PROPOSED RULEMAKING

CANINE HEALTH BOARD

[7 PA. CODE CHS. 28 AND 28a]

Canine Health Board Standards for Commercial Kennels; Correction

The Department of Agriculture has submitted a correction to the paragraph regarding the *Public Comment Period* of the preamble to the proposed rulemaking which appeared at 39 Pa.B. 5315, 5316 (September 12, 2009).

The correct version of the paragraph is as follows:

Interested persons are invited to submit written comments regarding the proposed regulation within 45 days following publication in the *Pennsylvania Bulletin*. These comments are public documents that will be posted on the Independent Regulatory Review Commission (IRRC) web site. The comments may be either: (1) mailed to the Canine Health Board, c/o Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Room 102, Harrisburg, PA 17110; or (2) sent by e-mail, to: CHBComments@state.pa.us.

DENNIS C WOLFF,
Secretary

[Pa.B. Doc. No. 09-1682. Filed for public inspection September 11, 2009, 9:00 a.m.]

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 128]

Pesticides

Statutory Authority

The Department of Agriculture (Department) proposes to amend Chapter 128 (relating to pesticides) as set forth in Annex A. This proposal is adopted under the specific authority of the Secretary of Agriculture (Secretary) to promulgate appropriate regulations for the safe handling, transportation, storage, display, distribution and disposal of pesticides as set forth in section 7(b)(2) Pesticide Control Act of 1973 (act) (3 P. S. § 111.27(b)(2)).

Purpose

The purpose of this proposed rulemaking is to clarify, update and in some instances, delete, the existing pesticide regulations to ensure that the regulated community has a better understanding of the regulatory requirements and to maintain the Department's statutory mandate to protect the public health and welfare. Some of the Department's changes were also included to make the regulations gender neutral, bring the existing requirements into compliance with changes in Commonwealth law, and comply with additional restrictions put forth by the United States Environmental Protection Agency (EPA). Additional requirements set forth in the regulations were included for State registration of EPA-approved pesticides, especially in the areas relating to sales of restricted use pesticides and the identification of individuals seeking to sell or receive restricted use pesticides. These changes were added to address homeland security issues.

The Department also removed several sections from the regulations to ease the requirements on applicators and provide substantial cost savings to the Commonwealth, commercial and public pesticide application businesses.

Background

In developing and drafting the proposed amendments, the Department has continuously sought the input and comments from numerous industry entities including the Pesticide Advisory Board (PAB), members of the general public, members of the regulated community, as well as various pesticide trade groups, associations and organizations. These regulations have been the subject of significant discussions at PAB public meetings starting in 2002 through 2008. To date, the PAB continues to monitor the proposed rulemaking and its impact upon the regulated community and advise the Secretary accordingly.

Specifically, as part of its public outreach and input, the Department conducted direct mailing to over 650 persons on the Hypersensitivity Registry since December 2002. The Department mailed newsletters discussing the proposed regulations to 6,000 pesticide application businesses. The Department also conducted presentations regarding the proposed changes at numerous meetings attended by pesticide business owners and dealers, including, but not limited to, the annual meeting of the PA Christmas Tree Growers Association.

As a result of years of public and pesticide industry input, the Department has subsequently incorporated many of the suggested comments and other changes to the proposed rulemaking. The Department believes that the input from the industry has been vital in producing a reasonable and prudent proposal, designed to protect the public health and welfare of the citizens of this Commonwealth.

Summary of the Major Provisions of the Proposed Rulemaking

Subchapter A. General Provisions

Section 128.2 (relating to definitions) contains several new definitions, including constructive notification, dosage or rate of application, FIFRA, perimeter treatment, person, pesticide dealer manager, therapeutic swimming pool and worker protection standard. The definition of "formulations" was deleted.

Section 128.3(a) (relating to fees) clarifies that the annual fee for a pesticide dealer's license is $10 "per location." Many pesticide dealers have more than one location, but for years have been able to utilize only one license. The Department believed it necessary to control the dealer's license by location.

Paragraph 1 creates a $15 annual fee for the new pesticide dealer manager's license per individual and paragraph 2 creates a $3 duplicate pesticide dealer manager's license fee.

Section 128.3(f)(3) (relating to examination fees) creates a $50 fee for the "pesticide dealer manager's examination. Paragraph 5 previously numbers (3) and (4) are renumbered to (4) and (5) respectively.

Section 128.3(g) renumbered paragraphs (i) and (ii) for purpose of consistency.

Section 128.3(i) increases the annual fee to register pesticide products from $135 to $250. The last increase was in 2001 when the fee was changed from $100 to

$135. The Department believes that this fee increase is reasonable and consistent with the fees other states charge to register pesticide products and in certain circumstances, the proposed fee increase is far less than that charged by New York ($300), California ($1000) and Louisiana ($700), for example. With respect to these fee increases, the Department has weighed the impact the increase will have on the regulated community with the increase in the operational costs associated with administering and regulating this industry.

Subchapter B. Licenses, Certificates and Permits

Pesticide Dealers

Section 128.10 (relating to license requirements for pesticide dealer) establishes new licensing requirements for businesses and individuals that resell or distribute restricted use pesticides. Each pesticide dealer must employ one person as a "pesticide dealer manager."

This section prohibits the pesticide dealer from distributing restricted use pesticides to persons without proof of proper identification.

Section 128.11 (relating to recordkeeping) changes the word "sale" to "distribution" and the recordkeeping information regarding distribution of restricted use pesticides. Individuals were not keeping proper records and documentation because the restricted use pesticide was not being technically sold, but distributed. The Department believes that this amendment will clarify the recordkeeping requirement.

Section 128.12 (relating to licensing of a pesticide dealer manager) establishes the parameters of a pesticide dealer manager's license, including age, qualifications, renewal and expiration.

Section 128.13 (relating to determination of competence) establishes the components of the written examination and the procedure for obtaining the pesticide dealer manager's license upon successful completion of the written examination.

Pest Management Consultants

Section 128.24 (relating to recordkeeping) deletes the requirement to maintain the "formulation" of pesticides in light of the deletion of the definition of "formulation" in § 128.2.

Pesticide Application Businesses

Section 128.31(c) (relating to license requirements) requires that the pesticide application business license number assigned to that business be applied in a contrasting color.

Section 128.31(d)(1) and (2) requires a pesticide application business to return voided applicator certificates or registered technician cards to the Department if those individuals are no longer employed by that business, or a written explanation why the applicator certificates or registered technician cards, or both, are unavailable.

Section 128.31(f) requires application businesses which include aerial applicators to provide the Department proof of compliance with Federal Aviation Administration regulations relating to agricultural aircraft operations.

Section 128.32 (relating to categories of business licenses) creates a new applicator category for sewer root control under the business category (D) and expands right-of-way to include "weeds" in category (E). This section deletes the industrial "weeds" category from category (F).

Section 128.33 (relating to assignment of work) changed the word "permit" to "allow" to avoid confusion.

Section 128.34 (relating to financial responsibility) raises the maximum allowable deductible amount from $1,000 to $2,500.

Section 128.35 (relating to recordkeeping) modifies, updates, clarifies and renumbers the recordkeeping requirements and provisions relating to pesticide applications by pesticide businesses. The Department believes that reordering and renumbering this section provides a more clear understanding of the pesticide businesses' responsibilities.

Commercial and Public Applications

Section 128.41 (relating to requirements for certification) clarifies the language of this section as it relates to commercial and public applicators. The proposed amendment also includes the use of pesticides which are otherwise deemed exempted from Federal registration. In subsection (b), the proposal deletes the references to private-residential swimming pools and adds a specific exemption for therapeutic pools.

Section 128.42 (relating to categories of commercial and public applicators) clarifies applicator Category 26—Sewer Root control (§ 128.32), which formally adopts and complies with the EPA's pesticide classification change. The proposed amendment combines pesticide applicator Categories 10 and 14 into one single category covering both areas of "right-of-way and weed" control. The proposed amendment also rewords the language of applicator categories 11, 12 and 15 with no change to the meaning.

Section 128.43 (relating to determination of competence) sets forth the identical criteria and areas of knowledge and competence for the written examination which is set forth in section 16.1 of the act (3 P. S. § 111.36a). The proposed amendment also requires proper proof of identity when taking a proctored examination and increases the time for completing the core examination plus at least one category from 180 days to 1 year.

Section 128.44 (relating to eligibility) establishes the minimum age a person is eligible for certification at 18 years of age. It also requires compliance with the provisions contained in 14 CFR Part 137 (relating to Agricultural Operations).

Section 128.45 (relating to recertification) updates the security issues in core training and requires that the trainer have at least 3 years experience as a certified applicator or equivalent education to conduct the training. The proposed amendment also provides for penalties for falsification of training or attendance at recertification courses.

Pesticide Application Technicians

Section 128.51 (relating to training program) reiterates the knowledge areas of training required by the act for pesticide application technicians.

Section 128.52 (relating to registration) provides that a pesticide application technician must be at least 16 years of age at the time of registration. The amendment also clarifies that the training period for pesticide application technicians must be at least 30-calendar days long.

Section 128.53 (relating to recordkeeping) requires, as a security measure, the retention of pesticide business employees' photo identification and other forms of valid identification. The proposed amendment also requires

that identification records must be completed and made available to the Department no later than 24 hours after the training set forth in § 128.51.

Private Applicators

Section 128.61 (relating to determination of competence) reiterates the knowledge areas of training required by the act for private applicators, including security relating to pesticide use. The proposed amendment requires that private applicators must provide personal identification, including photo identification to the examination proctor.

Section 128.62 (relating to eligibility) provides that a private applicator must be at least 16 years of age to be eligible for a permit for the application of pesticides. The proposed amendment clarifies that a private applicator with an expired permit cannot use a restricted use pesticide, unless under the direct supervision of a certified applicator.

Section 128.63 (relating to recertification) sets forth the required core and category courses for the recertification of private applicators as specified in the act. The proposed amendment enumerates the penalties for the falsification of course attendance and course information.

Section 128.64 (relating to fumigation by a private applicator) clarifies that a private applicator must hold a permit in the proper fumigation category to purchase or use a restricted use fumigation product. The proposed amendment also clarifies that only materials approved by the Department may be used during an examination for private applicators. It also requires that the private applicator provide the examination proctor with proper and valid photo identification.

Section 128.65 (relating to recordkeeping) removes the requirement of "formulation" in a private applicator's recordkeeping and reorders the topics in this section for clarity. The proposed amendment requires that a restricted use pesticide application record must be completed in writing and made available to the Department within 24 hours after the application date.

Reciprocity

Section 128.71 (relating to general provision) allows for additional out-of-State obtained pesticide categories to be added to an existing reciprocal certification.

Section 128.72 (relating to procedure) requires that any person seeking reciprocity with the Commonwealth shall be at least 18 years of age and provide valid photo identification and proof of out-of-State residency.

Subchapter C. Prior Notification

Section 128.81 (relating to right-of-way application) clarifies and provides uniformity with other prior notification sections within the regulations. The language does not alter the meaning.

Section 128.82 (relating to nonagricultural specific site application) clarifies and provides uniformity with other prior notification sections within the regulations. The language does not alter the meaning.

Section 128.83 (relating to ornamental or turf application) of the existing regulations has been rescinded and reconstructed as § 128.85a. The Department moved this section to arrange the types of notification requirements together for purposes of consistency and uniformity.

Section 128.83a is new and contains provisions found in § 128.85 (relating to agricultural applications). The Department moved provisions of this section to arrange the types of notification requirements together for purpose of consistency and uniformity).

Section 128.84 (relating to nonagricultural area-wide application) of the proposed amendment clarifies and provides uniformity with other prior notification sections.

Section 128.85 is new and contains provisions previously found in existing § 128.83.

Section 128.86 (relating to constructive notification) has been rescinded in its entirety and moved to the definitions in § 128.2.

Section 128.87 (relating to prior notification by certified mail) has been deleted and reserved.

Section 128.88 (relating to recordkeeping) establishes that records created under this provision must be completed within 24 hours after the application date.

Subchapter D. Registration of Pesticides

Section 128.91 (relating to EPA approval required) completely modifies this section to allow for EPA approval or registration for standards for state registration. EPA's changes to pesticide registration requirements exempted some pesticides from the EPA registration process. The proposed amendment will clarify that those exempted pesticides are included within the Department's registration process.

Subchapter E. Miscellaneous

Section 128.101 (relating to reporting of significant pesticide accidents or incidents) adds the word "incident" to the reporting requirement and further defines the term significant pesticide accident or incident" to provide clarity in the existing regulation. The proposed amendment will require the reporting to the Department of unexpected adverse effects resulting from a pesticide product even when applied consistent with the label directions.

Section 128.102 (relating to protected designated areas) expands the list of protected areas to include conservation areas and those areas containing endangered or threatened plant or animal species as those terms are defined by various statutes. The proposed amendment requires the Secretary to approve or deny within 60 days of the receipt of a request for a waiver to apply pesticides in an otherwise protected designated area.

Section 128.103 (relating to handling, transportation, storage, use and disposal of pesticides) eliminates references to open burning of pesticide containers and brings the regulation into compliance with the Department of Environmental Protection's air and solid waste regulations. The proposed amendment also clarifies the Department's ability to enforce the Federal Worker Protection Standard as set forth in 40 CFR Part 170.

Section 128.104 (relating to experimental use permits) clarifies that it is the responsibility of the registrant of a pesticide to notify the Department of an EPA-approved experimental use permit.

Section 128.106 (relating to additional responsibilities within school buildings) specifically includes "school grounds" in the existing prohibition from applying pesticides in common access areas within a school building when students are expected to be in that area for normal academic instruction or other related activities. The proposed amendment provide a list of exemptions to the pesticide application prohibition.

Section 128.107 (relating to providing information upon request) is a new provision which requires that all pesticide businesses and individuals maintain records regarding the sales, application, distribution, storage and

transportation of pesticides and to provide those records to the Department upon request.

Subchapter F. Pesticide Hypersensitivity Registry

Section 128.111 (relating to the registry) allows the Department to distribute the hypersensitive registry by means other than mail. To reduce costs, the proposed amendment allows the Department to reduce the number of publications of the registry from four times per year to only two. The amendment changes the registry renewal date from January to October of each year.

Section 128.112 (relating to notification of hypersensitive individuals) allows additional means of notification to the pesticide hypersensitive individual by pesticide businesses. The proposed amendment clarifies existing exemptions to the notification requirement and specifically exempts notification regarding an application of a pesticide in the normal care and maintenance of a swimming pool.

Fiscal Impact

Commonwealth: The Department has determined that the proposal will have little or no adverse financial impact on the Commonwealth since all funds budgeted for the Program are derived from the Pesticide Restricted Account. The funds in that account are obtained from licensing, permitting and registration fees and civil penalties placed upon pesticide manufacturers, dealers and applicators doing business within this Commonwealth.

There will, however, be some cost savings in the amount of time needed to review and process Hypersensitivity Registries as a result of the reduced number of times the registry is published.

Political Subdivisions: The propoasl will impose no costs and have no adverse fiscal impact on political subdivisions.

Private Sector: The proposal will have a direct fiscal impact on the private sector. Specifically, pesticide manufacturers will have increased fees for the registration of their pesticide product. Pesticide dealers will also have an increased fee. The regulation will, however, provide some cost savings to the private sector by raising the insurance deductible levels.

General Public: The proposal will not have any fiscal impact on the general public.

Paperwork Requirements

The proposal would not appreciably increase the paperwork burden of the Department or other government units or citizens, including the regulated community since there are already paperwork record-keeping requirements in the existing regulations.

Effective Date

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

Subset Date

There is no sunset date for the regulations. The Department will review the efficacy of these regulations on an ongoing basis.

Contact Person

Interested persons are invited to submit written comments regarding the proposed amendments within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Earl Haas.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 15, 2009, the Department submitted a copy of the proposed regulation and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. 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 regulation within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act sets forth detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-149. (1) General Fund; Implementing Year 2008-09 is $0; 1st Succeeding Year 2009-10 is $2,000; 2nd Succeeding Year 2010-11 is $ 2,000; 3rd Succeeding Year 2011-12 is $ 2,000; 4th Succeeding Year 2012-13 is $2,000; 5th Succeeding Year 2013-014 is $2,000; 2007-08 Program—$3,163,000; 2006-07 Program—$2,684,000; 2005-06 Program—$2,706,000; (7) Pesticide Regulatory Account; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 128. PESTICIDES

Subchapter A. GENERAL PROVISIONS

§ 128.2. Definitions.

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

* * * * *

***Constructive notification*—A person shall be deemed to have received notification if an adult residing in the same dwelling unit is so notified; orally, or by certified mail, or by a message left on an answering device activated by contacting the residence, including electronic mail or facsimile.**

* * * * *

***Dosage or rate of application*—The concentration of each pesticide, such as, a percent, ounces or quarts per gallon, pounds per 100 gallons, applied to a specific application site or target such as a crop, ornamental, cut stump, weed, animal, utility pole, reported as gallons per acre, pounds per 1,000 square feet, ounces per linear foot, ounces per cubic foot or ounces per animal.**

EPA—The United States Environmental Protection Agency.

***FIFRA*—The Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (FIFRA) (7 U.S.C. A. §§ 136—136y) .**

[*Formulation*—The physical composition of the pesticide product; for example, "dust," "emulsifiable

concentrate," "wettable powder" and "granular" are ways to describe the formulation of a pesticide product.]

* * * * *

***Perimeter treatment*—**

(i) The application of pesticide to the exterior of a structure to a maximum distance of 10 feet from the structure, unless the pesticide label clearly states otherwise, to prevent pests from invading the structure.

(ii) The term excludes tamper resistant bait stations.

***Person*—An individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.**

***Pesticide dealer manager*—An owner or individual employed by a licensed pesticide dealer who is responsible for storage and distribution of restricted use pesticides.**

* * * * *

Prior notification—Notification of a proposed application of pesticides given not more than 45 days and not less than 14 days prior to the date of application which contains the following information:

* * * * *

(iii) The name, address and telephone number of **[a person] the pesticide application business** to whom requests for additional information should be directed.

(iv) A request for prior notification shall expire on December 31 in the year in which it is made.

