

PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties for Violations of the Clean Indoor Air Act

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend §§ 43b.4—43b.9 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The Clean Indoor Air Act (act) (35 P.S. §§ 637.1—637.11), which became effective September 11, 2008, prohibits smoking in public places. Although the Department of Health has primary enforcement authority under the act, section 5(b)(1)(ii) of the act (35 P.S. § 637.5(b)(1)(ii)) provides that if a public place is subject to licensure by another agency, the Department of Health will refer the complaint to the appropriate licensing agency for investigation and enforcement. Six of the boards or commissions under the Bureau of Professional and Occupational Affairs (Bureau) license and routinely inspect “public places” as defined in section 2 of the act (35 P.S. § 637.2): the State Board of Barber Examiners; the State Board of Cosmetology; the State Board of Funeral Directors; the State Board of Pharmacy; the State Real Estate Commission; and the State Board of Vehicle Manufacturers, Dealers and Salespersons. Therefore, these six boards/commissions are responsible for the enforcement of the act in licensed facilities under their jurisdiction.

The act of July 2, 1993 (P.L. 345, No. 48) (Act 48) authorizes the Commissioner, after consultation with the licensing boards and commissions, to adopt a schedule of civil penalties for violations of their respective acts or regulations relating to the conduct or operation of a business or facility licensed by the licensing boards or commissions. Therefore, the Commissioner is proposing to amend the existing schedules of civil penalties to add civil penalties for violations of the act. Each of the boards/commissions approved the proposed rulemaking to the civil penalty schedule at a regularly scheduled public meeting.

Background and purpose

Adoption of a schedule of civil penalties for violations of the act at licensed facilities will permit authorized agents of the Bureau to issue citations for these violations. 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 a citation retain their due process right to a hearing prior to the imposition of discipline. Section 6(a) of the act (35 P.S. § 637.6) identifies three violations that are subject to civil

penalties: failure to post a sign as required by section 4 of the act (35 P.S. § 637.4); permitting smoking in a public place where smoking is prohibited; and smoking in a public place where smoking is prohibited.

Since the passage of the act, inspectors for these six boards and commissions have been notifying licensees about their responsibilities under the act. The inspectors have been provided a supply of the signs required under section 4 of the act and have been providing them to licensed facilities upon inspection. It was determined that because many licensees would not expect inspectors for the boards and commissions to be enforcing the provisions of the act, initial violations discovered during this educational effort would result in a warning and a compliance order. Once the civil penalty schedules have been promulgated, all violations will result in the issuance of a citation as set forth in the relevant civil penalty schedule.

Description of the Proposed Rulemaking

The Commissioner proposes to amend the existing schedules of civil penalties for each of these six boards/commissions in §§ 43b.4—43b.9 to establish a civil penalty schedule for the three violations in section 6 of the act: failure to post a required sign; permitting smoking where smoking is prohibited; and smoking in a public place where smoking is prohibited. Section 6(c) of the act sets forth the administrative penalties for violations of the act: not to exceed \$250 for first violations; not to exceed \$500 for second violations (defined as those occurring within 1 year of the first violation); and not to exceed \$1,000 for third violations (defined as those occurring within 1 year of the second violation). The Commissioner is therefore proposing civil penalties of \$250 for first offenses, \$500 for second offenses and \$1,000 for third offenses. The act is silent as to subsequent violations; however, Act 48 limits the maximum civil penalty that may be imposed by citation to \$1,000. Therefore, the Commissioner is proposing a civil penalty of \$1,000 for all subsequent violations, that is, those that occur within 1 year of the previous violation.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would not have adverse fiscal impact on the Commonwealth or its political subdivisions and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for violations of the act.

Sunset Date

Professional licensure statutes require each board and commission to be self-supporting; therefore, boards and commissions continually monitor the cost effectiveness of regulations affecting their operations. As a result, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 27, 2010, 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 Commit-

tee 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 must 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 Commissioner, 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 Counsel Cynthia Montgomery, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BASIL L. MERENDA,
Commissioner

Fiscal Note: 16-46. 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 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

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

STATE BOARD OF BARBER EXAMINERS

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Violation under 35 P. S.	Title/Description	Civil Penalty
Section 637.6(a)(1)	Failure of licensed barber shop or school to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Barber shop permitting smoking in the barber shop or barber school permitting smoking in the barber school in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in a barber shop or in a barber school in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

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§ 43b.5. Schedule of civil penalties—cosmetologists, [manicurists, cosmeticians, shops] nail technicians, estheticians, natural hair braiders, salons.

STATE BOARD OF COSMETOLOGY

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Violation under 35 P. S.	Title/Description	Civil Penalty
Section 637.6(a)(1)	Failure of licensed cosmetology salon, limited practice salon or cosmetology school to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Licensed cosmetology or limited practice salon permitting smoking in the salon or licensed cosmetology school permitting smoking in the school in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in a cosmetology salon, limited practice salon or cosmetology school in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

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§ 43b.6. Schedule of civil penalties—funeral directors and funeral establishments.

