RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 260a—266a, 266b, 267a, 269a AND 270a]

Hazardous Waste Management

The Environmental Quality Board (Board) by this order amends Chapters 260a—266a, 266b, 269a and 270a to update the hazardous waste management program. The Board proposes to add a new Chapter 267a (relating to standards for owners and operators of hazardous waste facilities operating under a standardized permit). These amendments and additions are set forth in Annex A.

This order was adopted by the Board at its meeting of September 16, 2008.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

For further information contact Dwayne Womer, Environmental Engineer Manager, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site www.depweb.state.pa.us.

C. *Statutory Authority*

This final-form rulemaking is authorized under sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.303 and 6020.305(e)(2)); sections 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20). Under sections 105, 402 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety, welfare and property, and the air, water and other natural resources of this Commonwealth. Sections 303 and 305(e)(2) of HSCA grant the Board the power and duty to promulgate regulations to carry out the provisions of that act. Sections 5, 402 and 501 of The Clean Streams Law grant the Board the authority to adopt regulations that are necessary to protect the waters of this Commonwealth from pollution. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Summary*

These changes are being made to address the Secretary's directive to review and revise all Department regulations to implement the goals contained in the Administration's priorities of increased environmental protection and improved human quality of life.

This final-form rulemaking includes revisions to remove obsolete provisions and correct inaccurate references currently in the regulations; delete the outdated coproduct transition scheme; simplify the hazardous waste manifest system; update the financial assurance requirements for bonding; expand and clarify the universal waste requirements; correct an outdated reference to the Board in the hazardous waste facilities siting criteria and add provisions for standardized permits.

The specific Administration priorities addressed in this final-form rulemaking include the following:

- Improving the permitting process by incorporating the Federal standardized permits provision and including regulatory provisions to accomplish this.
- Changing the bonding requirements to improve the reliability of money available to properly close a hazardous waste facility.
- Making a minor correction to the regulation for corrective action for solid waste management units to eliminate an impediment for the Commonwealth to receive Federal authorization, which would provide increased flexibility and further encourage brownfields redevelopment opportunities.
- Simplifying the reporting requirements for hazardous waste manifests and universal wastes to eliminate unnecessary reports and reduce paperwork requirements.
- Adding two new universal wastes that encourage recycling and proper management of hazardous wastes that might otherwise be disposed improperly.

Chapter 260a. Hazardous Waste Management System: General

§ 260a.30. Variances from classification as a solid waste. This section deleted the coproduct transition language, which is obsolete. This language was previously necessary to transition materials that were classified as coproducts and therefore not regulated as waste under the regulations prior to incorporating the Federal definition of solid waste on May 1, 1999. The deadline for transitioning was May 1, 2001.

Chapter 261a. Identification and Listing of Hazardous Waste

§ 261a.8. Requirements for universal waste. This section revises language to include new materials that may be managed as universal waste (oil-based finishes and photographic solutions). This section deleted mercury-containing devices from the universal wastes. 40 CFR now has a parallel regulation which is incorporated by reference. This causes the Pennsylvania-specific universal waste for mercury-containing devices to be redundant and unnecessary.

§ 261a.39. Conditional exclusion for used, broken cathode ray tubes (CRTs) and processed CRT glass undergoing recycling. A new provision added on final-form rulemaking makes an exception to the blanket substitution of terms to the requirements for exports of used and broken CRTs and processed CRT glass that is being exported.

The Environmental Protection Agency (EPA) retains the authority to regulate exports of hazardous wastes to foreign countries even in Federally-authorized states. The blanket substitution of "Department" for "Environmental Protection Agency" or "EPA" in § 260a.3 (relating to terminology and citations related to Federal regulations) is not applicable to exports.

Chapter 262a. Standards Applicable to Generators of Hazardous Waste

§ 262a.10. Incorporation by reference, purpose, scope and applicability. This section excluded University Laboratories XL Project—Laboratory Environmental Management Standard from the incorporation of Federal regulations by reference. These unincorporated citations apply only to specific university laboratories in Massachusetts and Vermont.

§ 262a.12. EPA identification numbers. This section removes the exception to substitution of terms in § 260a.3 because the Department now issues EPA ID numbers and adds the requirement for a generator to submit a subsequent notification if the name of the facility changes. This section clarifies a subsequent notification when there is a change of "generator status" instead of "facility class."

Subchapter B. Manifest. §§ 262a.20—262a.23. Changes to the manifest system in the incorporated Federal regulations that were published as final rule on March 4, 2005, known as the Uniform Manifest rule, have made Pennsylvania-specific requirements obsolete. The Pennsylvania-specific requirements are being deleted.

§ 262a.21. Manifest tracking numbers, manifest printing, and obtaining manifests. A new provision added on final-form rulemaking makes an exception to the blanket substitution of terms to the requirements for manifest tracking numbers, manifest printing and obtaining manifests. The blanket substitution of "Department" for "Environmental Protection Agency," "EPA" or "EPA Director" in § 260a.3 (relating to terminology and citations related to Federal regulations) is not applicable to this portion of the uniform manifest requirements. These requirements are considered by the EPA to be "nondelegable" to authorized states.

§ 262a.41. Biennial report. This section is deleted entirely because it is no longer necessary to modify the EPA report form for use in this Commonwealth.

§ 262a.100. Source reduction strategy. This section corrects an incorrect cross reference to 40 CFR.

Appendix to Chapter 262a. Uniform hazardous waste manifest and instructions (EPA Forms 8700-22 and 8700-22a and their instructions). A new provision added on final-form rulemaking makes an exception to the blanket substitution of terms to the requirements for manifest tracking numbers, manifest printing and obtaining manifests. The blanket substitution of "Department" for "Environmental Protection Agency," "EPA" or "EPA Director" in § 260a.3 is not applicable to this portion of the uniform manifest requirements. These requirements are considered by the EPA to be "nondelegable" to authorized states.

Chapter 263a. Transporters of Hazardous Waste

§ 263a.12. Transfer facility requirements. This section removes Pennsylvania-specific manifest requirements for transfer facilities. These are no longer necessary because of the incorporated Federal uniform manifest requirements.

§ 263a.13. Licensing. This section removes an inaccurate cross-reference to § 263a.30 (in Subchapter C. Hazardous Waste Discharges, regarding immediate action).

§ 263a.20. Manifest system, and § 263a.21. Compliance with the manifest. Pennsylvania-specific manifest requirements are being deleted as redundant because of the Federal uniform manifest rule finalized on March 4, 2005.

§ 263a.25. Civil penalties for failure to submit hazardous waste transporter fees, and § 263a.26. Assessment of penalties. These sections were deleted to remove regulatory provision for civil penalties. The provisions have never been used. The Department still has the authority to assess penalties for failure to submit fees, submission of falsified information, failure to submit documentation that no fee was due or failure to meet the time schedule for submission of fees.

Chapter 264a. Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

§ 264a.1. Incorporation by reference, purpose, scope and reference. The amendment clarifies the reference to the Federal Appendix VI to 40 CFR Part 264 that is excluded from incorporation by reference.

§ 264a.71. Use of the manifest system. Pennsylvania-specific manifest requirements are being deleted as redundant because of the Federal uniform manifest rule finalized on March 4, 2005. A new provision added on final-form rulemaking makes an exception to the blanket substitution of terms to the requirements for use of the manifest system. The blanket substitution of "Department" for "Environmental Protection Agency," "EPA" or "EPA Director" in § 260a.3 is not applicable to this portion of the uniform manifest requirements. These requirements are considered by EPA to be "nondelegable" to authorized states.

§ 264a.80. Civil penalties for failure to submit hazardous waste management fees, and § 264a.81. Assessment of penalties; minimum penalties. These sections were deleted to remove regulatory provision for civil penalties. These provisions have never been used. The Department still has the authority to assess penalties for failure to submit fees, submission of falsified information, failure to submit documentation that no fee was due or failure to meet the time schedule for submission of fees.

§ 264a.83. Administration fees during closure. This section deletes closure requirements from this section; identical Federal provisions are incorporated by reference in § 264a.1 (relating to incorporation by reference, purpose, scope and reference.)

§ 264a.101. Corrective action for solid waste management units. This section deletes the provision that will prevent Pennsylvania from being approved by the EPA for authorization to implement the RCRA Corrective Action Program.

§ 264a.115. Certification of closure. Language was proposed to be moved from § 264a.83 to this section. However, identical Federal provisions are incorporated by reference. The final-form rulemaking makes no changes to this section.

Chapter 264. Subchapter H. Financial Requirements.

§ 264a.143. Financial assurance for closure and § 264a.145. Financial assurance for postclosure care. The financial test and corporate guarantee was proposed to be eliminated, however, due to numerous comments during the public comment period, the provisions of this section are retained in the final-form rulemaking. The term "financial test" is added in the final-form rulemaking.

§ 264a.153. Requirement to file a bond. This section clarifies that only forms prepared and provided by the Department are acceptable for filing a bond.

§ 264a.154. Form, terms and conditions of bond. The financial test and corporate guarantee was proposed to be eliminated, however, due to numerous comments during the public comment period, the provisions of this section are retained in the final-form rulemaking. The term "financial test" is added in the final-form rulemaking.

§ 264a.156. Special terms and conditions for collateral bonds and bonds pledging a financial test or corporate guarantee for closure. The financial test and corporate guarantee was proposed to be eliminated, however, due to numerous comments during the public comment period, the provisions of this section are retained in the final-form rulemaking. The term "financial test" is added in the final-form rulemaking.

§ 264a.157. Phased deposits of collateral. This section clarifies that only new facilities that are applying for a new permit are eligible for phased deposit of collateral. An existing facility could enter forfeiture early in the phased deposit stage and not have adequate bond to cover closure costs.

§ 264a.168 Bond Forfeiture. This section revises bond forfeiture wording to specify that monies from forfeited bonds will first be used to properly close the facility for which the bond was forfeited (consistent with the Municipal and Residual Waste Regulations).

§ 264a.195. Inspections. This section, relating to hazardous waste tank inspection frequency, is rescinded. A request for interpretation from the PA Chamber of Business and Industry brought to the attention of Department staff that this section may conflict with Federal regulations otherwise incorporated by reference. This section originally supplemented the incorporated Federal regulations by adding a requirement that tanks be inspected every 72 hours when not operating, if waste remains in the tank. The incorporated Federal regulations require tanks to be inspected at least once each operating day. Since tanks are designed to contain an accumulation of hazardous waste, the Department has taken the position that, when waste is in the tank, it is operating and must be inspected once every 24 hours.

Chapter 265a. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

§ 265a.71. Use of the manifest system. Pennsylvania-specific manifest requirements are being deleted as redundant because of the Federal uniform manifest rule finalized on March 4, 2005. An exception to the blanket substitution of terms to the requirements for use of the manifest system has been made. The blanket substitution of "Department" for "Environmental Protection Agency," "EPA" or "EPA Director" in § 260a.3 is not applicable to this portion of the uniform manifest requirements. These requirements are considered by EPA to be "nondelegable" to authorized states.

§ 265a.80. Civil penalties for failure to submit hazardous waste management fees, and § 265a.81. Assessment of penalties; minimum penalties. These sections are deleted to remove regulatory provisions for civil penalties. These provisions have never been used. The Department still has the authority to assess penalties for failure to submit fees.

§ 265a.83. Administration fees during closure. This section deletes closure requirements from this section; identical Federal provisions are incorporated by reference in § 265a.1 (relating to Incorporation by reference, purpose, scope and applicability).

§ 265a.115. Certification of closure. Language was proposed to be moved from § 265a.83 to this section. However, the identical Federal provisions are incorporated by reference. The final-form rulemaking makes no changes to this section.

Chapter 265. Subchapter H. Financial Requirements.

§ 265a.143. Financial assurance for closure and § 265a.145. Financial assurance for postclosure care. The financial test and corporate guarantee was proposed to be eliminated, however, due to numerous comments during the public comment period, the provisions of this section are retained in the final-form rulemaking. The term "financial test" is added in the final-form rulemaking.

§ 265a.153. Requirement to file a bond. The amendment clarifies that only forms prepared and provided by the Department are acceptable for filing a bond.

§ 265a.154. Form, terms and conditions of bond. The financial test and corporate guarantee was proposed to be eliminated, however, due to numerous comments during the public comment period, the provisions of this section are retained in the final-form rulemaking. The term "financial test" is added in the final-form rulemaking.

§ 265a.156. Special terms and conditions for collateral bonds and bonds pledging a financial test or corporate guarantee for closure. The financial test and corporate guarantee was proposed to be eliminated, however, due to numerous comments during the public comment period, the provisions of this section are retained in the final-form rulemaking. The term "financial test" is added in the final-form rulemaking.

§ 264a.157. Phased deposits of collateral. This section is amended to clarify that only new facilities that are applying for a new permit are eligible for phased deposit of collateral. An existing interim status facility could enter forfeiture early in the phased deposit stage and not have adequate bond to cover closure costs.

§ 265a.163. Failure to maintain adequate bond. The amendment clarifies that requests by the Department for additional bond amounts will be in writing and eliminates a reference to failure to make timely payments for a phased deposit of collateral bond type which has been removed from the interim status standards of Chapter 265a (relating to interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities).

§ 265a.168. Bond forfeiture. The amendment revises bond forfeiture wording to specify that moneys from forfeited bonds will first be used to properly close the facility for which the bond was forfeited (consistent with the Municipal and Residual Waste Regulations).

§ 265a.195. Inspections. This section, relating to hazardous waste tank inspection frequency, is rescinded. A request for interpretation from the PA Chamber of Business and Industry brought to the attention of Department staff that this section may conflict with Federal regulations otherwise incorporated by reference. This section originally supplemented the incorporated Federal regulations by adding a requirement that tanks be inspected every 72 hours when not operating, if waste remains in the tank. The incorporated Federal regulations require tanks to be inspected at least once each operating day. Since tanks are designed to contain an accumulation of hazardous waste, the Department has taken the position that, when waste is in the tank, it is operating and must be inspected once every 24 hours.

Chapter 266a. Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

§ 266a.70. Applicability and requirements. The amendment corrects a typographical error that incorrectly refers to § 270a.60(b)(6) as the precious metal reclamation permit-by-rule provision. The correct citation is § 270a.60(b)(5).

Chapter 266b. Universal Waste Management

§ 266b.1. Incorporation by reference and scope. This section is modified by eliminating mercury-containing devices; the incorporated Federal regulations now include mercury-containing equipment with equivalent requirements and by listing two new Pennsylvania-specific materials to be eligible for management as universal wastes under this rulemaking, oil-based finishes and photographic processing solutions.

§ 266b.2 Applicability-mercury containing devices. This section is rescinded.

§ 266b.3. Definitions. The amendment deletes mercury-containing devices and relocates the definitions to the beginning of the subchapter. The section adds technical definitions for the two new materials that are being added as Pennsylvania-specific materials to be eligible for management as universal wastes under this rulemaking (oil-based finishes and photographic solutions).

§ 266b.4. Applicability—oil-based finishes. A new section was added to describe which oil-based finishes will be eligible for management as universal wastes.

§ 266b.5. Applicability—photographic solutions. A new section was added to describe which photographic solutions will be eligible for management as universal wastes.

Chapter 266b, Subchapter B. Small Quantity Handlers of Universal Waste. and *Chapter 266b, Subchapter C. Large Quantity Handlers of Universal Waste*. This section was modified by adding standards and labeling/marking requirements applicable to the two new materials, which are being added as Pennsylvania-specific materials to be eligible for management as universal wastes under this rulemaking (oil-based finishes and photographic solutions) and removes the management standards for mercury-containing devices.

Chapter 267a. Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit

This is a new chapter that incorporates by reference 40 CFR Part 267, along with a new Chapter 270a, Subchapter I that provides standards for hazardous waste facilities operating under a standardized permit that was published on September 8, 2005, as a final Federal regulation. The rule streamlines the hazardous waste permitting process for tanks, containers and containment buildings. It applies to onsite facilities and facilities controlled by the same company as the offsite generator. The standardized permit provision provides a streamlined process for generators of hazardous waste to obtain a permit to store wastes for greater than 90 days. A standardized permit process is also available to companies that generate hazardous waste at various locations but want to establish a treatment facility at one location for hazardous wastes generated at all locations.

Chapter 269a. Siting.

§ 269a.50. Environmental assessment considerations. The section replaces the Board as the jurisdictional designee of natural areas or wild areas with a more generic designee as a State or Federal agency. The legislation that established the Department of Conservation and Natural Resources (DCNR) and the Department as two separate agencies from the Department of Environmental Resources (DER) effectively changed the designee of these areas from the Board to the DCNR. The details for making these determinations are dealt with in guidance documents that assist applicants for siting hazardous waste facilities.

Chapter 270a. Hazardous Waste Permit Program.

§ 270a.2. Definitions. The definition of "standardized permit is amended."

§ 270a.6. References. The amendment corrects a typographical error in the 40 CFR 270.6 citation.

§ 270a.41. Procedures for modification, termination or revocation and reissuance of permits. Changes were made to 40 CFR Part 124, the general requirements for Federal permit issuance that affect hazardous waste permits. The Commonwealth regulations do not incorporate Part 124 by reference; these changes are in the 25 Pa. Code areas that are regulatory analogs to Part 124.

§ 270a.42. Permit modification at the request of the permittee. The amendment clarifies requirements and time frames for public notice for Class 3 modifications.

§ 270.51. Continuation of existing permits. Changes were made to 40 CFR Part 124, the general requirements for Federal permit issuance that affect hazardous waste permits. Pennsylvania regulations do not incorporate Part 124 by reference; these changes are in the 25 Pa. Code areas that are regulatory analogs to Part 124.

§ 270a.60. Permits-by-rule. The section was modified by deleting a defunct notification deadline and adding a clarifying provision establishing that thermal treatment activities are not eligible to operate under the generator treatment in accumulation containers, tanks and containment buildings permit-by-rule.

§ 270a.83. Preapplication public meeting and notice. The amendment eliminates Class 2 permit modification as a "significant change" (suggested by the EPA during authorization updated review).

Subchapter I. Procedures for RCRA standardized permit § 270a.201.