* * * * *

Swimming pool—An outdoor or indoor place used for bathing or for amateur, professional or recreational swimming**, excluding single-family residential pools**.

***Therapeutic swimming pool*—An indoor swimming pool or spa with a water temperature above 85°F used solely for rehabilitation or medically recommended treatment.**

Under the direct supervision of—The term includes the following:

(i) For a commercial or public certified applicator, the application of a pesticide by a registered pesticide application technician acting with the instructions and under the control of a certified applicator who is responsible for the actions of the technician and who is available when needed; or the application of a pesticide by a nonregistered or noncertified **[employe] person** acting with the instructions and under the **continuous voice and visual** control of a certified applicator who is responsible for the actions of the **[employee] person** and physically present at the application site. The supervising applicator shall be certified in the appropriate category relating to the application.

* * * * *

***Worker Protection Standard*—Includes all provisions of the Federal Worker Protection Standard as set forth in 40 CFR Part 170 (relating to worker protection standard).**

§ 128.3. Fees.

(a) *Pesticide dealer's license.* The annual fee for a pesticide dealer's license is $10 **per location**. The fee for a duplicate pesticide dealer's license is $3.

(1) The annual fee for a pesticide dealer manager's license is $15 per individual.

(2) The fee for a duplicate pesticide dealer manager's license is $3.

* * * * *

(d) *Commercial applicator's certificate.* The annual fee for the commercial applicator's certificate is $40. When the initial certification requires examination, no fee will be charged. The fee for a duplicate commercial applicator's certificate is $10. **If an applicator is employed by more than one pesticide application business, a separate certificate and fee is required.**

* * * * *

(f) *Examination fees.* Examination fees are nonrefundable. The following examination fees, with payment made in advance, will be charged:

* * * * *

(3) **Pesticide dealer manager's examination—$50.**

(4) Private applicator's examination—no charge.

[(4)] (5) Pest management consultant's examination—no charge except that a fee of $5 will be charged if an examination is requested on other than a regularly scheduled examination date.

(g) *Registration fee for a pesticide application technician.*

[(i)] (1) *Commercial pesticide application technician*. An annual registration fee of $30 will be charged to register a commercial pesticide application technician with the Department. The fee for a duplicate technician registration is $7.

[(ii)] (2) *Public pesticide application technician*. An annual registration fee of $20 will be charged to register a public pesticide application technician with the Department. The fee for a duplicate technician registration is $7.

* * * * *

(i) *Product registration.* The annual fee to register a pesticide is **[$135] $250**.

PESTICIDE DEALERS

§ 128.10. Licensing requirements for pesticide dealer.

(a) A person may not purchase or attempt to purchase a restricted use pesticide for resale or distribution unless the person has a current and valid dealer license.

(b) Each pesticide dealer shall, at all times, employ at least one licensed pesticide dealer manager.

(1) A licensed pesticide dealer shall notify the Department in writing within 15 days of a change in its license information including the employment status of its licensed pesticide manager.

(2) A licensed pesticide dealer shall return to the Department within 15 days the voided pesticide dealer manager's card of an employee that is no longer employed by the pesticide dealer. If the pesticide dealer manager's card issued by the Department is not available, the pesticide dealer shall notify the Department in writing within 15 days of the employee's termination and provide an explanation of why the card is unavailable and the last known home address for the individual.

(c) A pesticide dealer may not distribute a restricted use pesticide unless the receiver provides proof of appropriate valid certification or license and proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

§ 128.11. Recordkeeping.

(a) A pesticide dealer shall keep for each **[sale] distribution** of a restricted use pesticide a record containing the following information:

* * * * *

(2) The brand name **[and formulation]** of the restricted use pesticide **[that was purchased]**.

(3) **The EPA registration number of the restricted use pesticide.**

(4) The amount of the **restricted use** pesticide **[that was purchased]**.

[(4)] (5) The date of the **[purchase] distribution**.

(6) A signature and identification information of the individual accepting delivery.

(b) A record required to be kept under this section shall be **completed within 24 hours of the distribution in written or printable form,** maintained for at least 3 years and shall be made immediately available to the Department upon request or immediately available to medical personnel in an emergency.

§ 128.12. Licensing of a pesticide dealer manager.

(a) The Department will issue a pesticide dealer manager license to an applicant of 18 years of age or older, upon verification of passing a written competency examination and payment of the appropriate fee. Renewal of the dealer manager license will be based on receipt by the Department of an application accompanied by the appropriate fee.

(b) If a pesticide dealer manager fails to renew his license for 1 or more years, the dealer shall reestablish eligibility as described in § 128.13 (relating to determination of competence).

(c) The license for a pesticide dealer manager will expire on December 31st of each year.

(d) For currently licensed pesticide dealer locations, the requirements for employment of a pesticide dealer manager will become effective _____ (Editor's Note: The blank refers to a date) 1 year from the effective date of adoption of this proposed rulemaking) (Editor's Note: The blank refers to a date). Initial examination fee will be waived until _____. (Editor's Note: The blank refers to a date 1 year from the effective date of adoption of this proposed rulemaking.) The requirements for a dealer manager will be immediately effective for pesticide dealer locations licensed on or after _____. (Editor's Note: The blank refers to the effective date of adoption of the proposed rulemaking)

§ 128.13. Determination of competence.

(a) At least one individual at each pesticide dealer location shall show competence in the storage and distribution requirements for restricted pesticides. Competence will be determined on the basis of a written examination. The examination will include the following:

(1) Safety.

(2) Labeling and label comprehension.

(3) Storage and security.

(4) Spill control.

(5) Transportation.

(6) Pesticide disposal.

(7) Recognition of pesticide poisoning symptoms and first aid.

(b) An application to take an examination shall be filed along with the appropriate fee with the Department at least 10-working days prior to the date of the examination.

(c) The examination will be proctored. Successful completion of the examination will entitle a person to hold a pesticide dealer managers license. An opportunity will be provided to retake an examination if a passing grade has not been achieved.

(d) The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

(e) A person may not use reference materials during an examination unless approved by the Department or its designated agents.

(f) An application for a new pesticide dealer manager's license will be accepted throughout the calendar year. A full year's license fee will be required for a portion of a year, except that the Department may issue a license for an additional year when a new application is filed during the last 2 months of the license year.

PEST MANAGEMENT CONSULTANTS

§ 128.24. Recordkeeping.

(a) A pest management consultant shall keep for each instance in which he provides technical advice, supervision or aid or makes a recommendation to the user of a restricted use pesticide, the following information:

* * * * *

(2) The brand name **[and formulation]** of the pesticides recommended to be used.

* * * * *

PESTICIDE APPLICATION BUSINESSES

§ 128.31. Licensing requirements.

* * * * *

(c) A pesticide application business shall prominently display on every vehicle involved in the pesticide application phase of its business the license number assigned by the Department. The number **[shall] must** be in figures at least 3 inches high and **[shall]** be located on both sides of the vehicle at a readily visible location **in a contrasting color**.

(d) A licensed business shall notify the Department in writing within 15 days of a change in information in its application for licensing, or if it is no longer engaged in the application of pesticides.

(1) A licensed pesticide application business shall return to the Department within 15 days the voided applicator certification or registered technician card of an employee that is no longer employed by the pesticide application business.

(2) If the certification or registered technician card issued by the Department is not available, the pesticide application business shall notify the Department in writing within 15 days of the employees termination and provide an explanation of why the card is unavailable and the last known home address for the individual.

(e) A business that meets the definition of a commercial applicator as defined in section 4(6)(C) of the act (3 P. S. § 111.24(6)(C)) may not apply a pesticide without having a **valid** certified applicator physically present at the application site unless all application personnel on site are **valid** registered technicians.

(f) If the application business includes aerial applications, the applicant shall provide proof of compliance with the Federal Aviation Administration regulations as described in 14 CFR Part 137 (relating to agricultural aircraft operations).

§ 128.32. Categories of business licenses.

A commercial or public business shall identify in its application those business categories in which it desires to operate. A business shall employ for each business category in which it makes a pesticide application at least one applicator who is certified in a specific applicator category recognized under the general business category and shall limit its applications to those applicator categories in which it employs at least one certified applicator. The business categories are listed in paragraphs (1)—(10). The applicator categories recognized under a particular business category are listed under that business category.

* * * * *

(4) *Category (D)*—Aquatic Pest Control.

09 Aquatic Pest Control

24 Swimming Pools

26 Sewer Root Control

(5) *Category (E)*—Right-of-Way Pest Control.

10 Right-of-Way **and Weeds**

(6) *Category (F)*—Industrial, Institutional, Structural and Health Related.

11 Household and Health Related

12 Wood Destroying Pests

14 **[Industrial Weeds] (Reserved)**

15 Public Health Vertebrate Pest Control

16 Public Health Invertebrate Pest Control

19 Wood Preservation

23 Park or **[school] School** Pest Control

* * * * *

§ 128.33. Assignment of work.

A pesticide application business may not **[permit] allow** an individual to make a pesticide application in an applicator category in which the individual has not been certified as an applicator or trained and registered as a technician.

§ 128.34. Financial responsibility.

(a) The Department will consider a certificate of insurance from an insurer or surety to be evidence of financial responsibility if the insurer or surety is licensed to do business under section **[7 of the act of January 24, 1966 (P. L. 1509, No. 531) (40 P. S. § 1006.7), known as the Surplus Lines Insurance Law] 1605 of the Insurance Company Law of 1921 (40 P. S. §§ 991.1605), or otherwise permitted by Federal law or the Insurance Department to do business in this Commonwealth, if the following conditions are met:**

* * * * *

(4) The maximum deductible amount does not exceed **[$1,000] $2,500** of the combined policy limits. If a pesticide application business has not satisfied the deductible amount in a prior claim, the policy may not contain a deductible amount.

* * * * *

§ 128.35. Recordkeeping.

(a) A pesticide application business shall keep for every application of a pesticide a record containing the following information:

(1) The date of application. For a pesticide requiring a reentry time, the date of application **[shall] must** include the hour completed. **For continuous applications, such as swimming pools and chemigation, the record must include start and finish dates and the total amount of pesticide products used during that time period. For each addition of a pesticide to the system, an entry to the record is required.**

* * * * *

(3) The brand name **[and formulation]** of the pesticides used.

(4) **The EPA product registration number.**

[(4)] (5) **The total** amount of every pesticide used in pounds, ounces, gallons, liters, applied to a treated area.

[(5)] (6) The dosage or rate **of application,** of every pesticide used.

[(6)] (7) The **[name] names** and the **[certificate] certification** or technician's registration number **[, whichever is applicable,]** of each person making or

supervising the application. **When applicable the names of noncertified/nonregistered persons involved in the application.**

[(7) The EPA product registration number.]

* * * * *

(c) **Pesticide product and application information shall be made immediately available to medical personnel in an emergency.**

(d) A pesticide application record must be completed in written or printable form no later than 24 hours after the application date and made immediately available to the Department upon request.

[(c)] (e) A record required to be kept under this section shall be maintained for at least 3 years **[and shall be made immediately available to the Department upon request or to medical personnel in an emergency]**.

COMMERCIAL AND PUBLIC APPLICATIONS

§ 128.41. Requirements for certification.

(a) A person is deemed to be a commercial or public applicator and required to be certified if one or more of the following criteria are met:

(1) A person**[, whether or not he is a private applicator with respect to some uses,]** who applies or supervises the application of a pesticide **on an easement or** on the property or premises of another**[, including an easement] (other than his employer)**. **This includes the use of a pesticide exempted from Federal registration under § 128.91 (relating to EPA approval required).**

* * * * *

(b) The following are exceptions to subsection (a)(3)(viii):

* * * * *

(2) The use of general use pesticides **[by an owner or resident]** in the care and maintenance of a swimming pool at a private single-family residence.

(3) The use of a general use pesticide by an owner or employee in the care or maintenance of a swimming pool used solely as a therapeutic swimming pool.

§ 128.42. Categories of commercial and public applicators.

A commercial or public applicator applying or supervising the application of a pesticide shall be certified in one or more of the following applicator categories:

* * * * *

(10) *Right-of-way **and weeds***—The use of a pesticide to maintain a public road, an electrical power line, a pipeline, a railway right-of-way or a similar type of area **or to control vegetation around a structure, such as an oil tank, utility sub stations, an industrial railway siding, an airport, a parking lot, a fence or an industrial building or for the control of an invasive weed species in other areas.**

(11) *Household and health related*—The use of a pesticide in, on or around a food handling establishment, a human or nonagricultural animal dwelling, an institution such as a school or hospital, an industrial establishment, a warehouse, a grain elevator and other types of structures whether public or private. The application of a pesticide to protect a stored, processed or manufactured product is also included. The use of a **[fumigant, except where applied out-of-doors to a rodent burrow which does not lead into a dwelling or other structure, and except in the case of termite or other structural pest control is included. The treatment of an emergence crevice, an ant runway or a surface to control carpenter bees or the surface application of a pesticide to a wooden box, furniture or lumber is included] rodenticide or avicide is permitted in this category. The use of a pesticide in outdoor perimeter treatments to control pests, which may infest the structure, is included.**

(12) *Wood destroying pests*—The use of a pesticide to control or prevent termites, powder post beetles or other wood destroying pests infesting a residence, school, hospital, store, warehouse or other structures or structural components, **including wooden objects contained in or associated with the structure** and **[an] the** area adjacent to those structures.

* * * * *

(14) **[Industrial weeds—The use of a pesticide to control vegetation around a structure, such as an oil tank, an industrial railway siding, an airport runway, a parking lot, a fence or an industrial building**

(15)] *Public health vertebrate pest control*—The use of a pesticide to manage and control a vertebrate pest **such as rodents or birds,** affecting public health.

[(16)] (15) *Public health invertebrate pest control*—The use of a pesticide to manage and control an invertebrate pest affecting public health.

[(17)] (16) *Regulatory pest control*—The use of a pesticide to control an organism designated by the Commonwealth or the Federal government to be a pest requiring regulatory restrictions or control procedures to protect man or the environment.

[(18)] (17) *Demonstration and research pest control*—The use of a pesticide to demonstrate to the public the proper method of application for a pesticide and the use of a pesticide in research such as that undertaken by an extension specialist, county agent or vocational agriculture teacher.

[(19)] (18) *Wood preservation*—The use of a pesticide in wood impregnation to control or prevent fungi, insects, bacteria, marine borers and other wood destroying pests and includes pole treating or restoration and the use of a fumigant for in-place treatment of utility poles.

[(20)] (19) *Commodity and space fumigation*—The use of a fumigant in or to a structure, trailer, railcar, onboard ship, or in any type of fumigation chamber, such as under a tarpaulin for the control of pests in stored or in-transit commodities.

[(21)] (20) *Soil fumigation*—The application of a fumigant to a soil environment.

[(22)] (21) *Interior plantscape*—The use of a pesticide to control plant pests when the soil or plant to be treated is located within an enclosed structure.

[(23)] (22) *Park or school pest control*—The use of a pesticide in a campground or recreational area of a public or private park or on school property.

[(24)] (23) *Swimming pools*—The use of a pesticide in the care and maintenance of swimming pools.

[(25)] (24) *Aerial applicator*—The use of a pesticide applied by aircraft to any crop or land area. Applicators in this category shall comply with § **[128.83] 128.85** (relating to ornamental or turf application) when making ornamental or turf applications.

(25) ***Sewer root control*—The use of a pesticide to control vegetative growth in public and private sewage collection and distribution lines.**

§ 128.43. Determination of competence.

(a) For each of the categories **[listed]** in § 128.42 (relating to categories of commercial and public applicators), competence in the use and handling of pesticides **[shall] will** be determined on the basis of a written examination. The examination will include the following:

(1) Areas of knowledge and competence set forth **[at] in** section 16.1 of the act (3 P. S. § 111.36a).

(i) Identification of pests to be controlled and the damages caused by the pests.

(ii) The appropriate control measures to be used, including pesticides.

(iii) The hazards that may be involved in applying pesticides, to protect people and the environment.

(iv) The proper use of pesticide application equipment, including calibration and dosage calculations.

(v) Protective clothing and respiratory equipment required during application and handling of pesticides.

(vi) General precautions to be followed in cleaning and maintaining equipment used.

(vii) Transportation, storage, security and disposal of pesticides.

(viii) Applicable Federal and State pesticide laws and regulations.

* * * * *

(c) An examination **[shall] will** be proctored. **[A person may use approved reference sources during an examination.] The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address. Only reference materials approved by the Department may be used during the examination.** Successful completion of the core area and, successful completion of part two of the examination in a specific category will entitle a person to certification in that category. A person desiring certification for additional categories will be required to be examined for each additional category. An opportunity will be provided to retake an examination when a passing grade has not been achieved.

(d) If a person successfully completes only one part of the two-part examination, successful completion of the remaining part of the examination shall be obtained within **[180-calendar days] 1 year** from the date the initial part of the examination was successfully completed.

(e) An application to take an examination shall be filed along with the appropriate fee with the Department **[within] at least** 10-working days prior to the date of the examination.

* * * * *

§ 128.44. Eligibility.

(a) A person is eligible for certification upon **reaching 18 years of age and** fulfilling the requirements under §§ 128.41—128.43 (relating to requirements for certification; categories of commercial and public applicators; and determination of competence). In addition to the requirements for a commercial applicator's certification, an aerial applicator shall have a current commercial agricultural aircraft operator's certificate issued by the Federal Aviation Administration **[under] or show evidence of compliance with** 14 CFR **[§ 137.19(a) (relating to certification requirements)] Part 137 (relating to agricultural aircraft 0perations).**

(b) Within 12 months of becoming eligible to be certified as a commercial applicator, a person shall file with the Department an application for certification. A person who fails to file an application within this 12-month period will lose certification eligibility and shall again establish eligibility in accordance with §§ 128.41—128.43 An application for initial certification will be accepted from an eligible person throughout the year. A certificate **[shall] will** expire on September 30 following the date of application, except that the Department may issue a certificate for an additional year when an application is initially filed during the last 2 months of the certification year.

