

PROPOSED RULEMAKING

DEPARTMENT OF BANKING

[10 PA. CODE CH. 44]

Mortgage Licensee Education

The Department of Banking hereby withdraws the notice of proposed rulemaking, which would have amended the Mortgage Licensee Education regulations in 10 Pa. Code Chapter 44 (relating to mortgage bankers and brokers and consumer equity protection). This proposed regulation was published at 39 Pa.B. 2805 (June 6, 2009).

Further information is available by contacting the Office of Chief Counsel at (717) 787-1471.

STEVEN KAPLAN,
Secretary

[Pa.B. Doc. No. 09-1717. Filed for public inspection September 18, 2009, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CHS. 121 AND 129]

Control of NOx Emissions from Glass Melting Furnaces

The Department of Environmental Protection (Department) is soliciting comments on changes it recommends be made to the glass melting furnaces proposed rulemaking published at 38 Pa.B. 1831 (April 19, 2008). A notice was printed under the wrong heading (Environmental Quality Board) at 39 Pa.B. 5318—5320 (September 12, 2009). The text of the notice remains the same.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 09-1683. Filed for public inspection September 11, 2009, 9:00 a.m.]

[25 PA. CODE CH. 215]

Proposed Amendments to Radioactive Material Regulations

Pennsylvania is a U.S. Nuclear Regulatory Commission (NRC) Agreement State and has incorporated by reference many NRC regulations. The NRC is proposing to amend 10 CFR Part 31 (relating to general domestic licenses for product material), described as follows, and any amendments made to it will be incorporated into Pennsylvania's under 25 Pa. Code § 215.1(e) (relating to purpose and scope). Proposed changes to 10 CFR Part 31.5 (relating to certain detection, measuring, gauging, or controlling devices and certain devices for producing light to an ionized atmosphere) were published in the *Federal Register* at 74 FR 38372 (August 2, 2009). Limiting the quality of byproduct material in a generally licensed device.

The NRC is proposing to amend its regulations to limit the quantity of byproduct material contained in a generally licensed device to below 1/10 of the International Atomic Energy Agency (IAEA) Category 3 thresholds. Should this amendment a final rule, individuals in this Commonwealth possessing devices with byproduct material meeting or exceeding these thresholds would be required to apply for and obtain a specific license from the Department of Environmental Protection. Examples of such devices include certain gauges for measuring the thickness of materials, the density of solutions and slurries, the composition of bulk materials, and the level of fluids in industrial processes. The NRC is also proposing to further clarify the requirements that apply when a device authorized to be used under the general license is instead held under a specific license. The proposed amendments would also modify the Compatibility Categories contained in the current regulations.

For further information, contact Joseph M. Melnic, Chief, Division of Radiation Control, P. O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 787-3720; or Andrew Bockis, 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, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 09-1718. Filed for public inspection September 18, 2009, 9:00 a.m.]

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Appraiser Trainees; Initial and Continuing Education; Supervised Experience; Practice Standards

The State Board of Certified Real Estate Appraisers (Board) proposes to amend Chapter 36 (relating to State Board of Certified Real Estate Appraisers) to read as set forth in Annex A.

Purpose

The proposed rulemaking is intended to: (1) Establish a regulatory scheme for the appraiser trainee license, which was added to the Real Estate Appraisers Certification Act (REACA) (63 P. S. §§ 457.1—457.19) by the act of July 8, 2008 (P. L. 833, No. 59) (Act 59 of 2008) and the act of October 9, 2008 (P. L. 1380, No. 103) (Act 103 of 2008); (2) Revise and clarify initial education, continuing education and supervised experience requirements for certified appraisers, consistent with Federal criteria that are binding on the Board under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (Pub. L. No. 101-173, 103 Stat. 183); (3) Clarify appraiser practice standards relating to supervision and use of titles; and (4) Harmonize requirements for certified Pennsylvania evaluators with those for certified appraisers.

*Description of the Proposed Rulemaking**§ 36.1 (relating to definitions)*

Section 36.1 defines words and phrases used in Chapter 36, including the certified real estate appraiser classifications of “certified broker/appraiser,” “certified residential real estate appraiser” and “certified general real estate appraiser.”

The proposed rulemaking would define “licensed appraiser trainee” as “[A] person who holds a license issued under section 6(a.1) of the [REACA] and § 36.12a (relating to qualifications for licensure as appraiser trainee) and who is authorized to assist a certified residential real estate appraiser or certified general real estate appraiser in the performance of an appraisal.” Consistent with the form of the definitions of the three certified appraiser classifications, the definition of licensed appraiser trainee sets forth the statutory and regulatory basis of the license and the scope of practice under the license.

§ 36.2 (relating to application process)

Section 36.2 establishes the procedure for applying for certification as a residential or general real estate appraiser. Section 36.2(a) requires an applicant to submit an application on a form furnished by the Board and provides contact information for obtaining an application form. Section 36.2(b) requires an applicant to pay a nonrefundable application fee. Section 36.2(c) provides that approval of an application is valid for 1 year and that if the applicant does not pass the certification examination within the 1-year period, the applicant must submit a new application that will be reviewed under the requirements in effect at the time the new application is received. Section 36.2(d) provides that an applicant whose application has been disapproved has 1 year to correct the deficiencies and that if the applicant fails to correct the deficiencies within the 1-year period, the applicant must submit a new application that will be reviewed under the requirements in effect at the time the new application is received. Section 36.2(e) states that except as otherwise provided in §§ 36.11 and 36.12 (relating to qualifications for certification as residential real appraiser; and qualifications for certification as general real estate appraiser), an applicant shall comply with new requirements that take effect between the applicant’s initial filing of an application and the applicant’s passing the certification examination.

The proposed rulemaking would amend § 36.2(a), (b) and (d) to make those provisions applicable to an applicant for licensure as an appraiser trainee. The proposed rulemaking would revise § 36.2(d) to clarify that an applicant for licensure as an appraiser trainee must comply with any increased education requirement that takes effect between the applicant’s filing of an application that is disapproved and the applicant’s filing of a new application. The proposed rulemaking also would make editorial changes to § 36.2(c) to emphasize that it is applicable only to an applicant for certification as a residential or general real estate appraiser; an approved applicant for licensure as an appraiser trainee is not required to pass an examination as a condition of licensure.

§ 36.3 (relating to examinations)

Section 36.3(a) sets forth information about the examinations for certification as a residential and general real estate appraiser. Section 36.3(b) explains how interested parties can obtain additional information about the examinations from the professional testing organization that administers the examinations. The proposed rule-

making would amend § 36.3(a) to clarify that no examination is required for licensure as an appraiser trainee.

§ 36.6 (relating to fees)

Section 36.6 sets forth the schedule of fees charged by the Board. The proposed rulemaking would add an application fee of \$75 for licensure as an appraiser trainee. The fee would offset the projected cost to the Board of reviewing and processing the license application as well as defray a portion of the Board’s administrative overhead.

Section 5(6) of the REACA (63 P.S. § 457.5(6)), as amended by Act 59 of 2008, authorizes the Board to assess fees for the issuance and biennial renewal of an appraiser trainee license. At the request of the Department of State’s Bureau of Finance and Operations (BFO), the Board has deferred promulgation of a biennial renewal fee for the appraiser trainee license until after BFO has had an opportunity to provide updated projections about the Board’s revenue needs in future fiscal years. The biennial renewal fee does not have to be in place until the spring of 2011, when the Board will begin processing biennial renewal applications for the 2011-2012 biennial renewal period that begins July 1, 2011.

§§ 36.11 and 36.12 (relating to qualifications for certification as residential real estate appraiser; and qualifications for certification as general real estate appraiser)

Sections 36.11 and 36.12 are identically structured regulations that set forth the qualifications for certification as a residential and general real estate appraiser, respectively. Section 6(d) and (e) of the REACA (63 P.S. § 457.6(d) and (e)), provides that an applicant for certification as a residential or general real estate appraiser must, as a prerequisite to taking the certification examination, meet the education and experience requirements prescribed under the FIRREA. The Appraisal Foundation’s Appraiser Qualifications Board (AQB) is the independent body charged under the FIRREA with establishing the minimum initial education, continuing education, experience and examination requirements for state-credentialed real estate appraisers. Sections 36.11 and 36.12 incorporate the AQB’s education and experience requirements for residential and general real estate appraisers. Sections 36.11 and 36.12 were last amended July 21, 2007, to implement the AQB’s new requirements that took effect January 1, 2008.

Sections 36.11(b) and 36.12(b), subtitled “Appraisal classroom hours,” prescribe the appraisal education requirement for initial certification as a residential and general real estate appraiser, respectively. Section 36.11(b) provides that effective January 1, 2008, an applicant for residential real estate appraiser certification must have completed 200 classroom hours in the appraisal curriculum set forth in § 36.11(c)(2), except that the new requirement does not apply to an applicant who satisfied the former requirement of 120 classroom hours before January 1, 2008. Section 36.12(b) provides that effective January 1, 2008, an applicant for general real estate appraiser certification must have completed 300 classroom hours in the appraisal curriculum set forth in § 36.12(c)(2), except that the new classroom hour requirement does not apply to an applicant who satisfied the former requirement of 180 classroom hours before January 1, 2008. Sections 36.11(b)(1) and 36.12(b)(2) reflect a “segmented” approach, rather than a “firm date” approach, to implementation of the AQB’s new education requirements. Under the “firm date” approach, no appraiser certificate would be issued to an applicant on or

after January 1, 2008, unless the applicant has satisfied the increased classroom hour requirement. The AQB allowed states the option of implementing the new education requirements through either the firm date approach or the segmented approach. The Board opted for the segmented approach to minimize the potential disruption to the career plans of those persons who, at the time of the adoption of new regulations, were then taking steps to satisfy the education and experience requirements for appraiser certification.

