PROPOSED RULEMAKING

CANINE HEALTH BOARD

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

Canine Health Board Regulations; Public Hearing

The Department of Agriculture (Department) gives notice that a public hearing has been scheduled in this Commonwealth regarding the proposed Canine Health Board regulations, published under section 221(g) of the Dog Law (Law) (3 P. S. § 459-221(g)). Section 902 of the Law (3 P. S. § 459-902) requires a public hearing to be held prior to the promulgation of a regulation. Section 902 of the Law states, "The secretary, after due notice and a public hearing, may promulgate rules and regulations to carry out the provisions and intent of this act." As such, this public hearing is being held under the statutory mandate of the act and is not part of the regulatory review process.

There is a formal process, under the Regulatory Review Act (71 P. S. §§ 745.1—745.12), under which written public comments (by means of hardcopy or e-mail) on the Board regulations may be submitted to the Department. Persons who wish to submit comments for response, must be submitted by means of the regulatory review process. The proposed regulations are available for viewing at 39 Pa.B. 5315 (September 12, 2009) or online at www.pabulletin.com. This document describes the 45-day window (September 12 through October 27) within which interested persons may submit written comments on the proposed Board regulations.

The public hearing will be held on Friday, October 16, 2009, from 9 a.m. to 12 p.m. at the Department of Agriculture, Conference Room 309, 2301 North Cameron Street, Harrisburg, PA 17110 to address the proposed regulation. The purpose of the public hearing is to take testimony and hear public opinion regarding the proposed Board regulations. Testimony will be limited to issues regarding the proposed regulations.

Persons are welcome to attend the hearing and offer oral or written testimony to be included in the record of the hearing. Persons wishing to offer written testimony at the public hearing must submit written testimony no later than 2 days prior to the hearing. All written testimony will be identified and entered into the record at the beginning of the hearing. Individuals wishing to offer oral testimony should schedule a time to testify by contacting Jill Brownfield at (717) 214-3758 no later than 2 days prior to the hearing. Each person testifying will be allotted 5 minutes for oral testimony. The Department will try to allot time for walk-in testimony.

RUSSELL C. REDDING,
Acting Secretary

[Pa.B. Doc. No. 09-1867. Filed for public inspection October 9, 2009, 9:00 a.m.]

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 145]

[Correction]

Industrialized Housing

An error occurred in the preamble to the proposed rulemaking which appeared at 39 Pa.B. 4423, 4424 (August 1, 2009). The correct version of the affected paragraphs is as follows:

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the agency submitted a copy of this proposed rulemaking on July 20, 2009, to the Independent Regulatory Review Commission (IRRC), the Chairperson of the House Urban Affairs Committee and the Chairperson of the Senate Community, Economic and Recreational Development Committee (Committees). In addition to submitting the proposed rulemaking, the agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed rulemaking, it will notify the agency by September 30, 2009. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the agency, the General Assembly and the Governor of objections raised.

Effective Date/Sunset Date

(a) The regulations will become effective 60 days after final publication of the amendments in the *Pennsylvania Bulletin*.

(b) These regulations are monitored on a regular basis and updated as needed.

Contact Person

Interested persons are invited to submit in writing, by August 31, 2009, any comments, suggestions or objections regarding the proposed regulation to Mark Conte, Chief, Housing Standards Division, Department of Community and Economic Development, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120, (717) 720-7416.

[Pa.B. Doc. No. 09-1372. Filed for public inspection July 31, 2009, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating

The Fish and Boat Commission (Commission) proposes to amend 58 Pa. Code Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendment to § 111.56 (relating to Somerset County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed amendment is described in more detail under the summary of the proposal. On June 9, 2009, the Commission's Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

E. *Summary of Proposal*

A recent review of § 111.56 shows that subsections (c), (d) and (e) regarding Lake Somerset, High Point Lake, and Cranberry Glade Lake, were not included when the Commission reorganized its boating regulations in 1994. These subsections were inadvertently omitted at the time and thus were not part of the rulemaking package that was published in the *Pennsylvania Bulletin*. The Commission therefore proposes that § 111.56 be amended to add these overlooked subsections as set forth in Annex A. It is noted that because these lakes are owned or controlled by the Commission, it is already illegal to operate boats with internal combustion motors under § 53.8(a) (relating to boats).

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/reg comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-214. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

CHAPTER 111. SPECIAL REGULATIONS COUNTIES

Subpart C. BOATING

§ 111.56. Somerset County.

* * * * *

(c) *Lake Somerset*. The operation of boats powered by internal combustion motors is prohibited.

