesnake to determine its length. If the permittee is unable to measure the timber rattlesnake, the officer may seize the snake so that a measurement may be taken at another location.

§ 79.7. Organized reptile and amphibian hunt permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of fish), that it is necessary for the proper protection and management of reptiles and amphibians in this Commonwealth that organized reptile and amphibian hunts be conducted under permits issued under this section. The sponsor of an organized reptile and amphibian hunt shall apply for a permit by no earlier than January 1 and no later than March 1 of the year for which the hunt is proposed. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. The fee for the permit is \$100. The denial of a permit under this section is appealable in a manner provided by Chapter 51, Subchapter E (relating to permit procedures).

(b) *Permit issuance.*

(1) The Executive Director will issue permits to applicants who demonstrate that they are responsible and qualified to conduct an organized reptile and amphibian hunt. In determining the qualifications of an applicant, the Executive Director, or a designee, may consider factors as deemed appropriate, including, but not limited to, the experience of the applicant in conducting the events, the responsiveness of the applicant to reporting requirements, the safety record of the applicant, the ability of the applicant to conduct educational programs, the context of the event and competing applications.

(2) The Executive Director may limit the number of organized reptile and amphibian hunt permits to be issued for a particular vicinity and time proximity. In general, permits will be issued to qualified applicants no earlier than March 15 of the year in which the application is submitted. If the Commission is aware of events scheduled in the vicinity of one another within 4 weeks, and the Executive Director determines that all events cannot be permitted consistent with resource management and protection, the Executive Director may designate the applicants as competing applications. If competing applications are designated, the Executive Director may, if the parties cannot agree on the withdrawal of one or more applications, award a permit on a random basis, an alternate year basis or some other rational basis as the interests of fairness may dictate.

(c) *Required permit.* It is unlawful to engage in organized reptile and amphibian hunts unless the sponsors of the hunts have first procured the required permit for each hunt. The required permits shall be held in possession of the sponsor at all times during each hunt. Permittees shall comply with the terms and conditions of each permit and furnish reports required thereby.

(d) *Reporting.* At the location of the hunt, the permittee shall complete a report on the form prescribed by the Commission that will include, at a minimum, the location of the hunt; the names of the registered participants; the species name of the reptile or amphibian that was captured or killed; a description of the reptile or amphibian that was captured or killed; the date and time the reptile or amphibian was brought to the hunt and the permit number of the person who captured or killed the reptile or amphibian. The permittee shall complete the form as registered participants deliver their reptiles or amphibians for entry into the competition. This form shall be presented upon the request of an officer authorized to enforce the code. Within 10 days following the conclusion of the event, the permittee shall submit the form to the Commission.

(e) *Season.* It is unlawful to conduct an organized reptile or amphibian hunt for any species of reptile or amphibian except during the open season for the reptile or amphibian as specified in § 79.3 (relating to season and daily possession limits).

(f) *Provisional timber rattlesnake permits.*

(1) *Conditions.* A permitted sponsor of an organized hunt may issue provisional permits on the form prescribed by the Commission subject to the following conditions:

(i) A provisional permit allows the holder thereof to take, catch or possess one timber rattlesnake without tagging the snake as required by § 79.6(d) (relating to venomous snake permits).

(ii) Provisional permits will be issued only in connection with an organized hunt and will be valid only during the period of the organized hunt as stated in the permit.

(iii) Provisional permits will only be issued to holders of permits under § 79.6 who are registered participants in the organized hunt.

(iv) A snake caught under a provisional permit shall be entered into the hunt and shall become the possession of the permitted sponsor of the organized hunt until the permitted sponsor returns the snake to the holder of the provisional permit.

(v) The holder of a provisional permit shall be responsible for returning a snake caught under a provisional permit unharmed to the site from which it was taken by sunset of the last day of the organized hunt.

(vi) Provisional permits in no way allow the holders thereof to possess a snake beyond the period of the organized hunt. The holder of a provisional permit who wishes to retain possession of a snake caught under a provisional permit shall tag the snake in accordance with § 79.6(d).

(2) *Prohibited acts.* The following acts are unlawful:

(i) A permitted sponsor of an organized hunt issues a provisional permit in violation of this subsection.