STATE BOARD OF FUNERAL DIRECTORS

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Violation under 35 P. S.	Title/Description	Civil Penalty
Section 637.6(a)(1)	Failure of funeral establishment to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Funeral establishment permitting smoking in the funeral establishment in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in a funeral establishment in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

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PROPOSED RULEMAKING

§ 43b.7. Schedule of civil penalties—pharmacists and pharmacies.

STATE BOARD OF PHARMACY

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Violation under 35 P. S.	Title/Description	Civil Penalty
Section 637.6(a)(1)	Failure of a pharmacy permit holder to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Pharmacy permit holder permitting smoking in the pharmacy in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in a pharmacy in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

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

STATE REAL ESTATE COMMISSION

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Violation under 35 P. S.	Title/Description	Civil Penalty
Section 637.6(a)(1)	Failure of broker or cemetery broker to post a sign in a real estate office or cemetery office or real estate education provider to post a sign in a real estate school as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Broker or cemetery broker permitting smoking in a real estate or cemetery office or real estate education provider permitting smoking in a real estate school	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Commission smoking in a real estate office, cemetery office or real estate school	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

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

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

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Violation under 35 P. S.	Title/Description	Civil Penalty
Section 637.6(a)(1)	Failure of vehicle dealer, branch lot, public or retail vehicle auction, or wholesale vehicle auction to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Vehicle dealership, branch lot, public or retail vehicle auction or wholesale vehicle auction permitting smoking in an area where smoking is prohibited by the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in an area of the vehicle dealership, branch lot, public or retail vehicle auction or wholesale vehicle auction where smoking is prohibited by the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

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[Pa.B. Doc. No. 10-1681. Filed for public inspection September 10, 2010, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 63]

Responsibilities of Employers

The Department of Labor and Industry (Department), Office of Unemployment Compensation Tax Services (UCTS), proposes to amend Chapter 63 (relating to responsibilities of employers) to read as set forth in Annex A.

A. Statutory Authority

This rulemaking is proposed under section 201(a) of the Unemployment Compensation Law (law) (43 P. S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

B. Background and Description of Proposed Rulemaking

The purpose of this proposed rulemaking, which covers 50 sections of Chapter 63, is to update the regulations to conform to current law and practice.

This proposed rulemaking rescinds 12 sections of Chapter 63 and deletes portions of additional sections. The Department is rescinding provisions that are obsolete, inconsistent with the law or superseded by a subsequent statutory enactment. In some cases, the Department is rescinding a provision and combining it with other regulatory provisions to consolidate regulations with similar subject matter. In cases when a regulation is superfluous

because it merely repeats an existing statutory provision, the regulation is rescinded or amended to refer to the statute.

References to obsolete subdivisions of the Department are removed or replaced with references to the current agency or the Department generally. References to specific forms, some of which are outdated, are removed whenever possible.

In addition to the previous changes that occur throughout the proposed rulemaking, there are particular changes described as follows.

The law requires the Department to transfer the experience record and reserve account balance of a predecessor to its successor-in-interest if they share common ownership, control or management. The Department interpreted this provision of the law to apply if there was common ownership at the time of the business transfer and without regard to the duration of that common ownership. See *Armco, Inc. v. Department of Labor and Industry*, 713 A. 2d 1208 (Pa. Cmwlth. 1998). Proposed § 63.1a (relating to determining common ownership, control or management) modifies the Department's interpretation of the statute. It provides that the Department will not transfer a predecessor's employment experience to its successor-in-interest if the entities' common ownership, control or management started immediately before the business transfer.

Section 63.2 (relating to part transfers of organization, trade or business) regarding part transfers of an employer's experience record and reserve account balance, applies only to transfers that occurred before July 1, 2005.

Subsequent transfers will be governed by the regulations that deal with transfers generally and the 2005 amendments to the law.

Proposed amendments to § 63.3 (relating to required forms and time limits for applications) clarify that an application for transfer of an employer's experience record and reserve account balance is necessary in cases when a transfer is desired and specify when the Department will consider an untimely application for transfer to be filed *nunc pro tunc*.

Proposed amendments to § 63.4 (relating to disapproval of applications for delinquency) delete a subsection allowing a redundant 30-day period to pay the predecessor's delinquency to obtain a transfer of the predecessor's experience record and reserve account balance to the successor.

Section 63.15 (relating to determination under combined experience provision) is extensively amended to consolidate the provisions that determine the earliest calendar year for which a combination of the predecessor's experience and successor's experience will apply to the contribution rate of the successor. Under certain circumstances, the combined experience applies to the successor's rate for the year in which the transfer of business or workforce to the successor occurred. These provisions apply to a transfer of the predecessor's experience record and reserve account balance that is requested by the successor.

Proposed amendments to § 63.21 (relating to notification of rate and prerequisites for applications for review and redetermination) provide that an employer is not notified of its contribution rate until the Department issues a contribution rate notice to the employer. As amended, this section will also provide that an employer may not assert a reason for objecting to the Department's rate determination that it has not included in its appeal.