* * * * *

(e) If a person fails to complete delinquent recertification credits within 1 year from the triennial certification expiration date **or fails to renew certification for any reason during that time period**, the person is required to **[meet] reestablish eligibility by meeting** the requirements of §§ 128.3, 128.43 and 128.44 (relating to fees; determination of competence; and eligibility).

§ 128.45. Recertification.

(a) At intervals of 3 years, a certified commercial or public applicator shall provide evidence of having received current update training in technology relating to pesticides in the specific categories in which **[he] the applicator** is certified to maintain certification. Training will be divided into core and category specific areas as follows:

* * * * *

(b) Recertification credits will be given on the basis of attendance at **[meetings] courses** or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the "Pennsylvania State Plan for Certification of Pesticide Applicators." This plan has been filed with and approved by the EPA in accordance with **[the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A.**

§§ **136—136y FIFRA)**] Records of training will be maintained by the Department and a yearly statement will be sent to each certified commercial or public applicator describing credits obtained and credits due to meet recertification standards.

(c) Training will be approved based on the following criteria:

* * * * *

(3) Sponsors of recertification training shall submit a written request for course approval to the Department's regional office for the region in which the meeting will be held. A request to approve out-of-State training shall be submitted to the Department of Agriculture, Bureau of Plant Industry, [**Agronomic Services**] **Health and Safety** Division, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted at least 15 working days prior to the training date.

(4) A request for training approval [**shall**] **meet** include the following information:

(i) The name**, address** and phone number of the contact person who is coordinating the meeting.

* * * * *

(iii) The date **and time** of the meeting.

(iv) A listing of the [**speakers**] **trainers**, subject matter and time allotted to each subject.

(v) **The trainer has at least 3 years experience as a certified applicator in the appropriate category or has submitted documentation of other qualifications to serve as a trainer such as educational background.**

[**(v)**] **(vi)** A statement of whether the meeting is opened to the public and if there is a charge to attend.

* * * * *

(9) Falsification by a **pesticide business or other** course sponsor of information required under this subsection may result in **a warning, a fine, suspension and** the withdrawal of course [**approval**] **approvals** as set forth in this section.

(10) A person may not falsify attendance or that of another person's attendance at a recertification meeting. Falsification of attendance at a recertification course by a person may result in a warning, a fine or suspension or revocation of the applicator's certification and require recertification as required in §§ 128.3 and 128.61 (relating to fees; determination of competence).

PESTICIDE APPLICATION TECHNICIANS

§ 128.51. Training program.

(a) A pesticide application technician shall obtain instruction in, and possess adequate knowledge of, the proper use and handling of pesticides. The training program [**shall**] **must** include:

(1) Those areas of knowledge described in section 16.2 of the act (3 P. S. § 111.36b).

(i) Identification of pests relative to job responsibility.

(ii) The proper use of pesticides and use of application equipment, including calibration and maintenance equipment used on the job.

(iii) Protective clothing and respiratory equipment required during the application and handling of pesticides.

(iv) Transportation and disposal of pesticides used in and around the workplace.

(v) Applicable State and Federal regulations as they affect the work assignments.

* * * * *

§ 128.52. Registration.

(a) A business shall submit to the Department [**by first class mail, postage prepaid, on a form provided by the Department,**] a list of persons it intends to register as technicians. The postmarked date **or date of receipt** will indicate the beginning of a training period to consist of at least 30 **calendar** days of training.

* * * * *

(g) A technician shall be 16 years of age or older years of age at the time of application for registration.

§ 128.53. Recordkeeping.

* * * * *

(b) **The pesticide application business shall keep as part of its records proof of personal identification by retaining copies of a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.**

(c) A record required to be kept under this section shall be maintained for at least 3 years and **completed in written or printable form no later than 24 hours after the training and** shall be made immediately available to the Department upon request.

PRIVATE APPLICATORS

§ 128.61. Determination of competence.

(a) Competency in the use and handling of restricted use pesticides by a private applicator will be determined on the basis of a **proctored** written examination. The examination will include the following:

(1) Areas of knowledge described [**at**] **in** section 17.2 of the act (3 P. S. § 111.37b).

(i) Labeling and label comprehension.

(ii) Safety and health.

(iii) Environmental protection.

(iv) Pests.

(v) Pesticides.

(vi) Integrated pest management.

(vii) Equipment.

(viii) Application techniques and technology.

(ix) Laws and regulations.

(2) Transportation, storage**, security** and disposal.

* * * * *

(c) Only reference materials approved by the Department may be used during the examination.

(d) The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

§ 128.62. Eligibility.

(a) A private applicator will be eligible for a permit **upon reaching 16 years of age or older and** fulfilling the requirements of § 128.61 (relating to determination of competence) and subsection (b).

(b) Within 1 year of fulfilling the requirements of § 128.61, a private applicator shall file with the Department an application for a permit accompanied by the appropriate fee. A person who fails to file within this 1 year period shall again establish eligibility under § 128.61.

* * * * *

(d) A private applicator with an expired permit may not make an application of a restricted use pesticide (unless the individual is working under the direct supervision of a certified applicator).

§ 128.63. Recertification.

(a) At intervals of 3 years, a private applicator shall have accumulated credits as a result of having received update training approved by the Department in technology relating to the proper and safe use of pesticides to continue as a permitted private pesticide applicator. Training will be divided into core and category specific areas as specified in § 128.45(a) (relating to recertification).

(1) ***Core.***

(i) Safety and health.

(ii) Labeling and label comprehension.

(iii) Environmental protection.

(iv) Equipment use, calibration and dosage calculations.

(v) Protective clothing and respirator equipment.

(vi) Cleaning and maintaining equipment.

(vii) Transportation, storage, security and disposal.

(viii) Applicable State and Federal laws.

(2) ***Category specific.***

(i) Identification of pests.

(ii) Appropriate control measures.

(iii) Integrated pest management.

(b) Recertification credits will be given on the basis of attendance at meetings or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the Pennsylvania State Plan for Certification of Pesticide Applicators. This plan has been filed with and approved by the EPA under **[the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. §§ 136—136y)] FIFRA**. Records of training will be maintained by the Department and a yearly statement will be sent to each private applicator describing credits obtained and credits due to meet recertification standards. Training will be approved **as described** under § 128.45(c).

(c) If a private applicator fails to renew his permit by the date of expiration, renewal requires the following:

* * * * *

(2) Completion of the examination requirements as described in §§ 128.3, 128.61 and 128.62 (relating to fees; determination of competence; and eligibility) by the applicator if the due recertification credits are not completed within 1 year from the expiration date of the permit **or the permit is expired for more than 1 year for any reason**.

(d) Falsification by a pesticide business or other course sponsor of information required under this section may result in a warning, fine and suspension or the withdrawal of course approvals as set forth in § 128.45 and this section.

(e) A person may not falsify attendance or that of another person's attendance at a recertification meeting. Falsification of attendance at a recertification course by a person may result in a warning, fine or suspension or revocation of the applicator's certification and require recertification as required in § 128.61.

§ 128.64. Fumigation by a private applicator.

(a) **A private applicator shall hold a permit in the proper fumigation category in order to purchase or attempt to purchase or use a restricted use fumigant product.**

(b) In addition to the requirements in § 128.61 (relating to determination of competence), a private applicator using **[structural,]** commodity and space, or soil fumigants shall demonstrate competence in the proper and safe use of these pesticides. Competency shall be demonstrated by passing a **proctored** written examination specifically relating to each type of fumigant the applicator intends to use. **Only reference materials approved by the Department may be used during the examination. The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.**

[(b)] (c) A special permit will be issued, relating to fumigation, and will be valid for a 3-year period. A fee will not be charged for this special permit. A special permit will not be issued for the use of a fumigant unless the applicant has a private applicator's permit.

[(c)] (d) Recertification requirements shall be met through attendance at approved meetings and **[shall]** consist of at least two credits of category specific education relating to the appropriate area of fumigation in which the applicator is certified. The credits obtained by

a private applicator to meet the requirements of this subsection may also be used to meet the requirements of § 128.63 (relating to recertification).

§ 128.65. Recordkeeping.

(a) A private applicator shall keep for each application of a restricted use pesticide a record containing the following information:

(1) The date of application. For a **restricted use** pesticide requiring a reentry time, the date of application **[shall] must** include the hour completed.

* * * * *

(3) The size of the area treated.

[(3)] (4) The brand name **[and formulation]** of every **restricted use** pesticide used.

(5) The EPA product registration number.

[(4)] (6) The **total** amount of every **restricted use** pesticide used **in pounds, ounces, gallons, liters, applied to a treated area**.

[(5)] (7) The dosage or rate **of application, of** every **restricted use** pesticide used.

[(6)] (8) The names and **[, when applicable,]** the permit **or certification** numbers of the persons making or supervising the application. **When applicable, the names of the noncertified applicators acting, under the direct supervision of the private applicator, shall be recorded.**

[(7) The EPA product registration number.

(8) The size of the area treated.]

(b) A record required to be kept under this section shall be maintained for at least 3 years **[and shall be made immediately available to the Department upon request or immediately available to medical personnel in an emergency]**.

(c) Pesticide product and application information shall be made immediately available to medical personnel in an emergency.

(d) A restricted use pesticide application record shall be completed in written or printable form no later than 24 hours after the application date and made immediately available to the Department upon request.

RECIPROCITY

§ 128.71. General.

A person who is not a resident of this Commonwealth, but who has a valid license, certificate or permit from another state, may obtain an appropriate Pennsylvania license, certificate or permit if the state in which **[he] the person** is licensed has a reciprocal agreement with the Commonwealth under section 22 of the act (3 P. S. § 111.42). A license, certificate or permit **[shall] will** be issued under this section only for the initial period of issuance **for that eligible category**.

§ 128.72. Procedure.

A person desiring a license under § 128.71 (relating to general) shall submit to the Department a properly completed application, the appropriate fee and evidence of financial responsibility as required along with a copy of the person's current license, certificate or permit**, proof of having reached 18 years of age, out-of-State residency and proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.**

Subchapter C. PRIOR NOTIFICATION

§ 128.81. Right-of-way application.

* * * * *

(b) *Alternative form of notification.* In lieu of the notification requirements described in subsection (a), an applicator may give prior notification **[orally or by certified mail to every] by constructive notification to a** person residing in **[a] every** dwelling **unit** on land contiguous to the restricted use pesticide application site. **[This subsection does not apply to an aerial application of a restricted use pesticide.]**

(c) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the **[person designated to receive requests for additional information] pesticide application business**. Upon the request, the **[applicator] pesticide application business** shall **make constructive notification and** provide the following additional information at least 12 hours prior to the time of application:

* * * * *

(2) Upon **written** request the **[designated person] pesticide application business** shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide **used or** to be used.

* * * * *

§ 128.82. Nonagricultural specific site application.

(a) *Prior notification required.* A commercial/public applicator may not make a specific site application of a restricted use pesticide without first giving prior notification **[orally or by certified mail to every] by constructive notification to a** person residing in **[a] every** dwelling **unit** on land contiguous to the application site.

(b) *Additional information.*

(1) **[Upon request made by a person entitled to notice at] At** least 7 days prior to the proposed application date **[to the person designated to receive requests for additional information, the applicator shall], a person residing in a dwelling on land contiguous to the application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification and** provide the following additional information at least 12 hours prior to the time of application.

* * * * *

(2) Upon **written** request the **[designated person] pesticide application business** shall within 10 days of receiving a request under this subsection provide a copy of the label for every restricted use pesticide **used or** to be used.

(c) *Exceptions.* The following types of application do not require prior notification:

* * * * *

(4) An application of a restricted use pesticide that is injected into trees or utility poles.

§ 128.83. **[Ornamental or turf application] (Reserved)**.

[(a) *Notification.*

(1). A pesticide business that meets the definitions of category 06 (ornamental and shade trees) or 07 (lawn and turf) of § 128.42 (relating to categories of commercial and public applicators) regarding general use pesticides shall at least 12 hours prior to the time of application provide every person residing in a dwelling on land contiguous to the application site with the following information:

(i) The proposed date and time of application.

(ii) The brand name of every pesticide to be applied including the EPA registration number.

(2) Within 10 days of receiving a request , the pesticide application business shall provide a copy of the label for every pesticide to be used.

(b) *Exceptions.*—A person is not entitled to notification under subsection (a) unless the person makes a written request at least 7 days prior to the proposed date of application.

(c) *Premises sharing mutual border.* The request described in subsection (b) shall list by street address premises which share a mutual border with the premises owned by the person making the request.]

§ 128.83a. Agricultural application.

(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use pesticide for an agricultural purpose without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the restricted use pesticide application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification at least 12 hours prior to the time of application, and provide the following additional information:

(i) The proposed date and time of application.

(ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(iii) The business name, address, and phone number.

(2) The person making a request under this subsection shall identify in the request the name and address of every person operating agricultural land which shares a common border with property resided on by the person making the request.

(3) Upon written request, the pesticide application business shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

(c) *Alternate forms of notification.*

(1) In lieu of requirements in subsection (a) a pesticide application business may give constructive notification to a person residing in every dwelling unit on land contiguous to the restricted use pesticide application site at least 18 hours prior to the time of application. The pesticide application business shall provide the proposed date and location of the application, the brand name of every restricted use pesticide to be applied including the EPA registration number and the business name, address and phone number.

(2) In lieu of requirements in subsection (a), an applicator may post placards at usual points of entry to the application site and at the borders with adjoining properties owners at least 18 hours prior to the time of application. This placard must remain posted until the conclusion of any restricted reentry time listed on the pesticide label. The placards must be at least 8 1/2 inches by 11 inches in size and be printed with the following words; "Public Notice of Pesticide Application" and contain the pesticide application business's name, address, phone number and the brand name of every restricted use pesticide to be applied including the EPA registration number.

(d) *Exceptions.* An application of a restricted use pesticide does not require prior notification where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or a soil fumigant is used.

§ 128.84. Nonagricultural area-wide application.

* * * * *

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from **[a person designated to receive requests for additional information] the pesticide application business**. Upon the request, the **[applicator] pesticide application business** shall **make constructive notification and** provide the following information at least 12 hours prior to the time of application.

* * * * *

(iii) The business name, address and phone number.

(2) **[Within] Upon written request, the pesticide application business shall within** 10 days of receiving a request under this subsection, **[the designated person shall]** provide a copy of the label for every restricted use pesticide **used or** to be used.

§ 128.85. **[Agricultural application] (Reserved)**.

[(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use

pesticide for an agricultural purpose without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the restricted use pesticide application site may request additional information from a person designated to receive requests for additional information. Upon the request, the applicator shall at least 12 hours prior to the time of application, provide the following additional information:

(i) The proposed date and time of application.

(ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Within 10 days of receiving a request under this subsection, the designated person shall provide a copy of the label for every restricted use pesticide to be used.

(3) The person making a request under this subsection shall identify in his request the name and address of every person operating agricultural land which shares a common border with property owned by the person making the request.

(c) *Use of placards.* In lieu of requirements contained in subsections (a) and (b), an applicator may give prior notification orally or by certified mail to every person residing in a dwelling on land contiguous to the restricted use pesticide application site or may post placards around the application site at least 18 hours prior to the time of application. If the applicator uses placards, the placards shall contain the information required by this section for prior notification.

(d) *Exceptions.* An application of a restricted use pesticide does not require prior notification where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or a soil fumigant is used.]

§ 128.85a. Ornamental or turf application notification.

(a) *Notification.*

(1) A person shall submit a written request for notification of lawn, turf, ornamental, or shade tree pesticide applications, applicator categories 06 or 07 as described in § 128.42 (relating to categories of commercial and public applicators) to the pesticide application business for notification of pesticide applications by that business.

(i) This written request for notification is limited to and must list by owners name and street address of the premises sharing a mutual border with the residence of the person making the request.

(ii) The notification requirement becomes effective 7 days following receipt of the request by the pesticide application business.

(2) Upon receiving a written request at least 7 days prior to the application date, a pesticide business making lawn, turf, ornamental or shade tree applications shall make constructive notification of applications on contiguous lands at least 12 hours prior to the application providing the following information:

(i) The proposed date and time of application.

(ii) The brand name of every pesticide to be applied including the EPA registration number.

(iii) The business name, address and phone number.

(3) If specifically requested in writing, the pesticide application business shall within 10 days of receiving a request provide a copy of the labels for every pesticide used or to be used.

(b) Expiration of request. A request for notification made under this subchapter shall expire on December 31 in the year in which it is made.

(c) Records. The pesticide application business shall keep records of all requests for notification and records of notifications made for 3 years.

(d) *Exceptions.* An application of a pesticide to a tree by means of injection is not subject to notification.

§ 128.86. **[Constructive notification] (Reserved).**

[A person shall be deemed to have received notification under this subchapter if an adult residing in the same dwelling is so notified.]

§ 127.87. **[Prior notification by certified mail] (Reserved).**

[If this subchapter authorizes an applicator to give prior notification by certified mail, the prior notification shall be effective upon receipt.]

§ 128.88. Recordkeeping for prior notification.

(a) The **[applicator] pesticide application business** shall keep, for each occasion in which prior notification is required, a record containing the following information:

* * * * *

(4) A copy of correspondence relating to prior notification **or additional information**.

(b) A record required to be kept under this section shall be **completed in written or printable form no later than 24 hours after the application date,** maintained for at least 3 years and shall be made immediately available to the Department upon request.

Subchapter D. REGISTRATION OF PESTICIDES

§ 128.91. EPA **[registration] approval** required.

[Only a pesticide with an approved EPA registration will be accepted for registration by the Department.]

(a) Only pesticides which have been approved by EPA for registration under section 3 of FIFRA (7 U.S.C.A. § 136a) or are permitted to be distributed under a Federal exemption under section 18 or 25(b) of FIFRA (7 U.S.C.A. § 136p and 136w(o)may be registered by the State.

(b) State registration of products sold only under an emergency exemption approved under section 18 of FIFRA will remain in effect only for the period specified by the EPA in granting approval of an exemption, and will require the registrant to

provide to the State all information required under 40 CFR 166.32 (relating to reporting and recordkeeping requirements for specific, quarantine and public health exemptions).

(c) Pesticide registration is required for all pesticides exempted from regulation under FIFRA under 40 CFR 152.25(f) (relating to exemptions for pesticides of a character not requiring FIFRA regulation). State registration of products under this exemption will be permitted only when the product labeling, composition, efficacy and risks are consistent with the terms for Federal exemption.