(ii) The holder of a provisional permit violates the terms and conditions of the provisional permit.

(iii) The holder of the provisional permit possesses a snake beyond the period of the organized hunt.

(iv) The holder of a provisional permit releases the snake to a site other than the site from which it was taken.

(g) *Sacking contests.* Sacking contests of native species regardless of origin are prohibited. It is unlawful to import timber rattlesnakes or any subspecies, hybrid or variety of *Crotalus horridus*, into this Commonwealth for use in connection with a sacking contest.

(h) *Treatment of reptiles and amphibians.* Reptiles and amphibians held in connection with an organized hunt may not be confined without water or shade or otherwise physically abused or handled roughly. Free-handling of native, venomous reptiles in an organized hunt is prohibited. At the conclusion of the organized hunt, the sponsor shall return the snakes to the registered participants who entered the snakes in the event.

§ 79.8. Artificial propagation and dealers of live reptiles and amphibians.

(a) *General.* Except for hobby breeders and pet stores as defined in 3 Pa.C.S. Chapter 42 (relating to aquaculture development), it is unlawful to artificially propagate or deal in live reptiles and amphibians without being registered with the Department of Agriculture (Department) under 3 Pa.C.S. Chapter 42. It is unlawful for anyone, regardless of whether or not registered, to artificially propagate reptiles and amphibians except those species, subspecies and color morphs that the Commission has approved for artificial propagation in this Commonwealth in accordance with this section.

(b) *Approved lists.* The Bureau of Fisheries will maintain lists of species, subspecies and color morphs for which the Department may issue registrations for artificial propagation and registrations for dealers of live reptiles and amphibians. The Bureau of Fisheries will maintain two separate lists—one that the Commission

has approved for artificial propagation in an open system and one that the Commission has approved for artificial propagation in a closed system. The Director of the Bureau of Fisheries may update or modify the lists of approved species, subspecies and color morphs by adding species, subspecies or color morphs to or deleting species, subspecies or color morphs from the lists as necessary for the protection and management of reptiles and amphibians in this Commonwealth. The Commission will provide the lists to the Department on or before January 31 each year and whenever the Commission updates or modifies the lists. Copies of the lists of approved species, subspecies and color morphs are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, Pennsylvania 16823.

(c) *Open systems.* Reptiles and amphibians may be artificially propagated or held by dealers in an open system only when the Commission has approved the species, subspecies or color morphs for artificial propagation in an open system.

(d) *Closed systems.*

(1) Reptiles and amphibians may be artificially propagated or held by dealers in a closed system that meets the requirements of this subsection only when the Commission has approved the species, subspecies or color morphs for artificial propagation in a closed system.

(2) To artificially propagate or deal in live reptiles and amphibians in a closed system, an applicant for registration shall certify that the following conditions are met:

(i) The closed system will be constructed and operated in a manner that prevents the escape or liberation of live animals. Typically, a closed system will be housed indoors in a structure enclosed by solid walls, floor and roof. For purposes of this paragraph, a wall, floor or roof will be considered "solid" if it is constructed and maintained to prevent unauthorized human or animal intrusions into the closed system facility and to prevent release or escape of live reptiles or amphibians from the closed system. Other types of housing structures will be considered closed if they are appropriate for the species being held and prevent their escape or liberation onto the lands or into the waters of this Commonwealth.

(ii) If water will be used in the propagator's or dealer's normal operations, discharge or disposal of the water will be in a manner that prevents the escape or liberation of live animals onto the lands or into the waters of this Commonwealth.

(iii) No live reptiles or amphibians or live reptile or amphibian eggs will be permitted to escape. Accidental escape, spillage or loss of live reptiles or amphibians including their eggs will be contained within the facility in a manner that prevents the reptiles and amphibians or their eggs from escaping onto the lands or into the waters of this Commonwealth.

(3) The Commission may request from the Department a list of registered propagators and dealers that hold reptiles and amphibians in closed systems. The Commission, in its discretion, may inspect the closed systems to ensure that they are designed and constructed in a manner to prevent escape of live reptiles or amphibians or their live eggs onto lands or into the waters of this Commonwealth. In addition, the Commission, in its discretion, may inspect the closed systems at any time to ensure compliance with this subsection, and the Commission may issue an order to suspend operations of any of

these systems when an inspection discloses that it is not in compliance with this subsection.