In § 63.22 (relating to supporting data), the supporting data to be furnished with a rate appeal are expanded to address types of delinquency rates that exist as a result of recent amendments to the law.

In § 63.23 (relating to unacceptable reasons), unacceptable reasons for filing a rate appeal are expanded to include a challenge to the reserve account balance based on an alleged error that is over 4 years old. New provisions addressing the consequences of a payment plan default are added. A rate that is revised upwards due to a default may be appealed, but the only issue that may be raised is whether there was a default justifying the increase.

Proposed § 63.25 (relating to filing methods) enumerates acceptable methods for filing documents with the UCTS. Also, it specifies the dates on which documents submitted to the Department by these methods will be deemed to be filed.

Proposed § 63.26 (relating to appeal to the secretary) provides procedures for appeals of UCTS decisions to the Secretary. It concerns rate appeals, petitions for reassessment and applications for refund or credit.

Sections 63.31—63.36, regarding relief from charges, are amended and § 63.36a (relating to duration of relief from benefit charges and notice of changed circumstances) is proposed. New definitions and a list of circumstances under which an employer will be granted relief are provided. The method to be used, and time limit, for filing requests for relief are amended. The new section addresses termination of relief from benefit charges.

Section 63.51 (relating to initial and renewed registration) is amended to include the circumstances under which an employer shall file a renewed registration document with the Department.

Proposed amendments to § 63.52 (relating to quarterly reports from employers) require that employers file quarterly reports electronically.

Proposed § 63.59 (relating to PEO quarterly reports) specifies the method of filing, and the filing date of, Professional Employer Organization reports. It will replace a statement of policy issued on this subject.

Under proposed § 63.60 (relating to mass layoff report), if an employer lays off 50 or more individuals within a 7-day period, the employer is required to provide information to assist the Department to process the workers' benefit claims.

Section 63.63 (relating to agreement to compromise), regarding agreements to compromise tax liability, is amended to specify when an application to compromise is effective.

Section 63.64 (relating to records to be kept by employer), regarding records that an employer shall retain for unemployment compensation purposes, is amended to include workers whom the business believes are not "employees" and workers covered by a professional employer arrangement. In addition, more types of records are required.

Proposed § 63.66 (relating to power of attorney) provides that a business may empower an agent to represent it before the Department.

Proposed amendments to § 63.91 (relating to elections) specify the minimum and maximum periods of an election of reimbursable status.

Proposed amendments to § 63.93 (relating to filing of surety bond) specify the term of a surety bond and clarify that the bond applies to benefits that are based on wages paid during the period of reimbursable status, including benefits paid after that status has ended.

Under the proposed amendments to § 63.94 (relating to filing of security deposit), a nonprofit organization that provides money or securities as collateral in connection with an election of reimbursable status shall provide new collateral if it renews its reimbursable status when the current election expires. The proposed amendments also specify the reimbursement obligations that are secured by collateral in the form of money or securities.

Proposed § 63.96a (relating to conversion to contributory status) establishes procedures for situations when an employer elects reimbursable status but fails to provide collateral or a surety bond ceases to be effective during the period of an election. It also provides that unpaid reimbursement obligations are a basis for a delinquency contribution rate, if the employer converts to contributory status. Also, this section clarifies that a reimbursable employer that becomes a contributory employer remains liable for benefits that are based on wages paid during reimbursable status.

If a reimbursable employer provides securities as collateral, the Department may sell the securities to satisfy any amount owed by the employer. As amended, § 63.97 (relating to return or sale of money or securities) clarifies that any interest or increase in value accruing on the security may also be applied to the employer's debt.

Proposed amendments to § 63.99 (relating to assignment of rate of contribution) update provisions specifying

how the Department will determine an employer's contribution rate if the employer previously had been a reimbursable employer.

Proposed Subchapter D (relating to payment by electronic transfer) is new and specifies the circumstances in which an employer shall pay liabilities by electronic transfer. An employer that is not required to pay by electronic transfer and a claimant who is repaying an overpayment of benefits may use electronic transfer voluntarily.

C. *Affected Persons*

The proposed rulemaking potentially affects approximately 280,000 employers covered by the law.

D. *Fiscal Impact*

Commonwealth and the regulated community

This proposed rulemaking will allow the Department, under certain circumstances, to use the unemployment compensation employer experience of both the predecessor and the successor-in-interest to calculate the successor's contribution rate for the year in which the transfer of business or workforce occurred. Although the amount of unemployment compensation tax savings for successor employers and the corresponding decrease in tax revenues for the Unemployment Compensation Fund cannot be estimated, the Department expects the number of affected employers to be small and the overall monetary impact to be minimal. The Department is unable to estimate the cost to nonprofit, reimbursable employers of the provision requiring them to increase the value of their security as payrolls increase.

Political subdivisions

This proposed rulemaking does not affect political subdivisions except to the extent that they are employers covered by the law.