Subchapter E. MISCELLANEOUS

§ 128.101. Reporting of pesticide significant accidents or incidents.

* * * * *

(b) **[An applicator, a pesticide application technician or another person] A person after becoming aware of a significant pesticide accident or incident or** who has knowledge of a significant pesticide accident or incident shall **immediately** report it to the Department.

(c) As used in this section, the term "significant pesticide accident or incident" means an accident or incident involving a pesticide which **[creates a danger to human beings or results in damage to plant or animal life] requires a person to obtain medical treatment, results in illness requiring veterinary treatment of any wild or domestic animal, results in the unintended death of a human or animal, pollutes the waters of this Commonwealth, or causes damage which results in an economic loss of plants, organisms, structures or stored commodities**.

(d) Regulated person who following a pesticide application becomes aware of an unexpected adverse effect resulting from the pesticide product when applied in a manner consistent with the label directions shall contact the Department and provide information on the application and its effects.

(e) This section does not supersede the reporting procedures of other statutes or the regulations promulgated thereunder.

§ 128.102. Protected designated areas.

(a) An application of a restricted use pesticide within 100 feet of certain publicly-owned or designated lands will not be permitted unless a waiver is granted by the Secretary. Lands affected by this restriction include:

(1) State forest land designated **["Natural Areas and Wild Areas."] as a Conservation Area under 17 Pa. Code Chapter 44 (relating to conservation areas) or as a natural area or Wild Area under 17 Pa. Code Chapter 27 (relating to State Forest natural areas—statement of policy), and State park land designated as a conservation area under 17 Pa. Code Chapter 44 (relating to conservation areas) or as a Natural Area under 17 Pa. Code Chapter 17 (relating to state parks natural areas—statement of policy).**

(2) Areas containing endangered or **[rare organisms] threatened plant or animal species**. These **[organisms] species** are **[identified at] listed** in 17 Pa. Code **[Chapter 45 (relating to conservation of Pennsylvania native wild plants); and 58 Pa. Code Chapters 75 and 133 (relating to endangered species; and wildlife classification)] §§ 45.12 and 45.13 (relating to Pennsylvania endangered; and Pennsylvania threatened); fish identified in §§ 75.1. and 75.2 (relating to endangered species; and endangered species); and 58 Pa. Code Chapter 133; § 133.21. (relating to Pennsylvania classification of birds as Endangered and Threatened), § 133.41. (relating to Pennsylvania classification of mammals as Endangered and Threatened).**

* * * * *

(d) The Secretary will approve or deny the application within 60 days of receipt of the application.

§ 128.103. Handling, transportation, storage, use and disposal of pesticides.

(a) A person may not use, handle, transport, store, **dispose,** display or distribute a pesticide in a manner that endangers man or **[his] the** environment or contaminates food, feed, feed supplements, medications, fertilizers, seed or other products that may be handled, transported, stored, displayed or distributed with the pesticides **or otherwise is in conflict with State or Federal laws or regulations**.

(b) A person may not use, or cause to be used a pesticide inconsistent with its labeling **(as defined in § 128.2 (relating to definitions))**. A pesticide label containing an advisory instruction concerning the use of the pesticide being an environmental hazard shall be considered by the Secretary as a further restriction on the pesticide's use.

(d) A person may not dispose of, store or receive for disposal or storage a pesticide, pesticide container or pesticide container residue in a manner that does one or more of the following:

* * * * *

(2) **[Causes or allows the open dumping of pesticides or pesticide containers. Open burning by the owner of small quantities of combustible containers that do not exceed 50 pounds is exempt if the pesticide residue does not contain organic mercury, chlorates, lead, cadmium or arsenic compounds and the Commonwealth or local regulations permit the burning. When the burning takes place, regard shall be given to wind direction in relation to the protection of crops, animals and people from pesticide vapors created through burning.**

(3)] Causes or allows dumping of pesticides in **[a stream, river, pond, sewer or lake] sewers or surface waters of this Commonwealth**, except in conformance with permits issued **[jointly]** by the Department of Environmental Protection **[and],** the Fish and Boat Commission, or other Commonwealth agencies having jurisdiction regarding water pollution.

[(4)] (3) Violates an applicable State or Federal **[pollution control standard] acts and regulations.**

[(e) A person shall dispose and store pesticides, pesticide containers and pesticide container residue in accordance with acts and regulations administered by the EPA and the Department of Environmental Protection.]

(4) Causes or allows the open dumping of pesticides or pesticide containers. All pesticide contain-

ers shall be triple rinsed or equivalent pressure rinsed and free of all visible pesticide residues, emptied and punctured prior to disposal. Plastic pesticide containers should be offered for recycling or reconditioning where programs are available. If not, they may be disposed of in a permitted sanitary landfill, or a permitted commercial incinerator.

(e) A person may not use, or cause to be used, a pesticide inconsistent with its labeling. A pesticide containing an advisory instruction concerning the use of the pesticide subject to the Federal Worker Protection Standard (See 40 CFR Part 170 (relating to worker protection standard)) will be considered by the Secretary as a further restriction on the pesticide's use.

(f) A **[person] business** may not directly apply pesticides to the property of another without first obtaining permission of the owner, or occupant having care, custody or control of the property to do so, except in the case of easements or right-of-ways or when done under the direction of a governmental entity to protect the health and welfare of the public.

* * * * *

§ 128.104. Experimental use permits.

The Department shall be notified **by the registrant** prior to the use in this Commonwealth of a pesticide with an approved EPA experimental use permit. Notification **[shall] must** include copies of the EPA approval letter, a properly completed product label as defined in 40 CFR 172.6 (relating to labeling) and a list of the participants and cooperators involved in the program.

§ 128.106. Additional responsibilities **[within school buildings] relating to schools.**

(a) ***General.*** A pesticide **[other than a disinfectant or sanitizer]** may not be applied in a common access area within a school building **or on school grounds** when students are expected to be in the common access area for normal academic instruction or organized extracurricular activities within 7 hours following the application. The applicator shall also comply with reentry time restrictions contained on the pesticide label, whichever is greater **and the requirements of section 772.2 of the Public School Code of 1949 (24 P. S. § 7.772.2) (regarding notification of pesticide treatments at schools)**.

(b) ***Exemptions.*** **The following type of pesticide applications are exempt from this section.**

(1) Disinfectants and sanitizers.

(2) Self-containerized baits placed in areas not accessible to students.

(3) Gel type baits placed in cracks, crevices or voids.

(4) Swimming pool maintenance chemicals used in the care and maintenance of a swimming pool.

§ 128.107. Providing information upon request.

(a) A producer, distributor or other person shall maintain all books and records as required in section 8 of FIFRA (7 U.S.C.A. § 136f). The records shall be made available for inspection and reproduction when requested by the Department.

(b) A pesticide application business, pesticide dealer or person who handles, distributes, stores, transports, or applies any pesticide shall upon request provide to the Department, information about the pesticides including brand name, EPA registration number and active ingredients.

(c) A pesticide application business, pesticide dealer or person who handles, distributes, stores, transports or applies pesticide shall in an emergency upon request immediately provide to medical personnel information about the pesticides involved including brand name, EPA registration number and active ingredients.

Subchapter F. PESTICIDE HYPERSENSITIVITY REGISTRY

§ 128.111. Registry.

* * * * *

(c) **[A pesticide] Pesticide**-hypersensitive **[individual] individuals** who **[wants] want** to be on the registry shall provide to the Department **[his] their** name and primary residence including street address, city, state, zip code, county, daytime telephone number and nighttime telephone number. Each individual shall also provide an alternate telephone number where notification information can be conveyed. Individuals may also provide secondary locations, addresses and associated telephone numbers to be maintained as part of their listing. An individual submitting a request for listing less than 2 months preceding the effective date, as described in subsection (e), may not be included on the current registry with that effective date, but will be included in the next registry.

(d) To remain on the registry, an individual shall notify the Department annually during the month of **[January] October** of the individual's intent to remain on the registry for the next 12 months. Medical verification will not be required for this renewal.

(e) The Department will **[mail] distribute** the current registry to each licensed commercial and public pesticide application business on or before the effective dates of March 1, **[June 1, September 1 and December 1] and July 15** of each year. **[An individuals] Individuals** will not be considered officially included on the registry unless **[his name appears] their names appear** on the current registry.

§ 128.112. Notification of hypersensitive individuals.

(a) *General.* Prior to a pesticide application being made by a commercial or public pesticide application business the following conditions shall be met:

* * * * *

(4) Notification shall be made by telephone, **or** personal contact or certified mail **or if available, electronic mail or facsimile**.

(i) Notification requirements are met **[if the information is placed on a telephone answering device activated by calling the registrant's telephone number], through constructive notification by contacting the hypersensitive person's daytime or nighttime listings in the register** or if the information is given to an adult contacted by dialing the **[daytime, nighttime or]** alternate telephone number.

(ii) If notification cannot be made after at least two telephone contact attempts, notification may be made by placing the written notification information on the front door of the listed residence or **secondary** location **listed in the registry within 500 feet of the application site 12 to 72 hours prior to the application**.

(iii) A record shall be kept of every **[telephone]** contact and contact attempt made under this paragraph.

(b) *Exceptions.* The following types of application do not require notification under this section:

(1) An application of a pesticide within a **[single family residential] detached structure not listed as a secondary location**.

* * * * *

(4) An application of a pesticide to a tree **or utility pole** by means of injection. **[Prior notification requirements contained in § 128.83 (relating to ornamental or turf application) remain applicable.]**

* * * * *

(6) Application of a pesticide in the care and maintenance of a swimming pool.

(c) *Recordkeeping.* A record of the notification information required under this section, including the time and method of notification, shall be **made within 24 hours following the application and** maintained for at least 3 years and shall be made immediately available to the Department upon request **[or to medical personnel in an emergency]**.

[Pa.B. Doc. No. 09-1780. Filed for public inspection September 25, 2009, 9:00 a.m.]

DEPARTMENT OF STATE

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Chiropractors

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to add § 43b.22 (relating to schedule of civil penalties—chiropractors) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards. Section 506(a)(9) of the Chiropractic Practice Act (act) (63 P. S. § 625.506(a)(9)) authorizes the State Board of Chiropractic (Board) to take disciplinary action against a licensee for violating any provisions of the regulations of the Board. Section 506(a)(13) of the act (63 P. S. § 625.506(a)(13)) authorizes the Board to take disciplinary action against a licensee for failing to perform any statutory obligation placed upon a licensed chiropractor. Section 507(a) of the act (63 P. S. § 625.507(a)) requires a licensed chiropractor to complete at least 24 hours of continuing education during each biennial renewal cycle. Section 703 of the act (63 P. S. § 625.703) authorizes the Board to levy a civil penalty of up to $1,000 on any licensee who violates any provision of the act.

Background and Need for the Regulation

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the licensing boards being accomplished through the Act 48 citation process. The Board has not previously had an Act 48 schedule of civil penalties.

As is being done for other licensing boards with continuing education requirements, the Commissioner is proposing a civil penalty schedule for violation of the continuing education requirements for licensees of the Board, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process. Payment of the civil penalty will not relieve a licensee of the obligation to complete the required amount of mandatory continuing education. Under the separate rulemaking being proposed by the Board, a licensee who fails to complete the required amount of mandatory continuing education during the biennial renewal period will also be required to complete the required continuing education during the next 6 months; failure to complete the required continuing education by that deadline will subject the licensee to formal disciplinary action. See 39 Pa.B. (September 26, 2009).

Also, the Board's current regulation at 49 Pa. Code § 5.17(g) (relating to biennial registration; unregistered status and inactive status; failure to renew; address of record) prohibits a licensee whose license has lapsed from practicing chiropractic in this Commonwealth. As is being done for other licensing boards, the Commissioner is proposing a civil penalty schedule for practice on a lapsed or expired license, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process. Because failure to renew a license might be an attempt to avoid the continuing education or malpractice insurance requirements, use of an Act 48 citation for lapsed license practice will be limited to those first-time offenders who are in compliance with the continuing education requirements. A licensee who practiced on a lapsed license without having complied with the continuing education or malpractice insurance requirements will instead be subject to formal disciplinary action where the Board has the authority to suspend or revoke a license.

Description of the Proposed Amendments

The Commissioner, in consultation with the Board, proposes for a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period a civil penalty $50 for each credit hour that the licensee is deficient, up to a maximum of $1,000. Second and subsequent offenses would not be subject to an Act 48 citation, but rather

would proceed through the formal disciplinary process. The Commissioner, in consultation with the Board, also proposes for a first offense violation of practicing on a lapsed or expired license while in compliance with continuing education and malpractice insurance requirements a civil penalty $250 for practicing less than 6 months, $500 for 6 to 12 months, and $1,000 for 12 to 24 months. Second and subsequent offenses would not be subject to an Act 48 citation, but rather would proceed through the formal disciplinary process.

Compliance with Executive Order 1996-1

The Board considered and approved the proposed regulation at regularly scheduled public meetings. The Commissioner reviewed the proposed regulation and considered the purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1. The proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

Professional licensure statutes require each board to be self-supporting. Therefore, the Commissioner and the Boards continuously monitor the cost effectiveness of their regulations. As a result, 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 11, 2009, the Commissioner 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. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections 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, recommendations or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 or by e-mail at st-chiro@state.pa.us, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Use reference No. 16-44 (Act 48 chiro schedule of civil penalties), when submitting comments.

BASIL L. MERENDA,
Commissioner

Fiscal Note: 16-44. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND VOCATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.22. Schedule of civil penalties—chiropractors.

STATE BOARD OF CHIROPRACTIC

Violation Under 63 P. S.	Title/Description	Penalties
Section 625.507(a)	Failure to timely complete the required amount of continuing education	First offense—$50 per hour of deficiency, not to exceed $1,000 Subsequent offense—formal action

Violation Under 49 Pa. Code	Title/Description	Penalties
§ 5.17(g)	Practice on a lapsed license in compliance with CE and malpractice insurance requirements—first offense	Less than 6 months—$250 6 months to 12 months—$500 12 months to 24 months—$1,000

[Pa.B. Doc. No. 09-1781. Filed for public inspection September 25, 2009, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 109]

Lead and Copper Rule Short Term Revisions

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The amendments will provide for increased protection against, and consumer awareness of, exposure to lead in public water systems. The Lead and Copper Rule Short Term (LCR) Revisions (LCRSTR) build upon the existing Lead and Copper Rule and strengthens implementation of the monitoring, public education, customer awareness and lead service line replacement provisions.

This proposal was adopted by the Board at its meeting of June 16, 2009.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Lisa Daniels, Division of Operations Monitoring and Training, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-2189, or Marylou Barton, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this Preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection (Department) web site http://www.depweb.state.pa.us.

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-7 and 510-20).

D. *Background and Purpose*

This proposed rulemaking will amend the existing LCR. The LCR was published at 24 Pa.B. 6404 (December 24, 1994). The primary goal of the LCR is to reduce lead and copper levels at consumers' taps, thereby reducing the health risks associated with lead and copper. The pervasiveness of lead contamination in public drinking water systems is well documented. Lead and copper leach into the drinking water from solder, pipes and fixtures. The severity of contamination depends on the amount of lead or copper in the distribution system and the consumers' home plumbing, and the corrosiveness of the water. The original LCR established comprehensive monitoring requirements for lead and copper at the consumer's tap and treatment technique requirements for optimal corrosion control which include public education and lead service line replacement.

The proposed amendments will incorporate the provisions of the Federal Lead and Copper Rule: Short Term Regulatory Revisions that were promulgated by the United States Environmental Protection Agency (EPA) on October 10, 2007. This proposed rulemaking package will amend the Department's Safe Drinking Water Regulations as follows:

1. Clarify the definition of "tap" for lead and copper sampling to be a tap that provides water for drinking.

2. Rescind the provision that allows water systems to remain on a reduced monitoring frequency if either the lead or copper action level is exceeded. Water systems must meet both water quality parameter ranges and the lead and copper action levels to remain on a reduced monitoring schedule. Note that this is more stringent than the Federal regulation; EPA allows systems to exceed copper and remain on a reduced frequency.

3. Require water suppliers to provide a "consumer tap notice" to consumers whose taps are sampled. This notice must include the lead results for the tap that was sampled, an explanation of the health effects of lead and a list of steps consumers can take to reduce exposure to lead in drinking water.

4. Revise the public education and Consumer Confidence Report (CCR) provisions, with respect to lead, to clarify the mandatory language, expand delivery requirements and require an informational statement in all CCRs.

5. Require water systems to reevaluate lead service lines (LSL) previously deemed "replaced" through testing if the system resumes an LSL replacement program.

The draft proposed amendments were submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on August 21, 2008. The TAC Board provided comments on three of the proposed rulemaking provisions.

Specifically, TAC commented on the number of sample sites required by the LCR stating, "The requirement to have a minimum of five sample sites does not make sense. . . . Taking a minimum of five samples for statistical validity is not a correct assumption." The existing LCR requires a minimum of five samples for small systems serving less than 100 people because there is a high degree of variability in lead and copper levels between and within systems as well as between individual taps. Given the high degree of variability in lead and copper levels, collection of too few samples can result in false conclusions regarding the need for treatment. As a result, a sufficient number of samples is required to be confident that the measured lead levels are accurately assessed. Increased sampling helps improve the likelihood that the true need for treatment is accurately characterized.

The EPA believes the number of samples required in the LCR sufficiently accounts for the variability in lead and copper levels and reflects system-wide contaminant level distributions. The number of samples also takes into account the cost of sampling, and the EPA believes the numbers of samples required are reasonable and implementable.

In the Federal Lead and Copper Rule: Short Term Regulatory Revisions, the EPA again maintains that systems must take a minimum of five samples to adequately capture the variability of lead levels. However, the Federal Lead and Copper Rule: Short Term Regulatory Revisions also allow states the discretion to allow systems with fewer than five taps for human consumption to collect one sample per tap. Under this option, the compliance value is the sample with the highest test result, rather than the result from the 90th % sample. The EPA's intent is that only systems with fewer than five taps be allowed to collect fewer than five samples. Additionally, the water system must submit a written request and the state must approve the request in writing or by onsite verification.