(4) The Commission will invite the Department's Aquaculture Advisory Committee or a subcommittee thereof to draft and periodically update construction guidelines for closed system propagators and dealers to help them ensure closed systems prevent escape of reptiles and amphibians onto the lands or into the waters of this Commonwealth. These guidelines will assist registered propagators and dealers in the design, construction and maintenance of closed systems and will assist the Commission in inspecting these systems.

(5) It is unlawful for an operator of a closed system to liberate or allow live reptiles or amphibians to escape onto lands or into the waters of this Commonwealth.

(6) A registered operator of a closed system shall develop, maintain and make available for immediate inspection by the Commission and the Department upon request a written plan for containing or recovering escaped or liberated live reptiles and amphibians in the event of a closed system failure.

(7) A registered operator of a closed system shall notify both the Commission's Director of the Bureau of Fisheries and the Department's Aquaculture Coordinator immediately in the event of an escape or liberation of live reptiles and amphibians.

§ 79.9. Sale of native species.

Except as otherwise provided in the code or this chapter, it is unlawful to take, catch, kill or possess for purposes of selling or offering for sale or to sell, offer for sale, import or export for consideration, trade or barter, or purchase an amphibian or reptile that was taken from lands or waters wholly within this Commonwealth, and its progeny, whether dead or alive, in whole or in parts, including eggs or any life stage.

§ 79.10. Transportation and importation of native species.

(a) It is unlawful to transport or import into or within this Commonwealth a native species from another jurisdiction.

(b) It is unlawful to receive a native species that was transported or imported into or within this Commonwealth from another jurisdiction.

(c) This section does not apply to zoos or other accredited institutions that transport and import native species for scientific, educational or research purposes and Commission-recognized rehabilitators provided that they have received the written permission of the Executive Director or a designee under § 79.3(c) (relating to season and daily possession limits).

§ 79.11. Introduction.

(a) *Nonnative species.* It is unlawful to introduce a nonnative species into the natural environment of this Commonwealth. Persons who import nonnative reptiles or amphibians into this Commonwealth shall institute appropriate safeguards to prevent their introduction into the natural environment of this Commonwealth.

(b) *Native species.*

(1) *General rule.* It is unlawful to reintroduce a native species taken from the wild into the natural environment of this Commonwealth except when the following conditions are met:

(i) The reptile or amphibian is released to the point of capture.

(ii) The reptile or amphibian is released within 30 days of capture.

(iii) The reptile or amphibian is released during the period, May 1 through September 31.

(iv) The reptile or amphibian is in good health.

(v) The reptile or amphibian has not been in physical contact with another reptile or amphibian while in captivity.

(2) *Artificially propagated animals.* It is unlawful to introduce or facilitate the introduction of a native species that has been artificially propagated except when the following conditions are met:

(i) The Commission has approved the native species for artificial propagation in an open system in accordance with § 79.8 (relating to artificial propagation and dealers of live reptiles and amphibians).

(ii) The native species has been propagated by a propagator registered by the Department of Agriculture in accordance with 3 Pa.C.S. Chapter 42 (relating to aquaculture development).

§ 79.12. Color morphs of native species.

(a) For purposes of this chapter, it is presumed that color morphs of certain native species that are held in captivity were not taken from the wild. Therefore, the Commission has determined that color morphs of certain native species are exempt from the requirements of this chapter as provided in this section. The Commission will publish in the *Pennsylvania Bulletin* a list of color morphs of native species to which the following provisions apply:

(1) Color morphs of native species designated by the Commission are not subject to the possession limits of § 79.3 (relating to season and daily possession limits) provided they are not taken from the wild.

(2) Color morphs of native species designated by the Commission may be artificially propagated provided they are not taken from the wild and they are propagated in a closed system meeting the requirements of § 79.8 (relating to artificial propagation and dealers of live reptiles and amphibians).