This is a new subchapter that incorporates an analog to 40 CFR 124, Subpart G (Procedures for RCRA standardized permit). These permits are for generators who store waste for more than 90 days or conduct treatment in containers, tanks or containment buildings that do not qualify for generator treatment permit-by-rule. This permit is also available for accepting offsite waste from another generator that has the same owner. The standardized permit utilizes standard permit procedures, simplifying the permit process. A standardized permit is not available for thermal treatment.

Note: The new 40 CFR Part 270 Subchapter J—RCRA Standardized Permits for Storage and Treatment Units is incorporated by reference.

E. *Summary of Comments and Responses on the Proposed Rulemaking*

During the public comment period, the Board received approximately 23 comments from 11 industry organiza-

tions, the standing committee of the House and Senate, and the Independent Regulatory Review Commission (IRRC). A major concern raised during the public comment period was on the proposal to eliminate the option to use the Federally-incorporated financial test and corporate guarantee as an option to satisfy the closure and postclosure bond requirement. The final-form regulations eliminate the change to prohibit the use of the financial test and corporate guarantee, effectively retaining them as an option to satisfy the bond requirement. A series of comments were submitted by USEPA Region 3 that will expedite the authorization amendment for these regulations. Although the EPA's comments were received after the close of the public comment period, they were considered and incorporated in the final-form rulemaking.

F. *Benefits, Costs and Compliance*

Benefits

The regulatory changes will clarify some ambiguous provisions and eliminate redundant provisions and typographical errors. The changes include new requirements that address the Secretary's directive to review and revise all Department regulations to implement the goals contained in the Administration's priorities of increased environmental protection and improved human quality of life. The regulations will also provide a basis to solicit formal comment from the EPA for any changes required for approval of the regulations in an update application for state authorization of the hazardous waste program.

Compliance Cost

Most of the changes include clarifications and corrections that impose no new compliance costs. Some new requirements are intended to reduce compliance costs, such as the two new universal waste listings and the standardized permit. The implementation of the uniform manifest should provide cost saving to the regulated community.

Compliance Assistance Plan

As with previous hazardous waste management regulations, the Department's compliance assistance efforts will take three forms. Following promulgation as final-form rulemaking, the Department will prepare a fact sheet specifically addressing certain changes made by this regulatory amendment. The Department will also continue to work with the regulated community to explain impacts from the amendments and any necessary operational changes to remain in compliance. Information concerning these amendments and any necessary technical guidance documents will also be available on the Department's web site.

Paperwork Requirements

These regulations will result in a net reduction of paperwork requirements by implementing the uniform manifest and reducing other manifest, the universal waste reporting requirements and the standardized permit. Other changes do not affect paperwork requirements.

G. *Pollution Prevention*

For this regulatory change, the Department will require no additional pollution prevention efforts. The Department already provides pollution prevention educational material as part of its hazardous waste program. There is an existing requirement for hazardous waste generators to develop a source reduction strategy. The new universal wastes will help assure proper recycling or disposal that will facilitate pollution prevention by encouraging appropriate disposal of these wastes, preventing the hazardous constituents from polluting the air, land and water. The Department is actively involved with the EPA in the National Partnership for Environmental Priorities (NPEP) program. The NPEP program targets priority pollutants to reduce or eliminate them in products (which are frequently disposed at end of life) and wastes as the result of manufacturing products.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 22, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 3249, to the IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 19, 2008, these final-form regulations were deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 20, 2008, and approved the final-form regulations.

J. *Findings of the Board*

The Board finds that:

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

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

(3) These regulations do not enlarge the purpose of the proposal published at 37 Pa.B. 6421 (July 14, 2007).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code, Chapters 260a, 261a, 262a, 263a, 264a, 265a, 266a, 266b, 269a and 270a are amended by amending §§ 261a.8, 262a.10, 262a.12, 262a.21, 262a.100, 263a.12, 263a.13, 263a.20, 264a.1, 264a.71, 264a.83, 264a.143, 264a.145, 264a.153, 264a.154, 264a.156, 264a.157, 264a.168, 265a.71, 265a.83, 265a.143, 265a.145, 265a.153, 265a.154, 265a.156, 265a.163, 265a.168, 266a.70, 266b.1, 266b.3, 266b.11, 266b.12, 266b.31, 266b.32, 269a.50, 270a.2, 270a.6, 270a.41, 270a.42, 270a.51, 270a.60, 270a.83; by adding §§ 261a.39, 262a Appendix A, 266b.4, 266b.5, 266b.29, 266b.39, 267a.1, 267a.71, 261a.75, 267a.143 and 270a.201—270a.214; and by deleting §§ 260a.30, 262a.20, 262a.22, 262a.23, 262a.41, 263a.21, 263a.25, 263a.26,

264a.80, 264a.81, 264a.101, 264a.195, 265a.80, 265a.81, 265a.157, 265a.195 and 266b.2 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(*Editor's Note*: The proposal to amend §§ 264a.115 and 265a.115 (relating to certification of closure) included in the proposal at 37 Pa.B. 3249 have been withdrawn by the Board.)

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

(c) The Chairperson shall submit this order and Annex A to IRRC and Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board 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.

JOHN HANGER,
Acting Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6668 (December 6, 2008).)

Fiscal Note: Fiscal Note 7-409 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subchapter C. RULEMAKING PETITIONS

§ 260a.30. (Reserved).

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 261a.8. Requirements for universal waste.

In addition to the requirements incorporated by reference, oil-based finishes and photographic solutions as defined in § 266b.3 (relating to definitions) are included as wastes subject to regulation under Chapter 266b (relating to universal waste management).

§ 261a.39. Conditional exclusion for used, broken cathode ray tubes (CRTS) and processed CRT glass undergoing recycling.

Regarding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 261.39(a)(5) (relating to conditional exclusion for used, broken cathode ray tubes (CRTs) and processed CRT glass undergoing recycling).

CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 262a.10. Incorporation by reference, purpose, scope and applicability.

Except as expressly provided in this chapter, 40 CFR Part 262 and its appendices (relating to standards applicable to generators of hazardous waste) are incorporated by reference. In 40 CFR 262.10(g) (relating to purpose, scope and applicability), the term "section 3008 of the act" is replaced with "Article VI of the Solid Waste Management Act (35 P. S. §§ 6018.601—6018.617)." 40 CFR 262.10(j) and (k) (relating to purpose, scope, and applicability) and Part 262 Subpart J (relating to University Laboratories XL Project—Laboratory Environmental Management Standard) are not incorporated by reference.

§ 262a.12. EPA identification numbers.

In addition to the requirements incorporated by reference:

(1) A generator shall submit a subsequent notification to the Department if:

(i) The generator activity moves to another location.

(ii) The generator facility's designated contact person changes.

(iii) The ownership of the generator facility changes.

(iv) The type of regulated activity that takes place at the generator facility changes.

(v) The generator's generator status changes, except when the generator status change is temporary.

(vi) The name of the facility changes.

(2) A generator shall offer a shipment of hazardous waste only to a transporter with a valid license issued by the Department.

Subchapter B. MANIFEST

§ 262a.20. (Reserved).

§ 262a.21. Manifest tracking numbers, manifest printing and obtaining manifests.

Regarding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 262.21 (relating to manifest tracking numbers, manifest printing and obtaining manifests).

§§ 262a.22 and 262a.23. (Reserved).

§ 262a.41. (Reserved).

Subchapter I. SOURCE REDUCTION STRATEGY

§ 262a.100. Source reduction strategy.

(a) By January 17, 1994, a person or municipality that generates hazardous waste shall prepare a source reduction strategy in accordance with this section. Except as otherwise provided in this article, the strategy shall be signed by the person or municipality that generated the waste, be maintained on the premises where the waste is generated, be available on the premises for inspection by any representative of the Department and be submitted to the Department upon request. The strategy may designate certain production processes as confidential. This confidential information may not be made public without the expressed written consent of the generator. Unauthorized disclosure is subject to appropriate penalties as provided by law.

(b) For each type of waste generated, the strategy must include:

(1) A description of the source reduction activities conducted by the person or municipality in the 5 years prior to the date that the strategy is required to be prepared. The description must quantify reductions in the weight or toxicity of waste generated on the premises.

(2) A statement of whether the person or municipality established a source reduction program. This program must identify the methods and procedures that the person or municipality will implement to achieve a reduction in the weight or toxicity of waste generated on the premises, quantify the projected reduction in weight or toxicity of waste to be achieved by each method or procedure and specify when each method or procedure will be implemented.

(3) If the person or municipality has not established a source reduction program as described in paragraph (2), it shall develop a strategy including the following:

(i) A waste stream characterization, including source, hazards, chemical analyses, properties, generation rate, management techniques and management costs.

(ii) A description of potential source reduction options.

(iii) A description of how the options were evaluated.

(iv) An explanation of why each option was not selected.

(c) The strategy required by this section shall be updated when either of the following occurs:

(1) There is a significant change in a type of waste generated on the premises or in the manufacturing process, other than a change described in the strategy as a source reduction method.

(2) Every 5 years, unless the Department establishes, in writing, a different period for the person or municipality that generated the waste.

(d) If hazardous waste generated by a person or municipality will be treated, stored or disposed of at a solid waste management facility which has applied to the Department for approval to treat, store or dispose of the waste, the person or municipality that generated the hazardous waste shall submit the source reduction strategy required by this section to the facility upon the request of the facility.

(e) This section does not apply to persons or municipalities that generate a total of less than 1,000 kilograms of hazardous waste in each month of the year.

(f) A person or municipality that generates hazardous waste may reference existing documents it has prepared to meet other waste minimization requirements to comply with this section, including those proposed to comply with 40 CFR 262.41(a)(5)—(7) (relating to biennial report).

Appendix A

Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their instructions)

Regarding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their instructions).

CHAPTER 263a. TRANSPORTERS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 263a.12. Transfer facility requirements.

In addition to the requirements incorporated by reference:

(1) A transporter storing hazardous waste at a transfer facility for periods of not more than 10 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan as required by § 263a.13(b)(4) (relating to licensing). This plan shall be submitted under section 403(b)(10) of the act (35 P. S. § 6018.403(b)(10)) and approved in writing by the Department prior to the initiation of the storage.

(2) A transporter transferring hazardous waste from one vehicle to another at a transfer facility shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan as required by § 263a.13(b)(4). This plan shall be submitted under section 403(b)(10) of the act and shall be approved in writing by the Department.

§ 263a.13. Licensing.

(a) Except as otherwise provided in subsection (b), § 261a.5(c), § 266a.70(1) or § 266b.50 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators; applicability and requirements; and applicability), a person or municipality may not transport hazardous waste within this Commonwealth without first obtaining a license from the Department.

(b) A person or municipality desiring to obtain a license to transport hazardous waste within this Commonwealth shall:

(1) Comply with 40 CFR 263.11 (relating to EPA identification number).

(2) File a hazardous waste transporter license application with the Department. The application shall be on a form provided by the Department and completed as required by the instructions supplied with the form.

(3) Deposit with the Department a collateral bond conditional upon compliance by the licensee with the act, this article, the terms and conditions of the license and a Department order issued to the licensee. The amount, duration, form, conditions and terms of the bond must conform to § 263a.32 (relating to bonding).

(4) Submit a transporter contingency plan for effective action to minimize and abate discharges or spills of hazardous waste from an incident while transporting hazardous waste, in accordance with the Department's guidelines for contingency plans.

(5) Supply the Department with relevant additional information it may require.

(c) Upon receiving the application and the information required in subsection (b), the Department will evaluate the application for a license and other relevant information and issue or deny the license. If a license is denied, the Department will advise the applicant in writing of the reasons for denial.

(d) A license granted or renewed under this chapter is valid for 2 years unless the Department determines that circumstances justify issuing a license for less than 2 years. The expiration date will be set forth on the license.

(e) A license to transport hazardous wastes is nontransferable and nonassignable and usable only by the licensee and employees of the licensee.

(f) The Department may revoke or suspend a license in whole or in part for one or more of the following reasons:

(1) Violation of an applicable requirement of the act or a regulation promulgated under the act.

(2) Aiding or abetting the violation of the act or a regulation promulgated under the act.

(3) Misrepresentation of a fact either in the application for the license or renewal or in information required or requested by the Department.

(4) Failure to comply with the terms or conditions placed upon the license or renewal.

(5) Failure to comply with an order issued by the Department.

(6) Failure to maintain the required bond amount.

(g) The application for a license shall be accompanied by a check for $500 payable to the "Commonwealth of Pennsylvania." The application for license renewal shall be accompanied by a check for $250 payable to the "Commonwealth of Pennsylvania."

(h) In addition to the fees required by subsection (g), the transporter shall submit a fee of $5 for each license card requested in excess of ten cards.

(i) The licensee shall notify the Department within 30 days of any change in the information contained in the license application.

(j) A copy of the transporter contingency plan approved at licensure or approved as amended shall be carried on the transport vehicle while transporting hazardous waste.

Subchapter B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING

§ 263a.20. Manifest system.

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply in 40 CFR 263.20 (relating to manifest system), as incorporated by reference into this chapter.

§ 263a.21. (Reserved).

§ 263a.25. (Reserved).

§ 263a.26. (Reserved).

CHAPTER 264a. OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Subchapter A. GENERAL

§ 264a.1. Incorporation by reference, purpose, scope and reference.

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 264 and its appendices (relating to standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) are incorporated by reference.

(b) Relative to the requirements incorporated by reference:

(1) 40 CFR 264.1(f) (relating to purpose, scope and applicability), regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs) and Appendix VI to Part 264—(relating to political jurisdictions in which compliance with 40 CFR 264.18(a) must be demonstrated) are not incorporated by reference.

(2) Instead of 40 CFR 264.1(b), this chapter applies to an owner or operator of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, Chapters 261a and 266a and § 270a.60 (relating to identification and listing of hazardous waste; standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities; and permits-by-rule).

(3) Instead of 40 CFR 264.1(g)(2), this chapter does not apply to the owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2)—(4) (relating to requirements for recyclable materials) except to the extent the requirements are referred to in Chapter 266a, Subchapters C, E, F, G or § 270a.60.

(4) 40 CFR 264.1(g)(6) (relating to elementary neutralization unit and wastewater treatment unit) is not incorporated by reference. The owner or operator of an elementary neutralization unit or wastewater treatment unit may satisfy permitting requirements by complying with § 270a.60(b)(1).

(5) This chapter does not apply to handlers and transporters of universal wastes identified in 40 CFR Part 273 (relating to standards for universal waste management) or additional Pennsylvania-designated universal wastes identified in Chapter 266b (relating to universal wastes).

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

§ 264a.71. Use of the manifest system.

Regarding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 264.71 (relating to use of manifest system).

§ 264a.80. (Reserved).

§ 264a.81. (Reserved).

§ 264a.83. Administration fees during closure.

A nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

(1) Land disposal facilities—$100.

(2) Impoundments—$100.

(3) All other facilities—$50.

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

§ 264a.101. (Reserved).

Subchapter G. CLOSURE AND POSTCLOSURE

Subchapter H. FINANCIAL REQUIREMENTS

§ 264a.143. Financial assurance for closure.

40 CFR 264.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 264.143(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging financial test or corporate guarantee for closure).

§ 264a.145. Financial assurance for postclosure care.

40 CFR 264.145 (relating to financial assurance for post-closure care) is not incorporated by reference; except for 40 CFR 264.145(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging financial test or corporate guarantee for closure).

§ 264a.153. Requirement to file a bond.

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 264a.160 (relating to bond amount determination), payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant files with the Department a bond under this subchapter, payable to the Department, on a form prepared and provided by the Department, and the bond is approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility permitted or treated as having a permit, shall cease accepting hazardous waste unless the owner or operator submits a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the submittal. If, on review, the Department determines the owner or operator submitted an insufficient bond amount, the Department will require the owner or operator to deposit additional bond amounts under § 264a.162 (relating to bond amount adjustments).

§ 264a.154. Form, terms and conditions of bond.

(a) The Department accepts the following types of bond:

(1) A surety bond.

(2) A collateral bond.

(3) A bond pledging a financial test or corporate guarantee.

(4) A phased deposit collateral bond as provided in § 264a.157 (relating to phased deposits of collateral).

(b) The Department will prescribe and furnish the forms which shall be used for bond instruments.

(c) Bonds are payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.4c, 1396.4e and 1396.15c—1396.25), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.

(d) The bond must cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond must cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.

(e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

§ 264a.156. Special terms and conditions for collateral bonds and bonds pledging a financial test or corporate guarantee for closure.

* * * * *

(e) Bonds pledging a financial test or corporate guarantee for closure shall be subject to the requirements of 40 CFR 264.143(f) (relating to financial test and corporate guarantee for closure) and 40 CFR 264.145(f) (relating to financial assurance for post-closure care). Instead of the provisions of 40 CFR 264.143(f)(10)(i) (relating to financial assurance for closure) and 40 CFR 264.145(f)(11)(i), the procedures of § 264a.168 (relating to bond forfeiture), apply to bond forfeiture.

§ 264a.157. Phased deposits of collateral.

(a) An owner or operator may post a collateral bond in phased deposits for a new hazardous waste storage, treatment or disposal facility that will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The owner or operator submits a collateral bond form to the Department.

(2) The owner or operator deposits $10,000 or 25%, whichever is greater, of the total amount of bond determined in this chapter in approved collateral with the Department.

(3) The owner or operator submits a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The owner or operator deposits the full amount of bond required for the hazardous waste storage, treatment or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department will make the demand when one of the following occurs:

(1) The owner or operator fails to make a deposit of bond amount when required by the schedule for the deposits.

(2) The owner or operator violates the requirements of the act, this article, the terms and conditions of the permit or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) Interest earned by collateral on deposit accumulates and becomes part of the bond amount until the owner or operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest so accumulated may not offset or diminish the amount required to be deposited in each of the succeeding years

set forth in the schedule of deposit, except that in the last year in which a deposit is due, the amount to be deposited is adjusted by applying the total accumulated interest to the amount to be deposited as established by the schedule of deposit.

§ 264a.168. Bond forfeiture.

(a) The Department will forfeit the bond for a hazardous waste storage, treatment or disposal facility if the Department determines that any of the following occur:

(1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(2) The owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with the requirements of this article, the act, section 505(a) of the act, the terms and conditions of the permit or orders of the Department.

(3) The owner or operator fails, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.