Reducing the minimum number of samples could cause systems with 90th% values currently in compliance with the lead and copper action levels to exceed either or both action levels if fewer than five sites were sampled. These systems would then be faced with additional monitoring and treatment installation and operation costs.

It is more cost effective for small systems to take five samples than to chance exceeding an action level and be required to install and operate corrosion control or source water treatment based on a smaller pool of samples. Therefore, the Department is choosing not to implement this option and will continue to require a minimum of five samples.

TAC also commented on the public education delivery requirements contained in this rulemaking as they relate

to contacting local or county health agencies and any other organizations identified by these local health agencies. This proposed rulemaking requires that, as part of a public education program, systems must contact local public health agencies, such as the county or State Health Department, even if the agency is outside the water system's service area. TAC's comment states, " . . . The water systems should only have to contact those individuals on the list that are in the system's service area." It should be noted that the Department regulations must be at least as stringent as the corresponding EPA requirements. The public education delivery requirements in this proposed rulemaking are consistent with, but no more stringent than, the Federal requirements.

To assist public water systems in identifying the local health agencies they must contact as part of a public education program, a list is provided as follows: This list will also be provided in guidance.

Department of Health District Offices

Southeast District
Berks, Delaware, Lancaster,
Montgomery, Philadelphia, Schuylkill
442 Reading State Office Building
625 Cherry Street
Reading, PA 19602
(610) 378-4352

Southcentral District
Adams, Bedford, Blair, Cumberland,
Dauphin, Franklin, Fulton, Huntingdon,
Juniata, Lebanon, Mifflin, Perry, York
30 Kline Plaza
Harrisburg, PA 17104
(717) 787-8092

Southwest District
Armstrong, Beaver, Butler, Cambria,
Fayette, Greene, Indiana, Somerset,
Washington, Westmoreland
514 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
(412) 565-5101

Northeast Division
Carbon, Lacawanna, Lehigh,
Luzerne, Monroe, Northampton,
Pike, Susquehanna, Wayne, Wyoming
665 Carey Avenue, Suite 5
Wilkes-Barre, PA 18705-5485
(570) 826-2062

Northcentral District
Bradford, Centre, Clinton, Columbia,
Lycoming, Montour, Northumberland,
Potter, Snyder, Sullivan, Tioga, Union
Water Tower Square, Suite 109
1000 Commerce Park Drive
Williamsport, PA 17701-5475
(570) 327-3400

Northwest District
Cameron, Clarion, Clearfield, Crawford,
Elk, Forest, Jefferson, Lawrence,
McKean, Mercer, Venango, Warren
19 McQuiston Drive
Jackson Center, PA 16133
(724) 662-6068

County Health Department (CHD) Offices

Allegheny CHD
Public Drinking Water Program
Frank B. Clack Health Center
3901 Penn Avenue, Building 5
Pittsburgh, PA 15224-1318
(412) 578-8047

Chester CHD
Government Services Center
601 Westtown Road, Suite 090
P. O. Box 2747
West Chester, PA 19380-0990
(610) 344-6225

Bucks CHD
Public Drinking Water Program
1282 Almshouse Road
Doylestown, PA 18901
(215) 345-3318

Erie CHD
606 West 2nd Street
Erie, PA 16507
(814) 451-6700

TAC commented on the requirement for consumer tap notice, requesting suggested language for the content of the notice. The EPA has already developed guidance for the public education requirements, and the language provided by the EPA for the lead health effects and steps consumers can take to reduce exposure in the public education materials, may also be used for the consumer tap notices.

E. *Summary of Regulatory Requirements*

Section 109.1102(b)(relating to action levels and treatment technique requirements) Paragraph (1) is reformatted, splitting subparagraph (ii) to create clause (A) and subparagraph (iv) becomes clause (B) in subparagraph (ii). Section 109.1102(b)(1)(ii) clarifies that a system with optimized corrosion control treatment shall conduct monitoring at least once every 3 years.

Paragraph (2) is amended with language that is consistent with the Federal rule. Section 109.1102(b)(2)(ii) clarifies that the compliance deadlines for corrosion control treatment installation are based on the end of the monitoring period in which an action level was exceeded.

Section 109.1103(a)(3) (relating to monitoring requirements). This paragraph is amended to be consistent with the federal deadline to conduct source water monitoring found in 40 CFR 141.88(b).

Section 109.1103(b)(4). Paragraph (4) is amended to be consistent with the Federal rule and to clarify that systems that must resume corrosion control treatment installation activities resume compliance activities from the point where treatment installation was discontinued.

Section 109.1103(c)(3). This paragraph is amended to be consistent with the Federal deadline to conduct source water monitoring found in 40 CFR 141.88(b).

Section 109.1103(d). This subsection is amended to be consistent with the Federal monitoring requirements found in 40 CFR 141.87(d) (relating to monitoring requirements for water quality parameters).

Section 109.1103(d)(3). Paragraph (3) is amended to be consistent with the Federal deadline to conduct source water monitoring found in 40 CFR 141.88(b).

Section 109.1103(e)(1)(i)(B) and (C). Clause (B) is revised to clarify that a water system that has installed

corrosion control treatment must meet both the lead and copper action levels during follow-up monitoring to qualify for a reduced annual monitoring frequency. This clause is further amended to delete the requirement that water systems request reduced annual monitoring. These revisions are to be consistent with the Federal rule, but the Department is more stringent than the Federal rule in requiring that both action levels be met to qualify for a reduced monitoring frequency. This is more protective of public health. However, water suppliers that meet both the lead and copper action levels in addition to maintaining the range of water quality parameter values will automatically be granted a reduced annual monitoring frequency. The Federal rule requires that only the lead action level be met before water suppliers may request a reduced monitoring frequency. Clause (C) is amended to be consistent with the Federal monitoring requirements found in 40 CFR 141.86(d)(4)(ii) (relating to monitoring requirements for lead and copper in tap water).

Section 109.1103(e)(1)(ii)(B). Clause (B) is revised to clarify that a water system that has installed corrosion control treatment shall meet both the lead and copper action levels during reduced annual monitoring to qualify for a triennial monitoring frequency. This clause is further amended to delete the requirement that water systems request this reduced monitoring. These revisions are to be consistent with the Federal rule, but the Department is more stringent than the Federal rule in requiring that both action levels be met to qualify for a triennial monitoring frequency. This is more protective of public health. However, water suppliers that meet both the lead and copper action levels in addition to maintaining the range of water quality parameter values will automatically be granted a triennial monitoring frequency. The Federal rule requires that only the lead action level be met before water suppliers may request reduced triennial monitoring.

Section 109.1103(e)(1)(iii). This subparagraph is deleted because water systems will no longer need to request reduced monitoring. For systems that have installed corrosion control treatment, reduced monitoring will be automatically granted once the system meets both the lead and copper action levels and maintains the range of values for water quality parameters during follow-up or reduced annual monitoring.

Section 109.1103(e)(1)(iv). This subparagraph is renumbered to replace the deleted subparagraph (iii) and revised to be consistent with the Federal rule.

Section 109.1103(e)(1)(v). This subparagraph is deleted and moved to new paragraph (3).

Section 109.1103(e)(2)(i). This subparagraph is revised to correct the citation for entry point water quality parameter monitoring. The current citation references the water quality parameter monitoring required during follow-up monitoring after construction or modification of corrosion control treatment facilities; the correct reference should be the water quality parameter monitoring required after performance requirements are established.

Section 109.1103(e)(2)(ii)(A) and (B). Clause (A) is amended to be consistent with the Federal monitoring requirements found in 40 CFR 141.87(e)(2)(i) (relating to monitoring requirements for water quality parameters) and to correct the citation for entry point water quality parameter monitoring. The current citation references the water quality parameter monitoring required during follow-up monitoring after construction or modification of corrosion control treatment facilities; the correct reference should be the water quality parameter monitoring required after performance requirements are established. Clause (B) is amended to be consistent with the Federal rule and to clarify that triennial monitoring is required during specific years at 3-year intervals.

Section 109.1103(e)(2)(iii)—(v). These subparagraphs are deleted because they are moved to new paragraph (3).

Section 109.1103(e)(3). This paragraph is added to combine subparagraphs § 109.1103(e)(1)(v) and (2)(iii)—(v) for ease of reference and to clarify the compliance requirements when reduced monitoring is revoked. The language has also been amended to be consistent with the Federal rule and to clarify that the compliance activities are required if either action level is exceeded. The Department is more stringent than the Federal rule in requiring that both action levels be met to remain on a reduced monitoring frequency, but this is consistent with the criteria to qualify for a reduced tap monitoring frequency in § 109.1103(e)(1) and is more protective of public health.

Section 109.1103(g)(2). Paragraph 2 is reformatted to clarify site selection requirements for both community and nontransient, noncommunity water systems. Text has been added to the new subparagraph (iii) to clarify how sampling must be done when the system has fewer than five taps. Text has also been added to the new subparagraph (iv) to clarify when a system may use non-first draw samples. The additional text is added to be consistent with Federal language found in 40 CFR 141.86(c).

Section 109.1103(k)(4)(i). This subparagraph is amended to be consistent with the Federal rule and to clarify that monitoring is required during specific years at 9-year intervals.

Section 109.1104(a) (relating to public education and notification). This subsection is amended to be consistent with the Federal public education content requirements found in 40 CFR 141.85(a) and the Federal public education delivery requirements found in 40 CFR 141.85(b) (relating to public education and supplement monitoring requirements).

Section 109.1104(b). This subsection is amended to be consistent with the federal requirements for notification of results found in 40 CFR 141.85(d).

Section 109.1104(c). This subsection is renumbered.

Section 109.1107(a)(3)(i) (relating to system management responsibilities). This subparagraph is amended to correct a typographical error.

Section 109.1107(a)(5). This paragraph is amended to incorporate the Federal reporting requirements found in 40 CFR 141.90(f)(3) (relating to requirements).

Section 109.1107(a)(6). This paragraph is renumbered.

Section 109.1107(a)(7).

Section 109.1107(d)(1). This paragraph is amended to incorporate the Federal lead service line replacement requirements found at 40 CFR 141.84(b)(1) (relating to lead service line replacement).

Section 109.1107(d)(6). This paragraph is added to incorporate the federal lead service line replacement requirements found in 40 CFR 141.84(b)(2).

F. Benefits, Costs and Compliance

Benefits

The intent of this rulemaking is to improve implementation of the lead and copper regulations by clarifying

monitoring requirements, improving customer awareness and modifying lead service line "test-out" procedures. The increase in the administrative activities resulting from these revisions will generate new information which may prompt public water systems to take measures to further abate lead and copper exposure and thus reduce the associated risk, resulting in additional health benefits to consumers.

Because the precise impact of these revisions on the behavior of individual consumers and public water systems is not known, the EPA has not quantified the changes in associated health benefits for these revisions. However, the overall benefits from the LCR will increase as a result of the indirect effects of these revisions on public water systems and individual consumers.

Compliance Costs

Some of the cost increases estimated by the EPA will not apply to public water systems in this Commonwealth because this Commonwealth already implements similar provisions under the existing LCR. However, there are four provisions of the Lead and Copper Rule: Short Term Regulatory Revisions included in this rulemaking that are likely to increase costs for public systems in this Commonwealthnia:

1. Return to routine monitoring frequency if an action level is exceeded (larger systems will have higher costs because more samples are required than for the smaller systems).

2. Consumer tap notice requirements.

3. Public Education content and delivery requirements.

4. Consumer Confidence Report content requirements.

The number of systems in this Commonwealth affected by this proposed rulemaking is based on the total number of community and nontransient, noncommunity water systems as well as LCR monitoring information from 2007. Not all systems will need to implement each provision each year, therefore the number of systems likely to be affected by each provision and an average cost per system has been estimated. There is an additional one-time, up front cost for reviewing, training and implementing the LCRSTR that will be incurred by all water systems affected by this rulemaking. The cost estimates per system for each of these provisions are based on costs estimated by the EPA for public water systems nationwide.

The direct annual costs to implement each of these provisions for this Commonwealth's public water systems, cased on estimates from EPA, are as follows:

Provision #	*No. of Systems Affected*	*Annual Cost/System*	*Total Annual Costs*
1	140	(up to) $2,930	$410,200
2	3,228	$20	$64,560
3	107	(average of) $134.47	$14,388
4	2,078	$6.79	$14,110
Total			$503,258

The one-time, up front cost for public water systems is estimated to be $152.33 for each of the 3,228 public water systems, for a total cost of $491,721.

For the Commonwealth, there are costs associated with oversight and costs to State-owned public water systems. Of the 3,228 public water systems affected by this rulemaking, 42 (or 1.3%) are State-owned facilities, so 1.3% of the public water system costs detailed previously, could be incurred by this Commonwealth if all 42 systems implement all of these provisions each year. The details for the Commonwealth costs are as follows:

	One-Time Cost	*Annual Costs*	*Total*
Oversight Costs	$28,948	$5,404	$34,352
State-Owned Water Systems Costs	$6,393	$6,543	$12,936
Total	$35,341	$11,947	$47,288

Compliance Assistance Plan

The proposed revisions clarify and strengthen existing regulation. As a result, financial assistance should not be necessary. The Bureau of Water Standards and Facility Regulation has staff dedicated to providing both training and outreach support services to public water system operators. The Department web site contains the Drinking Water and Wastewater Treatment System Operator Information Center, which provides a bulletin board of timely, useful information for treatment plant operators. Additionally, the Department staff will provide educational, technical and compliance assistance through newsletters, guidance documents, training sessions and surveillance activities.

Paperwork Requirements

The requirements of the existing LCR include monitoring, reporting, public education and public notice. The only additional requirement of the LCRSTR is for water suppliers to provide a notice of the monitoring results to those consumers whose taps were sampled and a certification to the Department that this notice was delivered.

G. *Pollution Prevention*

Not applicable.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 9, 2009, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the House and Senate Environmental Resources and

Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of the detailed Regulatory Analysis Form prepared by the Department. 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 amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the amendments.

J. Public Comments

Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 19, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by October 26, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by October 26, 2009. A subject heading of the proposal and a return name and address must be included in each transmission.

JOHN HANGER,
Chairperson
Environmental Quality Board

Fiscal Note: 7-437. (1) General Fund; (2) Implementing Year 2009-10 is $28,948; 1st Succeeding Year 2010-11 is $5,404; 2nd Succeeding Year 2011-12 is $5,404; 3rd Succeeding Year 2012-13 is $5,404; 4th Succeeding Year 2013-14 is $5,404; 5th Succeeding Year 2014-15 is $5,404; 2008-09 Program—$102,149,000; (3) 2007-08 Program—$98,582,000; 2006-07 Program—$89,847,000; (7) State owned water system may incur costs to implement this regulation however the cost to any one agency is expected to be minimal, since the total cost to State-owned systems is expected to be estimated at $13,000; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 109. SAFE DRINKING WATER

Subchapter K. LEAD AND COPPER

§ 109.1102. Action levels and treatment technique requirements.

* * * * *

(b) *Treatment technique requirement for corrosion control.*

(1) *Optimal corrosion control treatment*. A community water system or nontransient noncommunity water system shall provide optimal corrosion control treatment which minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the system to violate a primary MCL. Water systems deemed to have optimized corrosion control treatment under this subsection shall operate in compliance with Department designated water quality parameters and continue to conduct lead and copper tap monitoring. A system may achieve optimal corrosion control treatment in one of the following ways:

* * * * *

(ii) A water system is deemed to have optimized corrosion control if the system demonstrates to the Department that for two consecutive 6-month monitoring periods conducted in accordance with § 109.1103 that the system does not exceed a lead or copper action level and the difference between the 90th percentile tap water lead level and the highest source water lead concentration is less than 0.005 mg/L, which is the Practical Quantitation Level for lead.

(A) To make this demonstration, the system shall collect one sample for lead from each entry point during a monitoring period prior to initiation of construction or modification of corrosion control treatment facilities. If the system thereafter exceeds an action level during a monitoring period, the system shall complete applicable compliance activities under paragraph (2). The Department may require a system to repeat compliance activities previously completed when the Department determines that this is necessary for the system to achieve optimal corrosion control treatment.

(B) A water system deemed to have optimized corrosion control in accordance with this subparagraph shall continue monitoring for lead and copper at the tap no less frequently than once every 3-calendar years using the reduced number of sites specified in § 109.1103(e), and collecting the samples at times and locations specified in § 109.1103(e)(1)(iii).

* * * * *

[(iv) Any water system deemed to have optimized corrosion control in accordance with this subsection shall continue monitoring for lead and copper at the tap no less frequently than once every 3-calendar years using the reduced number of sites specified in § 109.1103(e), and collecting the samples at times and locations specified in § 109.1103(e)(iv).]

(2) *Corrosion control treatment compliance schedule*. A system shall comply with the following schedule unless the system achieves optimal corrosion control treatment under paragraph (1)(i) or (ii) prior to initiation of construction or modification of corrosion control treatment facilities.

* * * * *

(ii) A large water system triggered into corrosion control because it is no longer deemed to have optimized corrosion control under **[subsection (b)(1)] paragraph (1), or any medium or small water system that exceeds an action level shall:**

(A) Submit a corrosion control treatment feasibility study that complies with paragraph (3) within 18 months of **[exceeding] the end of the monitoring period in which** the action level **was exceeded**.

(B) Submit a permit application or otherwise comply with the permit application requirements under § 109.1105(b) for construction or modification of corrosion control treatment facilities within 30 months of **[exceeding] the end of the monitoring period in which** the action level **was exceeded**.

(C) Initiate construction or modification of corrosion control treatment facilities within 48 months of **[exceeding] the end of the monitoring period in which** the action level **was exceeded**.

(D) Complete construction or modification of corrosion control treatment facilities and begin operation of these facilities within 60 months of **[exceeding] the end of the monitoring period in which** the action level **was exceeded**.

* * * * *

§ 109.1103. Monitoring requirements.

(a) *Initial monitoring*.