The proposed rulemaking would amend §§ 36.11(b) and 36.12(b) to provide that the increased classroom hour requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that includes evidence of the applicant's having satisfied the former classroom hour requirement before January 1, 2008. The purpose of the amendments is to establish a reasonable period of time after January 1, 2008, such as, 4 years during which an applicant who satisfied the former classroom hour requirement may qualify for appraiser certification without having to complete the increased classroom hour requirement. Because the experience requirement for residential and general real estate appraiser certification can be completed in as little as 24 months and 30 months, respectively, 4 years should be an adequate period of time for an applicant who satisfied the former classroom hour requirement before January 1, 2008, to obtain qualifying experience; moreover, it is likely that such an applicant would have already obtained some qualifying experience before January 1, 2008, because qualifying experience may be earned after 75 classroom hours have been completed. The Board believes that placing a reasonable limitation on the grandfathering effect of the segmented approach to implementation of the increased classroom hour requirement is desirable because it eliminates the possibility that persons could be credentialed as residential or general real estate appraisers in the distant future who lack the level of appraisal education that users of appraisal services would have come to expect of newly credentialed appraisers.

Sections 36.11(b)(2) and 36.12(b)(2), subtitled "Teaching credit," provide that classroom hours may be earned through the teaching of appraisal courses. Sections 36.11(b)(3) and 36.12(b)(3), subtitled "Providers of appraisal courses," identify the categories of acceptable providers of appraisal classroom hours. Sections 36.11(b)(4) and 36.12(b)(4), subtitled "Distance education," set forth the criteria by which appraisal courses may be offered by means of distance education (such as, online learning, videoconferencing, CD or DVD ROM). Sections 36.11(b)(5) and 36.12(b)(5), subtitled "Credit for challenge examination," state that classroom hours may be earned for an appraisal course in which the applicant obtained credit from the course provider by challenge examination without attending the course, so long as the course provider granted credit before January 1, 1990, and the Board is satisfied with the quality of the challenge examination.

The Appraisal Subcommittee (ASC) is the Federal agency charged, in part, with overseeing the activities of states in carrying out the requirements of the FIRREA. In July 2008, during its most recent field review of the Board's operations, the ASC advised the Board that the AQB has eliminated the awarding of classroom hours based on the teaching of appraisal courses or the successful completion of challenge examinations. Accordingly, the proposed rulemaking would delete §§ 36.11(b)(2), 36.11(b)(5), 36.12(b)(2) and 36.12(b)(5) and would redesignate

§§ 36.11(b)(3), 36.11(b)(4), 36.12(b)(3) and 36.12(b)(4) as §§ 36.11(b)(2), 36.11(b)(3), 36.12(b)(2) and 36.12(b)(3), respectively.

Sections 36.11(d) and 36.12(d), subtitled "Postsecondary education," set forth the postsecondary education requirement for initial certification as a residential and general real estate appraiser, respectively. Section 36.11(d)(1) provides that effective January 1, 2008, an applicant for residential real estate appraiser certification must either possess at least an associate's degree from an accredited college or university or have completed at least 21 semester credits in prescribed subject areas, while § 36.12(d)(1) provides that effective January 1, 2008, an applicant for general real estate appraiser certification must either possess at least a Bachelor's Degree from an accredited college or university or have completed at least 30 semester credits in prescribed subject areas. During its July 2008 field review, the ASC advised the Board that the AQB had changed the description of one of the prescribed subject areas from "Introduction to computers—word processing/spreadsheets" to "Computer science." The proposed rulemaking would amend §§ 36.11(d)(1) and 36.12(d)(1) to reflect the changed description.

Sections 36.11(d)(2) and 36.12(d)(2) provide that the postsecondary education requirement set forth in §§ 36.11(d)(1) and 36.12(d)(1), respectively, does not apply to an applicant who, as of January 1, 2008, had satisfied the appraisal classroom hour requirement that was in effect before January 1, 2008. These provisions reflect the "segmented" approach to implementation of the AQB's new education requirements discussed previously. Consistent with the proposed amendments to §§ 36.11(b) and 36.12(b), the proposed rulemaking would amend §§ 36.11(d)(2) and 36.12(d)(2) to provide that the postsecondary education requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that includes evidence of the applicant's having satisfied the former appraisal classroom hour requirement before January 1, 2008.

§ 36.12a (relating to qualifications for licensure as appraiser trainee)

Section 36.12a is a new section that would set forth the requirements for licensure as an appraiser trainee. Section 6(a.1) of the REACA, which was added by Act 59 of 2008, establishes the appraiser trainee license. The Board anticipates that, depending upon the timing of the publication of final-form rulemaking, it likely will begin processing applications for appraiser trainee licenses between January 1, 2010, and April 1, 2010.

Proposed § 36.12a(a), subtitled "Overview," would provide that an applicant for licensure as an appraiser trainee must be a person of good moral character and have completed the prescribed education. Proposed § 36.12a(a) would further provide that licensure as a real estate broker or salesperson under the Real Estate Licensing and Registration Act (RELRA) (63 P. S. §§ 455.101—455.902) is not a prerequisite for licensure as an appraisal trainee.

Section 6(a.1) and (c)(1) of the REACA reference education and moral character requirements, respectively, for an appraiser trainee, while a statement regarding the absence of any prerequisites under the RELRA currently appears in §§ 36.11(a) and 36.12(a) regarding the requirements for certification as a residential and general real estate appraiser, respectively.

Proposed § 36.12a(b), subtitled “Appraisal classroom hours,” would require an applicant for licensure as an appraiser trainee to have completed 75 classroom hours in the appraisal curriculum set forth in § 36.12a(b)(1), except that the requirement would not apply to an applicant who had satisfied the education requirement for certification as a residential real estate appraiser that was in effect immediately prior to January 1, 2008.

Section 6(a.1) of the REACA vests the Board with discretion in establishing the education requirement for licensure as an appraiser trainee. The proposed 75-hour requirement is the same as that recommended by the AQB for appraiser trainees. (Under the FIRREA the AQB’s education qualifications for appraiser trainees are not binding on state appraiser regulatory bodies.) The exemption for an applicant who had satisfied the pre-2008 education requirement for certification as a residential real estate appraiser before January 1, 2008, takes into account the amount of education—such as, completion of 120 classroom hours in appraisal subjects—as well as the need to avoid unnecessary disruption of the applicant’s apprenticeship activities that may be in progress as of the implementation of the appraiser trainee license.

Proposed § 36.12a(b)(1), subtitled “Content of appraisal education,” would require an applicant for licensure as an appraiser trainee to have completed the following three-course appraisal curriculum: basic appraisal principles (30 hours), basic appraisal procedures (30 hours), and Uniform Standards of Professional Appraisal Practice (USPAP) (15 hours). The proposed curriculum, including the subtopics listed for each course, is identical to that recommended by the AQB for appraiser trainees as of January 1, 2008. The same three courses also comprise part of the AQB’s new core curriculum required for certification as a residential and general real estate appraiser, as set forth in §§ 36.11(c)(2) and 36.12(c)(2), respectively.

Proposed § 36.12a(b)(2), subtitled “Examination requirement; length of classroom hour,” would define a classroom hour as 50 minutes out of each 60-minute segment and would require that an applicant for licensure as an appraiser trainee pass an examination pertinent to the course material as a condition of being awarded classroom hours. These provisions are the same as those applicable to an applicant for certification as a residential and general real estate appraiser, as set forth in §§ 36.11(b)(1) and 36.12(b)(1), respectively.

Proposed § 36.12a(3), subtitled “Providers of appraisal courses,” would permit an applicant for licensure as an appraiser trainee to receive credit for classroom hours obtained from an accredited college or university or, subject to prior approval from the Board under § 36.31 (relating to provider registration/appraisal courses), from an appraisal or real estate organization, a state or Federal agency, a proprietary school, or other provider. This provision is identical to those applicable to an applicant for certification as a residential and general real estate appraiser, as set forth in §§ 36.11(b)(3) and 36.12(b)(3), respectively.

Proposed § 36.12a(b)(4), subtitled “Distance education,” would permit an applicant for licensure as an appraiser trainee to utilize a distance education course if the course: (1) is approved by the Board; (2) is presented either by an accredited college or university that offers distance education courses in other disciplines or by a course provider that has received approval of course content from the Board or the AQB through its Course

Approval Program and approval of course design and delivery mechanism from the International Distance Education Certification Center; (3) requires completion of a written examination proctored by an official approved by the college, university or other course provider; and (4) meets the course content and classroom hour requirements prescribed by the Board. These requirements are the same as those applicable to an applicant for certification as a residential and general real estate appraiser, as set forth in §§ 36.11(b)(4) and 36.12(b)(4), respectively.

Proposed § 36.12a(c), subtitled “Noneligibility for licensure,” would provide that a certified real estate appraiser is not eligible for licensure as an appraiser trainee. This prohibition tracks section 6(a.1) of the REACA, which provides that the holder of a real estate appraiser certification is not eligible for an appraiser trainee’s license.

Proposed § 36.12a(d), subtitled “Limitation on license renewal,” would provide that an appraiser trainee license may not be biennially renewed more than 4 times unless the Board, for good cause shown and on a case-by-case basis, should determine that one or more additional renewals is warranted.

Section 10(a) of the REACA (63 P.S. § 457.10(a)), as amended by Act 103 of 2008, empowers the Board to prescribe a limitation on the number of times that an appraiser trainee may renew a license. The purpose of such a limitation is to prevent persons from becoming “permanent” appraiser trainees, a circumstance which, if allowed to occur, would contribute to a lessening of appraiser standards by making the trainee license the *de facto* entry-level appraiser credential. The proposed limitation of four biennial renewals, when combined with the initial license period, would allow an appraiser trainee to practice for between 8 and 10 years under ordinary circumstances. This time frame, which takes into account the fact that an appraiser trainee may elect to practice on a part-time basis for personal or economic reasons, should provide an appraiser trainee with an adequate opportunity to obtain the qualifying education and experience needed for certification as a residential or general real estate appraiser. The provision allowing the Board to grant additional renewals on a case-by-case basis permits the Board to address extraordinary circumstances, such as a serious, extended illness, that would prevent an appraiser trainee from obtaining qualifying education and experience for appraiser certification in a more timely fashion.