(4) The owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has a receiver appointed by the court, or has action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the owner or operator, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the owner or operator and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund. Use moneys received from the forfeiture of bonds, and interest accrued, first to accomplish final closure of, and to take steps necessary and proper to remedy and prevent adverse environmental effects from, the facility upon which liability was charged on the bonds. Excess moneys may be used for other purposes consistent with the Solid Waste Abatement Fund and the act.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

Subchapter J. TANK SYSTEMS

§ 264a.195. (Reserved).

CHAPTER 265a. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

§ 265a.71. Use of the manifest system.

Regarding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 265.71 (relating to use of manifest system).

§ 265a.80. (Reserved).

§ 265a.81. (Reserved).

§ 265a.83. Administration fees during closure.

A nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

(1) Land disposal facilities—$100.

(2) Impoundments—$100.

(3) Other facilities—$50.

Subchapter H. FINANCIAL REQUIREMENTS

§ 265a.143. Financial assurance for closure.

40 CFR 265.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 265.143(e) as referenced in § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging a financial test or corporate guarantee for closure).

§ 265a.145. Financial assurance for postclosure care.

40 CFR 265.145 (relating to financial assurance for postclosure care) is not incorporated by reference except for 40 CFR 265.145(e) as referenced in § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging a financial test or corporate guarantee for closure).

§ 265a.153. Requirement to file a bond.

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 265a.160 (relating to bond amount determination), payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant files with the Department a bond under this subchapter, payable to the Department, on a form prepared and provided by the Department, and the bond is approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start

construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility permitted or treated as issued a permit, shall cease accepting hazardous waste unless the owner or operator has submitted a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the submittal. If, on review, the Department determines the owner or operator has submitted an insufficient bond amount, the Department will require the owner or operator to deposit additional bond amounts under § 265a.162 (relating to bond amount adjustments).

§ 265a.154. Form, terms and conditions of bond.

(a) The Department accepts the following types of bond:

(1) A surety bond.

(2) A collateral bond.

(3) A bond pledging a financial test or corporate guarantee.

(b) The Department prescribes and furnishes the forms, which shall be used for bond instruments.

(c) Bonds are payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.

(d) The bond must cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond must cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.

(e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

§ 265a.156. Special terms and conditions for collateral bonds and bonds pledging a financial test or corporate guarantee for closure.

* * * * *

(e) Bonds pledging a financial test or corporate guarantee for closure shall be subject to the requirements of 40 CFR 265.143(e) (relating to financial test and corporate guarantee for closure) and 40 CFR 265.145(e) (relating to financial assurance for post-closure care) except for the provision of 40 CFR 265.143(e)(10)(i) (relating to financial assurance for closure) as specified in § 264a.143(a) (relating to financial assurance for closure). This is replaced by the procedures of § 265a.168 (relating to bond forfeiture).

§ 265a.157. (Reserved).

§ 265a.163. Failure to maintain adequate bond.

If an owner or operator fails to post additional bond within 60 days after receipt of a written request by the Department for additional bond amounts under § 265a.162 (relating to bond amount adjustments), the Department will issue a notice of violation to the owner or operator, and if the owner or operator fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the owner or operator and take additional actions that may be appropriate, including suspending or revoking permits.

§ 265a.168. Bond forfeiture.

(a) The Department will forfeit the bond for a hazardous waste storage, treatment or disposal facility when it determines that any of the following occur:

(1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(2) The owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit or orders of the Department.

(3) The owner or operator fails, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.

(4) The owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has a receiver appointed by the court, or had action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the owner or operator, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the owner or operator and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund. Use moneys

received from the forfeiture of bonds, and interest accrued, first to accomplish final closure of, and to take steps necessary and proper to remedy and prevent adverse environmental effects from the facility upon which liability was charged on the bonds. Excess moneys may be used for other purposes consistent with the Solid Waste Abatement Fund and the act.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

Subchapter J. TANK SYSTEMS

§ 265a.195. (Reserved).

CHAPTER 266a. MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Subchapter F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

§ 266a.70. Applicability and requirements.

In addition to the requirements incorporated by reference:

(1) A transporter transporting recyclable materials utilized for precious metal recovery in accordance with 40 CFR Part 266, Subpart F (relating to recyclable materials utilized for precious metal recovery) is deemed to have a license for the transportation of those materials if the transporter complies with:

(i) The EPA identification number requirements of 40 CFR 263.11 (relating to EPA identification number).

(ii) The hazardous waste transporter fee requirements of § 263a.23 (relating to hazardous waste transportation fee).

(2) An owner or operator of facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F is subject to § 261a.6(c) (relating to requirements for recyclable materials) unless the owner or operator is eligible for a permit by rule for the treatment under § 270a.60(b)(5) (relating to permits by rule).

CHAPTER 266b. UNIVERSAL WASTE MANAGEMENT

Subchapter A. GENERAL

§ 266b.1. Incorporation by reference and scope.

(a) Except as expressly provided in this chapter, 40 CFR Part 273 (relating to standards for universal waste management) is incorporated by reference.

(b) In addition to the requirements incorporated by reference in 40 CFR 273.1 (relating to scope), oil-based finishes as defined in § 266b.3 (relating to definitions) are included as waste listed in the definition of "universal waste."

(c) In addition to the requirements incorporated by reference in 40 CFR 273.1, photographic solutions as defined in § 266b.3 are included as waste listed in the definition of "universal waste."

§ 266b.2. (Reserved).

§ 266b.3. Definitions.

In addition to the definitions incorporated by reference in 40 CFR 273.9 (relating to definitions), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Oil-based finishes—

(i) Any paint or other finish that may exhibit, or is known to exhibit, a hazardous waste characteristic as specified in 40 CFR Part 261 Subpart C (relating to characteristics of hazardous waste), or which contains a listed hazardous waste as specified in 40 CFR Part 261 Subpart D (relating to lists of hazardous wastes), and is in original packaging, or otherwise appropriately contained and clearly labeled.

(ii) Examples of oil-based finishes include, but are not limited to, oil-based paints, lacquers, stains and aerosol paint cans.

Photographic solutions—Silver-bearing waste streams resulting from photographic processing solutions or rinse water.

§ 266b.4. Applicability—oil-based finishes.

(a) In addition to the requirements incorporated by reference in 40 CFR Part 273 (relating to standards for universal waste management), this chapter applies to persons managing oil-based finishes as defined in § 266b.3 (relating to definitions), except those listed in subsection (b).

(b) This section does not apply to persons managing the following oil-based finishes:

(1) Oil-based finishes that are not yet wastes under Chapter 261a (relating to identification and listing of hazardous waste). Subsections (c) and (d) describe when oil-based finishes become wastes.

(2) Oil-based finishes that are not hazardous waste. An oil-based finish is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste).

(c) Used oil-based finishes become a waste on the date they are discarded or sent for reclamation.

(d) Unused oil-based finishes become a waste on the date the handler discards them.

§ 266b.5. Applicability—photographic solutions.

(a) In addition to the requirements incorporated by reference in 40 CFR Part 273 (relating to standards for universal waste management), this chapter applies to persons managing photographic solutions as defined in § 266b.3 (relating to definitions), except those listed in subsection (b).

(b) This section does not apply to persons managing the following photographic solutions:

(1) Photographic solutions that are not yet wastes under Chapter 261a (relating to identification and listing of hazardous waste). Subsections (c) and (d) describe when photographic solutions become wastes.

(2) Photographic solutions that are not hazardous waste. A photographic solution is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste).

(c) Used photographic solutions become a waste on the date they are discarded or sent for reclamation.

(d) Unused photographic solutions become a waste on the date the handler discards them.

Subchapter B. SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE

§ 266b.11. Waste management for universal waste oil-based finishes.

A small quantity handler of universal waste oil-based finishes shall manage oil-based finishes, in their original or otherwise appropriate and labeled packaging, in a way that prevents releases of universal waste or a component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste oil-based finishes shall contain oil-based finishes that show evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the oil-based finish and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may not process oil-based finishes (including opening, blending, filtering, and the like).

§ 266b.12. Waste management for universal waste photographic solutions.

A small quantity handler of universal waste photographic solutions shall manage waste photographic solutions, in their original or otherwise appropriate and labeled packaging, in a way that prevents releases of universal waste or a component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste photographic solutions shall manage the photographic solutions in a lidded container. The container must be closed, structurally sound, compatible with the photographic solutions, and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may not process photographic solutions (for example, including, but not limited to, opening, blending, filtering, and the like).

§ 266b.29. Labeling/marking.

In addition to the requirements incorporated by reference in 40 CFR 273.14 (relating to labeling/marking), a small quantity handler of universal waste shall label:

(1) Each container of universal waste oil-based finish, or the container in which universal waste oil-based finishes are contained, with "universal waste oil-based finish" or "waste oil-based finish."

(2) Each container of universal waste photographic solutions, or the container in which universal waste photographic solutions are contained, with "universal waste photographic solutions" or "waste photographic solutions."

Subchapter C. LARGE QUANTITY HANDLERS OF UNIVERSAL WASTE

§ 266b.31. Waste management for universal waste oil-based finishes.

A large quantity handler of universal waste oil-based finishes shall manage oil-based finishes, in their original or otherwise appropriate and labeled packaging, in a way that prevents releases of universal waste or a component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste oil-based finishes shall contain oil-based finishes that show evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the oil-based finish, and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may not process oil-based finishes (for example including, but not limited to, opening, blending, filtering, and the like).

§ 266b.32. Waste management for universal waste photographic solutions.

A large quantity handler of universal waste photographic solutions shall manage waste photographic solutions, in their original or otherwise appropriate and labeled packaging, in a way that prevents releases of universal waste or a component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste photographic solutions shall manage the photographic solutions in a lidded container. The container must be closed, structurally sound, compatible with the photographic solutions, and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may not process photographic solutions (for example including, but not limited to, opening, blending, filtering, and the like).

§ 266b.39. Labeling/marking.

In addition to the requirements incorporated by reference in 40 CFR 273.34 (relating to labeling/marking), a large quantity handler of universal waste shall label:

(1) Each container of universal waste oil-based finish, or the container in which universal waste oil-based finishes are contained, with "universal waste oil-based finish" or "waste oil-based finish."

(2) Each container of universal waste photographic solutions, or the container in which universal waste photographic solutions are contained, with "universal waste photographic solutions" or "waste photographic solutions."

CHAPTER 267a. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

Subchap.
A. General
E. Manifest System, Recordkeeping, Reporting, and Notifying
H. Financial Requirements

Subchapter A. GENERAL

Sec.
267a.1. Incorporation by reference, purpose, scope and applicability.

§ 267a.1. Incorporation by reference, purpose, scope and applicability.

40 CFR Part 267 (relating to standards for owners and operators of hazardous waste facilities operating under a standardized permit) is incorporated by reference.

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING, REPORTING, AND NOTIFYING

Sec.
267a.71. Use of the manifest system.
267a.75. Reporting requirements.

§ 267a.71. Use of the manifest system.

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to termi-

nology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 267.71(d) (relating to use of the manifest system).

§ 267a.75. Reporting requirements.

Relative to the requirements incorporated by reference, the owner or operator shall submit to the Department its biennial report on EPA Form 8700-13B.

Subchapter H. FINANCIAL REQUIREMENTS

Sec.
267a.143. Financial assurance for closure.

§ 267a.143. Financial assurance for closure.

Regarding the requirements incorporated by reference, instead of 40 CFR 267 Subpart H (relating to financial requirements), owners or operators of hazardous waste facilities operating under a standardized permit shall comply with Chapter 264a, Subchapter H (relating to financial requirements).

CHAPTER 269a. SITING

Subchapter A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES

PHASE II CRITERIA

§ 269a.50. Environmental assessment considerations.

* * * * *

(b) If the Department determines that there is a significant impact on natural, scenic, historic or aesthetic values of the environment, the Department will consult with the applicant to examine ways to reduce the environmental incursion to a minimum. If, after consideration of mitigation measures, the Department finds that significant environmental harm will occur, the Department will evaluate the social and economic benefits of the proposed facility to determine whether the harm outweighs the benefits. The evaluation of environmental harm must include, at a minimum, a consideration of the impact of the proposed facility on the 15 types of environmental resources described in this subsection. There may be additional potentially affected natural, scenic, historic or aesthetic values which the Department is constitutionally obligated to protect that will be considered for proposed facilities in some locations. In those instances, the Department will identify additional potential impacts for the applicant. The following criteria may not be construed as an attempt to limit or restrict the responsibilities of a Commonwealth agency under PA. CONST. ART. I, § 27.

* * * * *

(5) If the facility is located within 1 mile of a National Natural Landmark designated by the United States National Park Service, or a natural area or wild area designated by a State or Federal agency, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the National Landmark, natural area or wild area.

* * * * *

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

Subchapter A. GENERAL INFORMATION

§ 270a.2. Definitions.

(a) The definitions for "disposal," "person," "standardized permit" and "storage" are not incorporated by reference.

(b) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply for the terms "Administrator," "Director," "Environmental Protection Agency" and "Regional Administrator" found in 40 CFR 270.2 (relating to definitions).

(c) The term "standardized permit" means a permit issued under Subchapter I (relating to procedures for standardized permit) and 40 CFR Part 270, Subpart J (relating to RCRA standardized permits for storage and treatment units) authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Department's discretion.

§ 270a.6. References.

Regarding the requirements incorporated by reference, the term "*Federal Register*" retains its meaning and is not replaced by the term "*Pennsylvania Bulletin*" when used in 40 CFR 270.6 (relating to references).

Subchapter D. CHANGES TO PERMITS

§ 270a.41. Procedures for modification, termination or revocation and reissuance of permits.

Instead of the procedures required in 40 CFR Part 124 (relating to procedures for decision making), permits are modified, terminated or revoked and reissued in accordance with the following:

(1) The Department may modify, revoke and reissue, or terminate a permit either at the request of an interested person, including the permittee, or upon the Department's initiative for reasons specified in 40 CFR 270.41—270.43 (relating to modification or revocation and reissuance of permits; permit modification at the request of the permittee; and modification or revocation and reissuance of permits, and termination of permits) or for a reason authorized under the act, this article or the terms and conditions of the permit. A request must be in writing and contain facts or reasons supporting the request.

(2) If the Department decides the request is not justified, the Department sends a brief written response giving a reason for the decision to the requester. The Department's refusal to modify, or revoke and reissue a permit under a request is not subject to public notice, comment or hearings.

(3) If the Department tentatively decides to modify, terminate or revoke and reissue a permit, in accordance with the incorporated provisions of 40 CFR 270.41, 270.42(c) or 270.43, the Department will prepare a draft permit under § 270a.10(c)(7)—(10) (relating to general application requirements) incorporating the proposed changes. The Department may request in writing additional information from the permittee and may require the permittee to submit an updated permit application. In the case of revoked and reissued permits, other than under 40 CFR 270.41(b)(3), the Department requires the submission of a new application. In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the permittee shall comply with the appropriate requirements in Subchapter I (relating to procedures for standardized permit). The permittee shall submit additional information or an updated or new application under a written request by the Department within the time specified by the Department.

(4) In a permit modification under this section, only those conditions to be modified are reopened when a new draft permit is prepared. Other aspects of the existing permit remain in effect for the duration of the permit.

When the permit is revoked and reissued, the entire permit is reopened just as if the permit expired and is reissued. During a revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

(5) If the Department tentatively decides to terminate a permit in accordance with the incorporated provisions of 40 CFR 270.43, it issues a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as a draft permit prepared under § 270a.10(c)(7)—(10).

(6) Class 1 modifications, as listed in the Appendix I to 40 CFR 270.42, are not subject to the requirements of this section.

§ 270a.42. Permit modification at the request of the permittee.

(a) Instead of complying with 40 CFR Part 124.10(c)(ix) (relating to public notice of permit actions and public comment period), the permittee shall send a notice to those persons in § 270a.80(d)(iv) (relating to public notice and comment requirements).

(b) Instead of the appeal procedure in 40 CFR 124.19 (relating to appeal of RCRA, UIC, NPDES, PSD permits), the Department's decision to grant or deny permit modifications may be appealed to the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514).

(c) Applicants seeking a Class 3 permit modification shall also comply with § 270a.83 (relating to preapplication public meeting and notice). Instead of the public notice and public meeting time frames contained in the introductory paragraph of 40 CFR 270.42(c)(2) and (4) (relating to permit modification at the request of the permittee), applicants seeking a Class 3 permit modification shall comply with the time frames under § 270a.83(b) and (d).

Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS

§ 270a.51. Continuation of existing permits.

(a) 40 CFR 270.51 (relating to continuance of expiring permits) is not incorporated by reference.

(b) The conditions of an expired permit continue in force until the effective date of a new permit if the following conditions are met:

(1) The permittee has submitted a timely application which is a complete application for a new permit.

(2) The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(c) Permits continued under this section remain fully effective and enforceable.

(d) When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may choose to do one or more of the following:

(1) Initiate enforcement action based upon the permit which has been continued.

(2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit.

(3) Issue a new permit with appropriate conditions.

(4) Take other actions authorized by these regulations.

(e) The conditions of an expired standardized permit continue in force until the effective date of a new permit if the following conditions are met:

(1) The permittee has submitted a timely and complete Notice of Intent under 40 CFR 124.202(b) (relating to how do I as a facility owner or operator apply for a standardized permit?) requesting coverage under a RCRA standardized permit.

(2) The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(f) When the Department notifies a permittee that the permittee is not eligible for a standardized permit (see 40 CFR 124.206 (relating to in what situations may I require a facility owner or operator to apply for an individual permit?)), the conditions of the expired permit will continue if the permittee submits a timely and complete application for a new permit within 60 days after the notification.

Subchapter F. SPECIAL FORMS OF PERMITS

§ 270a.60. Permits-by-rule.

(a) Relative to the requirements incorporated by reference, the following are substituted for the introductory paragraph in 40 CFR 270.60 (relating to permits by rule):

(1) In addition to other provisions of this chapter, the activities listed in this section are deemed to have a hazardous waste management permit if the owner or operator gives prior notification to the Department on a form provided by the Department and the conditions listed are met.