* * * * *

(3) *Initial source water monitoring*. A system which exceeds either the lead or copper action level shall collect one source water sample from each entry point within 6 months after the **[exceedance] end of the monitoring period in which the action level was exceeded**. Monitoring is required only for the parameter for which the action level was exceeded.

(b) *Special lead and copper tap monitoring*.

* * * * *

(4) If a medium or small water system exceeds an action level during a monitoring period after discontinuing compliance activities under paragraph (3), the system shall **[recommence completion of] complete** the applicable compliance activities under § 109.1102(b)(2). **[The Department may require a system to repeat compliance activities previously completed or undertake additional activities when the Department determines that the action is necessary to properly comply with corrosion control treatment requirements.]**

* * * * *

(c) *Follow-up monitoring after construction or modification of corrosion control treatment facilities*. A system which completes construction or modification of corrosion control treatment facilities in accordance with § 109.1102(b)(2) shall conduct the applicable monitoring specified in this subsection. A system which exceeds the lead action level after construction or modification of corrosion control treatment facilities shall begin lead service line replacement in accordance with § 109.1107(d) (relating to system management responsibilities).

* * * * *

(3) *Source water monitoring*. A system which installs source water treatment under § 109.1102(b)(4) shall monitor the source water at source water treatment entry points for the parameters for which the source water treatment was installed. The system shall monitor source water during the two consecutive 6-month monitoring periods specified in paragraph (1). Other systems which exceed either the lead or copper action level while conducting lead and copper tap monitoring in accordance with paragraph (1) shall collect one source water sample from each entry point within 6 months after the **[exceedance] end of the monitoring period in which the action level was exceeded** for the parameters exceeding the action level.

(d) *Monitoring after performance requirements are established*. A system shall conduct the applicable monitoring under this subsection beginning no later than the next 6-month monitoring period **that begins on January 1 or July 1** following the Department's designation of optimal corrosion control treatment water quality parameter performance requirements under § 109.1102 (b)(5) or source water performance requirements under § 109.1102(b)(4).

* * * * *

(3) *Source water monitoring*. A system which is conducting lead and copper tap monitoring in accordance with paragraph (1) shall monitor for the parameters exceeding the action level at each entry point within 6 months of the **end of the monitoring period in which the** action level **[exceedance] was exceeded**. For systems which have installed source water treatment, the results of this monitoring will be used by the Department in determining compliance with source water treatment performance requirements established under § 109.1102 (b)(4). The Department may require additional source water monitoring if the Department determines that the additional monitoring is necessary to assure compliance with the source water treatment performance requirements. A system that is not in compliance with the source water treatment performance requirements established under § 109.1102(b)(4) shall provide public notification in accordance with § 109.1104(b)(2).

(e) *Reduced monitoring*.

(1) *Reduced lead and copper tap monitoring*. A community water system conducting reduced lead and copper tap monitoring shall collect one sample from the number of sample sites listed in the following column. A nontransient noncommunity water system may reduce the number of sample sites to five, regardless of population served.

System size (# of people served)	*# of Sample Sites*
> 100,000 . . .	50
10,001 to 100,000 . . .	30
3,301 to 10,000 . . .	20
501 to 3,300 . . .	10
500 or fewer . . .	5

(i) *annual lead and copper tap monitoring*.

* * * * *

(B) A system that **[maintains the range of values for the optimal corrosion control treatment water quality parameter performance requirements specified by the Department under § 109.1102(b)(5) during each of two consecutive 6-month monitoring periods in accordance with subsection (d)(2)] has installed or modified corrosion control treatment facilities in accordance with § 109.1102(b)(2)** may **[request that the Department allow the system to] reduce the number of lead and copper sample sites and** reduce the frequency of monitoring to once per year

[and reduce the number of lead and copper sample sites.] if the following conditions are met:

(I) The system does not exceed the lead and copper action levels during each of two consecutive 6-month monitoring periods.

(II) The system maintains the range of values for the optimal corrosion control treatment water quality parameter performance requirements specified by the Department under § 109.1102(b)(5) during each of two consecutive 6-month monitoring periods in accordance with subsection (d)(2).

(C) Annual monitoring shall begin during the calendar year immediately following the end of the second consecutive 6-month monitoring period.

(ii) *Triennial lead and copper tap monitoring.*

* * * * *

(B) A system that **[maintains the range of values for optimal corrosion control treatment water quality parameter performance requirements specified by the Department under § 109.1102(b)(5) during 3 consecutive years of monitoring] has installed or modified corrosion control treatment facilities in accordance with § 109.1102(b)(2)** may **[request that the Department allow the system to]** reduce the frequency of lead and copper tap monitoring from annually to once every 3 years**[.] if the following conditions are met:**

(I) The system does not exceed the lead and copper action levels during 6-month or annual monitoring.

(II) The system maintains the range of values for the optimal corrosion control treatment water quality parameter performance requirements specified by the Department under § 109.1102(b)(5) during 3 consecutive years of monitoring.

* * * * *

(iii) **[*Request for reduced monitoring*. A system requesting reduced lead and copper tap monitoring under subparagraph (i)(B) or (ii)(B) shall submit that request on forms acceptable to the Department. The request shall include a summary of lead and copper tap and water quality parameter monitoring results and the results shall demonstrate that the system qualifies for reduced monitoring. The Department will review the information submitted and notify the water supplier of its decision and the basis for that decision.**

(iv)] *Sample sites and timing.* A system that reduces the number of sample sites and frequency of sampling shall collect samples from sample sites included in the pool of targeted sampling sites identified in subsection (g)(2). Systems sampling annually or less frequently shall conduct the lead and copper tap sampling between June 1 and September 30. The Department may approve a different period for conducting lead and copper tap monitoring sampling for systems **[collecting a reduced number of samples] on annual or less frequent monitoring**. The period may be no longer than 4 consecutive months and shall represent a time of normal operation when the highest levels of lead are most likely to occur.

[(v) *Reduced lead and copper tap monitoring revocation*.

(A) A large water system authorized to conduct reduced lead and copper tap monitoring that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in a 6-month period shall resume lead and copper tap sampling in accordance with subsection (d)(1).

(B) A small or medium water system authorized to conduct reduced lead and copper tap monitoring that exceeds either the lead or copper action level shall comply with the following:

(I) The water supplier shall conduct water quality parameter monitoring during the monitoring period in which the action level is exceeded.

(-a-) If the system has installed corrosion control treatment in compliance with § 109.1102(b)(2), water quality parameter monitoring shall be conducted in accordance with subsection (c)(2). If the results of this monitoring indicate that the system failed to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in a 6-month period, the water supplier shall resume lead and copper tap sampling in accordance with subsection (d)(1).

(-b-) If the system has not installed corrosion control treatment, water quality parameter monitoring shall be conducted in accordance with subsection (a)(2) and the system shall conduct corrosion control treatment activities in accordance with § 109.1102(b)(1)(i).

(II) The water supplier shall conduct source water monitoring in accordance with subsection (a)(3).

(III) If the lead action level is exceeded, the water supplier shall conduct a public education program in accordance with § 109.1104(a).]

(2) *Reduced water quality parameter monitoring for large water systems.* A large water system conducting reduced water quality parameter monitoring shall collect two sets of distribution samples from the following reduced number of sample sites. The sets of samples shall be collected from the same sample sites on different days and analyzed for the applicable water quality parameters.

System size (# of people served)	*# of Sample Sites*
> 100,000 . . .	10
50,001 to 100,000 . . .	7

(i) *Reduced sites.* A large water system that maintains the range of values for water quality parameter performance requirements reflecting optimal corrosion control treatment specified by the Department under § 109.1102(b)(5) during each of two consecutive 6-month monitoring periods conducted in accordance with subsection (d)(2) may collect distribution samples from the reduced number of sites during subsequent 6-month monitoring periods until the system qualifies for reduced frequency under subparagraph (ii). The system shall continue monitoring at each entry point as specified in subsection **[(c)(2)(iii)(B)] (d)(2)**.

(ii) *Reduced water quality parameter monitoring.*

(A) A large water system that maintains the range of values for water quality parameter performance requirements reflecting optimal corrosion control treatment

specified by the Department under § 109.1102(b)(5) during 3 consecutive years of monitoring at the reduced number of sites under subparagraph (i) may reduce the frequency with which it collects sets of water quality parameter distribution samples from every 6 months to annually. **Annual monitoring begins during the next calendar year.** A system conducting annual sampling shall collect these sets of samples evenly throughout the year to reflect seasonal variability. The system shall continue monitoring at each entry point as specified in subsection **[(c)(2)(iii)(B)] (d)(2)**.

(B) A large water system may reduce the frequency with which it collects tap water samples for applicable water quality parameters specified in § 109.1102(b)(5) to every 3 years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead of 0.005 mg/L, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L, and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under § 109.1102(b)(5). **Triennial monitoring shall be conducted during the last year of each 3-year compliance period—for example 1998, 2001, 2004 and so forth.**

[(iii) *Reduced water quality parameter monitoring revocation*. A large water system subject to reduced water quality parameter monitoring that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in any 6-month period shall resume water quality parameter distribution sampling in accordance with the number and frequency requirements specified in subsection (d)(2).

(iv) A large system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in subsection (e)(2) after it has completed two subsequent consecutive 6-month rounds of monitoring that meet the criteria of subsection (e)(2)(i).

(v) A large system may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites specified in subsection (e)(2) after it demonstrates through subsequent rounds of monitoring that it meets the criteria of subsection (e)(2)(ii).]

(3) *Reduced monitoring revocation*.

(i) *Reduced monitoring revocation for large water systems*. A large water system authorized to conduct reduced monitoring under this subsection that fails to meet the lead or copper action level during any 4-month monitoring period or that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in a 6-month period shall comply with the following:

(A) The water supplier shall resume lead and copper tap monitoring in accordance with subsection (d)(1).

(B) The water supplier shall resume water quality parameter distribution sampling in accordance with the number and frequency requirements specified in subsection (d)(2).

(I) A large system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (2) after it has completed two subsequent consecutive 6-month rounds of monitoring that meet the criteria of paragraph (2)(i).

(II) A large system may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (2) after it demonstrates through subsequent rounds of monitoring that it meets the criteria of paragraph (2)(ii).

(C) The water supplier shall conduct source water monitoring in accordance with subsection (d)(3). Monitoring is required only for the parameter for which the action level was exceeded. For systems on annual or less frequent monitoring, the end of the monitoring period is September 30 of the calendar year in which sampling occurs, or, if the Department has designated an alternate monitoring period, the end of the monitoring period is the last day of the 4-month period in which sampling occurs.

(ii) *Reduced monitoring revocation for small or medium water systems*. A small or medium water system authorized to conduct reduced lead and copper tap monitoring under this subsection that fails to meet the lead or copper action level during any 4-month monitoring period, or a small or medium system that has installed corrosion control treatment in compliance with § 109.1102(b)(2) and that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in a 6-month period, shall comply with the following:

(A) The water supplier shall conduct water quality parameter monitoring during the monitoring period in which the action level is exceeded. The start of the 6-month monitoring period for the water quality parameter monitoring required under this clause must coincide with the start of the annual or triennial tap monitoring period in which the action level was exceeded.

(I) If the system has installed corrosion control treatment in compliance with § 109.1102(b)(2), water quality parameter monitoring shall be conducted in accordance with subsection (c)(2).

(II) If the system has not installed corrosion control treatment, water quality parameter monitoring shall be conducted in accordance with subsection (a)(2) and the system shall conduct corrosion control treatment activities in accordance with § 109.1102(b)(1)(i).

(B) The water supplier shall collect one source water sample from each entry point within 6 months of the end of the monitoring period in which the action level was exceeded. Monitoring is required only for the parameter for which the action level was exceeded. For systems on annual or less frequent monitoring, the end of the monitoring period is September 30 of the calendar year in which sampling occurs, or, if the Department has designated an alternate monitoring period, the end of the monitoring period is the last day of the 4-month period in which sampling occurs.

(C) If a system has installed corrosion control treatment in compliance with § 109.1102(b)(2), the water supplier shall resume lead and copper tap monitoring in accordance with subsection (d)(1).

* * * * *

(g) *Sample site location plan*. The water supplier shall complete a sample site location plan which includes a materials evaluation of the distribution system, lead and copper tap sample site locations, water quality parameter sample site locations, and certification that proper sampling procedures are used. The water supplier shall complete the steps in paragraphs (1)—(3) by the applicable date for commencement of lead and copper tap monitoring under subsection (a)(1) and the step in paragraph (4) following completion of the monitoring. The water supplier shall keep the sample site location plan on record in accordance with § 109.1107(a)(1). If the system is required to prepare a corrosion control treatment feasibility study in accordance with § 109.1102(b)(3)(i), the system shall include the sample site location plan as part of the study.

* * * * *

(2) *Lead and copper tap sample site selection*. Lead and copper tap sampling sites are classified as tier 1, tier 2 or tier 3. Tier 1 sites are the highest priority sample sites.

* * * * *

(ii) *Site selection for nontransient noncommunity water systems*.

(A) The water supplier shall select all tier 1 sample site locations, if possible. A nontransient noncommunity water system with an insufficient number of tier 1 sampling sites shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the system shall use representative sites throughout the distribution system in which the plumbing materials used at the site would be commonly found at other sites served by the system.

[(A)] (B) Tier 1 sampling sites **[shall] must** consist of buildings that have one or more of the following:

* * * * *

[(B) If a nontransient noncommunity water system or a community water system that meets the criteria of § 109.1104(a)(2)(i)(E) contains a fewer number of buildings than the required number of sampling sites, the water supplier shall sample from different taps within a representative number of buildings. The taps shall be those most commonly used for drinking and the samples shall be taken on different days. If the system has an insufficient number of these taps to take each sample from a different tap, the water supplier may apply to the Department, in writing, to substitute non-first-draw samples. Those systems shall collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. Non-first-draw samples must be 1-liter in volume and collected from an interior tap that is typically used to provide drinking water.]

* * * * *

(iii) **[*Sample sites with lead service lines*. A system that has a distribution system containing lead service lines shall draw 50% of the samples it collects during each monitoring period from sites that contain lead pipes or copper pipes with lead solder, and 50% of those samples from sites served by a lead service line. If a water system cannot identify a sufficient number of sampling sites served by a lead service line, the system shall collect first draw samples from each site identified as being served by a lead service line.]**

***Site selection for community and nontransient nonommunity water systems that have fewer than five taps*. A system that has fewer than five taps that can be used for drinking that meet the sample site criteria specified in this paragraph shall collect at least one sample from each tap and then collect additional samples from those taps on different days during the monitoring period to meet the required number of sites.**

(iv) **[*Sample sites with point-of-use or point-of-entry devices*. Samples may not be taken from taps that have point-of-use or sites that have point-of-entry treatment devices designed to remove inorganic contaminants.]**

***Site selection for community and nontransient nonommunity facilities that operate continuously*. A community water system meeting the conditions in § 109.1104(a)(2)(i)(I) (relating to public education and notification), or a nontransient noncommunity water system, that operates continuously that has an insufficient number of taps commonly used for drinking to take each first-draw sample from a different tap, may apply to the Department, in writing, to substitute non-first-draw samples. These systems shall collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. Non-first-draw samples must be 1-liter in volume and collected from an interior tap that is typically used to provide water for human consumption.**

(v) *Sample sites with lead service lines*. A system that has a distribution system containing lead service lines shall draw 50% of the samples it collects during each monitoring period from sites that contain lead pipes or copper pipes with lead solder, and 50% of those samples from sites served by a lead service line. If a water system cannot identify a sufficient number of sampling sites served by a lead service line, the system shall collect first draw samples from each site identified as being served by a lead service line.

(vi) *Sample sites with point-of-use or point-of-entry devices*. Samples may not be taken from taps that have point-of-use or sites that have point-of-entry treatment devices designed to remove inorganic contaminants.

* * * * *

(h) *Sample collection methods*.

(1) *Lead and copper tap samples*. Tap samples for lead and copper collected in accordance with this subchapter, with the exception of lead service line samples collected under § 109.1107(d)(3) and tap monitoring samples collected under § 109.1103(g)(2)(ii)(B), shall be first-draw samples and the following sample collection methods shall be used:

* * * * *

(ii) First-draw samples from residential housing shall be collected from the cold water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be collected at an interior tap from which water is typically drawn for **[consumption] drinking**.

* * * * *

(k) *Monitoring waivers for small systems*. **[Any] A** small system that meets the criteria of this subsection may apply to the Department to reduce the frequency of monitoring for lead and copper under this section to once every 9 years if it meets all of the materials criteria specified in **[subsection (k)] paragraph** (1) and all of the monitoring criteria specified in **[subsection (k)] paragraph** (2). A system that meets the criteria in **[subsection (k)] paragraphs** (1) and (2) only for lead, or only for copper, may apply to the Department for a waiver to reduce the frequency of tap water monitoring to once every 9 years for that contaminant only.

* * * * *

(4) *Monitoring frequency for systems with waivers*.

(i) A system shall conduct tap water monitoring for the contaminant waived in accordance with subsection (e)(1)(iv) at the reduced number of sites identified in subsection (e) at least once every 9 years and provide the materials certification specified in paragraph (1) for the contaminants waived along with the monitoring results. **Monitoring shall be conducted during the last year of each 9-year compliance cycle-for example 2010, 2019, 2028 and so forth.**

* * * * *

§ 109.1104. Public education and notification.

(a) *Public education program*. The water supplier for a system that exceeds the lead action level based on tap monitoring conducted under § 109.1103 (relating to monitoring requirements) shall implement a public education program in accordance with this section. The public education program **[will] must** remain in effect until the system qualifies for discontinuation under paragraph (3).

(1) *Content*. The water supplier shall include mandatory language established by the EPA under 40 CFR 141.85 (relating to public education and supplemental monitoring requirements), which is incorporated by reference, in all of the printed and broadcast materials distributed through the lead public education program. Additional information presented by a system **[shall] must** be consistent with the information specified in this section and be in plain English that can be understood by laypersons. If appropriate or as designated by the Department, public education materials **[shall] must** be bilingual or multilingual. Systems may delete information pertaining to lead service lines, upon approval by the Department, if no lead service lines exist in the system's service area.