§ 36.13 (relating to experience options for preparation of appraisal reports)

Section 36.13 establishes the standards by which the Board evaluates experience acquired by appraiser candidates in the preparation of appraisal reports. Under §§ 36.11(e)(1) and 36.12(e)(1), at least one-half of the qualifying hours of experience required for certification as a residential and general real estate appraiser, respectively, must be in the preparation of appraisal reports.

Section 36.13(a)(1) provides that with regard to experience acquired before September 3, 1998, the Board will accept experience in preparing an appraisal report that has been acquired by: (1) a licensed real estate broker under the RELRA; (2) an elected officer, director or employee of a Federally or state-regulated banking or savings institution, savings bank, credit union or trust company, in connection with a loan transaction; (3) a certified broker/appraiser; or (4) an assistant to a residential or general real estate appraiser, subject to the

requirements of § 36.13(b). Section 36.13(a)(2) provides that with regard to experience acquired on or after September 3, 1998, the Board will accept experience in preparing an appraisal report that has been acquired by: (1) a certified broker/appraiser; or (2) an assistant to a residential or general real estate appraiser, subject to the requirements of § 36.13(b).

The proposed rulemaking would amend §§ 36.13(a)(1) and (2) to include appraisal report preparation experience acquired by a residential real estate appraiser while assisting a general real estate appraiser in an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units, subject to the requirements of proposed § 36.13(d). These amendments, which were inadvertently omitted when the Board last revised § 36.13 in July 2007, address the acceptability of appraisal report preparation experience acquired by a residential real estate appraiser who is seeking to upgrade to general real estate appraiser status. (As set forth in § 36.1, a residential real estate appraiser's scope of authority is the appraisal of residential property of 1-to-4 dwelling units.)

The proposed rulemaking would further amend § 36.13(a)(2) to include appraisal report preparation experience acquired as an appraiser trainee assisting a residential or general real estate appraiser, subject to the requirements of proposed § 36.13(c), and to cut off the acceptability of experience acquired as an assistant to a residential or general real estate appraiser after June 30, 2010. These amendments would establish July 1, 2010, as the date by which a person who is not a broker/appraiser or residential real estate appraiser must be licensed as an appraiser trainee to receive qualifying experience in the preparation of appraisal reports.

Section 36.13(b) provides that for an assistant to a residential or general real estate appraiser to acquire qualifying experience in the preparation of an appraisal report, the assistant shall: (1) perform an interior and exterior inspection of the subject property; (2) not arrive at an independent determination of value; and (3) sign the appraisal report as "assistant to the certified real estate appraiser" or be referenced in the certification section of the appraisal report, or in an addendum to the report, as having provided significant professional assistance.

The proposed rulemaking would amend § 36.13(b) to require the appraisal assistant to comply with USPAP and to complete and co-sign a Board-approved assistant checklist that relates to the assistant's work on the appraisal report. These amendments are consistent with §§ 36.11(e)(2) and 36.12(e)(2), which require all qualifying experience for certification as a residential and general real estate appraiser, respectively, to be USPAP-compliant, and with § 36.54 (relating to supervision of appraisal assistant), which requires a residential or general real estate appraiser who utilizes an appraisal assistant to sign an appraisal assistant checklist that has been completed by the assistant and that relates to the assistant's work on the appraisal report. The proposed rulemaking would also amend § 36.13(b) to include the clarifications that an appraisal assistant may be a co-signatory, rather than the sole signatory, to the appraisal report, and that the nature of the assistance being acknowledged in the report is "significant real property appraisal assistance"—the terminology currently used in USPAP—rather than "significant professional assistance." The proposed rulemaking would further amend § 36.13(b) to relieve an appraisal assistant of the obligation to

co-sign or otherwise be referenced in the certification section of the appraisal report if the appraisal assistant checklist is made part of the appraisal report.

Proposed § 36.13(c) would determine that an appraiser trainee planning to acquire qualifying experience in the preparation of an appraisal report, must: (1) not be supervised by more than one residential or general real estate appraiser on each appraisal assignment; (2) perform an interior and exterior inspection of the property; (3) not arrive at an independent determination of value; (4) comply with USPAP; and (5) complete and co-sign a Board-approved appraiser trainee checklist that relates to the trainee's work on the appraisal report and that is made part of the appraisal report submitted to the client.

By making inclusion of the appraiser trainee checklist a mandatory, as opposed to optional, component of the appraisal report, the Board intends to create a higher level of disclosure regarding the activities of a licensed appraiser trainee than has previously existed regarding the activities of an uncredentialed appraisal assistant. While USPAP requires a real estate appraiser to describe in the appraisal report the nature of significant real property appraisal assistance that he received from another, the level of required detail regarding the assistance varies depending on the format of appraisal report. Requiring the appraiser trainee checklist to be incorporated into every appraisal report—regardless of reporting format—ensures that every client is apprised in detail about which aspects of the appraisal were completed by the trainee. The stipulation that an appraiser trainee not have more than one supervisory appraiser per engagement represents the Board's interpretation of language in section 6(a.1) of the REACA providing that a trainee must practice under the direct supervision of "one" residential or general real estate appraiser for purpose of obtaining qualifying experience. The Board does not believe the General Assembly intended that an appraiser trainee be limited to a single supervisory appraiser for the duration of the apprenticeship; such an interpretation could have the effect of severely limiting the ability of a trainee to obtain qualifying experience for certification, particularly if there is a shortage of appraisers available who are able to offer employment for the full term of an apprenticeship.

Proposed § 36.13(d) would provide that for a residential real estate appraiser to obtain qualifying experience assisting a general real estate appraiser in the preparation of an appraisal report, the residential appraiser shall: (1) perform an interior and exterior inspection of the property; (2) not arrive at an independent determination of value; (3) comply with USPAP; and (4) co-sign the appraisal report as set forth in § 36.52 (relating to use of certificate number and title) and ensure that the nature of his significant real property appraisal assistance is specified in the report.

The proposed amendments relating to a residential real estate appraiser who assists a general real estate appraiser differ from those relating to an appraiser trainee in that a residential appraiser is not required to complete and sign a checklist relating to his activities in preparing the appraisal report. Because a residential real estate appraiser has completed education and training beyond that of an appraiser trainee and is authorized to perform appraisals within the scope of his certification without supervision, the Board believes it is sufficient that the extent of his assistance to a general real estate appraiser

be provided in the appraisal report, in accordance with the reporting standards of USPAP, rather than itemized in detail on a checklist.

§ 36.42 (relating to continuing education subject matter)

Section 36.42(a) lists acceptable continuing education topics for a real estate appraiser, while § 36.42(d) allows additional topics, on a case-by-case basis, if the appraiser can demonstrate that the topic contributes to the appraiser's competence. Section 36.42(b) requires each continuing education course to be at least 2 classroom hours in length and each classroom hour to comprise 50 minutes of a 60-minute segment. Section 36.42(d) permits a real estate appraiser to obtain continuing education from an accredited college or university or, subject to prior approval from the Board under § 36.31 (relating to provider registration/appraisal courses) from an appraisal or real estate organization, a State or Federal agency, a proprietary school, or other provider. Section 36.42(e) permits a real estate appraiser to obtain continuing education credit for participation in the continuing education process other than as a student; credit may be earned for service as an instructor, course developer, author of instructional materials, or for performance of a similar function.

During its July 2008 field review, the ASC advised the Board that the AQB limits the awarding of continuing education credit for participation other than as a student to a maximum of 50% of the continuing education requirement. Accordingly, the proposed rulemaking would amend § 36.42(e) to establish that limitations on the awarding of continuing education credit to a real estate appraiser.

§ 36.51 (relating to compliance with USPAP)

Section 36.51 requires a real estate appraiser to perform an appraisal in accordance with USPAP, provides that a real estate appraiser who violates USPAP is subject to disciplinary action under the REACA, and furnishes contact information for obtaining the current edition of USPAP.

Consistent with proposed § 36.13(c), the proposed rulemaking would amend § 36.51 to require an appraiser trainee to comply with USPAP when performing an appraisal. The proposed rulemaking also would amend § 36.51 to provide that an appraiser trainee who violates USPAP is subject to disciplinary action under the REACA. In this regard, section 11(a)(6) of the REACA (63 P. S. § 457.11(a)(6)), as amended by Act 59 of 2008, proscribes, in part, an appraiser trainee's violation of any standard for the development or communication of an appraisal. The proposed rulemaking also would make editorial changes to § 36.51.

§ 36.52 (relating to use of certificate number and title)

Section 36.52 requires a real estate appraiser to place name, signature, and certificate number immediately adjacent to or immediately below the appraiser's title on each appraisal report and appraisal agreement. Section 36.52 references the titles of "Pennsylvania certified general real estate appraiser," "Pennsylvania certified residential real estate appraiser" and "Pennsylvania certified broker/appraiser" and provides an example of how such titles, together with the other required information, should appear on an appraisal report or appraisal agreement.

The proposed rulemaking would amend § 36.52 to permit "substantially similar" titles to be substituted for those referenced in the section. This more flexible standard is desirable because some of the commercial software and templates that real estate appraisers use to prepare appraisal reports cannot be easily modified to accommodate the "long form" of their titles.