(b) In addition to the requirements incorporated by reference, the following requirements apply:

* * * * *

(2) A generator that treats its own hazardous waste in containers, tanks or containment buildings is deemed to have a permit-by-rule, if the owner or operator complies with the following requirements:

* * * * *

(vi) Treatment activities subject to requirements in addition to those specified in this section are not eligible to operate under this permit-by-rule.

* * * * *

Subchapter H. PUBLIC NOTICE AND HEARINGS

§ 270a.83. Preapplication public meeting and notice.

(a) *Applicability.*

(1) This section applies to RCRA Part B applications seeking initial permits for hazardous waste management units over which the Department has permit issuance authority.

(2) This section also applies to RCRA Part B applications seeking renewal of permits for the units, if the renewal application is proposing a significant change in facility operations.

(3) For the purposes of this section, a "significant change" is a change that would qualify as a Class 3 permit modification under 40 CFR 270.42 (relating to

permit modification at the request of the permittee) and § 270a.42 (relating to permit modification at the request of the permittee).

(4) This section also applies to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR Part 270, Subpart J (relating to RCRA standardized permits for storage and treatment units)), including renewal of a standardized permit for the units, when the renewal is proposing a significant change in facility operations, as defined in 40 CFR 124.211(c) (relating to what types of changes may I make to my standardized permit?).

(5) This section does not apply to Class 1 or Class 2 permit modifications under 40 CFR 270.42 and § 270a.42 or to applications that are submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.

(b) Prior to the submission of a Part B RCRA permit application for a facility, or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR Part 270, Subpart J), the applicant shall hold at least one meeting with the public to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection (b), and copies of any written comments or materials submitted at the meeting, to the Department as a part of the Part B application, under 40 CFR 270.14(b) (relating to contents of Part B: general requirements), or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR Part 270, Subpart J).

(d) The applicant shall provide public notice of the preapplication meeting at least 30 days prior to the meeting. The applicant shall maintain, and provide to the Department upon request, documentation of the notice.

(1) The applicant shall provide public notice in the following forms:

(i) *Newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (2), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Department will instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, if the Department determines that the publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

(ii) *Visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (2). If the applicant places the sign on the facility property, the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *Broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (2), at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Department.

(iv) *Notice to the Department.* The applicant shall send a copy of the newspaper notice to the Department and to the appropriate units of State and local government.

(2) The notices required under paragraph (1) must include the following:

(i) The date, time and location of the meeting.

(ii) A brief description of the purpose of the meeting.

(iii) A brief description of the facility and proposed operations, including the address or a map—for example, a sketched or copied street map—of the facility location.

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting.

(v) The name, address and telephone number of a contact person for the applicant.

Subchapter I. PROCEDURES FOR STANDARDIZED PERMIT

Sec.

§ 270a.201. Incorporation by reference, scope and applicability.

(a) Except as expressly provided in this subchapter, 40 CFR Part 124, Subpart G (relating to procedures for RCRA standardized permit) is incorporated by reference.

(b) The reference to § 124.2 in the introductory paragraph to 40 CFR 124.200 (relating to what is a RCRA standardized permit?) is replaced with § 270a.2(c) (relating to definitions).

(c) The requirements of §§ 270a.3, 264a.82, 264a.83, 265a.82 and 265a.83 do not apply to standardized permits.

§ 270a.202. Applying for a standardized permit.

Relative to the requirements incorporated by reference, the reference to 40 CFR 124.31 (relating to preapplication public meeting and notice) is replaced with § 270a.83 (relating to preapplication public meeting and notice).

§ 270a.203. Switching from an individual RCRA permit to a standardized permit.

Relative to the requirements incorporated by reference, the reference to 40 CFR 124.5 (relating to modification, revocation and reissuance, or termination of permits) is replaced with § 270a.41 (relating to procedures for modification, termination or revocation and reissuance of permits), and the reference to 40 CFR 124.204 (relating to what must I do as the Director of the regulatory agency to prepare a draft standardized permit?) is replaced with § 270a.204 (relating to procedures for preparing a draft standardized permit).

§ 270a.204. Procedures for preparing a draft standardized permit.

40 CFR 124.204 (relating to what must I do as the director of the regulatory agency to prepare a draft standardized permit?) is not incorporated by reference. Draft standardized permits are prepared in accordance with the following:

(1) The Department will review the Notice of Intent and supporting information submitted by the facility owner or operator.

(2) The Department will determine whether the facility is or is not eligible to operate under the standardized permit.

(i) If the facility is eligible for the standardized permit, the Department will propose terms to include in a supplemental portion. If the Department determines that these terms and conditions are necessary to protect human health and the environment and cannot be imposed, coverage under the standardized permit will be denied.

(ii) If the facility is not eligible for the standardized permit, the Department will tentatively deny coverage under the standardized permit. Cause for ineligibility may include the following:

(A) Failure of the owner or operator to submit all the information required under 40 CFR 270.275 (relating to what information must I submit to the permitting agency to support my standardized permit application?).

(B) Information submitted that is required under 40 CFR 270.275 is determined to be inadequate.

(C) The facility does not meet the eligibility requirements (activities are outside the scope of the standardized permit).

(D) A demonstrated history of significant noncompliance with applicable requirements.

(E) Permit conditions cannot ensure protection of human health and the environment.

(3) The Department will prepare a draft permit decision within 120 days after receiving the Notice of Intent and supporting documents from a facility owner or operator. The tentative determination under this section to deny or grant coverage under the standardized permit, including any proposed site-specific conditions in a supplemental portion, constitutes a draft permit decision. During the initial 120-day review period the Department may notify the permit applicant and take up to an additional 30 days to prepare a draft permit decision if determined necessary to complete review of documents submitted with the Notice of Intent.

(4) The Department's draft permit decision will be accompanied by a statement of basis or fact sheet as provided for in § 270a.10(c)(10)—(12) (relating to general application requirements and permit issuance procedures).

§ 270a.205. Procedures for preparing a final standardized permit.

40 CFR 124.205 (relating to what must I do as the director of the regulatory agency to prepare a final standardized permit?) is not incorporated by reference. Final standardized permits are prepared in accordance with the following: The Department will consider all comments received during the public comment period under § 270a.208 (relating to opportunities for public comments and hearings on draft standardized permit decisions) in making a final permit decision.

§ 270a.206. Requirement to apply for an individual permit.

40 CFR 124.206 (relating to in what situations may I require a facility owner or operator to apply for an individual permit?) is not incorporated by reference.

(1) The Department may determine that a facility is not eligible for the standardized permit based on the following:

(i) The facility does not meet the criteria in 40 CFR 124.201 (relating to who is eligible for a standardized permit?).

(ii) The facility has a demonstrated history of significant noncompliance with regulations or permit conditions.

(iii) The facility has a demonstrated history of submitting incomplete or deficient permit application information.

(iv) The facility has submitted incomplete or inadequate materials with the Notice of Intent.

(2) If the Department determines that a facility is not eligible for the standardized permit, the Department will inform the facility owner or operator that it shall apply for an individual permit.

(3) The Department may require a facility that has a standardized permit to apply for and obtain an individual permit. An interested person may petition the Department to take action under this paragraph. Cases when the Department may require an individual permit include the following:

(i) The facility is not in compliance with the terms and conditions of the standardized permit.

(ii) Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

(4) If the Department requires a facility authorized by a standardized permit to apply for an individual permit, the Department will notify the facility owner or operator in writing that an individual permit application is required. The Department will include in this notice a brief statement of the reasons for the decision, a statement setting a deadline for the owner or operator to file the application, and a statement that, on the effective date of the individual permit, the facility's standardized permit automatically terminates. The Department may grant additional time to file an application for an individual permit upon request from the facility owner or operator.

(5) When the Department issues an individual permit to an owner or operator otherwise subject to a standardized permit, the standardized permit for the facility will automatically cease to apply on the effective date of the individual permit.

§ 270a.207. Requirements for standardized permit public notices.

40 CFR 124.207 (relating to what are the requirements for public notices?) is not incorporated by reference.

(1) The Department will provide public notice of a draft standardized permit decision and an opportunity for the public to submit comments and request a hearing on the decision. The Department will provide the public notice to:

(i) The applicant.

(ii) Another agency that the Department knows has issued or is required to issue a RCRA, underground injection control, prevention of significant deterioration (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Protection, Research, and Sanctuaries

Act of 1972, the act of October 23, 1972 (Pub. L. No. 92-532, 86 Stat. 52) for the same facility or activity, including the EPA.

(iii) Federal or State agencies with jurisdiction over fish, shellfish and wildlife resources or coastal zone management plans, the Advisory Council on Historic Preservation, State historic preservation officers, and other appropriate government authorities, including any affected states.

(iv) Each person on a mailing list developed by the Department, which includes a person who submits to the Department a request in writing to be included on the list, a person solicited for area lists from participants in past permit proceedings in that area, and a member of the public notified of the opportunity to be put on the mailing list through periodic publication in the public press and in regional and State-funded newsletters, environmental bulletins or State law journals. The Department may update the mailing list periodically by requesting written indication of continued interest from those listed. The Department may delete from the list the name of a person who fails to respond to the request.

(v) Units of local government having jurisdiction over the area where the facility is located or proposed to be located.

(vi) State agencies having authority under State statute with respect to the construction or operation of the facility.

(2) The Department will issue the public notice according to the following methods:

(i) Publication of a notice in the *Pennsylvania Bulletin* and in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(ii) Other methods reasonably calculated to give actual notice of the action in question to a person potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(3) The Department will include the following information in the public notice:

(i) The name and telephone number of the contact person at the facility.

(ii) The name and telephone number of the Department office, and a mailing address to which people may direct comments, information, opinions or inquiries.

(iii) An address to which people may write to be put on the facility mailing list.

(iv) The location where people may view and make copies of the draft standardized permit and the Notice of Intent and supporting documents.

(v) A brief description of the facility and proposed operations, including the address or a map of the facility location on the front page of the notice.

(vi) The date that the facility owner or operator submitted the Notice of Intent and supporting documents.

(4) At the same time the public notice under this section is issued, the Department will place the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the Notice of Intent and supporting documents, and the statement of basis or fact sheet in a location accessible to the public in the vicinity of the facility or at a Department office in the vicinity of the facility.

§ 270a.208. Opportunities for public comments and hearings on draft standardized permit decisions.

40 CFR 124.208 (relating to what are the opportunities for public comments and hearings on draft permit decisions?) is not incorporated by reference.

(1) The public notice that the Department issues under § 270a.207 (related to requirements for standardized permit public notices) will allow at least a 45-day public comment period for people to submit written comments on the draft standardized permit decision. The public comment period will automatically be extended to the close of a public hearing under this section. The hearing officer may also extend the public comment period by so stating at the hearing.

(2) During the public comment period, any interested person may submit written comments on the draft standardized permit and may request a public hearing. Requests for public hearings must be submitted in writing to the Department and state the nature of the issues proposed to be raised during the hearing.

(3) The Department will hold a public hearing if a written notice of opposition to a standardized permit and a request for a hearing is received within the public comment period under paragraph (1). The Department may also hold a public hearing at its discretion, whenever, for instance, a hearing may clarify one or more issues involved in the standardized permit decision.

(4) Whenever possible, the Department will schedule a hearing under this section at a location convenient to the nearest population center to the facility. The Department will give public notice of the hearing at least 30 days before the date of the hearing.

(5) The Department will give public notice of the hearing according to the methods in § 270a.207(1) and (2). A person may submit oral or written statements and data concerning the draft standardized permit before, during or after the public hearing, as long as the Department receives the statements and data during the public comment period. The Department may set reasonable time limits upon the time allowed for oral statements and may require the submission of statements in writing. The Department will make a tape recording or written transcript of the hearing available to the public.

(6) Comments submitted in accordance with this section on the draft standardized permit decision may include the facility's eligibility for the standardized permit, the proposed supplemental conditions, if any, and the need for additional supplemental conditions.

§ 270a.209. Response to comments.

40 CFR 124.209 (relating to what are the requirements for responding to comments?) is not incorporated by reference.

(1) At the time the Department issues a final standardized permit, it will also respond to comments received during the public comment period on the draft standardized permit. The Department's responses will:

(i) Specify which additional conditions, if any, were changed in the final permit and the reasons for the change.

(ii) Briefly describe and respond to all comments on the facility's ability to meet the terms and conditions of the standardized permit, and on any additional conditions necessary to protect human health and the environment.

(2) The Department may request additional information from the facility owner or operator or inspect the

facility if it determines that additional information is necessary to adequately respond to comments or to make decisions regarding the terms and conditions of the standardized permit.

(3) The Department will make its response to public comments available to the public.

§ 270a.210. Procedures to appeal a final standardized permit.

40 CFR 124.210 (relating to may I, as an interested party in the permit process, appeal a final standardized permit?) is not incorporated by reference. The final standardized permit will contain information regarding the procedures to follow to appeal the Department's final permit decision, including the decision that the facility is eligible for the standardized permit. The terms and conditions of the uniform portion of the standardized permit are not subject to appeal.

§ 270a.212. Making routine changes.

Regarding the 40 CFR 124.212 requirements incorporated by reference, the reference to 40 CFR 124.10(c)(1)(ix) and (x) (relating to public notice of permit actions and public comment period) is replaced with § 270a.207(1)(iv)—(vi) (relating to requirements for standardized permit public notices).

§ 270a.214. Making significant changes.

Regarding the requirements incorporated by reference, the reference to 40 CFR 124.31(d) (relating to preapplication public meeting and notice) is replaced with § 270a.83(d) (relating to preapplication public meeting and notice).

[Pa.B. Doc. No. 09-39. Filed for public inspection January 9, 2009, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF COSMETOLOGY

[49 PA. CODE CH. 7]

General Revisions

The State Board of Cosmetology (Board) amends Chapter 7 (relating to State Board of Cosmetology) to read as set forth in Annex A. The rulemaking implements changes made to the act of May 3, 1933 (P. L. 242, No. 86) (63 P. S. §§ 507—527) (act), commonly referred to as the Cosmetology Law, by the act of July 7, 2006 (P. L. 704, No. 99) (Act 99), as well as updates the regulations to strengthen safety and sanitation requirements and to reflect current processes and practices utilized by the Board.

A. *Effective Date*

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

B. *Statutory Authority*

Section 11 of the act (63 P. S. § 517) authorizes the Board to promulgate regulations generally for the conduct of persons, copartnerships, associations or corporations affected by the act. Section 16 of Act 99 requires the Board to promulgate regulations to implement Act 99.

C. *Background and Need for Amendment*

Act 99 made substantial changes to the act by adding a new limited license classification—the natural hair braider license; by making changes to terminology in the act; by making other changes within the act to implement the new natural hair braider license; and by extending to all limited license classes: (1) the ability to practice outside of a licensed salon in a client's residence under specified circumstances; (2) the ability to practice on a temporary license; and (3) the prohibition on booth rental within a licensed salon. These changes require corresponding changes and additions to Chapter 7.

Because the Board needed to make wholesale changes to Chapter 7 to implement Act 99, the Board also took the opportunity to propose a number of other changes to the regulations. Although piecemeal changes have been made to the regulations over the years, generally in response to legislative changes to the act, the Board had not undertaken an overall review and update since 1975. In the intervening period, some of the Board's regulatory provisions have become obsolete, terms of art have changed, standards of sanitation have evolved, some of the Board's licensing and examination processes have changed and deficiencies or errors in the regulations have become apparent. Accordingly, in this rulemaking the Board makes changes, in addition to those required by Act 99, that the Board finds necessary to update the regulations and to address the way the profession and the Board have changed since 1975.

D. *Summary of Comments and the Board's Response*

Notice of proposed rulemaking was published at 37 Pa.B. 4628 (August 25, 2007). During the public comment period, the Board received comments from the Pennsylvania Association of Private School Administrators (PAPSA), York County School of Technology (YCST), the Empire Education Group (Empire), the Pennsylvania Academy of Cosmetology Arts & Sciences, and Debbie Ralph and Lisa Hopkins, two licensed cosmetology teachers. In addition, as part of their review under the Regulatory Review Act (71 P. S. §§ 745.1—745.12), the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) submitted comments. The following represents a summary of the comments received and the Board's response.

HPLC comments:

The HPLC asked if there should be an accreditation provision added to the "school of cosmetology" definition. As the statute currently reads, a school of cosmetology has 5 years from its licensure date to attain accreditation. Therefore, because a school of cosmetology can exist for up to 5 years without being accredited, the Board does not believe it is appropriate to amend the definition as suggested.

The HPLC also asked for a clarification on the provision regarding the time limit for the examination. The HPLC asked if an applicant fails one portion of the cosmetology exam and cannot pass it within the prescribed 1-year time period, do they have to retake both portions of the exam and inquired as to whether there a refresher course offered? Under the circumstances posed by the HPLC, the applicant would be required to retake both portions of the exam. The Board is not aware of the existence of refresher courses.

The HPLC also asked for clarification regarding the requirement of a model for the esthetics exam. The

committee asked whether the practical portion of the esthetics exam requires a live model and, if so, why does the cosmetology exam not require a live model? Applicants for the esthetics exam do need to bring a live model. The esthetics practical exam is a specialized exam and, therefore, is more detailed in the area of the human face than the cosmetology exam. It covers cleansing the face, steaming the face, manual extraction on the forehead, massaging the face, hair removal of the eyebrows, hair removal of the upper lip, application of a facial mask and facial makeup. For many of these tasks, the elasticity of human skin is needed and a mannequin is inadequate to evaluate a candidate's abilities in all of these areas. Because the cosmetology practical exam covers a much broader range of topics, including esthetics as a small portion of the exam, it includes only a basic facial, which can be adequately demonstrated on a mannequin.

The HPLC also requested clarification on the number of hours that students need before they can practice on the public. Section 7.120 (relating to work done by students on the public) states that a school may permit students to work on the public after they have completed at least 300 hours of instruction. However, as the HPLC noted, the limited license categories require a total of 300 hours or less prior to taking the exams. Upon consideration of this comment, the Board determined that the provision intended to require cosmetology students to complete at least 300 of the 1,250 total hours of instruction (or approximately 1/4 of the total hours) prior to working on the public. The Board therefore determined that esthetics students should complete at least 75 hours of instruction prior to working on the public; nail technicians would need 50 hours of instruction; and natural hair braiders would need 75 hours. Section 7.120 has been amended to reflect this determination.