General public

This proposed rulemaking does not affect the general public.

E. *Paperwork Requirement*

If an employer ceases to provide employment and subsequently resumes providing employment, proposed amendments to § 63.51 will require the employer under certain circumstances to renew its unemployment compensation registration. While § 63.64, as amended, requires employers to keep employment records on workers and to preserve additional types of records, it does not require employers to create records or information that they would not have created otherwise and does not impose additional reporting requirements.

F. *Sunset Date*

The regulations will be monitored through practice and application. Thus, a sunset date has not been designated.

G. *Effective Date*

With the exception of §§ 63.52(e) and 63.110—63.114, the proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The amendments to §§ 63.11—63.17 apply to transfers of organization, trade, business or workforce under section 301(d)(1)(A) of the law (43 P. S. § 781(d)(1)(A)) that occur on or after the effective date of those amendments. Section 63.59 applies to reports filed on or after the effective date of that section. The amendments to § 63.64(a) apply to employment occurring on or after the effective date of those amendments. The amendments to

§ 63.94 apply to elections to make payments in lieu of contributions that take effect on or after the effective date of those amendments. Because § 63.2 has been superseded by the act of June 15, 2005 (P. L. 8, No. 5) with regard to transfers of organization, trade, business or workforce that occur on or after July 1, 2005, § 63.2 is amended to restrict its applicability to transfers that occurred before that date.

Sections 63.52(e) and 63.110—63.114 will take effect on January 1, 2011, and apply to calendar quarters and billing periods that begin on or after the effective date of the final-form rulemaking. The Department, however, may delay the effective date of these sections if it is impossible or impractical to implement them on January 1, 2011.

H. *Public Comment*

Interested parties are invited to submit written comments, objections or suggestions about the proposed rulemaking to Michael L. Ziemke, Office of Unemployment Compensation Tax Services, Room 900, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Comments also may be submitted electronically to mziemke@state.pa.us. A subject heading referencing the proposed rulemaking, name and return mailing address must be included in each transmission. In addition, electronic comments shall be contained in the text of the transmission, not in an attachment.

For further information on this proposed rulemaking, contact Michael L. Ziemke, (717) 772-1581.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 26, 2010, the Department 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 Labor Relations Committee and the Senate Labor and Industry 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, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

SANDI VITO,
Secretary

Fiscal Note: 12-93. (1) Unemployment Compensation Fund;

	<i>Unemployment Compensation Benefit Payment Fund</i>
(4) 2007-08 Program—	\$2,320,529,000
2006-07 Program—	\$2,084,260,000
2005-06 Program—	\$1,998,637,000

(6) Due to the highly specific nature of these calculations, we are unable to accurately project the possible revenue loss to the Unemployment Compensation Fund. The actual loss would depend on the number and types of employers who would take advantage of this revision to

the regulation and would be dependent on the particular situation with those employers, thus any estimated future revenue loss to the Fund would be inaccurate; (8) recommends adoption. Loss of revenue is expected to be recovered over time. Implementation of solvency provisions found in Article III of the Unemployment Compensation Law (Act 1 of Special Session 2 of 1936) may be required.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 63. RESPONSIBILITIES OF EMPLOYERS

Subchapter A. GENERAL FUNCTIONS

TRANSFERS OF EXPERIENCE RECORDS

§ 63.1a. Determining common ownership, control or management.

For purposes of determining whether an employer was owned, controlled or managed by its successor-in-interest, whether an employer owned, controlled or managed its successor-in-interest, or whether an employer and its successor-in-interest were owned, controlled or managed by the same interest or interests under section 301(d)(1)(B) of the law (43 P. S. § 781(d)(1)(B)), common ownership, control, management or a combination thereof that exists at the time of the transfer of organization, trade, business or workforce will be disregarded if it commences immediately before the transfer and during a series of nearly contemporaneous business transactions culminating in the transfer.

§ 63.2. Part transfers of organization, trade or business.

(a) **Applicability.** This section applies to part transfers of an organization, trade or business that occurred before July 1, 2005.

(b) **Wage ratios.** When an application for part transfer of an employer's experience record and reserve account balance has been approved, or where such a transfer has occurred as provided in section 301(d)(1)(B) of the [Law] law (43 P. S. § 781(d)(1)(B)), the [Bureau shall] Department will determine the ratio that the wages paid during the last 3 completed calendar years prior to the date of the transfer, in that part of the organization, bears to all wages paid by the predecessor in the corresponding period. If the part which is transferred has been in existence for a period of less than 3-calendar years, wages paid during that period shall be used to determine the ratio.

[(b)] (c) **Application of ratio.** The wage ratio shall be used as the basis to reduce the reserve account of the predecessor and to establish the reserve account of the successor-in-interest, as follows:

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[(c)] (d) **Benefit paid subsequent to transfer.** When an application for part transfer of the experience record and reserve account balance of an employer is filed and approved, benefits paid after the date of transfer based on wages paid before the date of transfer, in that part of the organization, trade or business transferred, shall be charged to the experience record and reserve account of the successor-in-interest.