(3) Color morphs of native species designated by the Commission may be sold by artificial propagators and dealers registered in accordance with 3 Pa.C.S. Chapter 42 (relating to aquaculture development) provided they are not taken from the wild.

(b) The Commission recognizes that the captive breeding of color morphs approved for propagation by the Commission in this section may result in animals that have a normal color appearance (typical phenotype). The typical phenotype progeny of these color morphs may be sold provided that the following conditions are met:

(1) They are sold by an artificial propagator or dealer registered in accordance with 3 Pa.C.S. Chapter 42.

(2) They were propagated in a closed system meeting the requirements of § 79.8 by a registered propagator.

(3) The artificial propagator or dealer that intends to sell them shall file an initial inventory on the form prescribed by the Commission that contains the numbers in possession as of December 31, 2006, and other information that the Commission requires. The artificial propagator or dealer shall submit the inventory to the Commission's Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823 by no later than January 31, 2007.

(4) The artificial propagator or dealer selling them shall maintain a current inventory on a form prescribed by the Commission, showing their origin, numbers and other information that the Commission requires. Artificial propagators or dealers shall maintain the inventory at their place of business and shall have the inventory in their possession when selling them. The inventory shall be presented upon the request of an officer authorized to enforce the code.

(5) The artificial propagator or dealer selling them shall submit an annual report on the form prescribed by the Commission that includes changes in the numbers possessed (for example, gains and losses to the inventory) and other information that the Commission requires. The artificial propagator or dealer shall submit the report to the Commission's Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823 by no later than January 31 of the following year.

§ 79.13. Natural areas.

(a) This chapter applies to all native species occurring naturally within the boundaries of selected Natural Areas of the Department of Conservation and Natural Resources.

(b) The taking, catching, killing or possession of individuals of any native species occurring naturally within the boundaries of designated natural areas by persons other than those possessing a valid scientific collector's permit is prohibited.

(c) Notice of this section will be posted at parking lots or access areas on the fringe of each designated natural area.

(d) Subsections (a) and (b) apply to natural areas within State Forests posted in accordance with subsection (c).

[Pa.B. Doc. No. 06-2512. Filed for public inspection December 22, 2006, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 492]

Hearings and Appeals

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2006-4 REG, the Board has the authority to amend the temporary regulations adopted on March 16, 2006, as it deems necessary in accordance with the purpose of 4 Pa.C.S. Part II (relating to gaming) (Act 71) and to further the intent of Act 71. The Board has decided to make changes to the temporary regulations, dated March 16, 2006, as deposited with the Legislative Reference Bureau (Bureau) and published at 36 Pa.B. 1578 (April 1, 2006).

Therefore, the Board has deposited with the Bureau amendment to Chapter 492. The amendment is effective as of December 4, 2006.

The temporary regulation of the Board in Chapter 492 are amended by amending § 492.6(a) and (j) (relating to hearings generally) to read as set forth in Annex A.

Order

The Board, acting under the authorizing statute, orders that:

(a) Acting under the authority of the Act 71, the amendment to the temporary regulations adopted by resolution at the December 4, 2006, public meeting are adopted. The amendment to the temporary regulations pertains to hearings and appeals.

(b) The temporary regulations of the Board, 58 Pa. Code Chapter 492, are amended by amending § 492.6 to read as set forth in Annex A, with ellipses referring to the existing regulation.

(c) The amendment is effective December 4, 2006.

(d) The amendment to the temporary regulations shall be posted in its entirety on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The Chairperson of the Board shall certify this order and deposit the amendment to the temporary regulations with the Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-55. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART VII. GAMING CONTROL BOARD
Subpart H. PRACTICE AND PROCEDURE
CHAPTER 492. HEARINGS AND APPEALS

§ 492.6. Hearings generally.

(a) Unless the Board elects to hear a matter directly, all matters, except for hearings under § 441.19 (relating to licensing hearings for slot machine licenses), shall be assigned to the OHA. The Board may, in its discretion, designate a member of the Board, or other qualified person to serve as presiding officer in a particular matter.

* * * * *

(j) Hearings will be scheduled by the OHA, except for hearings under § 441.19 (relating to licensing hearings for slot machine licenses) which will be scheduled as the Board may direct. Hearings for violations of the act will be scheduled within 90 days of the initiation of action by the Bureau.