§ 36.54 (relating to supervision of appraisal assistant)

Section 36.54 sets forth the supervisory duties of a residential or general real estate appraiser when utilizing an appraisal assistant. The supervisory appraiser shall: (1) provide the Board with written notification of the name and address of the appraisal assistant when the assistant begins work for the supervisor; (2) directly supervise and control the assistant's work, assuming total responsibility for all value conclusions and other contents of the appraisal report; (3) accompany an assistant who is not a residential appraiser during the physical inspection of the property until the assistant has logged 300 hours of experience or the supervisor determines the assistant is competent under USPAP to perform the inspection unaccompanied, whichever period is longer; (4) accompany an assistant who is a residential appraiser during the physical inspection of the property until the supervisor determines that the assistant is competent under USPAP to perform the inspection unaccompanied; (5) sign the appraisal report as a real estate appraiser and either have the assistant sign the report as an assistant to the appraiser or identify the assistant in the certification section of the report, or in an addendum to the report, as having provided significant professional assistance; (6) sign a Board-approved appraisal assistant checklist that has been completed by the assistant and relates to the assistant's work on the appraisal report; and (7) provide a current or former assistant who is applying for appraiser certification with copies of designated appraisal reports and appraisal assistant checklists requested by the Board to verify the assistant's experience.

The proposed rulemaking would reorganize § 36.54 into three subsections and retitle it "Duties of supervisory appraiser." The proposed rulemaking would reclassify the current language as subsection (a) and would limit its applicability to the supervisory appraiser's utilization, before July 1, 2010, of an appraisal assistant who is not already credentialed as an appraiser trainee or residential real estate appraiser. June 30, 2010, is the last date that an appraisal assistant who is not an appraiser trainee or residential real estate appraiser can acquire qualifying experience in the preparation of appraisal reports towards the requirements for certification as a residential or general appraiser. The proposed rulemaking would eliminate the need for an appraisal assistant to sign or otherwise be acknowledged in the report if the appraisal assistant checklist is made part of the report. The proposed rulemaking would also clarify that an appraisal assistant may be a co-signatory, rather than the sole signatory, on the appraisal report and appraisal assistant checklist, and that the nature of assistance being acknowledged in the appraisal report is "significant real property appraisal assistance" rather than "significant professional assistance."

Proposed § 36.54(b) would set forth the supervisory duties of a residential or general real estate appraiser when utilizing an appraiser trainee. The supervisory appraiser shall: (1) have at least 5 years' experience as residential or general real estate appraiser; (2) supervise no more than 3 appraiser trainees at one time; (3) directly supervise and control the trainee's work, assum-

ing total responsibility for all value conclusions and other contents of the appraisal report; (4) accompany the trainee during the physical inspection of the property until the trainee has logged 300 hours of experience or until the supervisor determines that the trainee is competent under USPAP to perform the inspection unaccompanied, whichever period is longer; (5) co-sign a Board-approved trainee checklist that has been completed by the trainee, relates to the trainee's work on the appraisal report and is made part of the appraisal report that is submitted to the client; and (6) provide a current or former trainee who is applying for appraiser certification with copies of designated appraisal reports and appraiser trainee checklists requested by the Board to verify the trainee's experience. The requirements relating to the supervisory appraiser's experience and to the number of appraiser trainees that may be supervised at the same time track language in section 6(a.1) of the REACA.

Proposed § 36.54(c) would set forth the supervisory duties of a general real estate appraiser when utilizing a residential real estate appraiser as an assistant for an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units. These amendments were inadvertently omitted when the Board adopted § 36.54 in its original form in July 2007. Under proposed § 36.54(c), the supervisory appraiser shall: (1) directly supervise the residential appraiser's work, assuming total responsibility for all value conclusions and other contents of the appraisal work; (2) accompany the residential appraiser during the physical inspection of the property until the supervisory appraiser determines that the residential appraiser is competent under USPAP to perform the inspection unaccompanied; (3) co-sign the appraisal report as set forth in § 36.52 and specify in the report the nature of the significant real property appraisal assistance rendered by the residential appraiser; and (4) provide the residential appraiser, at the time of application for general appraiser certification, with copies of designated appraisal reports requested by the Board to verify the residential appraiser's experience.

§ 36.262 (relating to continuing education subject matter)

Section 36.262, which applies to certified Pennsylvania evaluators (CPEs) under the Assessors Certification Act (ACA) (63 P. S. §§ 458.1—458.16), is virtually identical in structure and content to § 36.42. As with § 36.42(e), the proposed rulemaking would amend § 36.262(e) to limit the awarding of continuing education credit for participation other than as a student to a maximum of 50% of the continuing education requirement. Although CPEs are not subject to the continuing education requirements established by the AQB, the Board has consistently adopted continuing education requirements for CPEs that mirror, as much as practicable, the continuing education requirements for real estate appraisers. The Board has done so, with the concurrence of the professional organization that represents CPEs, because of the similarities between the real estate appraising and real estate assessing professions.

Statutory Authority

Section 5(2) of the REACA (63 P. S. § 457.5(2)) and section 3 of the Assessors Certification Act (ACA) (63 P. S. § 458.3) authorize the Board to promulgate regulations as may be necessary to carry out the provisions of the REACA and the ACA, respectively. Additionally, section 9(a) of the REACA (63 P. S. § 457.9(a)) authorizes the Board to establish fees for its operations by regulation.

Fiscal Impact

The proposed rulemaking would require each applicant for licensure as an appraiser trainee to pay an application fee of \$75 to the Board. The fee would generate approximately \$30,000 in biennial revenues for the Board, based on projections that the Board would receive approximately 400 license applications biennially. The proposed rulemaking also would require those seeking to become licensed as appraiser trainees to incur costs in obtaining qualifying education for licensure. Although these costs cannot be quantified, they do not add to the overall cost of becoming credentialed as a residential or general real estate appraiser because the coursework that would be necessary for licensure as an appraiser trainee is part of the coursework that is currently necessary for certification as a residential or general appraiser.

The proposed rulemaking would not have a direct fiscal impact on the public or on other agencies and political subdivisions of this Commonwealth.

Paperwork Requirements

The proposed rulemaking would require each prospective appraiser trainee to file a license application with the Board and, once licensed, to file a biennial renewal application to retain the right to practice as a trainee. The Board would be required to develop application forms for initial licensure and biennial renewal of licensure as well as an appraiser trainee checklist for use by trainees and their supervisory real estate appraisers in documenting the nature of trainees' work in the preparation of appraisal reports. The proposed rulemaking would not create additional paperwork for residential and general real estate appraisers because they are already required to use checklists to document the experience acquired by appraisal assistants in their employ. The proposed rulemaking would not create additional paperwork for the general public or the Commonwealth and its political subdivisions.

Effective Date

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

Regulatory Review

On September 9, 2009, as required under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of this proposed rulemaking, a Regulatory Analysis Form and a Fee Report Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Standing Committee on Consumer Protection and Professional Licensure and the House Standing Committee on Professional Licensure. Copies of the Regulatory Analysis Form and Fee Report Form are available to the public upon request.

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

Public Comment

The Board invites interested persons to submit written comments, suggestions or objections regarding the pro-

posed rulemaking to Steven Wennberg, Regulatory Unit Counsel, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this notice in the *Pennsylvania Bulletin*.

ROBERT F. McRAE,
Chairperson

Fiscal Note: 16A-7015. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

**Subchapter A. GENERAL PROVISIONS
GENERAL PROVISIONS**

§ 36.1. Definitions.

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

* * * * *

Licensed appraiser trainee—A person who holds a license issued under section 6(a.1) of the act and § 36.12a (relating to qualifications for licensure as appraiser trainee) and who is authorized to assist a certified residential real estate appraiser or certified general real estate appraiser in the performance of an appraisal.

* * * * *

§ 36.2. Application process.

(a) *Application form.* A person interested in becoming a **licensed appraiser trainee**, a certified residential real estate appraiser or a certified general real estate appraiser shall complete and file with the Board a notarized application form and an application fee. Application forms may be obtained by visiting the Board's web site at www.dos.state.pa.us/real or by writing, telephoning, or e-mailing the Board at Post Office Box 2649, Harrisburg, PA 17105-2649, (717) 783-4866, or ST-APPRAISE, respectively.

(b) *Application fee.* The application fee for **licensure as an appraiser trainee** or certification as a residential real estate appraiser or general real estate appraiser is set forth in § 36.6 (relating to fees). Application fees are nonrefundable. Payments must be in the form of a personal check or money order made payable to the "Commonwealth of Pennsylvania."

(c) *Approved applications.* Subject to the provisions of subsection (e), an approved application **for certification as a residential real estate appraiser or general real estate appraiser** will be valid for 1 year from the date of approval. If an applicant does not pass the certification examination within this 1-year period, the applicant's application will be considered to have been withdrawn. If the applicant wishes to take the examination after 1 year from the date of approval, a new application, along with the required fee, shall be submitted to the Board.

(d) *Disapproved applications.* Subject to the provisions of subsection (e), an applicant **for licensure as an appraiser trainee, certification as a residential real estate appraiser, or certification as a general real estate appraiser** whose application has been disapproved by the Board will be notified in writing of the reasons for the disapproval, and will have 1 year from the date of disapproval to correct the deficiencies or to file a request for reconsideration. A request for reconsideration must give the reason for the applicant's request, must be accompanied by documentary materials not previously submitted which the applicant wishes the Board to consider and may include a request for an informal review with the Board. If a request for reconsideration is denied or, subject to the provisions of subsection (e), an applicant is unable to correct the deficiencies which resulted in the disapproval of the application within 1 year from the date of disapproval, a new application, along with the required fee, shall be submitted to the Board.

(e) *Compliance with new requirements.* Except as otherwise provided in §§ 36.11 and 36.12 (relating to qualifications for certification as residential real estate appraiser; and qualifications for certification as general real estate appraiser), an applicant **for certification as a residential real estate appraiser or general real estate appraiser** shall comply with any increased education or experience requirements that take effect between the applicant's filing of an initial application and the applicant's passing the certification examination. **An applicant for licensure as an appraiser trainee shall comply with any increased education requirement that takes effect between the applicant's filing of an application that is disapproved and the applicant's filing of a new application.**

§ 36.3. Examinations.