(d) *High Point Lake*. The operation of boats powered by internal combustion motors is prohibited.

(e) *Cranberry Glade Lake*. The operation of boats powered by internal combustion motors is prohibited.

[Pa.B. Doc. No. 09-1868. Filed for public inspection October 9, 2009, 9:00 a.m.]

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

[Correction]

EFDA Program Approval

An error occurred in the proposed rulemaking which appeared at 39 Pa.B. 5597 (September 26, 2009).

The State Board of Dentistry (Board) proposes to amend §§ 33.1, 33.3, 33.102 (relating to definitions; fees; and professional education) and to add § 33.117 (relating to EFDA program approval), to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under section 3(a) and (b), (d.1)(1) and (o) of the Dental Law (63 P. S. § 122(a), (d.1)(1) and (o)). Section 3(a) authorizes the Board to "establish and alter, from time to time, the standards of preliminary and professional education and training required for . . . certification for expanded func-

tion dental assistants." Section 3(b) authorizes the Board to "investigate and determine the acceptability and to approve and disapprove institutions and colleges of this State and of other states and countries for the education of students desiring to be . . . certified as expanded function dental assistants, and to revoke approvals where such institutions and colleges are no longer deemed proper." Section 3(d.1)(1) provides the general authority for the Board to provide for and to regulate the certification of expanded function dental assistants. 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

The act of December 27, 1994, (P. L. 1361, No. 160) (Act 160) amended the Dental Law to require the certification and regulation of expanded function dental assistants (EFDAs). Act 160 required dental assistants who desired to be certified as EFDAs to complete an education program and pass an examination approved by the Board. The Board, through regulations published on May 13, 2000, determined that the examination would include both a written component and a clinical component to ensure that certificateholders possess the requisite knowledge and skills to properly and safely perform their job functions. At the time, many interested parties and stakeholders, including dentists, dental hygienists, dental assistants and their professional associations participated in the development of the rulemaking. A major impetus for including the clinical component came from the dental assisting community itself, who felt that a clinical exam was necessary.

Ultimately, after years of attempts at obtaining a suitable examination through "requests for proposals" as well as through sole-source contracting, the Board was unable to identify a vendor who could provide a valid, reliable and defensible clinical exam that was also affordable to candidates. Because there is no widely available regional or National examination for EFDAs, the costs of developing and administering a Pennsylvania-specific examination for EFDAs would have to be borne by a rather small pool of candidates. Due in part to the projected costs of the clinical component of the examination, temporary permit holders and members of the legislature asked the Board to take another look at the clinical component requirement. As a result, the Board held a public hearing on July 21, 2001. Based upon the testimony received, as well as written comments, the Board was persuaded that the clinical component could be eliminated while still meeting its goals of public protection by placing more emphasis on standardizing EFDA education. Thereafter, the Board initiated proposed rulemaking to eliminate the clinical component of the examination and developed nonbinding "guidelines" for EFDA education programs.

In the intervening years, the Board developed five drafts of the "EFDA curriculum guidelines" by working with members of the dental community as well as dental educators. Eventually, the Board determined that the guidelines should be promulgated as regulations in order to assure that all EFDA education programs meet minimum requirements and that all candidates for EFDA certification must demonstrate competence in performing each of the dental procedures permitted under the Dental Law prior to graduation from an EFDA program. An "exposure draft" of the proposed rulemaking was distributed to over 150 interested parties and stakeholders in September of 2006, including each of the EFDA training programs currently operating in the Commonwealth. The Board received comments from the Pennsylvania Dental Hygienist's Association, the Pennsylvania Dental Association, the Pennsylvania Academy of General Dentistry, the Pennsylvania Association of Private School Administrators, Harcum College's EFDA Program Director, the Bradford School, Temple University School of Dentistry, the Independent Regulatory Review Commission (IRRC) and five individual dentists. As a result of the comments received, the Board is proposing the following amendments to its regulations relating to EFDA program approval.

Description of Proposed Amendments

The Board proposes to amend § 33.1 (relating to definitions) to include a definition of "EFDA program." Section 33.3 (relating to fees) would be amended to include a fee of $80 for EFDA program approval applications.

Section 33.102 (relating to professional education) would be amended to provide for the certification of an EFDA who graduates from a "board-approved" EFDA program that meets the criteria set forth in proposed § 33.117 (relating to EFDA program approval).