IRRC comments:

IRRC suggested that the Board define "school district" to clarify the Board's intent that the term includes area vocational-technical schools and asked if there is a process for school districts to become accredited to comply with the requirement in § 7.113a (relating to accreditation by a Nationally recognized accrediting agency). The Board intends the term school district to mean a school district, joint vocational school or department, area vocational-technical school or technical institute providing vocational education under Article XVIII of the Public School Code of 1949 (24 P. S. §§ 18-1801—18-1855), and has added a definition as suggested. With regard to accreditation, the Middle States Association of Colleges and Schools Commission on Secondary Education evaluates and accredits institutions providing middle and secondary education, as well as vocational-technical schools that offer nondegree granting postsecondary education. Additionally, the State Board for Vocational-Technical Education is recognized by the United States Department of Education for the accreditation of public postsecondary vocational education institutions and programs offered at career and technical education institutions not offered for college credit. Therefore, school districts and area vocational-technical schools and technical institutes are able to comply with the accreditation requirement without further amendment to the regulations.

IRRC noted that under § 7.31(c) (relating to examination prerequisite for licensure; exception), the Board would accept evidence of prior practice as a natural hair braider without penalty for failure to comply with the licensure provisions prior to the effective date of Act 99 (September 5, 2006). IRRC recommended that the Board amend the final-form rulemaking to provide notice to the regulated community of the nature of these penalties. Section 2 of the act (63 P. S. § 508) makes it unlawful for a person to practice cosmetology, esthetics, natural hair braiding or nail technology without a license. Under section 5 of the act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. § 2205), the Commissioner of Professional and Occupational Affairs promulgated a schedule of civil penalties for violations of the act and regulations of the Board at § 43b.5 (relating to schedule of civil penalties—cosmetologists, manicurists, cosmeticians, shops), which provides for the imposition of a civil penalty of $500 for the first offense of practicing without a license, and formal administrative action for a second or subsequent offense. Therefore, the Board believes that it is not necessary to provide additional notice in this rulemaking as to the nature of the penalties for unlicensed practice. However, the Board did amend the final-form rulemaking to cross-reference section 2 of the act to aid clarity.

IRRC asked for a clarification of the requirement that a first time examinee complete both portions of the exam "within 1 year." This provision is intended to require that once the examinee passes one portion of the exam, the examinee has 1 year to pass the remaining portion. If the examinee fails to do so, he must retake the entire exam. As a result of the apparent confusion about this requirement, § 7.32(c) (relating to deadline for examination applications) has been amended for clarity.

IRRC asked the Board for an explanation of the need for the provision in § 7.32d(d) (relating to requirements for cosmetologist examination) which requires an applicant for the cosmetology exam who holds a limited license (esthetician, nail technician or natural hair braider) seeking education credits complete the entire 1,250 hours, including those completed in the limited practice field, within 4 years. The Board does not want an applicant seeking credit for courses taken, for example, 10 years prior to applying for the exam. There must be a set time period for allowing credit for courses taken in the past. The Board determined that 4 years was a reasonable amount of time to ensure that the information was relevant and still fresh in the applicant's mind.

IRRC noted that the existing language found in § 7.32d relating to applicants that receive training by, or under the auspices of, the Bureau of Rehabilitation in the Department of Labor and Industry is repeated in §§ 7.32e, 7.32f and 7.32h (relating to requirements for esthetician examination; requirements for nail technician examination; and requirements for natural hair braider examination). IRRC inquired as to what is meant by the phrase "under the auspices of." The Board believes this term was intended to mean that the training was sponsored or funded by the Office of Vocational Rehabilitation (OVR) within the Department of Labor and Industry. In responding to this comment, the Board determined that the current entity within the Department of Labor and Industry that provides vocational training to persons with disabilities is the OVR. Therefore, the final-form rulemaking has been amended.

IRRC asked the Board to clarify the language in § 7.41(b) (relating to display of licenses) which requires that "[a]n individual license shall be readily available for inspection . . . ." IRRC was unclear if the language referred to the salon owner's license, the license of an individual working in the salon, or both. A salon owner may or may not hold an individual license. The amended language was intended to convey a change in policy. Prior

to these amendments, all licenses had to be conspicuously displayed, both facility licenses (for salons and schools) and individual licenses, as set forth in § 7.11 (relating to types of individual licenses). Under the amendments, anyone holding an individual license (cosmetology teacher, limited practice teacher, cosmetologist, esthetician, nail technician or natural hair braider) is no longer required to display the individual license, but to merely make sure that the license is available for inspection by the public or a representative of the Board at the salon or school where the individual licensee works. In considering this comment, the Board realized that the rulemaking failed to address school licenses, and has amended § 7.41 by adding a subsection (c) to address school licenses.

IRRC also requested clarification of the requirement under § 7.43(c) (relating to expiration and renewal of licenses) that natural hair braiders provide proof of meeting the education requirement set forth in section 5(b)(3)(ii)(C) of the act within 2 years of initial licensure. IRRC would like to know what kind of proof is necessary. In general, the Board requires an official school transcript from a licensed school of cosmetology as proof of education for all categories of licensees, and expects that the same would be required here. As a result of IRRC's comment, this section was amended to provide examples of the type of documentation that would be acceptable as proof of meeting the education requirement.

IRRC also noted that under § 7.94 (relating to sanitary use of supplies), spatulas and other utensils may not come into contact with the skin or hair. IRRC asked how can it be possible for a tool to avoid contact with the hair? This section has been amended to clarify that the tool may not come into contact with the skin or hair of another client until the tool has been properly disinfected.

Under § 7.111 (relating to application for school license), IRRC noted that the terms "satisfactory experience" and "satisfactory work experience" are vague and asked the Board to specify the type of experience that would be considered acceptable. In response, the Board has amended the final-form rulemaking to delete the vague terminology and to clarify that a school supervisor must have 1,250 hours of experience as a cosmetology teacher and 1,800 hours of experience working as the designated person in charge of a cosmetology salon.

Under § 7.120 (relating to work done by students on public), there was concern expressed by IRRC, as well as all stakeholders that responded to public comment, in reference to the language restricting cosmetology schools from charging for student services only the reasonable cost of materials used on the client only. After reexamining this language, the Board chose to modify this language to state that the school may charge a fee for student services based on reasonable cost of materials used in such treatment. The Board believes the intent of section 7 of the act (63 P. S. § 513), is to preclude a school from charging for the student's labor or otherwise profiting from the clinical work of its students. Therefore, it is reasonable to interpret this section as permitting a school to recoup its costs in providing these services to the public.

Also, like the HPLC, IRRC requested clarification on the number of hours that limited-license holders need before they can practice on the public. In response, the final-form rulemaking was amended as described previously.

Public comments:

The PAPSA provided comments on behalf of the following cosmetology schools: Beaver Falls Beauty Academy, Kittanning Beauty School, New Castle Beauty School, Butler Beauty School, Laurel Business Institute, 19 Empire Beauty Schools, Pruonto's Hair Design, DeRielle Designworks Academy, Altoona Beauty School, Jean Madeline Education Center, Lancaster School of Cosmetology, Bucks County School of Beauty Culture, Venus Beauty Academy, Douglas Beauty Center, Penn Commercial, 4 McCann Schools of Business, Pennsylvania Beauty Academy and Punxy Beauty School. The Board also received comments from Empire, YCST, the Pennsylvania Academy of Cosmetology Arts & Sciences and two licensed cosmetology teachers. The following discussion groups similar comments under the relevant section heading.

§ 7.1 (relating to definitions)

PAPSA commented that the definition of "esthetics" is incomplete and asked that the terms "eyelash perming" and "the use of industry standard mechanical and electrical apparatus" be added to the definition of "Esthetics." The Board amended the definition to address PAPSA's concerns. PAPSA also noted that the definition of "natural hair braider" should include "cut" as an exclusion, thereby clarifying that natural hair braiders are not permitted to cut hair. The Board has made the suggested amendment.

Cosmetology teacher Lisa Hopkins asked if natural hair braiding included the application of heat from a straightening comb or ceramic iron to prepare the hair for weaving purposes. The Board considered this question and determined that natural hair braiding would include the use of such appliances, and has amended the definition to clarify this issue.

Cosmetology teacher Debbie Ralph questioned the definition of esthetics. The definition of esthetics is set forth by statute and, while the Board may clarify the definition by regulation, it may not change or expand the definition.

§ 7.31 (relating to examination prerequisite for licensure; exceptions)

PAPSA and Empire were unclear as to what constituted acceptable proof of 3 years work experience for "grandfathered" hair braiders. The Board believes that the statute and regulations are clear. An individual seeking licensure as a natural hair braider without examination must produce tax records that demonstrate employment in the natural hair braiding profession for 3 consecutive years immediately prior to the date of application for licensure, as well as an affidavit from the applicant and the applicant's immediate supervisor, where applicable. The form of the required affidavit is provided on the natural hair braider application.

§§ 7.32 and 7.35 (relating to deadline for examination applications; and failure of examination)

PAPSA and Empire asked what the consequences were for not noncompliance with the provision that requires applicants to take and pass both portions of an exam within 1 year. As discussed previously, the Board intends these provisions to require that an applicant pass both portions of the exam within 1 year of passing the first portion of the exam. If both portions of the exam are not taken and passed within a 1-year period, the applicant will have to take both portions again until the applicant is successful. There are no sanctions or refresher courses being imposed by the Board. The consequence is that the Board simply will not license an applicant until the applicant meets this requirement.

§ 7.32d (relating to requirements for cosmetologist examination)

PAPSA was unclear as to when a school may accept transfer hours from a student and asked the Board to clarify the language in § 7.32d. PAPSA asked how a school could award transfer hours to someone with a limited license who has not practiced in 4 or 5 years or to someone who received a license 10—15 years ago and have only practiced sporadically or how a school could transfer hours to someone that cannot pass a school administered practical or theory exam? The Board did not intend by this language to mandate that schools accept all transfer hours from limited licensees. As noted previously, subsection (d) requires all 1,250 hours, including those hours completed for a limited license, be completed within 4 years. Subsection (c) is intended to provide credit for recently-acquired education credits. PAPSA recommended that the Board modify the current language so that it reads that an applicant will be given credit for "up to X hours." The Board agreed and has made this amendment to the final-form rulemaking.

Debbie Ralph suggested that because the nail technology and esthetics curricula should be the same as that covered in the cosmetology curriculum, schools should be permitted to grant credit for all of the coursework completed by licensed estheticians or nail technicians, if the school wishes. This, she noted, is especially true for schools that teach all three curricula. A student should be able to transfer all 200 or 300 hours when switching to the cosmetology curriculum. The Board considered this comment, but determined that no change would be made to the rulemaking. Not all schools teach exactly the same curricula. The Board determined that it would grant credit for recently-acquired courses that teach the skills which are also taught in the cosmetology curriculum.

§ 7.32h (relating to requirements for natural hair braider examination)

Debbie Ralph suggested that § 7.32h is unclear as to whether an individual needs a 10th grade education or be 16 years of age, or both. The Board believes the statute and the regulation are clear. An applicant for the natural hair braider examination must be 16 years of age or older. In addition, the applicant must have completed a 10th grade education or its equivalent, or received training from the OVR, unless the applicant is a veteran or is 35 years of age or older. If the applicant is a veteran or is 35 years of age or older, there is no inquiry into whether the individual completed a 10th grade education or received training from OVR. Finally, the individual must have completed 300 hours of training in natural hair braiding at a licensed school of cosmetology.

§ 7.34 (relating to models for practical portion of examination)

Empire suggested that the Board clearly state that live models are only required for the esthetics exam and that mannequins are acceptable for other exams. The Board has amended the final-form rulemaking to clarify this issue.

§ 7.41(b) (relating to display of licenses)

Empire suggested that the Board clarify that all individual licenses, including those applicable to schools, do not have to be displayed but rather readily available for inspection. Empire also pointed out that subsection (a) only refers to salons, and it could be construed as only applicable to individuals licensed and working in salons. The Board believes that the amendments to this section clarify the Board's intent discussed previously. Salon and school licenses must be displayed conspicuously. Individual licenses (cosmetology teacher, limited practice teacher, cosmetologist, esthetician, nail technician or natural hair braider) must be readily available for inspection at the salon or school, as applicable.

§ 7.43(c) (relating to expiration and renewal of licenses)

PAPSA raised concerns that there were no sanctions for natural hair braiders that fail to comply with the required 150 hours of education within 2 years of initial licensure. Because the statute makes this a requirement of renewal of a license, the license of any "grandfathered" natural hair braider who fails to complete the 150 hours will not be renewed. In addition, violation of this provision of the statute and regulations will result in disciplinary action under section 13 of the act (63 P. S. § 519), which authorizes the Board to refuse, revoke, refuse to renew or suspend a license on proof on a violation of any of the provisions of the act or the rules and regulations established by the Board.

Lisa Hopkins, a cosmetology teacher, commented that the "grandfathered" natural hair braiders should need to demonstrate skills in locking and weaving as part of the 150 hours of training to be completed during the first 2 years of licensure. The Board considered this comment and agreed that, at a minimum, grandfathered natural hair braiders should complete 25 hours of locking and weaving as part of the 150 hours and has made amendments to this section to accommodate this change.

§ 7.71 (relating to equipment and supplies for a cosmetology salon)

Debbie Ralph stated that the Milady textbook teaches that putting tools in an airtight container will ruin them. The Board notes that nowhere does the Board require tools be stored in an airtight container.

§ 7.71c. (relating to equipment and supplies for a natural hair braiding salon)

Lisa Hopkins raised concerns that the equipment requirements for a hair braiding salon could be financially burdensome in requiring multiple shampoo bowls or basins for more than one braider. The regulations provide for the minimum equipment necessary for one hair braider and require that for each additional hair braider, equipment and supplies be increased such that each natural hair braider can render services safely and efficiently. This issue can be addressed on an individual, case-by-case basis as the salon is inspected.

§ 7.111 (relating to application for a school license)

Debbie Ralph asked if the school supervisor is "back to having a cosmetology license." The Board notes that § 7.111(a)(2)(i) requires a school supervisor to hold a cosmetology teacher license.

§ 7.120 (relating to work done by students on public)

PAPSA, Empire, the Pennsylvania Academy of Cosmetology Arts & Sciences and Debbie Ralph were also concerned that restricting cosmetology schools in charging for student services to only the reasonable cost of materials used on the client would have a severe impact on students, schools and salons. After re-examining this language, the Board chose to modify this language to state that the school may charge for student services based on reasonable costs of materials, as previously discussed. The Board believes the intent of section 7 of the act, is to preclude a school from charging for the student's labor or otherwise profiting from the clinical work of its students. Therefore, it is reasonable to

interpret this section as permitting a school to recoup its costs in providing these services to the public.

Empire and Lisa Hopkins also commented on the provision requiring a student to complete 300 hours of training prior to being permitted to work on the public. As discussed previously, the Board agrees with their analysis that this provision clearly was intended to refer only to cosmetology students and has amended the rulemaking to permit students of esthetics and natural hair braiding to work on the public with 75 hours of training, and students of nail technology to begin working on the public after 50 hours of training.

§ 7.129 (relating to curriculum requirements)

PAPSA stated that the current language in § 7.129 which states that the cosmetology curriculum "must" comprise 1,250 hours, is too restrictive in that many programs require more than 1,250 hours because of degree requirements and other reasons. PAPSA suggested that this be changed to read "a minimum of" 1,250 hours. The Board agreed and has amended each of the curricula requirements (cosmetology, esthetics, nail technology and natural hair braiding) to clarify that the Board is establishing minimum standards.

YCST made some recommendations for altering the language under the basic cosmetology curriculum relating to cosmetology skills—cognitive and manipulative. The Board has amended this section to include conditioning, chemical texturizing and makeup, as suggested.

In addition, YCST asked if it is still necessary for the teacher curriculum to have salon management theory since the recent change eliminating the cosmetology manager's license and because the cosmetologist curriculum already covers business practices. The Board believes it is necessary to continue to include salon management theory in the teacher curriculum because salon management theory goes beyond basic business practices. With the elimination of the cosmetology manager's license, any cosmetologist could be placed in responsible charge of a salon. Therefore, cosmetology teachers must be knowledgeable in salon management theory to prepare cosmetologists for this role.

YCST asked whether business practices should be covered under the esthetics, nail technology and natural hair braiding curricula. The Board has determined that similar material is taught under the "professional practices" portion of these curricula, and therefore, has made no change to the regulations based on this comment.

Lisa Hopkins raised concerns about existing cosmetology teachers lacking skills in the manipulative skills of braiding, locking or weaving, and may not be qualified to teach the natural hair braiding curriculum. The Board notes that it is each individual cosmetology school's responsibility to assure that their faculty is qualified.

E. *Description of Amendments to Final Rulemaking*

§ 7.1 (relating to definitions)

The Board amended the definition of esthetics to clarify that it includes eyelash perming and the use of industry standard mechanical and electrical apparatus and appliances in the practice of the profession. The Board also amended the definition of natural hair braiding to clarify that the term includes the application of heat by the use of a straightening comb, ceramic iron or similar appliance to prepare the hair for manipulation; and that it does not include cutting the hair. Finally, the Board added a definition of school district to clarify that the term is intended to include any school district, joint vocational school or department, area vocational-technical school or technical institute that provides vocational education under Article XVIII of the Public School Code of 1949.

§ 7.31 (relating to examination prerequisites for licensure; exceptions)

The Board amended § 7.31(c) to add a cross reference to section 2 of the act, which makes it unlawful for a person to practice cosmetology, esthetics, natural hair braiding or nail technology without a license, to clarify the Board's intent to forego prosecution of any unlicensed practice by natural hair braiders that occurred prior to the effective date of Act 99 of 2006, which created the separate licensure classification for natural hair braiders.

§ 7.32 (relating to deadline for examination applications)

The Board amended § 7.32(c) to clarify that both the theoretical and practical portions of the exam must be passed within 1 year of the date the first portion is passed.

§ 7.32b (relating to requirements for teacher examinations)

The Board amended § 7.32b(a)(4) and (b)(4) to clarify that applicants for the teacher exam must have completed "a minimum of" 500 hours of instruction in a teacher curriculum prior to taking the exam.