* * * * *

[Pa.B. Doc. No. 06-2513. Filed for public inspection December 22, 2006, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CH. 503]
Self Exclusion

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2006-8-REG, the Board has the authority to amend the temporary regulations adopted on May 19, 2006, as it deems necessary in accordance with the purpose of 4 Pa.C.S. Part II (relating to gaming) (Act 71) and to further the intent of Act 71. To respond to changes in the Board's self-exclusion program, the Board has decided to make changes to the temporary regulations, dated May 19, 2006, as deposited with the Legislative Reference Bureau (Bureau) and published at 36 Pa.B. 2902 (June 10, 2006).

Therefore, the Board has deposited amendments to Chapter 503 (relating to self exclusion) with the Bureau. The amendments are effective as of December 4, 2006.

The temporary regulations of the Board in Chapter 503 are amended by amending Chapter 503 to read as set forth in Annex A.

Order

The Board, acting under the authorizing statute, orders that:

(a) Acting under the authority of Act 71, the amendments to the temporary regulations adopted by resolution at the December 4, 2006, public meeting are adopted. The amendments to the temporary regulations pertain to self exclusion.

(b) The temporary regulations of the Board, 58 Pa. Code Chapter 503, are amended by amending §§ 503.1 and 503.3—503.6; by deleting § 503.2 and by adding § 503.7 to read as set forth in Annex A.

(c) The amendments are effective December 4, 2006.

(d) The amendments to the temporary regulations shall be posted in their entirety on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The Chairperson of the Board shall certify this order and deposit the amendments to the temporary regulations with the Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-52. (1) State Gaming Fund; (2) Implementing Year 2006-07 is \$188,000; (3) 1st Succeeding Year 2007-08 is \$108,000; 2nd Succeeding Year 2008-09 is \$112,000; 3rd Succeeding Year 2009-10 is \$116,000; 4th Succeeding Year 2010-11 is \$121,000; 5th Succeeding Year 2011-12 is \$126,000; (4) 2005-06 Program—\$26,400,000; 2004-05 Program—\$13,200,000; 2003-04 Program—\$2,900,000; (7) Board Budget; (8) recommends adoption. Funds from the administrative accounts within the State Gaming Fund will be used to cover the costs of these regulations.

Annex A
TITLE 58. RECREATION
PART VII. GAMING CONTROL BOARD
Subpart I. COMPULSIVE AND PROBLEM GAMBLING

CHAPTER 503. SELF EXCLUSION

§ 503.1. Definitions.

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

Fully executed gaming transaction—An activity involving a slot machine or associated equipment which occurs on the gaming floor of a licensed facility and which results in an individual obtaining any money or thing of value from, or being owed any money or thing of value by, a slot machine licensee.

Self-excluded person—A person whose name is included, at the person's own request, on the self-exclusion list maintained by the Board.

Self-exclusion list—A list of names of persons who, under this chapter, have voluntarily agreed to be excluded from the gaming floor and all gaming activities at a licensed facility and to be prohibited from collecting any

winnings, recovering any losses or accepting complimentary gifts or services or any other thing of value at a licensed facility.

Winnings—Any money or thing of value received from, or being owed by a slot machine licensee as a result of a fully executed gaming transaction.

§ 503.2. (Reserved).

§ 503.3. Request for self exclusion.

(a) A person may have the person's name placed on the self-exclusion list by submitting a request for self exclusion in the form and manner required by the Board.

(b) A person requesting placement on the self-exclusion list shall submit, in person, a completed request for self exclusion to the Board. The Board will designate locations for submission of completed requests for self exclusion in accordance with this chapter.

(c) A request for self exclusion must include the following identifying information:

- (1) Name, including any aliases or nicknames.
- (2) Date of birth.
- (3) Address of current residence.
- (4) Telephone number of current residence.
- (5) Social Security number, when voluntarily provided in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C.A. § 552a).

(6) Physical description of the person, including height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person.

(7) Government issued photo identification such as driver's license or passport.