[(d) **Part transfers.** An application for part transfer of the experience record and reserve account balance of an employer may be approved by the Bureau only if the application is filed in accordance with § 63.3 (relating to required forms and time limits for applications). If the predecessor is a partnership, a majority of the partners shall sign the application, except that when the partnership consists of two individuals, both shall sign the application.]

§ 63.3. Required forms and time limits for applications.

(a) [Application] An application for the transfer of the experience record and reserve account balance of a predecessor under the provisions of section 301(d)(1)(A) of the [Law] law (43 P. S. § 781(d)(1)(A)) shall be filed [on the "Application for Experience Record and Reserve Account Balance of Predecessor" provided on page 3 of the Form UC-1, Employer's Initial Statement, and accompanied by an Affidavit of Business Transfer Form (UC-745), or a copy of the bill of sale signed by both parties involved in the transfer, or in such form as to contain the essential information required] in the manner prescribed by the Department and containing the information that the Department requires. The application shall be signed by both the predecessor and the successor-in-interest.

(b) An application for the transfer of the experience record and reserve account balance of a predecessor, either in whole or in part, shall be filed [prior to the end of the calendar year immediately following the calendar year in which the transfer occurred] within the time allowed under section 301(d)(1)(A) of the law.

(c) [When] An application for the transfer of the experience record and reserve account balance of a predecessor that is filed beyond the time allowed under section 301(d)(1)(A) of the law is deemed to have been filed timely when the sole business of the successor-in-interest is that which [he] the successor-in-interest acquires from the predecessor in a total transfer of the predecessor's business, and the successor-in-interest, through error or inadvertence, continues to file contribution reports and pay contributions under the account number of the predecessor and at the rate determined by the [Bureau] Department to apply to the predecessor [, the reporting and payment shall be considered an application for the experience record and reserve account balance of the predecessor with respect to the time limit for filing the application].

§ 63.4. Disapproval of applications for delinquency.

[(a)] If an application for transfer of the experience record and reserve account balance of a predecessor either in whole or part, is filed and the predecessor is delinquent in the payment of contributions, interest or penalties due on wages paid by [him] the predecessor as of the date the business was transferred, the [Bureau shall] Department will disapprove the application if the delinquency is not paid within 30 days of the request for payment by the [Bureau] Department. [The disapproval shall apply to all actions pertaining to

the transfer, including the transfer of the predecessor's contribution rate to the successor.

(b) The transfer application may be considered if the following actions are taken within the time allowed in the Law for filing transfer applications:

(1) The successor-in-interest files a timely rate appeal requesting a reconsideration of the transfer application.

(2) The delinquency is paid not later than 30 days following the request for payment by the Bureau (following such appeal).

(c) If a transfer application is approved the transfer shall be effective with the calendar year for which the timely appeal is filed.]

ASSIGNMENT OF CONTRIBUTION RATES

§ 63.11. [General requirements] (Reserved).

[Where an application for the transfer of the experience record and reserve account balance of a predecessor has been approved, or where the transfer has occurred as provided in section 301(d)(1)(B) of the Law (43 P. S. § 781(d)(1)(B)), the contribution rates for the successor-in-interest shall be determined in accordance with the provisions of §§ 63.12—63.17.]

§ 63.12. [Successors not formerly employers] (Reserved).

[The successor-in-interest who prior to the transfer was not an employer during the calendar year in which the transfer occurred (referred to in this section and §§ 63.13—63.17 as the "transfer year") shall be assigned the rate of his predecessor for the remainder of that year, if the following requirements were met:

(1) The transfer application was filed by the successor-in-interest prior to the expiration of the rate appeal period for the transfer year (which rate appeal period expires 90 days after the mailing of the rate notice to the successor's last known post office address) or a timely rate appeal was filed and the transfer application was filed within 30 days of notification by the Bureau of the need for such transfer application.

(2) The predecessor paid contributions for the period required under section 301.1(b) of the Law (43 P. S. § 781.1(b)), with respect to the organization, trade or business, or part thereof transferred.]

§ 63.13. [Successors formerly employers] (Reserved).

[Successors-in-interest who prior to the transfer were employers during the transfer year may not be assigned the rate of their predecessors for the remainder of the transfer year.]

§ 63.14. [Rate determination in subsequent years] (Reserved).

[For calendar years subsequent to the transfer year, the rate for the successor-in-interest shall be determined on the basis of the experience record and reserve account balance, or in case of a part transfer the appropriate portion thereof, which has been transferred from the predecessor and com-

bined with that of the successor-in-interest, except that the rate for a successor-in-interest who has acquired a predecessor's reserve account balance which has been adjusted to zero shall be determined in accordance with § 63.16 (relating to periods of subjectivity).]

§ 63.15. Determination under combined experience provisions.