Section 33.117(a) proposes definition of terms relating to EFDA program approval including: "clinical setting," "clinical evaluation," "clinical instruction," "competencies," "competent" and "laboratory or preclinical instruction." Subsection (b) sets forth the requirement for EFDA programs to apply for approval and pay an application fee. It also outlines the contents of the application for EFDA program approval.

Subsection (c) sets forth the criteria for EFDA program approval. Paragraph (1) sets forth standards relating to planning and assessment. It requires EFDA programs to establish program goals and objectives and to develop specific criteria for measuring levels of competency to reflect the acceptable and prevailing standards and expectations of the dental community for each of the procedures an EFDA is authorized to perform under § 33.205a (relating to practice as an expanded function dental assistant). Paragraph (2) sets forth the requirements for institutional accreditation. Paragraph (3) sets forth the requirement of a program director who is responsible for the operations of the EFDA program. Paragraph (4) sets forth the qualifications required of EFDA program faculty. Paragraph (5) sets forth the requirement for physical facilities and equipment, and provides for off-campus clinical facilities and extramural dental offices for internships or externships. Paragraph (6) sets forth the minimum requirements for EFDA program curriculum. Paragraph (7) requires candidates for graduation from an EFDA program to demonstrate certain required competencies, and that clinical competency be determined by at least one licensed dentist evaluator in a clinical setting. It also provides for documentation of the student's competency attainment to be maintained by the EFDA program for a minimum of 5 years from graduation or completion of the program and that the documentation be provided to the Board as part of the student's initial application for certification as an expanded function dental assistant.

Finally, subsection (d) sets forth the procedure for denying approval to an EFDA program or for removing an EFDA program from the approved list.

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on the Commonwealth or its political subdivisions because the costs associated with processing EFDA program approval applications will be borne by applicants.

The proposed amendments will require the Board to develop an application for EFDA program approval, but

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 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 printed in regular text to 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.]

DEPARTMENT OF GENERAL SERVICES DEPARTMENT OF AGRICULTURE

[70 PA. CODE CH. 110]

State Metrology Laboratory Fee Schedule

The Department of General Services (DGS) and the Department of Agriculture (PDA) propose to amend the fees for testing services performed by the State Metrology Laboratory (Laboratory) by amending the PDA's current regulation in 70 Pa. Code § 110.2 (relating to State Metrology Laboratory fee schedule). The proposed amendment would read as set forth in Annex A.

Statutory Authority

The Consolidated Weights and Measures Act (3 Pa.C.S. §§ 4101—4194) (act) is the legal authority for the proposed amendment. The act requires that DGS establish, by regulation, fees for metrology laboratory calibration, type evaluation and other testing services. See 3 Pa.C.S. § 4178 (relating to fees). In section 4190 (relating to rules and regulations), it provides PDA's authority to regulate as necessary to implement the act.

Purpose of the Regulation

The amendment will fulfill the statutory requirement that DGS establish, charge and collect the fees described in section 4178 of the act. Currently, the Laboratory provides these services based upon a fee schedule established over 5 years ago, and promulgated in 2005. The proposed amendment is necessary to comply with the act. The amendment will ensure that taxpayer dollars are not used to pay for testing by the Laboratory when user fees are statutorily authorized and required.

Background

Reorganization Plan No. 1 of 1986 (71 P. S. § 751-38) transferred PDA's statutory functions, powers and duties relating to weights and measures laboratory testing to DGS. PDA retained general weights and measures enforcement responsibility. This division of responsibilities between DGS and PDA was repeated in the act, which took effect in 1997.

DGS manages and operates the Laboratory, as part of the Division of Quality Assurance in the Bureau of Purchases under the Deputy Secretary for Procurement.

In 2005, PDA promulgated regulations under authority of the act. These regulations appear in Title 70 (relating to weights, measures and standards). In particular, 70 Pa. Code § 110.1 (relating to metrology services) states that a Laboratory will charge a fee for conducting tests that may be required for device type approval under this chapter, and for Laboratory calibration, type evaluation and any other testing services it performs under authority of the act. A fee schedule was first included in the regulations adopted in 2005.

The proposed amendment would update the schedule of fees.

Overview of the Proposed Regulation

The proposed amendment would amend § 110.2 to update the fees charged by DGS for Laboratory testing services.

Affected Individuals and Organizations

Each year, the Laboratory provides metrology calibration, type evaluation and testing for several hundred persons, who sell, install, service or repair commercially used weighing and measuring devices and who must have the accuracy of their field standards verified under 70 Pa. Code § 6.3 (relating to field standards). Last year the Laboratory provided approximately 991 services—including services to approximately 414 private persons.