(a) The examination required for certification as a residential real estate appraiser is the AQB-endorsed Uniform State Certified Residential Real Property Appraiser Examination or its equivalent. The examination required for certification as a general real estate appraiser is the AQB-endorsed Uniform State Certified General Real Property Appraiser Examination or its equivalent. The certification examinations are administered by a professional testing organization under contract with the Board at times and places established by the professional testing organization. **An examination is not required for licensure as an appraiser trainee.**

* * * * *

§ 36.6. Fees.

The following is the schedule of fees charged by the Board:

* * * * *

Licensed Appraiser Trainee

Application \$75

QUALIFICATIONS FOR CERTIFICATION OR LICENSURE

§ 36.11. Qualifications for certification as residential real estate appraiser.

* * * * *

(b) *Appraisal classroom hours.* [An applicant shall submit evidence to the Board of having completed 120 classroom hours of courses in subjects related to real estate appraisal, including the 15-hour National USPAP Course, together with coverage of the topics listed in subsection (c)(1).] Effective January

1, 2008, an applicant shall submit evidence to the Board of having completed 200 classroom hours in the appraisal curriculum set forth in subsection (c)(2)[, except that the new requirement does not apply to an applicant who has satisfied the existing education requirement before January 1, 2008]. This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that shows evidence of the applicant's having completed 120 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

* * * * *

(2) [*Teaching credit.* Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses for actual classroom time, but credit will not be given for course repetition.

(3)] *Providers of appraisal courses.* * * *

[(4)] (3) *Distance education.* * * *

* * * * *

[(5) *Credit for challenge examination.* The Board may accept toward the classroom hour requirement a course for which the applicant obtained credit from the course provider by challenge examination without attending the course, if the course provider granted credit prior to July 1, 1990, and the Board is satisfied with the quality of the challenge examination that was administered by the course provider.]

* * * * *

(d) *Postsecondary education.*

(1) Effective January 1, 2008, an applicant shall submit evidence to the Board of having satisfied one of the following requirements:

* * * * *

(ii) Completion of 21 semester credit hours in the following college-level subjects at an accredited college or university:

* * * * *

(F) [*Introduction to computers-word processing/spreadsheets*] *Computer science.*

* * * * *

(2) [*This subsection does not apply to an applicant who completed 120 classroom hours of qualifying appraisal education under subsection (b) before January 1, 2008.] This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that shows evidence of the applicant's having completed 120 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.*

* * * * *

§ 36.12. *Qualifications for certification as general real estate appraiser.*

* * * * *

(b) *Appraisal classroom hours.* [*An applicant shall submit evidence to the Board of having completed 180 classroom hours of courses in subjects related to real estate appraisal, including the 15-hour National USPAP Course, together with coverage of the topics listed in subsection (c)(1).*] Effective January 1, 2008, an applicant shall submit evidence to the Board of having completed 300 classroom hours in the appraisal curriculum set forth in subsection (c)(2)[, except that the new requirement does not apply to an applicant who has satisfied the existing education requirement before January 1, 2008]. This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that shows evidence of the applicant's having completed 180 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

* * * * *

(2) [*Teaching credit.* Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses for actual classroom time, but credit will not be given for course repetition.

(3)] *Providers of appraisal courses.* * * *

[(4)] (3) *Distance education.* * * *

* * * * *

[(5) *Credit for challenge examination.* The Board may accept toward the classroom hour requirement a course for which the applicant obtained credit from the course provider by challenge examination without attending the course, if the course provider granted credit prior to July 1, 1990, and the Board is satisfied with the quality of the challenge examination that was administered by the course provider.]

* * * * *

(d) *Postsecondary education.*

(1) Effective January 1, 2008, an applicant shall submit evidence to the Board of having satisfied one of the following requirements:

* * * * *

(ii) Completion of 30 semester credit hours in the following college-level subjects at an accredited college or university:

* * * * *

(G) [*Introduction to computers—word processing/spreadsheets*] *Computer science.*

* * * * *

(2) [*This subsection does not apply to an applicant who completed 180 classroom hours of qualifying appraisal education under subsection (b) before January 1, 2008.] This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that shows evidence of the applicant's having completed 180 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP*

Course or equivalent course, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

* * * * *

§ 36.12a. Qualifications for licensure as appraiser trainee.

(a) *Overview.* An applicant for licensure as an appraiser trainee shall be of good moral character and meet the education requirements prescribed by this section. Neither a real estate salesperson's license nor a real estate broker's license issued under the Real Estate Licensing and Registration Act (63 P. S. § 455.101—455.902) is a prerequisite for licensure as an appraiser trainee.

(b) *Appraisal classroom hours.* An applicant shall submit evidence to the Board of having completed 75 classroom hours in the appraisal curriculum in paragraph (1), except that this requirement does not apply to an applicant who had satisfied the education requirement for certification as a residential real estate appraiser that was in effect as of December 31, 2007.

(1) *Content of appraisal education.* An applicant's classroom hours must satisfy the following curriculum requirements:

- (i) Basic appraisal principles (30 hours).
 - (A) Real property concepts and characteristics.
 - (I) Basic real property concepts.
 - (II) Real property characteristics.
 - (III) Legal description.
 - (B) Legal considerations.
 - (I) Forms of ownership.
 - (II) Public and private controls.
 - (III) Real estate contracts.
 - (IV) Leases.
 - (C) Influences on real estate.
 - (I) Governmental.
 - (II) Economic.
 - (III) Social.
 - (IV) Environmental, geographic and physical.
 - (D) Types of value.
 - (I) Market value.
 - (II) Other value types.
 - (E) Economic principles.
 - (I) Classical economic principles.
 - (II) Application and illustrations of the economic principles.
 - (F) Overview of real estate markets and analysis.
 - (I) Market fundamentals, characteristics and definitions.
 - (II) Supply analysis.
 - (III) Demand analysis.
 - (IV) Use of market analysis.
 - (G) Ethics and how they apply in appraisal theory and practice.
 - (ii) Basic appraisal procedures (30 hours).

- (A) Overview of approaches to value.
- (B) Valuation procedure.
 - (I) Defining the problem.
 - (II) Collecting and selecting the data.
 - (III) Analyzing.
 - (IV) Reconciling and final value opinion.
 - (V) Communicating the appraisal.
- (C) Property description.
 - (I) Geographic characteristics of the land/site.
 - (II) Geologic characteristics of the land/site.
 - (III) Location and neighborhood characteristics.
 - (IV) Land/site considerations for highest and best use.
 - (V) Improvements—architectural styles and types of construction.
- (D) Residential applications.
 - (iii) National USPAP Course or equivalent (15 hours).
 - (A) Preamble and ethics rules.
 - (B) Standard 1.
 - (C) Standard 2.
 - (D) Standards 3 to 10.
 - (E) Statements and advisory opinions.
- (2) *Examination requirement; length of classroom hour.* Credit towards the classroom hour requirement will only be granted when the applicant successfully completes an examination pertinent to the course. A classroom hour is defined as 50 minutes out of each 60 minute segment.
- (3) *Providers of appraisal courses.* Credit for the classroom hour requirement may be obtained from accredited colleges or universities and community or junior colleges. Subject to Board approval under § 36.31 (relating to provider registration/appraisal courses), credit for the classroom hour requirement may also be obtained from real estate appraisal or real estate related organizations, State or Federal agencies or commissions, proprietary schools and other providers.
- (4) *Distance education.* A distance education course is acceptable to meet the classroom hour requirement if the course is approved by the Board and meets the following conditions:
 - (i) The course is presented by one of the following:
 - (A) An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines.
 - (B) A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program.
 - (ii) The applicant successfully completes a written examination proctored by an official approved by the college, university or other course provider.

(iii) The content and classroom hours of the course meet the requirements of paragraphs (1) and (2).

(c) *Noneligibility for licensure.* A certified real estate appraiser is not eligible to be licensed as an appraiser trainee.

(d) *Limitation on license renewal.* An appraiser trainee license may not be biennially renewed more than four times unless the Board, for good cause shown and on a case-by-case basis, determine that one or more additional renewals is warranted.

§ 36.13. Experience options for preparation of appraisal reports.

(a) An applicant for certification as a residential real estate appraiser or a general real estate appraiser under §§ 36.11 and 36.12 (relating to qualifications for certification as residential real estate appraiser; and qualifications for certification as general real estate appraiser) shall have acquired experience in the preparation of appraisal reports in one or more of the following:

(1) Prior to September 3, 1998:

* * * * *

(v) As a certified residential real estate appraiser assisting a certified general real estate appraiser in an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units, provided the residential appraiser satisfies the requirements of subsection (d).

(2) On or after September 3, 1998:

* * * * *

(ii) As an assistant to a certified residential real estate appraiser or certified general real estate appraiser, provided the experience is acquired before July 1, 2010, and the assistant satisfies the requirements of subsection (b).

(iii) As a licensed appraiser trainee assisting a certified residential real estate appraiser or certified general real estate appraiser, provided the trainee satisfies the requirements of subsection (c).

(iv) As a certified residential real estate appraiser assisting a general real estate appraiser in an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units, provided the residential appraiser satisfies the requirements of subsection (d).

(b) An assistant to a certified general real estate appraiser or certified residential real estate appraiser shall observe the following requirements when preparing an appraisal report:

* * * * *

(3) The assistant shall comply with USPAP.

(4) The assistant shall complete and co-sign a Board-approved appraisal assistant checklist that relates to the assistant's work on the appraisal report.

[(3) The] (5) Unless the appraisal assistant checklist is made part of the appraisal report, the assistant shall [sign] co-sign the appraisal report as "assistant to the certified real estate appraiser" or be referenced in the certification section of the appraisal

report, or in an addendum to the appraisal report, as having provided significant [professional] real property appraisal assistance.