[Subject to § 63.16 (relating to periods of subjectivity), the first calendar year for which combination of experience shall be applicable for computing the contribution rate for the successor-in-interest shall be determined as follows:

(1) If the transfer application is filed prior to the expiration of the rate appeal period for the calendar year immediately following the transfer year, it shall be effective beginning with the calendar year in which it is filed.

(2) If the successor-in-interest has filed a timely application for review and redetermination of contribution rate, and filed a transfer application within 30 days of notification by the Bureau of the need for such application, it shall be effective beginning with the calendar year for which the timely appeal was filed.

(3) If the transfer application is filed after the expiration of the rate appeal period for the calendar year immediately following the transfer year, it shall be effective beginning with the calendar year following the year in which it is filed.]

If a successor-in-interest applies for a transfer of the experience record and reserve account balance of a predecessor, in whole or in part, under section 301(d)(1)(A) of the law (43 P. S. § 781(d)(1)(A)), the Department will combine the experience of the predecessor and the experience of the successor-in-interest, if any, for the purpose of determining the contribution rate of the successor-in-interest. The earliest calendar year for which a combination of experience under section 301(d)(1)(A) of the law will apply to the contribution rate of the successor-in-interest will be determined in accordance with this section.

(1) If the successor-in-interest files its application for a transfer of experience prior to the expiration of the rate appeal period for a calendar year, the year in which the application is filed is the earliest calendar year for which a combination of experience will apply.

(2) If the successor-in-interest files a timely application for review and redetermination of its contribution rate, and files its application for a transfer of experience within 30 days after the Department notifies the successor-in-interest that an application for a transfer of experience is required, the year for which the application for review and redetermination of contribution is filed is the earliest calendar year for which a combination of experience will apply.

(3) If the successor-in-interest files its application for a transfer of experience after the expiration of the rate appeal period for a calendar year, the calendar year following the year in which the application is filed is the earliest calendar year for which a combination of experience will apply.

(4) Notwithstanding paragraphs (1), (2) and (3), the earliest calendar year for which a combination of experience will apply is the year in which the transfer of organization, trade, business or work force occurred, if the successor-in-interest files its application for a transfer of experience within 90 days after the transfer of organization, trade, business or work force and any of the following apply:

(i) The successor-in-interest did not pay wages covered by the law prior to the transfer of organization, trade, business or work force.

(ii) The successor-in-interest most recently paid wages covered by the law prior to the year in which the transfer of organization, trade, business or work force occurred, and the reserve account of the successor-in-interest is terminated in accordance with section 302(d) of the law (43 P. S. § 782(d)) as of the computation date for that year.

(iii) The successor-in-interest most recently paid wages covered by the law prior to the year in which the transfer of organization, trade, business or work force occurred, and the reserve account of the successor-in-interest is not terminated in accordance with section 302(d) of the law as of the computation date for that year.

(5) If the earliest calendar year for which a combination of experience applies to the contribution rate of the successor-in-interest is the year in which the transfer of organization, trade, business or work force occurred, and paragraph (4)(i) or (ii) applies to the successor-in-interest, the rate of the successor-in-interest for the year in which the transfer of organization, trade, business or work force occurred is the rate of the predecessor for that year.

(6) Notwithstanding paragraphs (1)—(5), the experience record and reserve account balance acquired from the predecessor may not affect the contribution rate of the successor-in-interest for any period prior to the date on which the transfer of organization, trade, business or workforce occurs.

§ 63.16. [Periods of subjectivity] (Reserved).

[(a) Subsequent to the transfer year, a successor-in-interest who has acquired the whole or part of the reserve account balance of a predecessor which was adjusted to zero under the provisions of section 302(c) of the Law (43 P. S. § 782(c)) shall not have his rate determined on the basis of the combined experience of the predecessor and the successor-in-interest until the expiration of three calendar years following the computation date on the which the predecessor's account was adjusted to zero, unless prior to the expiration of the three-year period the successor-in-interest as of any computation date meets either of the following reporting requirements:

(1) Has been subject under the Law for 14 or more consecutive calendar quarters.

(2) Has been subject under the Law for a period as long as, or longer than, the preceding employer.

(b) A successor-in-interest whose period of subjectivity under the Law is not sufficient to meet the requirements of subsection (a) of this section

shall pay contributions at the rate provided in section 301(d)(1)(D)(3) of the Law (43 P. S. § 781(d)(1)(D)(3)).]

§ 63.17. **Binding effect of transfers.**

A transfer of an experience record and reserve account balance, in whole or in part, having been approved by the [Bureau] Department on the basis of an application for the transfer of predecessor experience record and reserve account balance, [shall be binding on] binds both the predecessor and the successor-in-interest. [The experience record and reserve account balance thus transferred shall be included with that of the successor-in-interest for determination of rates for calendar years subsequent to the year of transfer except as provided in § 63.16 (relating to periods of subjectivity). The predecessor may not be entitled to adjusted rates for calendar years subsequent to the transfer year, based upon the experience record and reserve account balance which has been transferred.]