§ 7.32d (relating to requirements for cosmetologist examination)

The Board corrected the reference to the Office of Vocational Rehabilitation in the Department of Labor and Industry. In addition, the Board amended this section to clarify that the cosmetology education is "a minimum of" 1,250 hours of instruction. The Board also amended subsection (c) to clarify that an applicant for the cosmetologist exam that already holds an active esthetician license issued by the Board may obtain credit for "up to" 160 hours toward the total 1,250 hours required for a cosmetology license; a licensed nail technician may obtain credit for "up to" 100 hours; and a licensed natural hair braider may obtain credit for "up to" 125 hours.

§ 7.32e (relating to requirements for esthetician examination)

The Board corrected the reference to the Office of Vocational Rehabilitation in the Department of Labor and Industry and amended the section to clarify that the esthetician education is "a minimum of" 300 hours of instruction.

§ 7.32f (relating to requirements for nail technician examination)

The Board corrected the reference to the Office of Vocational Rehabilitation in the Department of Labor and Industry and amended the section to clarify that the nail technician education is "a minimum of" 200 hours of instruction.

§ 7.32h (relating to requirements for natural hair braider examination)

The Board corrected the reference to the Office of Vocational Rehabilitation in the Department of Labor and Industry and amended the section to clarify that the natural hair braider education is "a minimum of" 300 hours of instruction.

§ 7.34 (relating to models for practical portion of examination)

The Board amended this section to clarify that only the practical portion of the esthetics examination requires a live model. All other exams require the use of a mannequin.

§ 7.41 (relating to display of licenses)

The Board added subsection (c) to address the display of school licenses.

§ 7.43 (relating to expiration and renewal of licenses)

The Board amended subsection (c) to require that a "grandfathered" natural hair braider must complete only 50 hours in scalp care and 25 hours in locking and weaving as part of the 150 hours that is required to be completed as a condition of renewal of a license. The Board also amended subsection (c) to clarify the types of documentation that would be acceptable as proof of meeting the education requirements.

§ 7.94 (relating to sanitary use of supplies)

The Board amended subsection (c) to clarify that the utensils may not be permitted to come into contact with the skin or hair of another client until they are properly disinfected.

§ 7.111 (relating to application for a school license)

The Board amended subsection (a)(2) to clarify that a school supervisor must have acquired 1,250 hours of experience as a cosmetology teacher and 1,800 hours of experience as the designated person in charge of a cosmetology salon.

§ 7.120 (relating to work done by students on the public)

The Board amended subsection (a) to clarify that the school may charge a fee that reflects the reasonable cost of materials used in the treatment of clients. The Board believes the intent of section 7 of the act, is to preclude a school from charging for the student's labor or otherwise profiting from the clinical work of its students. Therefore, it is reasonable to interpret this section as permitting a school to recoup its costs in providing these services to the public. In addition, the Board clarified that cosmetology students must complete at least 300 hours of instruction prior to working on the public; esthetics students must complete at least 75 hours of instruction to work on the public; nail technology students must complete at least 50 hours of instruction to work on the public; and natural hair braiding students must complete at least 75 hours of instruction to work on the public.

§ 7.129 (relating to curriculum requirements)

The Board amended this section to clarify that each of the curricula requirements establish minimum requirements. The Board also amended the cosmetology curriculum to include conditioning, chemical texturizing and makeup.

F. *Fiscal Impact and Paperwork Requirements*

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

G. *Sunset Date*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 4628, to IRRC, the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the HPLC for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC, the SCP/PLC and the HPLC with copies of comments received as well as other documents when requested. In preparing the final-form regulations, the Board has considered the comments received 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)), the final-form regulations was approved by the HPLC on November 17, 2008, and deemed approved by the SCP/PLC on December 17, 2008. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 18, 2008, and approved the final-form regulations.

I. *Contact Person*

Further information may be obtained by contacting C. William Fritz, II, Board Counsel, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649.

J. *Findings*

The Board finds that:

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

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

(3) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 37 Pa.B. 4628.

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

K. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 7, are amended by amending §§ 7.1, 7.2, 7.11, 7.12, 7.14, 7.14a, 7.15, 7.31, 7.31a, 7.32, 7.32a, 7.32b, 7.32d, 7.32e, 7.32f, 7.32g, 7.34, 7.35, 7.41, 7.43, 7.45, 7.50—7.53, 7.62, 7.64—7.66, 7.71, 7.71a, 7.71b, 7.75, 7.76—7.79, 7.81—7.83, 7.90—7.95, 7.98, 7.100, 7.111, 7.114, 7.115, 7.118, 7.118a, 7.120, 7.123, 7.125, 7.128, 7.129 and 7.131—7.134 and by adding §§ 7.12a, 7.17 and 7.32h to read as set forth in Annex A.

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

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

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

SUSAN E. RINEER,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 104 (January 3, 2009).)

Fiscal Note: Fiscal Note 16A-4514 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 7. STATE BOARD OF COSMETOLOGY

GENERAL PROVISIONS

§ 7.1. Definitions.

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

Act—The act of May 3, 1933 (P. L. 242, No. 86) (63 P. S. §§ 507—527), known as the Cosmetology Law.

Board—The State Board of Cosmetology.

Booth space—The area of a salon in which a licensed cosmetologist or a holder of a limited license provides to a client a service for which a license is required under the act.

Braiding—Intertwining the hair in a systematic motion to create patterns in a three-dimensional form, inverting the hair against the scalp along part of a straight or curved row of intertwined hair, or twisting the hair in a systematic motion, including extending the hair with natural or synthetic hair fibers.

Bureau—The Bureau of Professional and Occupational Affairs in the Department of State.

Cosmetologist—A licensed individual who is engaged in the practice of cosmetology.

Cosmetology—

(i) Any or all work done for compensation by any person, which work is generally and usually performed by cosmetologists, which work is for the embellishment, cleanliness and beautification of the human hair, such as arranging, braiding, dressing, curling, waving, permanent waving, cleansing, cutting, singeing, bleaching, coloring, pressing, or similar work thereon and thereabout, and the removal of superfluous hair, and the massaging, cleansing, stimulating, manipulating, exercising, or similar work upon the scalp, face, arms or hands, or the upper part of the body, by the use of mechanical or electrical apparatus or appliances or cosmetics, preparations, tonics, antiseptics, creams or lotions, or by any other means, and of manicuring the nails, which enumerated practices shall be inclusive of the term cosmetology but not in limitation thereof.

(ii) The term also includes the acts comprising the practice of nail technology, natural hair braiding and esthetics.

Department—The Commissioner of Professional and Occupational Affairs in the Department of State.

Esthetics—

(i) The practice of massaging the face, applying cosmetic preparations, antiseptics, tonics, lotions or creams to the face, removing superfluous hair by tweezers, depilatories or waxes, eyelash perming and the dyeing of eyelashes and eyebrows.

(ii) The term includes the use of industry standard mechanical and electrical apparatus and appliances in the practice of esthetics.

Esthetician—An individual licensed by the Board to practice esthetics.

Lavatory—A working toilet and a working sink with hot and cold running water that are located in a separate room that affords privacy to the user.

Limited license—A license issued by the Board to an individual which permits that individual to engage in the practice of esthetics, natural hair braiding or nail technology.

Limited practice salon—A salon licensed by the Board for the provision of esthetician services, nail technology services or natural hair braiding services only.

Limited practice teacher—A teacher licensed by the Board for the purpose of providing instruction in the area of esthetics, nail technology or natural hair braiding only.

Nail technician—An individual licensed by the Board to engage in the practice of nail technology.

Nail technology—The practice of manicuring the nails of an individual, applying artificial or sculptured nails to an individual, massaging the hands of an individual or massaging the lower arms of an individual up to the individual's elbow, massaging the feet of an individual or the lower legs of an individual up to the individual's knee, or a combination of these acts.

Natural hair braider—An individual licensed by the Board to engage in the practice of natural hair braiding.

Natural hair braiding—

(i) The practice of utilizing techniques that result in tension on hair roots of individuals, such as twisting, wrapping, weaving, extending, locking or braiding of the hair. The term includes the application of heat by the use of a straightening comb, ceramic iron or similar appliance to prepare the hair for manipulation.

(ii) The term does not include cutting the hair or the application of dyes, reactive chemicals or other preparations to alter the color or to straighten, curl or alter the structure of hair.

School of cosmetology—Any individual, partnership, association, business corporation, nonprofit corporation, municipal corporation, school district or any group of individuals however organized whose purpose is to provide courses of instruction in cosmetology or the teaching of cosmetology.

School district—A school district, joint vocational school or department, area vocational-technical school or technical institute providing vocational education under Article XVIII of the Public School Code of 1949 (24 P. S. §§ 18-1801—18-1855).

Tanning units—Equipment that utilizes ultraviolet light for the purpose of cosmetic tanning.

§ 7.2. Fees.

Fees charged by the Board are as follows:

Licensure of cosmetologist, nail technician, esthetician or natural hair braider	$10
Licensure of cosmetology teacher or limited practice teacher	$10
Licensure of cosmetology salon or limited practice salon	$55
Licensure by reciprocity	$20
Registration of cosmetology apprentice	$70
Biennial renewal of nail technician license	$35

Biennial renewal of esthetician license $35

Biennial renewal of cosmetologist license $35

Biennial renewal of natural hair braider license ... $35

Biennial renewal of cosmetology teacher or limited practice teacher license $55

Biennial renewal of cosmetology salon or limited practice salon license $60

Biennial renewal of cosmetology school license ... $150

Approval of cosmetology school supervisor $20

Change in cosmetology salon or limited practice salon (inspection required). $55

Change in cosmetology salon or limited practice salon (no inspection required). $15

Change in cosmetology school (inspection required) $110

Change in cosmetology school (no inspection required) $35

Reinspection of cosmetology salon or limited practice salon or cosmetology school $40

Certification of student or apprentice training hours $30

Verification of license, registration, permit or approval $15

INDIVIDUAL LICENSES

§ 7.11. Types of individual licenses.

The following licenses are issued by the Board to qualified individuals under the act:

(1) Cosmetology teacher.

(2) Limited practice teacher.

(3) Cosmetologist.

(4) Esthetician.

(5) Nail technician.

(6) Natural hair braider.

§ 7.12. Scope of cosmetology teacher license.

An individual holding a cosmetology teacher license is qualified, without further licensure, to perform the functions of a teacher, cosmetologist, esthetician, nail technician or natural hair braider.

§ 7.12a. Scope of limited practice teacher license.

(a) An individual holding a limited practice teacher license in esthetics is qualified, without further licensure, to teach esthetics in a licensed school of cosmetology and to perform the functions of an esthetician.

(b) An individual holding a limited practice teacher license in nail technology is qualified, without further licensure, to teach nail technology in a licensed school of cosmetology and to perform the functions of a nail technician.

(c) An individual holding a limited practice teacher license in natural hair braiding is qualified, without further licensure, to teach natural hair braiding in a licensed school of cosmetology and to perform the functions of a natural hair braider.

§ 7.14. Scope of cosmetologist license.

An individual holding a cosmetologist license is qualified, without further licensure, to perform the functions of a cosmetologist, esthetician, nail technician or natural hair braider.

§ 7.14a. Scope of esthetician license.

An individual holding an esthetician license is qualified to perform esthetician services only.

§ 7.15. Scope of nail technician license.

An individual holding a nail technician license is qualified to perform nail technology services only.

§ 7.17. Scope of natural hair braider license.

An individual holding a natural hair braider license is qualified to perform natural hair braiding services only.

EXAMINATIONS

§ 7.31. Examination prerequisite for licensure; exceptions.

(a) Except as provided in subsections (b) and (c), an individual who wants to obtain a cosmetology teacher, limited practice teacher, cosmetologist, esthetician, nail technician or natural hair braider license listed in §§ 7.12—7.17 shall pass the examination required by the Board for that license.

(b) An individual who meets the criteria for licensure by reciprocity under section 9 of the act (63 P. S. § 515) may obtain a license without examination.

(c) Until January 11, 2010, the Board will issue a natural hair braider license to an applicant who does the following:

(1) Submits the application adopted by the Board.

(2) Pays the required licensing fee in § 7.2 (relating to fees).

(3) Provides proof that the applicant has practiced natural hair braiding for 3 consecutive years immediately prior to the date of the application for licensure.

(i) Proof of practice requires that the applicant provide tax records of employment and an affidavit from the applicant and the applicant's immediate supervisor, where applicable, verifying the applicant's practice of natural hair braiding for 3 consecutive years immediately prior to the date of the licensure application.

(ii) The Board will accept the information provided and will impose no penalty upon the applicant for failure to comply with the licensing provisions in section 2 of act (63 P. S. § 508), that the applicant committed prior to September 5, 2006, which is the effective date of the act of July 7, 2006 (P. L. 704, No. 99).

§ 7.31a. Examination dates and locations.

Licensing examinations are given monthly in Philadelphia, Pittsburgh, Harrisburg and additional locations established by the examination administrator after consultation with the Board.

§ 7.32. Deadline for examination applications.

(a) The deadline for submitting an examination application is 1 month prior to the testing date for the specific location where the applicant intends to take the exam, a date established by the examination administrator.

(b) The application of a first-time examinee will not be processed unless the application is property completed as set forth in § 7.32a (relating to contents of examination).

(c) A first-time examinee shall complete and pass both the theoretical and practical portions of the exam within 1 year of the date the first portion is passed. If the exam provider changes, the Board retains the discretion to grant exceptions to this 1-year requirement to facilitate the transition from one exam provider to another.

§ 7.32a. Contents of examination application.

(a) The application of a first-time examinee must include the following:

(1) Proof of having met the requirements for the examination applied for as set forth in §§ 7.32b—7.32h.

(2) A physician's certification that the applicant is free from contagious, communicable or infectious diseases.

(3) The examination fee set by the professional testing organization and the license fee prescribed in § 7.2 (relating to fees).

(b) The application of a reexaminee shall be accompanied by the examination fee set by the professional testing organization.

§ 7.32b. Requirements for teacher examinations.

(a) An applicant for the cosmetology teacher examination shall:

(1) Be 18 years of age or older.

(2) Have completed a 12th grade education or its equivalent.

(3) Possess a current cosmetologist license.

(4) Have completed a minimum of 500 hours of instruction in a cosmetology teacher curriculum provided by a licensed school of cosmetology.

(b) An applicant for the limited practice teacher examination in esthetics, nail technology or natural hair braiding shall:

(1) Be 18 years of age or older.

(2) Have completed a 12th grade education or its equivalent.

(3) Possess a current limited license in the relevant limited practice field.

(4) Have completed a minimum of 500 hours of instruction in a cosmetology teacher or limited practice teacher curriculum provided by a licensed school of cosmetology.

(c) An applicant who has already obtained a limited practice teacher license in one of the limited practice fields and desires to obtain a limited practice teacher license in an additional limited practice field shall:

(1) Meet the requirements in subsection (b) for the additional limited practice field.

(2) Successfully complete the practical portion of the teacher examination for the additional limited practice field in which the applicant desires to become a licensed teacher.

§ 7.32d. Requirements for cosmetologist examination.

(a) An applicant for the cosmetologist examination who holds no limited licenses shall:

(1) Be 16 years of age or older.

(2) Except as provided in subsection (b), have done one of the following:

(i) Completed a 10th grade education or its equivalent.

(ii) Received training from or under the auspices of the Office of Vocational Rehabilitation in the Department of Labor and Industry.

(3) Have done one of the following:

(i) Completed a minimum of 1,250 hours of instruction in cosmetology, within a period of not less than 8 consecutive months, as a day-time student in a licensed school of cosmetology.

(ii) Completed a minimum of 1,250 hours of instruction in cosmetology, within a period of not less than 15 consecutive months, as a night-time student in a licensed school of cosmetology.

(iii) Completed 2,000 hours of training in a Board-approved cosmetology apprentice program.

(b) Subsection (a)(2), does not apply to an applicant who is one of the following:

(1) A veteran.

(2) Thirty-five years of age or older.

(c) An applicant for the cosmetologist examination who holds one or more active limited licenses issued by the Board and who obtained educational credits through a licensed cosmetology school will be given credit for the number of educational hours obtained to qualify for the active limited license or licenses as follows:

(1) An applicant who holds an active esthetician license will be given credit for up to 160 hours toward the total cosmetology training program of 1,250 hours.

(2) An applicant who holds an active nail technician license will be given credit for up to 100 hours toward the total cosmetology training program of 1,250 hours.

(3) An applicant who holds an active natural hair braider license will be given credit for up to 125 hours toward the total cosmetology training program of 1,250 hours.

(d) An applicant seeking credit for educational credits under subsection (c) shall complete the total of 1,250 cosmetology training hours, including those already completed in the limited license practice field for which the applicant is seeking credit, within 4 consecutive years.

§ 7.32e. Requirements for esthetician examination.

(a) An applicant for the esthetician examination shall:

(1) Be 16 years of age or older.

(2) Except as provided in subsection (b), have done one of the following:

(i) Completed a 10th grade education or its equivalent.

(ii) Received training from or under the auspices of the Office of Vocational Rehabilitation in the Department of Labor and Industry.

(3) Have completed a minimum of 300 hours of instruction in skin care in a licensed school of cosmetology.

(b) Subsection (a)(2) does not apply to an applicant who is one of the following:

(1) A veteran.

(2) Thirty-five years of age or older.

§ 7.32f. Requirements for nail technician examination.

(a) An applicant for the nail technician examination shall:

(1) Be 16 years of age or older.

(2) Except as provided in subsection (b), have done one of the following:

(i) Completed a 10th grade education or its equivalent.

(ii) Received training from or under the auspices of the Office of Vocational Rehabilitation in the Department of Labor and Industry.

(3) Have completed a minimum of 200 hours of instruction in nail technology in a licensed school of cosmetology.

(b) Subsection (a)(2) does not apply to an applicant who is one of the following:

(1) A veteran.

(2) Thirty-five years of age or older.

§ 7.32g. Issuance of temporary licenses to qualified examination applicants.

(a) A temporary license may be issued to an applicant who is eligible for admission to the cosmetologist examination or to any limited license examination and who pays the examination fee set by the professional testing organization and the license fee prescribed in § 7.2 (relating to fees). The purpose of a temporary license is to allow an otherwise qualified applicant to practice pending the applicant's scoring a passing grade on the examination.