(i) **[*Mandatory language for newspapers and water bill inserts*. The community water supplier shall include the information contained in 40 CFR 141.85(a) in all printed material submitted to newspapers and inserted with customers' water bills. In addition to the water bill insert, the water supplier shall provide the following alert on the water bill itself in large print:**

"Some homes in this community have elevated lead levels in their drinking water. Lead can pose a significant risk to your health. Please read the enclosed notice for further information."

If a water supplier is unable to include the alert verbatim on the water bill because of insufficient space on the bill, the water supplier may request, and the Department may allow, a minor wording change so long as the content remains essentially unaffected. Public education language in 40 CFR 141.85(a)(1)(iv)(B)(5) and (D)(2) may be modified regarding building permit record availability and consumer access to these records, upon approval by the Department.]

***Content of written materials*. Community water suppliers and nontransient noncommunity water suppliers shall include the mandatory language and other content requirements established under 40 CFR 141.85(a)(1) and (2), which is incorporated by reference.**

(ii) **[*Mandatory language for pamphlets and brochures*. The water supplier shall include the information contained in 40 CFR 141.85(a)(1)(ii) and (iv) in all pamphlets or brochures printed and distributed in accordance with this section.]**

***Information for non-English-speaking populations*. For each non-English-speaking group that exceeds 10% of the residents for systems serving at least 1,000 people or 100 residents for systems serving less than 1,000 people, and speak the same language other than English, the written materials must contain information in the appropriate languages regarding the importance of the materials or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the materials or to request assistance in the appropriate language.**

(iii) **[*Mandatory language for public service announcements*. The water supplier shall include the information contained in 40 CFR 141.85(b) in public service announcements submitted for broadcast.]**

***Submission prior to delivery*. Water systems shall submit copies of all written public education materials to the Department prior to delivery.**

[(iv) *Mandatory language for nontransient noncommunity water systems*. The water supplier for a nontransient noncommunity water system shall include either the information contained in 40 CFR 141.85(a)(1), or the information contained in 40 CFR 141.85(a)(2), in public education materials printed and distributed in accordance with this section.]

(2) *Delivery*.

(i) *Community water system requirements*. Within 60 days after **[exceeding] the end of the monitoring period in which** the lead action level **was exceeded**, unless it is already repeating public education tasks under this subsection **[(a)]**, the water supplier for a community water system shall deliver the public education materials to its customers in accordance with clauses (A)—**[(D)] (G)**. The water supplier shall repeat the tasks contained in clauses (A)—**[(C)] (D) and (H)** every 12 months, and in clause **[(D)] (G)** every 6 months for as long as the system exceeds the lead action level. **For systems that are required to conduct monitoring annually or less frequently, the end of the monitor-**

ing period is September 30 of the calendar year in which sampling occurs, or, if the Department has designated an alternate monitoring period, the end of the monitoring period is the last day of the 4-month period in which sampling occurs.

(A) The water supplier shall **[insert notices with and include the alert on each customer's water bill containing the information in paragraph (1)(i). If the billing cycle or billing form prevents distribution of this notice within 60 days of the lead action level exceedance, the water supplier may deliver the information required in paragraph (1) within 60 days of the lead action level exceedance in one of the following ways:] deliver printed materials meeting the content requirements of paragraph (1) to all bill paying customers.**

[(I) A separate direct mailing.

(II) Hand delivery.]

(B) The water supplier shall **[submit the information in paragraph (1)(i) to the editorial departments of the major daily and weekly newspapers circulated throughout the community] deliver education materials meeting the content requirements of paragraph (1) to local public health agencies, such as the county or State Health Department, even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the potentially affected consumers. The water supplier shall contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations which may include organizations outside the service area of the water system. If a list is provided, the water supplier shall deliver education materials that meet the content requirements of paragraph (1) to all the organizations on the list.**

(C) The water supplier shall deliver **[pamphlets or brochures, or both, that contain the information in paragraph (1)(ii) to facilities and organizations, including the following] education materials meeting the content requirements of paragraph (1) to the organizations listed in subclauses (I)-(VI) that are located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or water system's users:**

(I) Public **and private** schools or local school boards, or both.

(II) **[City or county health department.**

(III)] Women, Infants, and Children or Head Start Programs whenever available.

[(IV)] (III) Public and private hospitals and **medical** clinics.

[(V)] (IV) Pediatricians.

[(VI)] (V) Family planning clinics.

[(VII)] (VI) Local welfare agencies.

(D) The water supplier shall **[submit a public service announcement which includes the information in paragraph (1)(iii) to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.] make a good faith effort to locate the following organizations within the water system's service area and deliver education materials meeting the content requirements of paragraph (1) to them along with an informational notice that encourages distribution to all the organization's potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of the organizations in subclauses (I)—(III) from the local public health agencies even if the agencies are not located within the water system's service area:**

(I) Licensed childcare centers.

(II) Public and private preschools.

(III) Obstetricians-gynecologists and midwives.

(E) **[A community water system may apply to the Department, in writing, to use the text specified in 40 CFR 141.85(a)(2) in lieu of the text in 40 CFR 141.85(a)(1), and to perform the tasks listed under subparagraph (ii)(A) in lieu of the tasks under clauses (A)—(D) if:]**

The water supplier shall provide information on or in each water bill at least quarterly. The message on the water bill must include the following statement exactly as written except for the text in brackets for which the water system must include system-specific information:

(*Editor's Note*: The text in capital letters and brackets is to indicate that the water supplier needs to insert its own information to replace this text.)

"[INSERT WATER SYSTEM NAME] found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call [INSERT WATER SYSTEM NAME] (or visit [INSERT WEB SITE ADDRESS])."

[(I) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to the plumbing or installing point-of-use treatment devices.

(II) The system provides water as part of the cost of services provided and does not charge for water consumption.]

(F) **[A community water system serving 3,300 or fewer persons may omit the task contained in clause (D) if notices containing the information required under paragraph (1) are distributed to every household served by the system at least once during each calendar year the system exceeds the lead action level.]**

The water supplier shall post education materials meeting the content requirements of paragraph (1) on the water system's web site if the system serves a population greater than 100,000 for as long as the system exceeds the lead action level.

(G) The water supplier shall submit a press release to newspaper, radio and television stations.

(H) In addition to the requirements of clauses (A)—(F), community water suppliers shall imple-

ment at least three activities from the categories listed in subclauses (I)—(IX). The educational content and selection of these activities shall be determined in consultation with the Department.

(I) Public service announcements.

(II) Paid advertisements.

(III) Public area information displays.

(IV) E-mails to customers.

(V) Public meetings.

(VI) Household deliveries.

(VII) Targeted individual customer contact.

(VIII) Direct distribution of education materials to all multifamily homes and institutions.

(IX) Other methods approved by the Department.

(I) A community water system may apply to the Department, in writing, to omit the text required in 40 CFR 141.85(a)(2) and to perform the tasks listed under subparagraph (ii) in lieu of the tasks under clauses (A)-(H) if the following apply:

(I) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to the plumbing or installing point-of-use treatment devices.

(II) The system provides water as part of the cost of services provided and does not charge for water consumption.

(J) A community water system serving 3,300 or fewer persons may modify its public education program as follows:

(I) The system may limit distribution of public education materials required under clauses (B) and (C) to facilities and organizations served by the system that are most likely to be visited by pregnant women and children.

(II) The system may omit the task in clause (G) if notices meeting the content requirements of paragraph (1) are distributed to every household served by the system.

(III) The system shall implement at least one of the tasks specified in clause (H).

(ii) *Nontransient noncommunity water system requirements*. Within 60 days after **[exceeding] the end of the monitoring period in which** the lead action level **was exceeded**, the water supplier for a nontransient noncommunity water system shall deliver the public education materials contained in paragraph (1)**[(iv)]** to its consumers, unless it is already repeating public education tasks under this subsection. **For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which sampling occurs, or, if the Department has designated an alternate monitoring period, the end of the monitoring period is the last day of the 4-month period in which sampling occurs.**

* * * * *

(iii) *Extension of the 60-day delivery deadline*. Water systems may request an extension of the 60-day delivery deadline, but the water system must receive written approval from the Department prior to the 60-day deadline.

(3) *Discontinuation of public education program*. A water supplier may discontinue **[implementation of its public education program] delivery of public education materials** if the system does not exceed the lead action level during the most recent 6-month monitoring period conducted under § 109.1103. The system shall resume public education in accordance with this section if it exceeds the lead action level at any time during a future monitoring period.

(4) *Notification of customer monitoring*. A water supplier that fails to meet the lead action level on the basis of tap monitoring conducted in accordance with § 109.1103 shall provide information regarding laboratories certified by the Department for lead and copper testing to any customer who requests it.

(b) ***Notification of results*. Water systems shall deliver a consumer tap notice of lead tap water monitoring results to persons served by the water at sites that are sampled under § 109.1103.**

(1) *Content*. The consumer notice must include the following:

(i) The results of lead tap water monitoring for the tap that was sampled.

(ii) An explanation of the health effects of lead.

(iii) A list of steps consumers can take to reduce exposure to lead in drinking water.

(iv) Contact information for the water system.

(2) *Timing*. Water systems shall provide the consumer notice within 30 days after the system learns of the tap monitoring results.

(3) *Delivery*. The consumer notice shall be delivered to persons served at the tap that was sampled either by mail or by another method approved by the Department. The system shall provide notice to all persons served by the tap that was sampled, including consumers who do not receive water bills.

(c) Public notification requirements. * * *

* * * * *

§ 109.1107. System management responsibilities.

(a) *Reporting and recordkeeping*. Systems shall comply with the following requirements and otherwise comply with § 109.701 (relating to reporting and recordkeeping):

* * * * *

(3) *Corrosion control treatment reporting requirements*.

(i) A water supplier demonstrating optimal corrosion control treatment under § 109.1102(b)(1)(ii) (relating to action levels and treatment technique requirements) shall submit information in writing sufficient for the Department to evaluate and determine whether optimal treatment has been achieved. **[281961]**

* * * * *

(5) ***Consumer notice of lead tap monitoring results reporting requirements*. The water supplier shall submit to the Department within 3 months of the end of the monitoring period in which lead tap monitoring was conducted a sample copy of the consumer notice of lead tap monitoring results along with a certification that the notices were distributed in accordance with § 109.1104(b).**

(6) Lead service line replacement reporting. * * *

* * * * *

[(6)] (7) Record maintenance. * * *

* * * * *

(d) *Lead service line replacement.*

(1) *Initiation of lead service line replacement.* A system that exceeds the lead action level when conducting lead and copper tap monitoring in accordance with § 109.1103(c)(1) or (d)(1) after construction or modification of corrosion control treatment facilities shall initiate lead service line replacement. The first year of lead service line replacement begins **[with the next 6-month monitoring period following the action level exceedance] on the first day following the end of the monitoring period in which the action level was exceeded. If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which sampling occurred. If the Department has designated an alternate monitoring period in writing, the end of the monitoring period is the last day of the designated alternate monitoring period.**

* * * * *

(5) *Discontinuation of lead service line replacement.* A water supplier may cease replacing lead service lines if the system meets the lead action level during two consecutive 6-month monitoring periods when conducting lead and copper tap monitoring. Thereafter, if the system exceeds the lead action level, the water supplier shall recommence replacing lead service lines in accordance with paragraph **[(2)] (6)**.

(6) *Resumption of lead service line replacement.* Water systems that resume a lead service line replacement program shall update their lead service line inventory to include those sites that were previously excluded under paragraph (3). Systems shall divide the updated number of remaining lead service lines by the number of remaining years in the replacement program to determine the number that must be replaced each year. If the system has completed a 15-year lead service line replacement program, the Department will determine a schedule for replacing or retesting lead service lines that were previously tested out under the replacement program (when the system reexceeds the lead action level).

[Pa.B. Doc. No. 09-1782. Filed for public inspection September 25, 2009, 9:00 a.m.]

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

Continuing Education Violations

The State Board of Chiropractic (Board) proposes to amend its regulations to amend § 5.77(d) (relating to failure to meet continuing education requirements), by adding subsection (d) 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 302(3), 506(a)(9) and 507(a) of the Chiropractic Practice Act (act) (63 P. S. §§ 625.302(3), 625.506(a)(9) and 625.507(a)).

Background and Need for the Amendment

Section 507(a) of the act requires each licensee to complete at least 24 hours of continuing education during each biennial renewal period. Under section 506(a)(13) of the act, the Board may take disciplinary action against a licensee who fails to perform any statutory obligation placed upon a licensed chiropractor. Disciplinary actions for failing to complete the continuing education requirement in a timely manner invariably result in the licensee being required to pay a civil penalty proportionate to the amount of deficiency and to make up the deficiency promptly. Accordingly, the Board proposes to utilize the more streamlined procedures under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) where in the Commissioner of Professional and Occupational Affairs, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs, may promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards.

Description of the Proposed Amendments

The proposed rulemaking would add subsection (d). Because continuing education is generally required as a condition of renewal, under existing § 5.77(c) a licensee who has not completed the mandatory continuing education may, without any penalty, permit his license to become inactive (and not practice chiropractic in this Commonwealth) until the licensee completes the required amount continuing education. Proposed subsection (d) would permit a licensee who did not complete the required amount of continuing education to renew (and practice), but would also require the licensee to pay an Act 48 civil penalty and make up the deficient credit hours within 6 months. A licensee who does not make up the deficiency timely and provide proof will be subject to formal disciplinary action.

Fiscal Impact and Paperwork Requirements

The proposed amendments 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 11, 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. 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 by email at st-chiro@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Use reference No. 16A-4318 (continuing education violations), when submitting comments.

KATHLEEN G. MCCONNELL, D. C.,
Chairperson

Fiscal Note: 16A-4318. 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 37. STATE BOARD OF CHIROPRACTIC

Subchapter G. CONTINUING EDUCATION

§ 5.77. Failure to meet continuing education requirements.

* * * * *

(d) Unless otherwise excused by the act or this chapter, a licensee who fails to complete the minimum required amount of continuing education during the applicable renewal period is subject to discipline under § 43b.22 (relating to schedule of civil penalties—chiropractors). Within 6 months after the end of the renewal period during which the required amount of continuing education was not completed, the licensee shall make up the deficiency and provide proof of attendance at continuing education courses as required under section 507 of the act (63 P. S. § 625.507) and § 5.14 (relating to certification to use adjunctive procedures) for the previous biennial registration period. In addition to any civil penalty assessed under this subsection, failure to provide the Board with proof of the required amount of continuing education within 6 months after the beginning of a biennial period in which the licensee renewed without having completed the required amount of continuing education shall subject the licensee to disciplinary action under section 506(a)(9) of the act (63 P. S. § 625.506(a)(9)). Failure to complete all of the required amount of continuing education within 6 months after the beginning of a biennial period in which the licensee renewed without having completed the required amount of continuing education shall subject the licensee to disciplinary action under section 506(a)(13) of the act.

[Pa.B. Doc. No. 09-1783. Filed for public inspection September 25, 2009, 9:00 a.m.]

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]
Clinical Examinations

The State Board of Dentistry (Board) proposes to amend § 33.103 (relating to examinations) 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 proposed rulemaking is authorized under section 3(c), (d), (e) and (o) of the Dental Law (63 P. S. § 122(c), (d), (e) and (o)). Section 3(c) and (d) authorize the Board to license dentists and dental hygienists by examination. Section 3(e) authorizes the Board to provide for the conduct of licensure examinations. Section 3(o) provides the general authority of the Board "to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board."

Background and Purpose

Currently, the Board requires that applicants for licensure as a dentist or dental hygienist take and pass the National Board Dental or Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations, Inc. (written examination) and the clinical examination administered by the Northeast Regional Board of Dental Examiners, Inc. (NERB). Over the last few years, the Board has been, and will continue to be involved in the efforts to adopt a National clinical examination, but to date, it has not come to fruition. In the absence of a National clinical examination, the Board has determined that applicants for licensure by examination should be able to take any of the five regional clinical examinations; that is, those examinations administered by NERB, the Southern Regional Testing Agency, Inc. (SRTA), the Western Regional Examining Board (WREB), the Central Regional Dental Testing Service, Inc. (CRDTS), or the Council of Interstate Testing Agencies, Inc. (CITA).

In March of 2009, the Board solicited comments from stakeholders and interested parties regarding the proposal to expand the list of acceptable clinical examinations to include those administered by each of these five regional examining agencies. All of the commentators agreed in theory with the proposal to expand the list of acceptable examinations. However, the Pennsylvania Dental Association (PDA) suggested that the Board consider, instead of listing the five regional testing agencies, defining the criteria by which a clinical examination will be considered valid and reliable. However, the Board believes that, while many of the Board members are experienced dentists and dental hygienists, they are not psychometricians, nor are they trained in education measurement or quantitative psychology. Therefore, the Board is not able to evaluate whether a particular examination is psychometrically sound, valid, reliable or legally defensible. The Board currently relies on NERB to develop and administer an examination that is valid, reliable and legally defensible. The Board will continue to rely on each of the regional testing agencies to defend their examinations if challenged. The Board, however, has reviewed the content of the examinations, and finds them to be sub-

stantially similar. In addition, the American Dental Association (ADA) has advocated that each state dental board consider accepting all of the examinations administered by the various regional testing agencies, all of which, with the exception of CITA, have been in existence for decades.

The PDA also noted that the proposed rulemaking does not address State-administered clinical examinations, nor does it include the American Board of Dental Examiners' ADLEX (dental) or ADHLEX (dental hygiene) examinations. The examinations administered by the five regional testing agencies, in combination, are accepted in all but a few states that administer their own examinations. In addition, some states that administer their own examinations also accept the results of at least one of the regional examinations. If an applicant for this Commonwealth licensure has not passed an examination administered by one of the five regional testing agencies as proposed by this rulemaking, that individual could still apply for licensure under § 33.107 (relating to licensure by criteria approval). Therefore, the Board determined that it would not address state administered examinations in this proposal. In addition, the ADLEX/ADHLEX examinations are not administered by the American Board of Dental Examiners (ADEX), but by a regional testing agency. In fact, NERB currently administers the ADLEX examination. To the Board's knowledge, no regional testing agency currently administers the ADHLEX examination. Therefore, the Board determined that it was not necessary to address these examinations in the proposed rulemaking at this time.