APPLICATIONS FOR REVIEW AND REDETERMINATION OF CONTRIBUTION RATES

§ 63.21. [Prerequisites] Notification of rate and prerequisites for applications for review and redetermination.

(a) For purposes of section 301(e)(2) and (j) of the law (43 P. S. § 781(e)(2) and (j)), an employer is not notified of its rate of contribution for a calendar year until the Department issues a Contribution Rate Notice to the employer.

[An] (b) The Department may consider an application for review and redetermination of contribution rate filed under section 301(e)(2) of the [Law (43 P. S. § 781(e)(2)) shall be considered] law only if it meets the following conditions:

(1) It is filed within [90 days after the mailing of the contribution rate notice to the last known post office address of the employer] the time specified in section 301(e)(2) of the law.

(2) The reasons set forth by the employer contain factual statements, not mere generalities, showing specifically where the contribution rate [of] or reserve account balance is incorrect. The Department may not consider any factual or legal reason that the employer fails to assert in its application for review and redetermination.

§ 63.22. **Supporting data.**

Employers who wish to file an application for review and redetermination of contribution rate shall furnish [the following type of] supporting data as follows:

(1) To contest a ruling [by the Bureau] of insufficient experience, the employer shall submit information to show that his employer experience record meets the eligibility requirements of section 301.1(b) of the [Law] law (43 P. S. § 781.1(b)) for a rate of less than the standard rate provided in section 301(a)(1) [(43 P. S. § 781(a)(1))] or [section 301(a)](3) of the law (43 P. S. § 781(a)(1) and (3)), whichever is applicable.

(2) To contest a [ruling by the Bureau of money or report delinquency] contribution rate assigned un-

der section 301(a)(2) of the law, the employer shall submit information to show [**whether**] that it filed all reports establishing the amount of contributions and showing the amount of wages paid for calendar quarters through the second quarter of the preceding calendar year, and that it paid all contributions, penalties and interest due on wages paid to the end of the second quarter of the preceding calendar year [**have been paid. If a delinquency does exist, he may remove this cause of his ineligibility for a reduced rate by filing the reports and paying the delinquent amount within 30 days after the Bureau, in response to his request, notifies the employer of the missing reports and amounts due**].

(3) To contest a contribution rate assigned under section 301(a)(2.1) of the law, the employer shall submit information to show that it filed the reports required under section 315(a)(1), (2) and (3) of the law (43 P. S. § 715(a)(1), (2) and (3)).

(4) To contest the accuracy of any figures shown on the [**Form UC-657,**] Contribution Rate Notice, the employer shall submit information obtained from his records to substantiate the alleged discrepancy.

§ 63.23. Unacceptable reasons.

[**An**] (a) The Department will not approve an application for review and redetermination of contribution rate based on the following reasons [**shall not be approved by the Bureau**]:

(1) *Questions of eligibility.* [(i) **That claimants**] **Claimants** who caused the benefit charges were ineligible to receive unemployment compensation.

[(ii)] (i) Questions of eligibility for compensation shall be resolved conclusively under sections 501—512 of the [**Law**] law (43 P. S. §§ 821—832) and § 65.63 (relating to filing of appeals)[, and the affected employers shall be notified with respect thereto].

[(iii)] (ii) Appeals raising questions of eligibility for compensation shall be filed in the manner and within the time prescribed [**therein**] in the law and this subpart. (For detailed instructions, see [**the reverse side of**] Form UC-44F, Notice of Financial Determination, which is mailed to base-year employers at the time the [**Bureau**] Department makes the financial determination on the application for benefits by the claimant.)

(2) *Claimants who caused benefit charges.* [(i) **That claimants**] **Claimants** who caused benefit charges were separated from the applicant due to being discharged for willful misconduct connected with their work or due to leaving work without good cause attributable to their employment.

[(ii)] (i) Questions as to the right to relief from charges for these reasons shall be resolved conclusively under section 302(a) of the [**Law**] law (43 P. S. § 782(a)) and §§ 63.31—63.37 (relating to relief from benefit charges)[, and the affected employers shall be notified with respect thereto].

[(iii)] (ii) Requests raising these questions shall be filed in the manner and within the time prescribed [**therein**] in the law and this subpart. (For detailed

instructions, see Form UC-44FR, Request for Relief from Charges, which is mailed to base-year employers with the Form UC-44F.)

(3) *Benefits charged to employer's reserve account.* [(i) **That benefits**] **Benefits** charged to the reserve account of the employer as shown on Form UC-640, Monthly Notice of Compensation Charged, are incorrect.

[(ii)] (i) Questions [**as to**] regarding the accuracy of benefit charges on Form UC-640, shall be resolved conclusively under section 301(e)(1) of the [**Law**] law (43 P. S. § 781(e)(1))[, and the affected employers shall so be notified].

[(iii)] (ii) Protests contesting the accuracy of [**such**] the charges shall be filed in the manner and within the time prescribed in [**Form UC-640**] the law and this subpart. (For detailed instructions, see [**the reverse side of**] Form UC-640, Monthly Notice of Compensation Charged, which is mailed to base-year employers following the payment of unemployment compensation to their former employees.)