(c) A licensed appraiser trainee shall observe the following requirements when preparing an appraisal report for a certified general real estate appraiser or certified residential real estate appraiser:

(1) The trainee may not be supervised by more than one residential or general appraiser on each appraisal assignment.

(2) The trainee shall perform an inspection of the interior and exterior of the property.

(3) The trainee may not arrive at an independent determination of value.

(4) The trainee shall comply with USPAP.

(5) The trainee shall complete and co-sign a Board-approved appraiser trainee checklist that relates to the trainee's work on the appraisal report and that is made part of the appraisal report submitted to the client.

(d) A certified residential real estate appraiser shall observe the following requirements when preparing an appraisal report for a certified general real estate appraiser:

(1) The residential appraiser shall perform an inspection of the interior and exterior of the property.

(2) The residential appraiser may not arrive at an independent determination of value.

(3) The residential appraiser shall comply with USPAP.

(4) The residential appraiser shall co-sign the appraisal report as set forth in § 36.52 (relating to use of certificate number and title) and shall ensure that the nature of his significant real property appraisal assistance is specified in the report.

CONTINUING EDUCATION

§ 36.42. Continuing education subject matter.

* * * * *

(e) Continuing education credit may also be granted—up to 50% of the biennial requirement—for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted include teaching, program development, authorship of textbooks or similar activities which the applicant can demonstrate to the Board are equivalent to obtaining continuing education.

STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

§ 36.51. Compliance with USPAP.

A certified real estate appraiser or licensed appraiser trainee shall perform an appraisal assignment in accordance with USPAP. A certified real estate appraiser or licensed appraiser trainee who violates one or more provisions of USPAP shall be subject to disciplinary action under the act. [A certified real estate appraiser can obtain a] A copy of the current edition of USPAP can be obtained by writing, telephoning or e-mailing the Appraisal Foundation at 1029 Vermont

Avenue, N.W., Suite 900, Washington D.C. 20005-3517, (202) 347-7722, or info@appraisalfoundation.org, respectively.

§ 36.52. Use of certificate number and title.

A certified real estate appraiser shall place his name, signature and certificate number adjacent to or immediately below the title "Pennsylvania certified general real estate appraiser," "Pennsylvania certified residential real estate appraiser" or "Pennsylvania certified broker/appraiser," as appropriate, on each written appraisal report and each written appraisal agreement. A substantially similar title may be substituted. Professional designations may be included adjacent to the signature, if applicable. The following will serve as an example:

/s/ _____

John Doe, (Professional designation, if applicable)
Pennsylvania Certified Residential Real Estate Appraiser
Certification number RL-999999-L

§ 36.54. [Supervision of appraisal assistant] Duties of supervisory appraiser.

(a) A certified residential real estate appraiser or certified general real estate appraiser who utilizes an appraisal assistant before July 1, 2010, shall:

* * * * *

(3) Accompany the assistant during the physical inspection of the property [as follows:

(i) In the case of an assistant who is not a certified residential real estate appraiser, accompany the assistant during the physical inspection of the property] until the assistant has logged 300 hours of appraisal experience or until the supervising appraiser determines the assistant is competent under USPAP to perform the physical inspection unaccompanied, whichever is the longer period.

[(ii) In the case of an assistant who is a certified residential real estate appraiser seeking to obtain qualifying experience for certification as a general real estate appraiser, accompany the assistant during the physical inspection of the property until the supervising appraiser determines the assistant is competent under USPAP to perform the physical inspection unaccompanied.]

(4) [Sign] Co-sign the appraisal report as a certified real estate appraiser under § 36.52 (relating to use of certificate number and title) and, unless the appraisal assistant checklist referenced in paragraph (5) is made part of the appraisal report submitted to the client, either have the assistant sign the appraisal report as assistant to the certified real estate appraiser or identify the assistant in the certification section of the appraisal report, or in addendum to the appraisal report, as having provided significant [professional] real property appraisal assistance.

(5) [Sign] Co-sign a Board-approved appraisal assistant checklist that has been completed by the assistant and relates to the assistant's work on the appraisal report.

* * * * *

(b) A certified residential real estate appraiser or certified general real estate appraiser who utilizes a licensed appraiser trainee shall:

(1) Have at least 5 years' experience as a residential or general appraiser.

(2) Supervise no more than three trainees at one time.

(3) Directly supervise and control the trainee's work, assuming total responsibility for the contents of the appraisal report, including all value conclusions.

(4) Accompany the trainee during the physical inspection of the property until the trainee has logged 300 hours of appraisal experience or until the supervising appraiser determines the trainee is competent under USPAP to perform the physical inspection unaccompanied, whichever is the longer period.

(5) Co-sign a Board-approved appraiser trainee checklist that has been completed by the trainee, relates to the trainee's work on the appraisal report and is made part of the appraisal report submitted to the client.

(6) Provide a current or former trainee who is applying for appraiser certification with copies of designated appraisal reports requested by the Board to verify the trainee's experience.

(c) A certified general real estate appraiser who utilizes a certified residential real estate appraiser as an assistant for an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units shall:

(1) Directly supervise and control the residential appraiser's work, assuming total responsibility for the contents of the appraisal report, including all value conclusions.

(2) Accompany the residential appraiser during the physical inspection of the property until the general appraiser determines the residential appraiser is competent under USPAP to perform the physical inspection unaccompanied.

(3) Co-sign the appraisal report as set forth in § 36.52 and specify in the appraisal report the nature of the significant real property appraisal assistance rendered by the residential appraiser.

(4) Provide the residential appraiser, at the time of application for general appraiser certification, with copies of designated appraisal reports requested by the Board to verify the residential appraiser's experience.

Subchapter C. CERTIFIED PENNSYLVANIA EVALUATORS

CONTINUING EDUCATION

§ 36.262. Continuing education subject matter.

* * * * *

(e) Continuing education credit [will] may also be granted—up to 50% of the biennial requirement—for participation, other than as a student, in appraisal or assessment educational processes and programs. Examples of activities for which credit [will] may be

granted include teaching, program development, authorship of [text books] textbooks or similar activities [if] which the applicant can demonstrate to the Board [that these activities] are equivalent to obtaining continuing education.

[Pa.B. Doc. No. 09-1719. Filed for public inspection September 18, 2009, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40] Continuing Education Providers

The State Board of Physical Therapy (Board) proposes to amend § 40.63 (relating to continuing education) to read as set forth in Annex A.

Effective date

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

Statutory Authority

The amendment is authorized under sections 3(a) and 9(c) of the Physical Therapy Practice Act (act) (63 P. S. §§ 1303(a) and 1309(c)).

Background and Need for the Amendment

Section 9(a) of the act generally prohibits a physical therapist from treating human ailments by physical therapy except upon referral by a physician. However, under section 9(b) of the act, a physical therapist who meets certain qualifications may receive from the Board a certificate of authority to practice physical therapy without the required referral (often known as direct access). Under section 9(c)(1) of the act, a certificateholder shall complete a minimum amount of continuing education in each biennial renewal cycle to maintain direct access certification. The Board previously promulgated § 40.63 to set standards of continuing education for a direct access certificate holder.

Under § 40.63(d), a sponsor shall apply to the Board and obtain approval for each course or program of continuing education for the direct access certificate holder to receive credit that will satisfy the continuing education requirement. To avoid the need to apply for approval and review applications from providers that the Board knows currently meet the standards for approved continuing education courses, the Board proposes to preapprove those sponsors without requiring an application or specific review by the Board. Additionally, § 40.63(d) does not currently set a time in which the sponsor shall apply for approval. The Board proposes to require a continuing education sponsor to apply for approval at least 60 days in advance of the course presentation so that the Board would have adequate time to review the application and to permit a sponsor to request a waiver of that time limitation for good cause shown. Finally, because a given course might be offered multiple times, the Board proposes to explicitly indicate through its regulations that approval of a course is good for multiple offerings of that course throughout the year.

Description of the Proposed Amendments

The proposed rulemaking would first amend § 40.63(d)(1) and (3) to refer to approval status of the continuing education course, not the sponsor as the current regulation incorrectly refers. To provide the Board with adequate time in which to review the application, § 40.63(d)(3) would be amended to require that an application for course approval be submitted at least 60 days prior to the date the continuing education course is due to take place. Proposed § 40.63(d)(5) would be added to provide that a sponsor who is unable to apply at least 60 days in advance may request a waiver setting forth the reasons why the 60-day requirement could not be met. The Board may grant the waiver and review the application, if possible, within less than 60 days. Also, proposed § 40.63(d)(6) would be added to provide that course approval is valid for 1 year. The sponsor may offer other presentations of that course throughout the year, so long as they are indicated on the application.

Proposed § 40.63(h) would be added to provide for preapproval of sponsors whom the Board has determined meet the standards for approved courses and programs. Courses that otherwise meet all requirements for required continuing education would be approved when offered by the American Physical Therapy Association and its components, the Federation of State Boards of Physical Therapy (FSBPT) and graduate education programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE). It should be noted that the Board is a constituent member of FSBPT and that in § 40.11 (relating to license by examination; requirements for examination) the Board requires applicants to be graduates of physical therapy programs accredited by CAPTE. However, CAPTE accredits only entry-level programs—those awarding up through a Master's Degree. To the extent they otherwise meet all requirements for required continuing education, courses offered by postentry level doctorate of physical therapy programs in institutions accredited by the regional accrediting organization recognized by the Council of Regional Accrediting Commissions on behalf of the Council for Higher Education Accreditation, would also be preapproved.

Fiscal Impact and Paperwork Requirements

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee (Committees). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review

criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, or st-physical@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6513 (continuing education providers), when submitting comments.