(b) A temporary license is valid for 9 months.

(c) The holder of a temporary cosmetologist license shall practice under the supervision of a licensed cosmetology teacher or cosmetologist. The holder of a temporary limited license shall practice under the supervision of a licensed cosmetology teacher, cosmetologist, limited practice teacher in the corresponding limited practice field or holder of a corresponding limited license.

§ 7.32h. Requirements for natural hair braider examination.

(a) An applicant for the natural hair braider examination shall:

(1) Be 16 years of age or older.

(2) Except as provided in subsection (b), have done one of the following:

(i) Completed a 10th grade education or its equivalent.

(ii) Received training from or under the auspices of the Office of Vocational Rehabilitation in the Department of Labor and Industry.

(3) Have completed a minimum of 300 hours of Board-approved subject relating to sanitation, scalp care, anatomy and natural hair braiding in a licensed school of cosmetology.

(b) Subsection (a)(2) does not apply to an applicant who is one of the following:

(1) A veteran.

(2) Thirty-five years of age or older.

§ 7.34. Models for practical portion of examination.

An examinee taking the practical part of the esthetics examination shall bring with him a live model. An examinee taking the practical part of any other exam shall bring a mannequin.

§ 7.35. Failure of examination.

An examinee who fails either the practical or theoretical part of the examination for a cosmetology teacher, limited practice teacher, cosmetologist, esthetician, nail technician or natural hair braider license will be required to retake and pass the failed portion of the examination within 1 year of the date the examinee takes and passes the other portion of the examination.

DISPLAY, LOSS AND RENEWAL OF LICENSES AND PERMITS

§ 7.41. Display of licenses.

(a) A salon license issued by the Board shall be displayed in a conspicuous place within the business premises of the salon.

(b) An individual license shall be readily available for inspection by the public or representatives of the Board at the place of business or employment of the individual holding the license.

(c) A school license issued by the Board shall be displayed in a conspicuous place within the premises of the school.

§ 7.43. Expiration and renewal of licenses.

(a) Licenses issued by the Board expire at biennial intervals. A license renewal notice is mailed to each licensee approximately 4 weeks before the license expiration date. Renewal of the license is accomplished by submission of the license renewal application and the license renewal fee prescribed in § 7.2 (relating to fees).

(b) A licensee who fails to file the biennial renewal application or pay the required biennial renewal fee by the renewal date shall have the license classified as unregistered. As long as a licensee holds an unregistered license, the licensee is not permitted to practice in this Commonwealth. A licensee who practices during a period in which the license was unregistered shall be required to pay a penalty fee of $5, as prescribed in § 7.2, for each month or part of a month that the licensee practices since the expiration of the biennial renewal and may be subject to disciplinary proceedings before the Board or criminal prosecution, or both.

(c) Within 2 years of the initial issuance of a natural hair braider license issued without examination under § 7.31(c) (relating to examination prerequisite for licensure; exceptions), the natural hair braider licensee shall provide to the Board a certified copy of a school transcript, a certified copy of a scholastic record required by § 7.119 (relating to student records), or an equivalent document certified by a licensed school of cosmetology, that demonstrates that the licensee has completed 150 hours of education from a licensed school of cosmetology as a condition of renewal of the license. The 150 hours of education must include, at a minimum:

(1) Fifty hours in scalp care.

(2) Fifty hours in hygiene.

(3) Twenty-five hours in occupational safety, the provisions of the act and this chapter.

(4) Twenty-five hours in natural hair braiding techniques, such as locking and weaving.

§ 7.45. Reexamination if the license is not current for 5 or more years.

The holder of a cosmetology teacher, limited practice teacher, cosmetologist, esthetician, nail technician or natural hair braider license that has been expired or in escrow for at least 5 years shall retake and pass the practical part of the examination for that license before submitting a renewal application.

LICENSURE AND MANAGEMENT OF SALONS

§ 7.50. Applicability of requirements.

The requirements of §§ 7.51—7.53, 7.65 and 7.71—7.71b, 7.75—7.78, 7.81 and 7.82, apply equally to cosmetology salons, esthetician salons, nail technology salons and natural hair braiding salons, unless the context indicates otherwise.

§ 7.51. Application for a salon license.

(a) An owner-applicant for a salon license shall submit a license application to the Board with the following:

(1) A sketch plan showing the layout of the salon, including the position of the doors, windows, partitions, shampoo basins, lavatories, adjustable chairs and other floor equipment.

(2) The name and license number of the individual who will be the designated person in charge of the salon in the absence of the owner.

(3) The salon license fee prescribed in § 7.2 (relating to fees).

(b) A license will not be issued until the Board has verified the sworn statements made by the owner-applicant in the application and the salon has been inspected by a Bureau inspector for compliance with the facility requirements of this chapter. If the inspector determines that the salon meets the facility requirements of the act and this chapter, a license will be issued.

§ 7.52. Change of location or physical dimensions.

(a) A salon license is valid only for the location stated on the license. The owner of a salon who wishes to change its location shall submit an application to the Board for a change of salon location together with the information required in § 7.51 (relating to application for salon license) and the fee for change of salon location prescribed in § 7.2 (relating to fees). The application will be processed in the manner prescribed by § 7.51.

(b) A salon owner shall submit to the Board for its approval a sketch plan of any proposed change in the physical dimensions of the salon.

§ 7.53. Change of ownership.

The owner of a salon shall immediately notify the Board in writing of a change in the controlling ownership of the salon. If a partner or co-owner is being added or deleted, the owner shall submit to the Board an application for change of license and the fee for change of license prescribed in § 7.2 (relating to fees).

§ 7.62. Management of salons.

(a) A cosmetology salon shall be managed by the salon owner or, in the absence of the salon owner, a person in charge designated by the salon owner.

(b) The designated person in charge shall be a licensed cosmetologist, except as follows:

(1) In the case of an esthetician salon, the designated person in charge may be either a licensed cosmetologist or a licensed esthetician.

(2) In the case of a nail technology salon, the designated person in charge may be either a licensed cosmetologist or a licensed nail technician.

(3) In the case of a natural hair braiding salon, the designated person in charge may be either a licensed cosmetologist or a licensed natural hair braider.

(c) Both the owner and the designated person in charge are responsible for posting the name of the owner or designated person in charge in a conspicuous place in the salon as required by section 4.4(b) of the act (63 P. S. § 510.4(b)).

(d) The owner or designated person in charge of the salon shall be readily available in person to Bureau inspectors during regular business hours.

§ 7.64. Responsibilities of salon owner or designated person in charge.

(a) The primary responsibilities of a salon owner and designated person in charge are the administration of the business and personnel affairs of the salon and to assure compliance within the salon with all laws of the Commonwealth, this chapter and the Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

(b) A salon owner or designated person in charge will be subject to disciplinary action by the Board for a violation of the act or this chapter committed by a licensed employee of the salon, if the owner or designated person in charge had knowledge of, or control over, the violation or should have had knowledge or control.

§ 7.65. Rental of booth space.

The rental of booth space within a salon is prohibited.

§ 7.66. Discrimination.

It is prohibited for any person to refuse, withhold from, or deny to any person because of the person's race, color, religious creed, ancestry or National origin, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of a cosmetology, esthetician, nail technology or natural hair braiding salon.

PHYSICAL REQUIREMENTS OF A SALON

§ 7.71. Equipment and supplies for a cosmetology salon.

(a) A cosmetology salon must contain the following equipment, which is considered the minimum equipment needed for a salon with one cosmetologist:

(1) One adjustable chair.

(2) One styling station with mirror.

(3) One labeled first aid kit containing the following items:

(i) An antiseptic.

(ii) Cotton balls.

(iii) Protective plastic or latex gloves.

(iv) A blood spill kit.

(v) A hazardous waste bag.

(vi) Eyewash.

(vii) Burn ointment.

(viii) Plastic or latex bandage strips of varying sizes and shapes.

(ix) Sterile gauze pads.

(4) One dryer or blow dryer.

(5) One shampoo tray dryer.

(6) Twelve combs and twelve brushes.

(7) One covered waste container.

(8) A closed storage area for soiled linen.

(9) One timer clock.

(10) One closed towel cabinet for clean linen.

(11) A closed container for sanitized implements.

(12) One wet sanitizer.

(13) A reception desk.

(14) Twelve sanitary towels for each styling station in the salon.

(15) One sink with hot and cold running water that is readily accessible to each styling station in the work area of the salon.

(16) One multipurpose fire extinguisher suitable for use on Class A, B and C fires.

(b) For each additional cosmetologist, supplies and equipment shall be increased so that each cosmetology can render services safely and efficiently.

§ 7.71a. Equipment and supplies for an esthetician salon.

(a) An esthetician salon must contain the following equipment and supplies, which is considered the minimum equipment needed for a salon with one esthetician:

(1) One adjustable chair.

(2) One work station with mirror.

(3) One labeled first aid kit containing the following items:

(i) An antiseptic.

(ii) Cotton balls.

(iii) Protective plastic or latex gloves.

(iv) A blood spill kit.

(v) A hazardous waste bag.

(vi) Eyewash.

(vii) Burn ointment.

(viii) Plastic or latex bandage strips of varying sizes and shapes.

(ix) Sterile gauze pads.

(4) One covered waste container.

(5) A closed storage for soiled linen.

(6) One closed towel cabinet for clean linen.

(7) One timer clock.

(8) A closed container for sanitized implements.

(9) One wet sanitizer.

(10) On dry sterilizer.

(11) A reception desk.

(12) Twelve sanitary towels for each work station in the salon.

(13) One sink with hot and cold running water that is readily accessible to each work station in the work area of the salon.

(14) One multipurpose fire extinguisher suitable for use on Class A, B and C fires.

(b) For each additional esthetician, equipment and supplies shall be increased so that each esthetician can render services safely and efficiently.

§ 7.71b. Equipment and supplies for a nail technology salon.

(a) A nail technology salon must contain the following equipment and supplies, which is considered the minimum equipment needed for a salon with one nail technician:

(1) One chair for use in manicure and pedicure.

(2) One manicure table with light, chair and stool.

(3) One pedicure basin and stand.

(4) One labeled first aid kit containing the following items:

(i) An antiseptic.

(ii) Cotton balls.

(iii) Protective plastic or latex gloves.

(iv) A blood spill kit.

(v) A hazardous waste bag.

(vi) Eyewash.

(vii) Burn ointment.

(viii) Plastic or latex bandage strips of varying sizes and shapes.

(ix) Sterile gauze pads.

(5) One covered waste container.

(6) A closed storage area for soiled linen.

(7) One closed towel cabinet for clean linen.

(8) Twelve sanitary towels for each work station in the salon.

(9) One wet sanitizer.

(10) A closed container for sanitized implements.

(11) A reception desk.

(12) One sink with hot and cold running water that is readily accessible to each work station in the work area of the salon.

(13) One multipurpose fire extinguisher suitable for use on Class A, B and C fires.

(b) For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently.

§ 7.71c. Equipment and supplies for a natural hair braiding salon.

(a) A natural hair braiding salon must contain the following equipment and supplies, which is considered the minimum equipment needed for a salon with one natural hair braider:

(1) One adjustable chair.

(2) One styling station with mirror.

(3) One labeled first aid kit containing the following items:

(i) An antiseptic.

(ii) Cotton balls.

(iii) Protective plastic or latex gloves.

(iv) A blood spill kit.

(v) A hazardous waste bag.

(vi) Eyewash.

(vii) Burn ointment.

(viii) Plastic or latex bandage strips of varying sizes and shapes.

(ix) Sterile gauze pads.

(4) One dryer or blow dryer.

(5) One shampoo tray or basin.

(6) Twelve combs and twelve brushes.

(7) One covered waste container.

(8) A closed storage area for soiled linen.

(9) One closed towel cabinet for clean linen.

(10) A closed container for sanitized implements.

(11) One wet sanitizer.

(12) A reception desk.

(13) Twelve sanitary towels for each styling station in the salon.

(14) One sink with hot and cold running water that is readily accessible to each styling station in the work area of the salon.

(15) One multipurpose fire extinguisher suitable for use on Class A, B and C fires.

(b) For each additional natural hair braider, equipment and supplies shall be increased so that each natural hair braider can render services safely and efficiently.

§ 7.75. Entrances.

The entrance to a salon that is located in a private home must permit clients to enter the salon directly from the public thoroughfare without passing through any part of the home.

§ 7.76. Floor space.

(a) The floor area of a salon operated by one licensee must have a minimum area of 180 square feet with a minimum width of 10 feet. An additional area of at least 60 square feet is required for each additional licensee in the salon. The Board, upon an applicant's request, may grant a variance from the space requirements concerning a salon which the Board believes is reasonable.

(b) Salons opened prior to September 15, 1976, which have been operating with one cosmetologist must have sufficient floor space to properly install the equipment with regard to the health and safety of the patrons of the cosmetology salon. It is suggested that the floor space be a minimum of 10 feet by 12 feet or 120 square feet, with 60 square feet for each additional operator. The Board, after examination of the salon's layout, may grant variance from the salon space requirements which the Board believes is reasonable.

§ 7.77. Use of salon for other purposes prohibited.

No part of a salon, including lavatories and laundry facilities, may be used for other purposes.

§ 7.78. Sign.

A salon must display, at or near its main entrance, a sign that is clearly visible indicating to the public that it is a cosmetology salon or limited practice salon.

§ 7.79. Lavatories.

A salon must have adequate lavatories on the premises. For the purposes of this section, "on the premises" means within the square footage of the salon.

ACTIVITIES OUTSIDE A SALON

§ 7.81. Rendering of services outside a salon.

A cosmetologist or holder of a limited license, with the permission of the employing salon, may render by appointment cosmetology or limited license services to persons at their residences and to persons who are confined to institutions due to illness, imprisonment, old age or similar circumstances.

§ 7.82. Record of services rendered outside a salon.

A licensee who renders licensed services outside the salon shall maintain at the employing salon complete records for each service rendered outside the salon, including the date, time, place and fee charged. The record of outside services shall be considered part of the records of the salon.

§ 7.83. Responsibility of a salon for outside services.

A salon through which appointments are made for the rendering of cosmetology or limited license services outside the salon shall be responsible for ensuring that the licensees are fully supplied and equipped when they perform services outside the salon and that all other requirements of this chapter are complied with.

HEALTH AND SAFETY IN SALONS

§ 7.90. Applicability of requirements.

The requirements of this section and §§ 7.91—7.98 and 7.100 apply equally to cosmetology salons, esthetician salons, nail technology salons and natural hair braiding salons, unless the context indicates otherwise.

§ 7.91. Sanitation and safety generally.

(a) A salon must be well lighted and well ventilated.

(b) All areas of the salon, including the floors and lavatories, shall be maintained in a safe, orderly and sanitary condition.

(c) Sharp implements shall be stored upright with the points down or in a protective case.

§ 7.92. Sanitization of equipment.

Razors for hair, tweezers, combs, hairbrushes, and other tools, instruments, utensils and appliances that come into contact with a client shall be sanitized immediately after each use and maintained in a sanitary condition at all times.

§ 7.93. Sanitary use of towels.

(a) Only clean cloth towels or disposable paper towels shall be used on clients. Unused cloth towels shall be kept in a closed cabinet. Unused paper towels shall be kept in a closed cabinet or closed towel dispenser. A cloth towel that has been used on a client shall be immediately placed in a closed container for soiled linen. A disposable paper towel that has been used on a client shall be immediately discarded in a covered waste container.

(b) The headrest of a facial chair shall be covered with a clean cloth towel or an unused disposable paper towel before the start of each facial.

(c) A clean cloth towel, unused disposable paper towel or unused neck strip shall be placed around the neck of a client whose hair is about to be cut to prevent the hair cloth from touching the skin.

§ 7.94. Sanitary use of supplies.

(a) The use of powder puffs or styptic pencils in a salon is prohibited.

(b) Only powered or liquid astringents, applied with a clean cloth towel or clean piece of cotton, may be used to check bleeding.

(c) Creams and other semisolid substances shall be removed from their containers with a sterile spatula or similar utensil. The spatula or similar utensil may not be permitted to come into contact with the skin or hair of another client until it is properly disinfected.

(d) An article that has been dropped on the floor or otherwise rendered unsanitary shall be sterilized before it is reused.

§ 7.95. Individual cleanliness.

Every salon employee who serves the public shall be clean as to person and dress and shall thoroughly cleanse the hands immediately before rendering services to a client and immediately after using the lavatory.

§ 7.98. Violation of related laws.

The license of a licensee who has pled guilty or nolo contendere to, or has been convicted of, a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or a similar State or Federal law, shall be subject to suspension or revocation under section 13 of the act (63 P. S. § 519).

§ 7.100. Permanent wave operations and chemical applications.

A client may not be left unattended during the heating or processing period of a permanent wave operation or chemical application.

LICENSURE AND ADMINISTRATION OF SCHOOLS OF COSMETOLOGY

§ 7.111. Application for a school license.

(a) An owner-applicant for a school license shall submit a license application to the Board with the following:

(1) A sketch plan showing the layout of the school, including the location of classrooms, offices and lavatories and the position of all floor equipment.

(2) The name, signature and license number of the school supervisor, together with proof that the supervisor meets the following qualifications:

(i) Possesses a current cosmetology teacher license issued by the Board.

(ii) Has done one of the following:

(A) Acquired 2,500 hours of satisfactory experience as a cosmetology teacher.

(B) Acquired 1,250 hours of experience as a cosmetology teacher and 1,800 hours of experience.

(3) The name and signature of the person authorized to accept service of legal notice and to transact business on behalf of the school.

(4) Proof that the fictitious name of the school, if any, is registered with the Corporation Bureau of the Department of State.

(5) Proof of compliance with applicable provisions of 34 Pa. Code (relating to labor and industry).

(6) The fees for a school license and approval of a school supervisor prescribed in § 7.2 (relating to fees).

(7) Proof of accreditation or application for accreditation in accordance with § 7.113a (relating to accreditation by a Nationally recognized accrediting agency). Approval by the Department of Education in accordance with Article XVIII of the Public School Code of 1949 (24 P. S. §§ 1801—1855) is acceptable proof of accreditation for secondary vocational technical schools.