The Board did not make any changes to the proposed rulemaking based on the PDA's comments. In general, the Board has determined that it was most prudent at this time to look to the existing regional examining agencies as a means of opening up the possibility of licensure in this Commonwealth to as many qualified individuals as possible. Most of the interested parties that commented on the proposal indicated that this is a positive step to permit more qualified individuals to obtain licensure, to increase access to dental care for residents in this Commonwealth, and to allow dentists and dental hygienists more flexibility and mobility.

Description of Proposed Amendments

The Board proposes to amend § 33.103 to provide that applicants for licensure by examination may take and pass a clinical examination administered by any of the five regional examining agencies.

Fiscal Impact and Paperwork Requirements

The proposed amendment should have no fiscal impact on the Commonwealth or its political subdivisions because the costs associated with examinations will be borne by candidates for licensure. The proposed amendments should not have an adverse fiscal impact on applicant because the fees for the various regional examinations are comparable and an applicant could choose the most cost-effective examination to take.

The proposed amendment should not result in any additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 16, 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 House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking.

JOHN V. REITZ, D.D.S.,
Chairperson

Fiscal Note: 16A-4620. 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 33. STATE BOARD OF DENTISTRY

Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS

§ 33.103. Examinations.

(a) *Dentists.* Candidates for licensure shall pass the National Board Dental Examination (written examination) and the **[Northeast Regional Board (NERB) Dental Examination (clinical examination)] dental clinical examination administered by one of the following:**

(1) The Northeast Regional Board of Dental Examiners, Inc. (NERB).

(2) The Southern Regional Testing Agency, Inc. (SRTA).

(3) The Western Regional Examining Board (WREB).

(4) The Central Regional Dental Testing Service, Inc. (CRDTS).

(5) The Council of Interstate Testing Agencies, Inc. (CITA).

(b) *Dental hygienists.* Candidates for licensure shall pass the National Board Dental Hygiene Examination (written examination) and the **[NERB Dental Hygiene**

Examination (clinical examination)] dental hygiene clinical examination administered by one of the following:

(1) The North East Regional Board of Dental Examiners, Inc. (NERB).

(2) The Southern Regional Testing Agency, Inc. (SRTA).

(3) The Western Regional Examining Board (WREB).

(4) The Central Regional Dental Testing Service, Inc. (CRDTS).

(5) The Council of Interstate Testing Agencies, Inc. (CITA).

* * * * *

(d) *Additional requirement.* The Board will recognize successful completion of the **[NERB Dental Examination or NERB Dental Hygiene Examination] dental or dental hygiene clinical examinations** or the expanded function dental assistant examination approved by the Board for up to 5 years from the date scores are reported to the Board. After 5 years, the Board will accept passing scores on the examinations only if the candidate has been engaged in postgraduate training or in the practice of dentistry, as a dental hygienist or as an expanded function dental assistant in another jurisdiction.

[Pa.B. Doc. No. 09-1784. Filed for public inspection September 25, 2009, 9:00 a.m.]

[49 PA. CODE CH. 33]
EFDA Program Approval

The State Board of Dentistry (Board) proposes to amend § 33.103 (relating to examinations), 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 proposed rulemaking is authorized under section 3(c), (d), (e) and (o) of the Dental Law, (63 P. S. § 122(c), (d), (e) and (o)). Section 3(c) and (d) authorize the Board to license dentists and dental hygienists by examination. Section 3(e) authorizes the Board to provide for the conduct of licensure examinations. Section 3(o) provides the general authority of the Board "to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board."

Background and Purpose

Currently, the Board requires that applicants for licensure as a dentist or dental hygienist take and pass the National Board Dental or Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations, Inc. (written examination) and the clinical examination administered by the Northeast Regional Board of Dental Examiners, Inc. (NERB). Over the last few years, the Board has been, and will continue to be involved in the efforts to adopt a National clinical examination, but to date, it has not come to fruition. In the absence of a National clinical examination, the Board has determined that applicants for licensure by examination should be able to take any of the five regional clinical examinations, that is, those examinations administered by NERB, the Southern Regional Testing Agency, Inc. (SRTA), the Western Regional Examining Board (WREB), the Central Regional Dental Testing Service, Inc. (CRDTS) or the Council of Interstate Testing Agencies, Inc. (CITA).

In March of 2009, the Board solicited comments from stakeholders and interested parties regarding the proposal to expand the list of acceptable clinical examinations to include those administered by each of these five regional examining agencies. All of the commentators agreed in theory with the proposal to expand the list of acceptable examinations. However, the Pennsylvania Dental Association (PDA) suggested that the Board consider, instead of listing the five regional testing agencies, defining the criteria by which a clinical examination will be considered valid and reliable. However, the Board believes that, while many of the Board members are experienced dentists and dental hygienists, they are not psychometricians, nor are they trained in education measurement or quantitative psychology. Therefore, the Board is not able to evaluate whether a particular examination is psychometrically sound, valid, reliable or legally defensible. The Board currently relies on NERB to develop and administer an examination that is valid, reliable and legally defensible. The Board will continue to rely on each of the regional testing agencies to defend their examinations if challenged. The Board, however, has reviewed the content of the examinations, and finds them to be substantially similar. In addition, the American Dental Association (ADA) has advocated that each state dental board consider accepting all of the examinations administered by the various regional testing agencies, all of which, with the exception of CITA, have been in existence for decades.

The PDA also noted that the proposed rulemaking does not address State-administered clinical examinations, nor does it include the American Board of Dental Examiners' ADLEX (dental) or ADHLEX (dental hygiene) examinations. The examinations administered by the five regional testing agencies, in combination, are accepted in all but a few states that administer their own examinations. In addition, some states that administer their own examinations also accept the results of at least one of the regional examinations. If an applicant in this Commonwealth licensure has not passed an examination administered by one of the five regional testing agencies as proposed by this rulemaking, that individual could still apply for licensure under § 33.107 (relating to licensure by criteria approval). Therefore, the Board determined that it would not address State administered examinations in this proposal. In addition, the ADLEX/ADHLEX examinations are not administered by the American Board of Dental Examiners (ADEX), but by a regional testing agency. In fact, NERB currently administers the ADLEX examination. To the Board's knowledge, no regional testing agency currently administers the ADHLEX examination. Therefore, the Board determined that it was not necessary to address these examinations in the proposed rulemaking at this time.

The Board did not make any changes to the proposed rulemaking based on the PDA's comments. In general, the Board has determined that it was most prudent at this time to look to the existing regional examining agencies as a means of opening up the possibility of licensure in this Commonwealth to as many qualified individuals as possible. Most of the interested parties that commented on the proposal indicated that this is a

positive step to permit more qualified individuals to obtain licensure in this Commonwealth, to increase access to dental care for residents of this Commonwealth, and to allow dentists and dental hygienists more flexibility and mobility.

Description of Proposed Amendments

The Board proposes to amend § 33.103 to provide that applicants for licensure by examination may take and pass a clinical examination administered by any of the five regional examining agencies.

Fiscal Impact and Paperwork Requirements

The proposed amendment should have no fiscal impact on the Commonwealth or its political subdivisions because the costs associated with examinations will be borne by candidates for licensure. The proposed amendment should not have an adverse fiscal impact on applicants because the fees for the various regional examinations are comparable and an applicant could choose the most cost-effective examination to take.

The proposed amendment should not result in any additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulation. 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 16, 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 Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking.

JOHN V. REITZ, D.D.S.
Chairperson

Fiscal Note: 16A-4616. 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 33. STATE BOARD OF DENTISTRY

Subchapter A. GENERAL PROVISIONS

§ 33.1. Definitions.

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

* * * * *

***EFDA program*—An expanded function dental assisting training program.**

* * * * *

§ 33.3. Fees.

(a) Following is a schedule of fees charged by the Board:

* * * * *

EFDA program approval application fee ..... $ 80

* * * * *

Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS AND CERTIFICATION OF EXPANDED FUNCTION DENTAL ASSISTANTS

§ 33.102. Professional education.

* * * * *

(c) *Expanded function dental assistants.*

(1) Candidates for certification as expanded function dental assistants shall show compliance with section 3(d.1) of the act by submitting verification of one of the following:

(i) Graduation from **[an expanded function dental assisting program] a Board-approved EFDA program** at a 2-year college or other institution accredited or provisionally accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation which offers an Associate Degree.

(ii) Graduation from a dental hygiene school which required the successful completion of at least 75 hours of clinical and didactic instruction in restorative functions accredited or provisionally accredited by the Commission on Dental Accreditation **(CODA)** of the American Dental Association.

(iii) Completion of a **Board-approved** certification program in expanded function dental assisting of at least 200 hours of clinical and didactic instruction from a dental assisting program accredited by one of the following:

(A) The Commission on Dental Accreditation **(CODA)** of the American Dental Association.

* * * * *

(2) **The Board will approve EFDA programs that meet the criteria in § 33.117 (relating to EFDA program approval).**

[(2)](3) Candidates for certification who receive their professional education outside the United States or from

a nonaccredited program may satisfy the education requirement by submitting their credentials to a program listed in paragraph (1) and obtaining additional training that will lead to the awarding of a degree by that school.

[(3)] (4) This subsection does not apply to persons who are not required to meet the educational requirements under section (3)(d.1)(2) of the act.

(*Editor's Note:* Proposed § 33.117 is new and is printed in regular text enhance readibility.)

§ 33.117. EFDA program approval.

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

Clinical setting—

(i) A setting in which expanded function dental assisting procedures are performed through direct patient care.

(ii) The term does not include any setting where procedures are performed on typodonts, manikins or by other simulation methods.

Clinical evaluation—An evaluation system based on observation of a student's performance of clinical skills in contexts that resemble those the student will be expected to encounter as an expanded function dental assistant in a dental office.

Clinical instruction—A learning experience in a clinical setting where the student performs expanded functions on patients under the supervision of an instructor.

Competencies—Statements describing the necessary requirements to perform each procedure in § 33.205a (relating to practice as an expanded function dental assistant) to the level required to meet the acceptable and prevailing standard of care within the dental community in this Commonwealth.

Competent—Having sufficient knowledge, skill and expertise in performing expanded functions to meet and maintain the acceptable and prevailing standard of care within the dental community in this Commonwealth.

Laboratory or preclinical instruction—A learning experience in which students perform expanded functions using study models, typodonts, manikins or other simulation methods under the supervision of the instructor.

(b) *Application.* EFDA programs shall apply for Board approval on forms to be provided by the Board and pay the fee set forth in § 33.3 (relating to fees). The application must include the following information:

(1) EFDA program goals and objectives.

(2) Criteria for measuring competencies.

(3) Documentation of accreditation as required under section 3(d.1) of the act (63 P. S. § 122(d.1)).

(4) The curriculum vitae and job description of the EFDA program director.

(5) The curriculum vitae and job description of each faculty member assigned to the EFDA program.

(6) A description of the physical facilities and equipment used by the EFDA program for laboratory, preclinical and clinical instruction.

(7) A copy of the formal written agreement for the use of off-campus laboratory, preclinical or clinical facilities, if applicable.

(8) Course outlines, course descriptions or syllabi for the EFDA program curriculum.

(9) Other information requested by the Board.

(c) *Requirements for approval.* The Board will approve EFDA programs that meet the following requirements:

(1) *Planning and assessment.*

(i) The EFDA program shall delineate its program goals and objectives for preparing individuals in the expanded function dental assisting procedures set forth in § 33.205a to a level consistent with the acceptable and prevailing standard of care within the dental community in this Commonwealth.

(ii) The EFDA program shall develop specific criteria for measuring levels of competency for the procedures set forth in § 33.205a which must reflect the acceptable and prevailing standards and expectations of the dental community. Students shall be evaluated by faculty according to these predetermined criteria.

(iii) The EFDA program shall record and retain student clinical evaluations as documentation of student competency for a minimum of 5 years from the student's graduation or completion of the EFDA program.

(2) *Institutional accreditation.* The EFDA program shall comply with the accreditation requirements of section 3(d.1) of the act and § 33.102(c) (relating to professional education).

(3) *Program director.* The EFDA program shall identify a program director who is responsible for and involved in the following:

(i) Student selection.

(ii) Curriculum development and implementation.

(iii) Ongoing evaluation of program goals, objectives, content and outcomes assessment.

(iv) Annual evaluations of faculty performance including a discussion of the evaluation with each faculty member.

(v) Evaluation of student performance and maintenance of competency records for 5 years from graduation or completion of the EFDA program.

(vi) Participation in planning for and operation of facilities used in the EFDA program.

(vii) Evaluation of the clinical training and supervision provided in affiliated offices and off-campus facilities, as applicable.

(viii) Maintenance of records related to the EFDA program, including instructional objectives and course outcomes.

(ix) Instruction of all licensed dentists overseeing off-campus clinical procedures performed by EFDA students to ensure that the policies and procedures of the off-campus facility are consistent with the philosophy and objectives of the EFDA program.

(4) *Faculty.* An EFDA program faculty member shall either be a dentist who holds a current license in good standing from the Board, or shall have or possess the following:

(i) A current expanded function dental assistant certificate issued by the Board.

(ii) A minimum of 2 years of practical clinical experience as an expanded function dental assistant.

(iii) Current National certification as a certified dental assistant (CDA) issued by the Dental Assisting National Board.

(iv) Completed, or is in the process of completing, a course in education methodology of at least 3 credits or 45 hours offered by an accredited institution of postsecondary education.

(5) *Facilities.*

(i) The EFDA program shall provide adequate physical facilities and equipment for laboratory, preclinical and clinical instruction.

(ii) If the EFDA program contracts for off-campus laboratory, preclinical or clinical instruction facilities, the following conditions must be met:

(A) There must be a formal written agreement between the EFDA program and the laboratory, preclinical or clinical facility.

(B) In off-campus clinical facilities, a licensed dentist shall oversee all dental procedures performed on patients by EFDA program students. The licensed dentist shall receive instruction to ensure that the policies and procedures of the off-campus facility are consistent with the philosophy and objectives of the EFDA program.

(iii) The standards in this paragraph are equally applicable to extramural dental offices or clinic sites used for clinical practice experiences, such as internships or externships.

(6) *Curriculum.* The curriculum of an EFDA program must consist of the following components:

(i) *General education.* The EFDA program shall include general education subjects as determined by the educational institution with a goal of preparing the student to work and communicate effectively with patients and other health care professionals.

(ii) *Dental sciences.* The EFDA program shall include content in general dentistry related to the expanded functions set forth in § 33.205a, including courses covering the following topics:

(A) Dental anatomy.

(B) Occlusion.

(C) Rubber dams.

(D) Matrix and wedge.

(E) Cavity classification and preparation design.

(F) Bases and liners.

(G) Amalgam restoration.

(H) Composite restoration.

(I) Sealants.

(J) Crown and bridge provisional fabrication.

(K) Dental law and ethics.

(iii) *Clinical experience component.* The EFDA program shall include a minimum of 120 hours of clinical experience performing expanded function dental assisting procedures as an integral part of the EFDA program. The clinical experience component shall be designed to achieve a student's clinical competence in each of the expanded function dental assisting procedures set forth in § 33.205a.

(7) *Demonstrating competency.*

(i) *General education.* Students of the EFDA program shall be required to demonstrate competency in general education subjects by attaining a passing grade on written or oral examinations.

(ii) *Laboratory and preclinical instruction.* Students of the EFDA program shall be required to demonstrate competency by attaining a score of at least 80% in all laboratory and preclinical courses. Students shall be required to demonstrate the knowledge and skills required to:

(A) Carve the anatomy of all teeth.

(B) Establish proper contact areas, embrasures, marginal adaptation, as well as facial and lingual heights of contour so as to restore the proper tooth form and function in all restorative materials.

(C) Apply the basic concepts and terms of occlusion and carving concepts in the restoration of proper occlusal relationships.

(D) Describe the problems associated with improper contouring of restorations.

(E) Identify and differentiate G.V. Black's cavity classifications.

(F) Select, prepare, assemble, place and remove a variety of matrices and wedges.

(G) Place and finish Class I-VI restorations with correct marginal adaptation contour, contact and occlusion.

(H) Assemble, place and remove rubber dams.

(I) Place sealants.

(J) Crown and bridge provisional fabrication.

(K) Understand the act and this chapter as they apply to an expanded function dental assistant's responsibilities.

(iii) *Clinical experience.* EFDA program students shall be evaluated and deemed clinically competent by at least one licensed dentist evaluator in a clinical setting. The EFDA program director shall instruct the dentist clinical evaluators regarding the required competencies to ensure consistency in evaluation. Clinical competency is achieved when the dentist evaluator confirms the student has sufficient knowledge, skill and expertise in performing expanded functions to meet and maintain the acceptable and prevailing standard of care within the dental community in this Commonwealth.

(iv) *Documenting competency.*

(A) The EFDA program faculty and program director shall document the student's general education, preclinical and laboratory competency attainment.

(B) The licensed dentist evaluator shall document the student's clinical competency attainment prior to graduation from the EFDA program.

(C) The EFDA program director shall provide documentation of the student's competency attainment to the Board as part of the student's application for certification as an expanded function dental assistant.

(D) The EFDA program shall retain the student's competency documentation for a minimum of 5 years from graduation or completion of the EFDA program.

(d) *Refusal or withdrawal of approval.* The Board may refuse to approve an EFDA program or may remove an EFDA program from the approved list if it fails to meet and maintain the requirements in this section, in accordance with the following:

(1) The Board will give an EFDA program notice of its provisional denial of approval or of its intent to remove the program from the approved list.

(2) The notice will set forth the requirements that are not being met or maintained by the EFDA program.

(3) A program served with a provisional denial or notice of intent to remove will be given 45 days in which to file a written answer to the notice.

(4) The EFDA program will be provided an opportunity to appear at a hearing to demonstrate why approval should not be refused or withdrawn.

(5) The Board will issue a written decision.

(6) The Board's written decision is a final decision of a governmental agency subject to review under 2 Pa.C.S. § 702 (relating to appeals)

[Pa.B. Doc. No. 09-1785. Filed for public inspection September 25, 2009, 9:00 a.m.]