JAMES L. CLAHANE, PT,
Chairperson

Fiscal Note: 16A-6513. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS PRACTICE WITHOUT PHYSICIAN REFERRAL

§ 40.63. Continuing education.

* * * * *

(d) *Approved [sponsors; acceptable] courses and programs.*

(1) Courses and programs [provided by Board-approved sponsors] approved by the Board will be accepted as satisfying the continuing education requirement. It is the responsibility of the certificateholder to ascertain the approval status of the [sponsor] course before undertaking a continuing education activity.

* * * * *

(3) Sponsors of physical therapy continuing education seeking Board approval of individual courses shall submit an application at least 60 days prior to the date the continuing education course is due to take place, on forms provided by the Board and pay the required fee. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons. The Board will not approve a [sponsor] course unless [it] the sponsor:

* * * * *

(5) A sponsor seeking approval who is unable to submit the application at least 60 days prior to the date the course is given, may request a waiver in writing setting forth the reasons why the 60-day requirement could not be met.

(6) Approval of a course will be valid for 1 year after approval. In the event that the sponsor is scheduling multiple courses, the sponsor shall indicate on the application each date the course is to be given.

* * * * *

(h) *Preapproved sponsors.* In addition to sponsors whose specific courses and programs are approved, the Board finds the following entities have currently met the standards for approved courses and programs. Accordingly, courses that otherwise meet all requirements for required continuing education are approved when offered by the following sponsors:

(1) The American Physical Therapy Association (APTA) and its components.

(2) The Federation of State Boards of Physical Therapy (FSBPT) and its jurisdictions.

(3) Graduate education programs accredited by The Commission on Accreditation in Physical Therapy Education (CAPTE).

(4) Postentry level doctorate of physical therapy programs in an academic institution accredited by a regional accrediting organization recognized by the Council of Regional Accrediting Commissions on behalf of the Council for Higher Education Accreditation.

[Pa.B. Doc. No. 09-1720. Filed for public inspection September 18, 2009, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Biennial Renewal Fees

The State Board of Veterinary Medicine (Board) proposes to amend § 31.41 (relating to fees) as set forth in Annex A. The proposed rulemaking would provide for an incremental increase to the biennial license renewal fee for veterinarians and veterinary technicians over the upcoming five biennial renewal cycles.

Effective Date

The amendment will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. The increased fees would be effective for the renewal period beginning December 1, 2010.

Statutory Authority

Section 13(b) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.13(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures. In recent years, while considering biennial renewal fee proposals from a variety of boards within the Bureau of Professional and Occupational Affairs, the House Professional Licensure Committee has suggested that the licensing boards set fee increases that are incremental over more than one biennial period. By this proposal, the Board would implement this suggestion. In addition to providing smaller increases for licensees, licensees benefit because the cost of promulgating biennial renewal fee regulations is saved.

Background and Purpose

The Board's current biennial license renewal fees for veterinarians and veterinary technicians were established in 2006. See 36 Pa.B. 4608 (August 19, 2006). At the time

the fee was established, it was anticipated that the new fee would enable the Board to balance its revenues and expenses for at least two biennial periods. Under section 13(b) of the act, the Board is required to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises virtually all of its revenue through biennial renewal fees.

At Board meetings in December 2007, and May 2008, the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses. BFO projected a deficit of \$105,254.45 in Fiscal Year (FY) 2007-2008, a deficit of \$153,361.88 in FY year 2009-2010, a deficit of \$374,361.88 in FY 2011-2012 and a deficit of \$748,361.88 in FY 2013-2014. According to the information presented, it would appear that BFO's 2005 projections were insufficient. The major reason for the deficits is that the number of complaints against veterinarians, particularly allegations of negligence or malpractice which require substantial resources to investigate, review and prosecute, have increased. As a result of the projected deficits, BFO again recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 13(b) of the act.

BFO recommended increasing the renewal fee for veterinarians to \$450 and increasing the renewal fee for veterinary technicians to \$115. Upon consideration of the HPLC's recommendation that the Board adopt an incremental increase rather than sporadic, large increases, the Board determined that it would accept the HPLC's recommendation such that a figure close to BFO's recommendation would be achieved over three biennial renewal periods rather than immediately. The Board's proposal would create the following fee schedule over the next 10 years:

| | <i>Veterinarians</i> | <i>Veterinary Technicians</i> |
|---------------|----------------------|-------------------------------|
| Current | \$ 300 | \$ 75 |
| November 2010 | \$ 360 | \$ 90 |
| November 2012 | \$ 400 | \$ 100 |
| November 2014 | \$ 440 | \$ 110 |
| November 2016 | \$ 490 | \$ 120 |
| November 2018 | \$ 540 | \$ 130 |
| November 2020 | \$ 590 | \$ 140 |

In spite of the proposed increases, the Board's new fees will be less than some surrounding states, but will be higher than other surrounding states. The Board is not aware of any other state that has adopted an incremental fee schedule.

Description of Proposed Amendments

Based upon the expense and revenue estimates provided to the Board, the Board proposes to amend § 31.41 to increase the fee for biennial renewal of licenses for veterinarians from \$300 to \$360 for the first biennial period following promulgation of the regulation, and in accordance with the schedule previously listed, over the next five biennial periods. This incremental increase should be less burdensome on the Board's licensees while allowing the Board to meet its statutory obligations.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fee for veterinarians and veterinary technicians.

The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees: however, the proposed rulemaking should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitor its revenue and cost on a FY and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Michelle Roberts, Administrative Assistant, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-5723, Biennial Renewal Fees, when submitting comments.

THOMAS J. MCGRATH, D.V.M.,
Chairperson

Fiscal Note: 16A-5723. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

[*Veterinarians*] *Veterinarian fees for services:*

* * * * *

[**Biennial renewal\$300**]

* * * * *

Veterinarian biennial renewal:

| | |
|---|--------------|
| Biennial renewal fee for biennial period December 1, 2010—November 30, 2012..... | \$360 |
| Biennial renewal fee for biennial period December 1, 2012—November 30, 2014..... | \$400 |
| Biennial renewal fee for biennial period December 1, 2014—November 30, 2016..... | \$440 |
| Biennial renewal fee for biennial period December 1, 2016—November 30, 2018..... | \$490 |
| Biennial renewal fee for biennial period December 1, 2018—November 30, 2020..... | \$540 |
| Biennial renewal fee for biennial period December 1, 2020—November 30, 2022..... | \$590 |

* * * * *

Veterinary [technicians] technician fees for services:

* * * * *

| | |
|---------------------------------|---------------|
| [Biennial renewal | \$75] |
|---------------------------------|---------------|

* * * * *

Veterinary technician biennial renewal:

| | |
|---|--------------|
| Biennial renewal fee for biennial period December 1, 2010—November 30, 2012..... | \$90 |
| Biennial renewal fee for biennial period December 1, 2012—November 30, 2014..... | \$100 |
| Biennial renewal fee for biennial period December 1, 2014—November 30, 2016..... | \$110 |
| Biennial renewal fee for biennial period December 1, 2016—November 30, 2018..... | \$120 |
| Biennial renewal fee for biennial period December 1, 2018—November 30, 2020..... | \$130 |
| Biennial renewal fee for biennial period December 1, 2020—November 30, 2022..... | \$140 |

[Pa.B. Doc. No. 09-1721. Filed for public inspection September 18, 2009, 9:00 a.m.]

**[49 PA. CODE CH. 31]
Responsibility to Clients and Patients**

The State Board of Veterinary Medicine (Board) proposes to amend § 31.21, Principle 7 (relating to rules of professional conduct for veterinarians, responsibility to clients and patients) to read as set forth in Annex A. The amendment would specify two exceptions to the existing rule that veterinarians may choose whom they will serve. First, the proposal would require a veterinarian to provide humane euthanasia to relieve the suffering of an animal physically presented to the veterinarian’s facility during the veterinarian’s business hours. Second, the proposal would require a veterinarian to provide notice and a reasonable time to secure alternative services if a veterinarian decides to discontinue treatment of an animal.

In addition, the proposal would clarify an existing provision related to protecting the personal privacy of clients. The proposal would also specifically require veterinarians to practice in accordance with current advancements in veterinary medicine and acceptable and

prevailing standards of care, including work with respect to drugs used by a veterinarian. Finally, the proposal would specifically require veterinarians to utilize analgesic drugs and therapies in accordance with current veterinary medical knowledge and acceptable and prevailing standards of care.

Effective Date

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

Statutory Authority

Section 21(11) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.21(11)) provides that the Board “shall suspend or revoke” a licensee or certificateholder who “depart[s] from or fail[s] to conform to the standards of acceptable and prevailing veterinary medical practice.” The Board’s proposed subsections (d) and (f) are consistent with this provision.

Section 21(12) of the act provides that the Board “shall suspend or revoke” a licensee or certificateholder who is found guilty of “[e]ngaging in practices in connection with the practice of veterinary medicine which are in violation of the standards of professional conduct as defined herein or prescribed by the rules of the board.” Section 5(2) of the act (63 P. S. § 485.5(2)) authorizes the Board to “[a]dopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.” The Board’s proposed amendment of subsections (a)—(c) and (e) update the Board’s rules of professional conduct and set forth standards to maintain high standards of integrity, skills and practice in the profession.

Background and Need for Amendments

The Board published an earlier draft of this rulemaking as proposed rulemaking at 37 Pa.B. 1038 (March 3, 2007). The Board received comments from individual veterinarians and the Pennsylvania Veterinary Medical Association (PVMA). Both the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) provided comments as part of their review of the proposed rulemaking. The Board’s original proposal related to the refusal to provide emergency services. Based on the extensive comments received by the Board, in writing and at a public hearing held on March 20, 2008, the Board made extensive revisions to the proposal. Due to the extent of the revisions, the Board determined it should republish as proposed rulemaking.