Cities and counties which are required to procure standards of weights and measures and any additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment) are exempt from the fee requirements with respect to the calibration, evaluation or other testing of those standards and equipment. See 3 Pa.C.S. § 4178.

The general public will benefit because the fees generated will pay for services which are now paid for in part by taxpayer dollars.

Fiscal Impact

Commonwealth

The estimated annual revenue to the Commonwealth (DGS) from the proposed amendment is approximately $125,000. The proposed amendment should not result in additional costs to the Commonwealth.

Public Sector

No other government entity will incur any costs or realize any savings.

General Public

The proposed amendment will impose no costs and have no fiscal impact upon the general public.

Affected Businesses

The affected businesses, which use Laboratory services, will have to pay the fees set in the proposed amendment. The anticipated average fee per user is estimated to be $302.

Paperwork Requirements

The proposed amendment will not result in an increase in paperwork for the Laboratory, which already is required to issue invoices, collect payments and transmit payments to the State Treasury. Similarly, under section 4193(c) of the act (relating to disposition of funds), the Treasury Department will have no increase in paperwork.

Effective Date

The proposed amendment will take effect upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

Public Comments and Contact Person

Interested persons are invited to submit written comments regarding the proposed amendment to Michael C. Barrett, Senior Counsel, Office of Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, PA 17125, (717) 787-5599 within 30-calendar days after the date of publication of this proposed amendment in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 29, 2009, DGS submitted a copy of the proposed amendment to the Independent Regulatory Review Commission (IRRC). On that same date DGS submitted a copy to the House and Senate Committees on State Government (Committees). DGS and

PDA also provided IRRC and the Committees with a detailed Regulatory Analysis Form prepared by DGS. A copy of this material is available to the public upon request.

In accordance with section 5(g) of the Regulatory Review Act, if IRRC has comments, recommendations or objections regarding any portion of the proposed amendment, it must so notify DGS within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by DGS, the General Assembly and the Governor prior to the final publication of the proposed amendment.

JAMES P. CREEDON,
Secretary

Fiscal Note: 8-14. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 70. WEIGHTS, MEASURES AND STANDARDS

PART V. STATE METROLOGY LABORATORY

CHAPTER 110. GENERAL PROVISIONS

§ 110.2. State Metrology Laboratory fee schedule.

* * * * *

(c) *Schedule of fees.* The State Metrology Laboratory **[shall charge] charges** the following fees for the indicated testing services:

General type of test	*Description*	*Fee*
Precision mass	Up to ASTM E 617 Class 2 or best calibration but not to a specific class to and including 30 kg. or 50 lb.	$30 per weight
Precision mass	ASTM E617 Class 3 and 4 and OIML Class F1 and F2 to and including 30 kg. or 50 lb.	$**[12] 30** per weight
Ordinary mass	NIST Class F and ASTM E617 Classes 5, 6, 7 and OIML Class M1, M2 and M3 to and including 5 kg. or 10 lb.	$**[2] 6** per weight (without adjustment) $10 per weight (with adjustment)
Ordinary mass	NIST Class F and ASTM E617 Classes 5, 6 and 7 from 10 kg. or 20 lb. to 50 kg. or 100 lb.	$**[5] 10** per weight (without adjustment) $**[10] 20** per weight (with adjustment)
Ordinary mass	NIST Class F and ASTM E617 Classes 5, 6 and 7 from 100 kg. or 200 lb. to 2,500 kg. or 5,500 lb.	$**[15] 20** per weight (without adjustment) $**[25] 40** per weight (with adjustment)
Ordinary mass	Weight carts	$**[50] 210** per cart
Volume transfer	5 gallon/20 liter test measures	$**[15] 45** per measure (includes adjustment)
Volume transfer	10 gallon to 50 gallon	$**[50] 150** per prover (includes adjustment)
Volume transfer	51 to 100 gallon	$150 per prover (includes adjustment)
Volume transfer	Greater than 100 gallon	$150 plus **[$50 per each additional 100 gallons or fractions thereof] $1 per each additional gallon over 100 gallons**
Gravimetric calibrations	Metal test measures to 5 gallon or 20 liters or 1 cubic foot	$**[35] 180** per item
Length calibrations	Metal tapes or rules	$15 per point tested
Timing devices	Stopwatches	$30
Wheel load weighers		$**[6] 20** per scale
Special tests		$75 per man-hour

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[Pa.B. Doc. No. 09-1869. Filed for public inspection October 9, 2009, 9:00 a.m.]