(d) The information provided in subsection (c) shall be updated by the self-excluded person within 30 days of a change.

(e) The length of self exclusion requested by the person may be one of the following:

- (1) One year (12 months).
- (2) Five years.
- (3) Lifetime.

(f) A request for self exclusion must include a signed release which:

- (1) Acknowledges that the request for self exclusion has been made voluntarily.
- (2) Certifies that the information provided in the request for self exclusion is true and accurate.
- (3) Acknowledges that the individual requesting self exclusion is a problem gambler.

(4) Acknowledges that if the individual is found on the gaming floor or engaging in gaming activities at any licensed facility, that the individual will be subject to removal and may be subject to arrest for criminal trespass under 18 Pa.C.S. § 3503 (relating to criminal trespass).

(5) Releases, indemnifies, holds harmless and forever discharges the Commonwealth, the Board, and all slot machine licensees from any claims, damages, losses, expenses or liability arising out of, by reason of or relating to the self-excluded person or to any other party for any harm, monetary or otherwise, which may arise as a result of one or more of the following:

(i) The failure of a slot machine licensee to withhold gaming privileges from or restore gaming privileges to a self-excluded person.

(ii) Otherwise permitting or not permitting a self-excluded person to engage in gaming activity in a licensed facility while on the list of self-excluded persons.

(iii) Disclosure by a slot machine licensee of information regarding a self-excluded person to any person or group who is not affiliated with the slot machine licensee.

(iv) Disclosure of information regarding a self-excluded person by the Board.

(g) Self exclusions for 1 or 5 years remain in effect until the self-excluded person requests removal from the Board's self-exclusion list under § 503.6 (relating to removal from self-exclusion list).

(h) A person submitting a self-exclusion request shall be required to present a government-issued photo identification containing the person's signature and photograph when the person submits the request.

(i) A person requesting self exclusion under this chapter shall be required to have a photograph taken by the Board, or agent thereof, upon the Board's acceptance of the request to be on the list.

§ 503.4. Self-exclusion list.

(a) The Board will maintain the official self-exclusion list and notify each slot machine licensee of any additions to or deletions from the list by first class mail or by transmitting a notice by electronic means directly to each slot machine licensee.

(b) The notice provided to slot machine licensees by the Board will include the following information concerning a person who has been added to the self-exclusion list:

- (1) Name, including any aliases or nicknames.
- (2) Date of birth.
- (3) Address of current residence.
- (4) Telephone number of current residence.

(5) Social Security number, when voluntarily provided by the person requesting self exclusion under section 7 of the Privacy Act of 1974 (5 U.S.C.A. § 552a).

(6) Physical description of the person, including height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person.

(7) A copy of the photograph taken by the Board under § 503.3(i) (relating to request for self exclusion).

(c) The notice provided to slot machine licensees by the Board concerning a person whose name has been removed from the self-exclusion list will include the name and date of birth of the person.

(d) A slot machine licensee shall maintain a copy of the self-exclusion list and establish procedures to ensure that the copy of the self-exclusion list is updated and that all appropriate employees and agents of the slot machine licensee are notified of any addition to or deletion from the list within 5 business days after the day notice is mailed to each slot machine licensee or transmitted electronically under subsection (a).

(e) Information furnished to or obtained by the Board under this chapter will be deemed confidential and will not be disclosed except in accordance with this chapter.

(f) Slot machine licensees, employees or agents thereof may not disclose the name of, or any information about, a

person who has requested self exclusion to anyone other than employees and agents of the slot machine licensee whose duties and functions require access to the information. Notwithstanding the foregoing, a slot machine licensee may disclose the identity of a self-excluded person to appropriate employees of other slot machine licensees in this Commonwealth or affiliated gaming entities in other jurisdictions from disclosing the identity of persons self excluded to other affiliated gaming entities in this Commonwealth or other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs operated by affiliated licensed gaming entities.

(g) A self-excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's self-exclusion list.

(h) Any winnings incurred by a self-excluded person shall be remitted to the Board and deposited into the Compulsive and Problem Gambling Treatment Fund.

(i) For the purposes of this section, any winnings issued to, found on or about, or redeemed by a self-excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 503.5. Duties of slot machine licensees.