(b) A school license will not be issued until the Board has verified the sworn statements made by the owner-applicant in the license application and the school has been inspected by a Bureau inspector as provided in § 7.113 (relating to inspection of a school before licensure). The Board may request the owner-applicant to appear before the Board to answer questions about the application.

§ 7.114. School equipment and supplies.

(a) A school enrolling 25 students or less must have, at a minimum, the following equipment:

(1) Four shampoo basins.

(2) Eight hair dryers.

(3) Four manicure tables and chairs.

(4) Four closed containers for sanitized implements.

(5) Four wet sanitizers.

(6) Four facial chairs.

(7) Four complete sets of cold wave equipment.

(8) One mannequin for each student.

(9) Twelve styling stations, mirrors and chairs.

(10) One locker for each student.

(11) Four closed containers for soiled linen.

(12) Three closed waste containers.

(13) One container for sterile solution for each manicure table.

(14) One bulletin board with dimensions of at least 2 feet by 2 feet.

(15) One chalkboard with dimensions of at least 4 feet by 4 feet.

(16) One linen cabinet.

(17) An arm chair or usable table and chair for each student in the theory room.

(18) Three timer clocks.

(19) Attendance records.

(20) Two sanitary towels per student.

(b) These minimum equipment requirements shall increase proportionately as the number of students enrolled in the school increases.

§ 7.115. Student equipment and supplies.

(a) A school shall ensure that each cosmetology student possesses and maintains in sanitary condition the following:

(1) One shampoo cape.

(2) One pair of scissors.

(3) One hair cutting razor.

(4) Two brushes.

(5) Six combs.

(6) A minimum of 100 pin curl clips.

(7) Complete tools for nail technology, including emery boards, pusher and brush.

(8) A carrying case of sufficient size to accommodate the equipment and supplies used by the student.

(9) A basic cosmetology text book. A book of questions and answers is not considered a textbook.

(10) One pair of tweezers.

(b) A school shall ensure that each esthetician student possesses and maintains in sanitary condition the following:

(1) One facial cape.

(2) Two spatulas.

(3) One pair of tweezers.

(4) One make-up kit.

(5) Facial supplies.

(6) A carrying case of sufficient size to accommodate the equipment and supplies used by the student.

(7) A basic skin care/make-up textbook.

(c) A school shall ensure that each nail technology student possesses and maintains in sanitary condition the following:

(1) One polish kit.

(2) Complete tools for nail technology, including emery boards, pusher and brush.

(3) A carrying case of sufficient size to accommodate the equipment and supplies used by the student.

(4) A basic nail technology textbook.

(d) A school shall ensure that each natural hair braiding student possesses and maintains in sanitary condition the following:

(1) One shampoo cape.

(2) One comb-out cape.

(3) Two brushes.

(4) Six combs.

(5) A minimum of 100 pin curl clips.

(6) A carrying case of sufficient size to accommodate the equipment and supplies used by the student.

(7) A basic natural hair braiding textbook.

§ 7.118. Professional staff.

(a) A school shall employ as teachers of courses that are part of the required curriculum persons who possess a current cosmetology teacher or limited practice teacher license issued by the Board, except that a school may employ as teachers of business or teaching skills persons who hold a current teacher's certificate issued by the Department of Education.

(b) The license of each teacher employed by the school shall be conspicuously displayed in the school.

(c) A school shall employ at least one full-time teacher.

(d) The student/teacher ratio of a class taught for credit may not exceed 25 to 1, except if a guest lecture is given by a person who is not regularly employed by the school as a teacher.

(e) A school shall have attached to its staff for consultation purposes a physician who possess a current license to practice medicine in this Commonwealth.

§ 7.118a. Uniforms.

Teachers and students shall be attired in washable uniforms during school hours. A teacher uniform must be distinguished from a student uniform.

§ 7.120. Work done by students on the public.

(a) A school may permit students to work on the public, and may charge a fee for treatment performed by students on the public based on the reasonable cost of materials used in such treatment, if the students have successfully completed the following hours of instruction:

(1) Cosmetology Curriculum—300 Hours

(2) Esthetics Curriculum—75 Hours

(3) Nail Technology Curriculum—50 Hours

(4) Natural Hair Braiding Curriculum—75 Hours

(b) A school that permits its students to work on the public shall display in a conspicuous place at the entrance to the school a sign with letters at least 2 inches in height, that states the following: "ALL WORK IN THE SCHOOL DONE BY STUDENTS ONLY" and "CHARGES FOR REASONABLE COST OF MATERIALS ONLY."

(c) A school shall display in a conspicuous place at the entrance to the school a sign stating that it is a school of cosmetology.

§ 7.123. Duty work.

A school shall require students to keep their stations clean and to assist in general cleanup and other duties that may be required in an operating salon, except that students may not be required to scrub floors, wash windows or perform janitorial tasks.

§ 7.125. Health and safety in school.

A school shall observe the same health and safety requirements that are prescribed for salons in §§ 7.91—7.98, 7.100 and 7.101.

§ 7.128. Mandatory offering of cosmetology curriculum.

(a) A school shall offer instruction in the curriculum for cosmetologists prescribed in § 7.129 (relating to curriculum requirements).

(b) A school may offer instruction in the curriculum for teachers, estheticians, nail technicians and natural hair braiders prescribed in § 7.129.

§ 7.129. Curriculum requirements.

(a) Except as provided in subsection (b), a school's cosmetology curriculum, excluding electives, must comprise a minimum of 1,250 hours, and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

BASIC COSMETOLOGY CURRICULUM

	Recommended Hours
Professional Practices	50
Bacteriology, Disinfection, Sanitation	
Professional Attitude	
Business Practices	
PA Cosmetology Law	
Sciences	200
Histology	
Trichology	
Chemistry	
Physiology	
Cosmetic Dermatology	
Electricity	
Cosmetology Skills—Cognitive and Manipulative	1,000
Shampooing and Conditioning	
Hair Shaping	
Hair Styling/Fingerwaving	
Chemical Texturizing	
Permanent Waving	
Hair Coloring	

	Recommended Hours
Hair Straightening	
Skin Care	
Nail Technology	
Temporary Hair Removal	
Scalp Treatment	
Care of all hair types and textures	
Makeup	
	Total 1,250

(b) A school's cosmetology curriculum for a student who holds a barber's license issued by the State Board of Barber Examiners must comprise a minimum of 695 hours and cover the subjects in subsection (a); the following breakdown of hours by subject is recommended:

	Recommended Hours
Professional Practices	15
Sciences	80
Cosmetology Skills—Cognitive and Manipulative	600
	Total 695

(c) A school's teacher curriculum, excluding electives, must comprise a minimum of 500 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

TEACHER CURRICULUM

	Recommended Hours
Teaching Techniques for Subjects Related To Cosmetology Curriculum	300
Student Teaching	100
Professional Practices	25
Salon Management Theory	75
	Total 500

(d) A school's esthetics curriculum, excluding electives, must comprise a minimum of 300 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

ESTHETICS CURRICULUM

	Recommended Hours
Professional Practices	40
Sciences	100
Facial Treatments	100
Temporary Hair Removal	10
Makeup	50
	Total 300

(e) A school's nail technology curriculum, excluding electives, must comprise a minimum of 200 hours and cover the following subjects; the accompanying breakdown of hours by subjects is recommended:

NAIL TECHNOLOGY COURSE OUTLINE

	Recommended Hours
Professional Practice	25
Sciences	75
Nail Treatments	75
Pedicuring	25
	Total 200

(f) A school's natural hair braiding curriculum, excluding electives, must comprise a minimum of 300 hours and cover the following subjects; the accompanying breakdown of hours by subjects is recommended:

NATURAL HAIR BRAIDING COURSE OUTLINE

	Recommended Hours
Professional practices, including sanitation	50
Sciences, including scalp care and anatomy	125
Cognitive and manipulative skills related to natural hair braiding	125
	Total 300

PREPARATION BY APPRENTICESHIP METHOD

§ 7.131. Introduction.

An individual who chooses to seek eligibility for the cosmetologist examination by apprenticeship shall comply with section 10 of the act (63 P. S. § 516) and the applicable requirements of this section and §§ 7.132—71.134 (relating to preparation by appenticeship method).

§ 7.132. Apprentice curriculum.

The cosmetology teacher responsible for offering instruction to an apprentice in a cosmetology salon shall teach the same cosmetology curriculum that the Board prescribes for schools of cosmetology in § 7.129 (relating to curriculum requirements), with additional hours included so that the total number of hours adds up to 2,000, as follows:

BASIC COSMETOLOGY APPRENTICE CURRICULUM

	Recommended Hours
Professional Practices	50
Bacteriology, Disinfection, Sanitation	
Professional Attitude	
Business Practices	
PA Cosmetology Law	
Sciences	200
Histology	
Trichology	
Chemistry	
Physiology	
Cosmetic Dermatology	
Electricity	
Cosmetology Skills—Cognitive and Manipulative	1,750

	Recommended Hours
Shampooing and Conditioning	
Hair Shaping	
Hair Styling/Fingerwaving	
Permanent Waving	
Hair Coloring	
Hair Straightening	
Skin Care	
Nail Technology	
Temporary Hair Removal	
Scalp Treatment	
Care of all hair types and textures	
Makeup	
	Total 2,000

§ 7.133. Application for apprentice permit.

To qualify for apprenticeship training in a cosmetology salon, an individual shall apply to the Board for an apprentice permit.

§ 7.134. Apprentice reports.

The owner of a cosmetology salon that employs apprentices shall submit to the Board, on a form provided by the Board, a quarterly report of the hours earned by each apprentice. The reports shall be submitted by the following dates: April 15, July 15, October 15 and January 15.

[Pa.B. Doc. No. 09-40. Filed for public inspection January 9, 2009, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 401a]

Licensed Facility

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(a) and (b) (relating to general and specific powers) amends § 401a.3 (relating to definitions) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

This amendment provides additional clarification as to how the Board interprets the term "licensed facility."

Explanation of the Amendment to Chapter 401a

Currently, the Board's regulations use the definition of "licensed facility" that is contained in 4 Pa.C.S. § 1103 (relating to definitions).

However, a number of questions have arisen as to how the term should be interpreted. For example, 4 Pa.C.S. § 1305(b) (relating to Category 3 slot machine license) requires that no Category 3 license shall be located within 15 linear miles of another licensed facility. Questions have been raised as to whether the 15 linear miles should be measured from the property line of the applicant or the building that houses the gaming floor.

To provide greater clarity to applicants for and holders of slot machine licenses, the Board is expanding the definition of "licensed facility" to clarify that it includes the gaming floor, all restricted areas servicing the slot operations, amenities, such as food, beverage and retail outlets and other areas serving the gaming floor which are located on or directly accessible from the gaming floor or restricted areas. The term does not include areas that are exclusively devoted to pari-mutuel activities, hotel activities or other amenities not related to the slot machine gaming operations.

Comment and Response Summary

Notice of proposed rulemaking was published at 38 Pa.B. 2053 (May 3, 2008).

The Board received comments from Senators Robert Tomlinson and Mike Folmer, Representatives Mauree Gingrich, Ronald Marisco and Rosemarie Swanger, the Lebanon County Commissioners, East Hanover Township (Lebanon County), the Bushkill Group, Inc., the Lebanon Valley Chamber of Commerce, the Ono Fire Company (East Hanover Township, Lebanon County) and Sands Casino Resort Bethlehem during the public comment period. By letter dated July 2, 2008, the Independent Regulatory Review Commission (IRRC) also submitted comments. All of these comments were reviewed by the Board and are discussed in detail as follows.

Most of the commentators, except the Bushkill Group, Inc. and Sands Casino Resort Bethlehem, commented that this expanded definition would make East Hanover Township in Lebanon County and Lebanon County ineligible to receive any local share gaming funds. For that reason, they recommended that the Board not revise the definition of licensed facility.

Their arguments were based on the fact that approximately 22 acres of the land owned by Penn National Turf Club (Penn National) is located in Lebanon County and their presumption that Penn National is the slot machine licensee. Actually, the holder of the slot machine license is Mountainview Thoroughbred Racing Association (Mountainview), not Penn National. When this amendment was proposed, Mountainview leased approximately 220 acres from Penn National and all of that acreage is in Dauphin County. So regardless of how the term "licensed facility" was defined, East Hanover Township (Lebanon County) and Lebanon County would not have been eligible to receive any local share funds. In August of 2008, Penn National and Mountainview amended the lease so that it now includes the acreage in Lebanon County.

The Board concurs with commentators that there will be economic impacts on East Hanover Township (Lebanon County) and Lebanon County. However, the Board does not believe that changing the definition of "licensed facility" to include all areas owned or leased by a slot machine licensee is consistent with the language of the Pennsylvania Race Horse Development and Gaming Act (act) or the intent of the General Assembly.

While Lebanon County is not entitled to any local share funds under the act, the act does permit counties that receive funds to enter into intergovernmental cooperative agreements with other jurisdictions for sharing these funds. Therefore, the Board encourages Lebanon County to enter into discussions with Dauphin County to explore the possibility of entering into an agreement.

IRRC and some of the other commentators questioned the Board's authority to "change" the statutory definition of licensed facility.

The Board has not changed the statutory language in the definition. That language continues to mirror the

language of the act. The Board has, however, expanded the definition by adding additional language which articulates how the Board interprets the language in the act. This has been done under the Board's general authority to regulate gaming in this Commonwealth.

IRRC suggested that the Board consider further amendments to this definition to clarify whether the phrase "physical land-based location" refers to the entire property or just identified structures on the property where the licensed facility is located.

The Board believes the proposed definition, with the revisions discussed, is clear that it only applies to certain areas within a structure or structures. Because a number of the licensed facilities are in buildings which also house activities unrelated to gaming (such as pari-mutuel or retail activities) expanding the definition to include the entire building which houses the gaming related activities would be inconsistent with the act.

IRRC questioned if amending the definition of licensed facility would somehow interfere with the Department of Revenue's (Revenue) powers under 4 Pa.C.S. § 1403 (relating to establishment of State gaming and net slot machince revenue distributions).

Section 1403 of the act vests Revenue with the sole authority to make distributions from the State Gaming Fund; it does not give Department of Revenue (Revenue) the authority to define what constitutes a "licensed facility." Instead, section 1202 of the act gives the Board the authority to regulate all aspects of gaming.

IRRC also asked the Board to explain how the proposed definition is consistent with legislative intent and whether it represents a policy issue that warrants legislative review.

In the act, the term "licensed facility" is used over 200 times in a variety of contexts. Reading these provisions as a whole, the Board believes that the intent of the General Assembly when it first passed the act was that the licensed facility consists of more than just the gaming floor but less than the entire parcel of land on which the licensed facility is located.

Additionally, during the deliberations on Senate Bill 862, which amended the act, the phrase "and associated areas" in the definition of "licensed facility" and a definition of "associated areas," which had been added in an earlier version of the bill, were both deleted by the House. During the floor debate in the Senate, both Senators Brightbill and Fumo expressed reservations that this amendment by the House could reduce the scope of what was included as part of a "licensed facility."

Given the various provisions that use the term "licensed facility" and the most recent amendments to the act passed by the General Assembly, the Board believes that its interpretation of what constitutes a licensed facility is consistent with the intention of the General Assembly. Additionally, because this definition was amended in the final version of Senate Bill 862, the Board believes that this is an issue that the General Assembly has already reviewed.

IRRC and a commentator also suggested that the Board consider limiting the scope of the proposed definition solely for the purposes of measuring linear distance between facilities.

While the one example used in the proposed preamble addressed the 15 mile issue, this definition is also intended to give slot machine licensees guidance for other issues as well. Additionally, since there is no basis for such a distinction in the act, the Board believes it lacks a statutory basis to do multiple definitions. Even if the Board had the authority, multiple definitions would be confusing to licensees.

Sands Casino Resort Bethlehem supports the expansion of the definition of licensed facility and offered revisions which it believes would further clarify this definition. IRRC suggested that the Board consider the changes offered by Sands Casino Resort Bethlehem.

The Board has reviewed the suggestions offered by Sands Casino Resort Bethlehem and has included some of the suggested language in the final-form definition.

The Bushkill Group, Inc. supports the adoption of the regulation as proposed because it clarifies the definition of licensed facility.

The Board appreciates the support expressed by this commentator.

Affected Parties

Holders of and applicants for a slot machine license will be affected by this rulemaking.

There are currently 11 slot machine licensees and 4 applicants for slot machine licenses.

Fiscal Impact

Commonwealth

There will be no new costs to the Board or other Commonwealth agencies as a result of this amendment.

Political Subdivisions

Under 4 Pa.C.S. § 1403, the distribution of funds from the local share assessment is based upon the location of the licensed facility. For slot machine licensees that have licensed facilities in more than one county or municipality this proposed rulemaking could have a fiscal impact on those political subdivisions. However, as discussed previously, none of the currently licensed facilities are located in multiple political subdivisions.

Private Sector

To the extent that this rulemaking clarifies the definition of the term "licensed facility," there may be some small potential savings to applicants or potential applicants for a slot machine license.

General Public

This final-form rulemaking will have no fiscal impact on the general public.

Paperwork requirements

This final-form rulemaking creates no new paperwork requirements.

Effective Date

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

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 2008, the Board submitted a copy of the proposed rulemaking, published at 38 Pa.B. 2053, and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Over-

sight Committee and the Senate Committee on Community, Economic and Recreational Development (Committees).

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the Committees on November 5, 2008. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 6, 2008, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt this amendment 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapter 401a, are amended by amending § 401a.3 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

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

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

MARY DIGIACOMO COLINS,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6429 (November 22, 2008).)

Fiscal Note: Fiscal Note 125-85 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Licensed facility—

(i) The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines including the gaming floor, all restricted areas servicing slot operations, and food, beverage and retail outlets and other areas serving the gaming floor which are located either on or directly accessible from and adjacent to the gaming floor or the restricted areas servicing slot operations.

(ii) The term does not encompass areas or amenities exclusive to pari-mutuel activities, hotel activities including hotel rooms, catering or room service operations serving a hotel, convention, meeting and mutipurose facilities, retail facilities, food and beverage outlets and other amenities and activities not located on or adjacent to the gaming floor, or related to slot machine gaming operations.

* * * * *

[Pa.B. Doc. No. 09-41. Filed for public inspection January 9, 2009, 9:00 a.m.]