The act was amended in December 2002; in part, the amendments defined “veterinarian-client-patient relationship.” See 63 P. S. § 485.3. Based on this statutory amendment, the Board proposes to rename Principle 7 “Responsibility to clients and patients.”

The amendment is needed to conform the Board’s regulatory mandates with current expectations for professional practice.

Description of Proposed Amendments

The Board proposes to add exceptions to the general rule that veterinarians may choose whom they will serve, to account for circumstances in which a veterinarian is presented with an animal in grave condition that is physically presented to the veterinarian during the veterinarian’s regular business hours. The proposed amendment provides that a veterinarian may not refuse to provide humane euthanasia to relieve the suffering of an animal. The proposed amendment requires a veterinarian

to make a reasonable attempt to identify and contact the owner of such an animal and permits the veterinarian to proceed without client consent if the owner cannot be identified or contacted. This provision would also allow a veterinarian to euthanize an animal brought to the veterinary facility in a life-threatening condition without the owner's consent if, in the veterinarian's professional judgment, euthanasia is the only appropriate option.

When the rulemaking was previously proposed, IRRIC asked if this provision would have a disproportionate impact on farm animal veterinarians. The Board does not believe that the provision will have a significant effect on farm animal practitioners because it is unlikely that an owner would be able to load a cow that is in a grave condition into a trailer to transport it to a veterinary facility so that it can be physically presented to the veterinarian during regular business hours.

Second, the proposed amendment would permit a veterinarian to discontinue treatment of an animal after giving notice to the client of the veterinarian's intention to withdraw and after providing the client with reasonable time to secure alternative treatment. The proposal specifies that a reasonable time is based on the condition of the animal and the availability of alternative services. This provision protects the public by ensuring that the public will have a reasonable time to find another veterinarian.

The Board proposes to delete the second sentence of subsection (b) as redundant.

The Board's current provision in subsection (c) requires veterinarians to "protect the personal privacy of clients." This provision has caused confusion among licensees. Therefore, the Board proposes to expand subsection (c) to provide guidance on the provision.

The Board proposes to delete the current text of subsections (d) and (e), which the Board believes is self-evident and does not need to be set forth in regulation.

The Board proposes an amendment to what is currently subsection (e), but will become subsection (d). An individual approached the Board with the suggestion that the Board require veterinarians to provide a "client information sheet" whenever the veterinarian dispenses nonsteroidal anti-inflammatory drugs (NSAIDs). Virtually any drug may cause an adverse reaction. In addition, some drugs and other treatment options are not indicated for use in animals with certain health problems or animals receiving certain other drug therapies. The Board believes that its regulations should provide broad protection to the public in relation to veterinary medical diagnosis and treatment rather than focusing on one narrow class of drugs. The Board finds that public protection will be advanced by requiring veterinarians to inform clients of the benefits, risks and side effects of all recommended treatments, from surgeries to drug therapies, and to document client consent to or rejection of treatment in the animal's veterinary medical record. The latter requirement was promulgated as part of the Board's regulation related to recordkeeping. See, 49 Pa. Code § 31.22(4), published at 37 Pa.B. 3240 (July 14, 2007).

The Board proposes to expand this provision by requiring client signature for euthanasia and other treatments that have significant risks. The signature would not be required prior to performing the treatment, because the client is not always physically present. In such a case, the client may give oral consent, and the veterinarian may subsequently obtain the client's signature.

The former Chairperson of the Department of Agriculture's Animal Health and Diagnostic Commission, Dr. Paul Kneply, submitted comments to the Board on its draft rulemaking. The comments inquired about the implications of proposed subsection (f) for "normal farming activities and practices used in production animal medicine, such as castration and dehorning." Dr. Kneply noted, "A veterinarian may not normally administer anesthesia for these practices," and asked whether the proposed language would "prohibit 'normal animal agricultural practices' without anesthesia and pain medication." The Board is aware that the acceptable and prevailing standard of veterinary medical practice in producing animal medicine does not always include the administration of anesthesia or analgesia for the performance of procedures that, if performed on a companion animal, would require the administration of anesthesia or analgesia, or both. For this reason, the Board amended the draft language of subsection (f) to include language that the expectation of analgesia is consistent with the acceptable and prevailing standards of veterinary medical practice.

Finally, the Board proposes to add to subsection (g) the requirement that the veterinary medical record of an animal be provided to another veterinarian within a reasonable time. The Board declined to propose a specific time because, in many cases, all that is required is a one-page document, for example, of blood test results. In such cases, the document should be faxed upon request. Other requests for records may take longer. In any event, it would not be reasonable to take longer than the 72 hours permitted under the Board's regulations for responding to a request for records from a client.

Compliance with Executive Order 1996-1

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the proposed amendment, the Board sent the text of the draft proposed amendment to interested parties, including State and regional veterinary medical associations and considered the comments made by these interested parties.

Fiscal Impact and Paperwork Requirements

The proposed amendment should not have any financial impact on licensees, the Board or any other State entity. The proposed amendment will have no fiscal impact on the public. There are no additional paperwork requirements associated with the rulemaking.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRIC and to the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), and the House Professional Licensure Committee (HPLC). A copy of this material is available to the public upon request.

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

the General Assembly, and the Governor, prior to final publication of the rulemaking.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Michelle Roberts, Board Administrator, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA, 17105-2649, www.dos.state.pa.us/vet within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

THOMAS J. MCGRATH, D.V.M.,
Chairperson

Fiscal Note: 16A-5722. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

PROFESSIONAL CONDUCT

§ 31.21. Rules of Professional Conduct for Veterinarians.

* * * * *

Principle 7. [Veterinarian/client/relationships] Responsibility to clients and patients.

(a) [Veterinarians] Except as provided in this subsection, veterinarians may choose whom they will serve[. Once they have undertaken the care of an animal, however, they may not neglect the animal], but may not neglect an animal with which the veterinarian has an established veterinarian/client/patient relationship.

(1) During a veterinarian's regular business hours, a veterinarian may not refuse to provide humane euthanasia to relieve the suffering of an animal that is physically presented to the veterinarian at the veterinarian's facility. A veterinarian may provide humane euthanasia for an animal under this paragraph without a veterinarian/client/patient relationship. If the owner is unknown, the veterinarian shall make a reasonable attempt to determine the identity of the animal's owner. If the owner is known or identified, the veterinarian shall make a reasonable attempt to contact the owner and obtain consent to euthanasia or treatment. If the owner cannot be identified or cannot be contacted, the veterinarian shall exercise proper veterinary medical judgment to determine whether to provide humane euthanasia or other veterinary medical care to the animal.

(2) If a veterinarian deems it necessary to discontinue the treatment of an animal with which the veterinarian has a veterinarian/client/patient relationship, the veterinarian shall give notice to the client of his intention to withdraw and provide reasonable time to allow the client to obtain necessary veterinary care for the animal. A veterinarian shall exercise proper veterinary medical judgment by determining the length of time that is reason-

able based on the condition of the animal and the availability of alternative veterinary medical services.

(b) [In their relations with clients, veterinarians should] Veterinarians shall consider first the welfare of the animal for the purpose of relieving suffering and disability while causing a minimum of pain or fright. [Benefit to the animal should transcend personal advantage or monetary gain in decisions concerning therapy.]

(c) Veterinarians and their staffs shall protect the personal privacy of clients, unless the veterinarians are required by law to reveal the confidences or it becomes necessary to reveal the confidences to protect the health and welfare of an individual, the animal or others whose health and welfare may be endangered. Personal information that should be protected under this section includes a client's Social Security number and sensitive financial information and confidential health information about the client. Veterinary medical records of a client's animals shall be released to the Board or its agents upon demand, as set forth in section 27.1(b)(1) of the act (63 P. S. § 485.27a(b)(1)). Any portion of a veterinary medical record relevant to public health shall be released to public health or law enforcement officials upon demand. Veterinary medical records shall be released to the general public only with the written consent of the client, subpoena or court order.

(d) [Veterinarians shall be fully responsible for their actions with respect to an animal from the time they accept the case until the animal is released from their care.

(e) In the choice of drugs, biologics or other treatments, veterinarians should use their professional judgment in the interests of the animal, based upon their knowledge of the condition, the probable effects of the treatment and the available scientific evidence that may affect these decisions.] Veterinarians shall practice in accordance with current advancements and acceptable and prevailing standards of care in veterinary medicine, including using current proven techniques, drugs and scientific research that may affect treatment decisions. Veterinarians shall practice in accordance with advancements and acceptable and prevailing standards of care related to the pharmacologic properties, indications and contraindications of drugs and biologics.

(e) Veterinarians shall explain the benefits and significant potential risks of treatment options to clients. Veterinarians shall document, by client signature, the client's consent for euthanasia and other treatments that have significant potential risks. If the client is not present to provide a signature, veterinarians shall obtain oral consent and subsequently obtain the client's signature.

(f) Veterinarians shall serve as patient advocates especially regarding the alleviation of pain and suffering, consistent with the acceptable and prevailing standards of veterinary medical practice. Veterinarians shall utilize analgesic drugs, dosages, treatment intervals and combination therapies proven to be safe and effective in different species and in various conditions of age, illness or injury in

accordance with current veterinary medical knowledge and acceptable and prevailing standards of care.

[(f)] (g) If a client desires to consult with another veterinarian about the same case, the first veterinarian shall readily withdraw from the case, indicating the circumstances on the veterinary medical record of the animal, and shall forward copies of the animal's veterinary medical records **in a reasonable period of time** to other veterinarians who request them.

[(g)] (h) If a client requests referral to another veterinarian or veterinary hospital, the attending veterinarian shall honor the request and facilitate the necessary arrangements, which shall include forwarding copies of the veterinary medical records of the animal to the other veterinarian or veterinary hospital.

* * * * *

[Pa.B. Doc. No. 09-1722. Filed for public inspection September 18, 2009, 9:00 a.m.]