(a) A slot machine licensee shall train its employees and establish procedures that are designed to:

(1) Identify a self-excluded person when present in a licensed facility and, upon identification, notify the following persons:

(i) Employees of the slot machine licensee whose duties include the identification and removal of self-excluded persons.

(ii) Designated representatives of the Board.

(2) Notify the Pennsylvania State Police when a self-excluded person is found on the gaming floor or engaging in gaming activities.

(3) Refuse wagers from and deny gaming privileges to a self-excluded person.

(4) Deny check cashing privileges, player club membership, complimentary goods and services, junket participation and other similar privileges and benefits to any self-excluded person.

(5) Ensure that self-excluded persons do not receive, either from the slot machine licensee or any agent thereof, junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities at its licensed facility.

(6) Comply with § 503.4(d) (relating to self-exclusion list).

(7) Disseminate written materials to patrons explaining the self-exclusion program.

(b) A slot machine licensee shall submit a copy of its procedures and training materials established under subsection (a) to the Board 30 days prior to initiation of gaming activities at the licensed facility. Amendments to these procedures shall be submitted to the Board at least 10 business days prior to their implementation. If the Board does not object to the procedures or amendments thereto, the procedures or amendments shall be deemed to be approved.

(c) A slot machine licensee shall post signs at all entrances to a licensed facility indicating that a person who is on the self-exclusion list may be subject to arrest for trespassing under 18 Pa.C.S. § 3503 if the person is on the gaming floor or engaging in gaming activities.

(d) The list of self-excluded persons is confidential, and any distribution of the list to an unauthorized source constitutes a violation of the act and subjects the disclosing party to sanctions the Board deems appropriate.

(e) Under section 1516 of the act (relating to list of persons self excluded from gaming activities), slot machine licensees and employees thereof may not be liable for damages in any civil action, which is based on the following:

(1) Failure to withhold gaming privileges from or restore gaming privileges to a self-excluded person.

(2) Permitting or not permitting a self-excluded person to gamble.

(3) Good faith disclosure of the identity of a self-excluded person to someone, other than those authorized by this chapter, for the purpose of complying with this chapter.

(f) A slot machine licensee shall report the discovery of a self-excluded person on the gaming floor or engaging in gaming activities to the Board within 3 days in a form and manner prescribed by the Board.

§ 503.6. Removal from self-exclusion list.

(a) A self-excluded person may, upon the expiration of the period of self exclusion, request removal of the person's name from the self-exclusion list by submitting a completed request for removal as required by subsections (b) and (c).

(b) A request for removal from the self-exclusion list must be in a form prescribed by the Board. The form must include:

(1) The identifying information specified in § 503.3(c) (1)–(7) (relating to request for self exclusion).

(2) The signature of the person requesting removal from the self-exclusion list indicating acknowledgment of the following statement:

"I certify that the information that I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previous request for self exclusion, and I authorize the Board to permit all slot machine licensees of the Commonwealth of Pennsylvania to reinstate my gaming privileges at licensed facilities."

(c) The request shall be submitted to a location designated by the Board. A person submitting a request for removal from the self-exclusion list shall be required to present a valid government-issued photo identification containing the person's signature when the request is submitted. No sooner than 5 business days after the request is submitted, the person submitting the request shall:

(1) Return to the Board office where the request was filed.

(2) Present a valid government-issued photo identification containing the person's signature.

(3) Sign the request a second time.

(d) Within 5 business days after the request is signed for a second time, the Board will delete the name of the person requesting removal from the self-exclusion list and notify each slot machine licensee of the removal.

§ 503.7. Exceptions to the prohibition from being on the gaming floor for individuals on the self-exclusion list.

The prohibition against allowing self-excluded persons to be on the gaming floor does not apply to an individual who is on the self-exclusion list if all of the following apply:

(1) The individual is carrying out the duties of employment or incidental activities related to employment.

(2) The slot machine licensee's security department and the Board's office located at the licensed facility have received prior notice.

(3) Access to the gaming floor is limited to the time necessary to complete the individual's assigned duties.

(4) The individual does not otherwise engage in any gaming activities.

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