(4) *Reserve account balance.* The reserve account balance as indicated on the Contribution Rate Notice is inaccurate, if the alleged inaccuracy is attributable to an error that occurred more than 4 years prior to the computation date for the contribution rate in question.

(5) *Payment plan default.* The rate of contribution assigned after the employer defaults on a deferred payment plan is incorrect for reasons unrelated to the payment plan or the default.

(i) Under section 301(a)(2) of the law, an employer that is delinquent in the payment of contributions, interest or penalty is assigned a rate of contribution that is the sum of 3% plus the employer's rate as otherwise determined. However, if the employer is complying with a deferred payment plan, section 301(a)(2) of the law provides that the Department will issue a rate of contribution that does not include the additional 3%. If the employer defaults on the payment plan, section 301(a)(2) of the law provides that the employer's contribution rate or rates for the period of the payment plan are retroactively revised to include the additional 3%.

(ii) If an employer with a deferred payment plan is assigned a rate that does not include the additional 3% and the employer is dissatisfied with the assigned rate, the employer is responsible to timely contest the assigned rate. If an employer defaults on a payment plan and the employer's rate is revised to include the additional 3%, an application for review and redetermination of contribution rate filed in response to the rate revision is limited to the issue of whether a default on the payment plan occurred.

(b) [**While an**] **An** application for review and redetermination of contribution rate [**shall**] **will** not be [**approved on the grounds described herein**] **disapproved under this section** while the issues of benefit eligibility or charge relief are [**still**] pending under the provisions specified, neither shall the application be disapproved pending such proceedings. In [**all such**] **those** cases, the employer's application shall be held in abeyance until final resolution of the issue of eligibility or relief from charges [**as the case may be**].

§ 63.24. Unacceptable applications.

(a) [Applications shall be denied for the following reasons] The Department will deny the following applications for review and redetermination of contribution rate:

(1) Applications which are not timely filed [according to] under § 63.21(1) (relating to notification of rate and prerequisites for applications for review and redetermination).

(2) Applications based upon the reasons in § 63.23 (relating to unacceptable reasons) [shall be denied and returned to the employers with letters explaining the reasons for the denial].

(b) [Applications] The Department may deny applications for review and redetermination of contribution rate which do not furnish the information required in § 63.21(b)(2) or § 63.22 (relating to supporting data) [shall be returned to the employer with a statement of the reasons for returning such applications].

(c) [Any of the forms referred to in this section and §§ 63.21—63.23 (relating to applications for review and redetermination of contribution rates) may be obtained by writing to the Bureau of Employment Security, Department of Labor and Industry, Harrisburg, Pennsylvania 17121.] If an application is denied under this section, the Department will inform the employer and advise the employer of the reasons for the denial.

FILINGS AND APPEALS

§ 63.25. Filing methods.

(a) *Applicability.* Except as otherwise provided in the law or this chapter, a document shall be filed with the Office of Unemployment Compensation Tax Services (UCTS) in accordance with subsections (b)—(g).

(b) *United States mail.* The filing date will be determined as follows:

(1) The date of the official United States Postal Service postmark on the envelope containing the document, a United States Postal Service Form 3817 (Certificate of Mailing) or a United States Postal Service certified mail receipt.

(2) If there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt, the date of a postage meter mark on the envelope containing the document.

(3) If the filing date cannot be determined by any of the methods in paragraph (1) or (2), the filing date will be the date recorded by UCTS when it receives the document.

(c) *Common carrier.* A document may be delivered by a common carrier of property that is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board. The date of filing is the date the document was delivered to the common carrier, as established by a document or other record prepared by the common carrier in the normal course of business. If the date of delivery to the common carrier cannot be determined by the

documents in the record, the date of filing will be the date recorded by UCTS when it receives the document.

(d) *Fax transmission.*

(1) The filing date will be determined as follows:

(i) The date of receipt imprinted by the UCTS fax machine.

(ii) If the UCTS fax machine does not imprint a legible date, the date of transmission imprinted on the faxed document by the sender's fax machine.

(iii) If the faxed document is received without a legible date of transmission, the filing date will be the date recorded by UCTS when it receives the document.

(2) A party filing a document by fax transmission is responsible for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the document may not be properly or timely filed.

(e) *Electronic transmission other than fax transmission.* The filing date is the receipt date recorded by the UCTS electronic transmission system, if the electronic record is in a form capable of being processed by that system. A party filing by electronic transmission shall comply with UCTS instructions concerning format. A party filing by electronic transmission is responsible for using the proper format and for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the document may not be properly or timely filed.

(f) *Personal delivery.* The filing date will be the date the document was personally delivered to UCTS during its normal business hours.

(g) *Additional and suspended methods.*

(1) UCTS may prescribe additional filing methods. If UCTS prescribes an additional filing method, it will designate the date on which a document is filed by that method.

(2) UCTS may suspend one or more of the filing methods prescribed under subsections (b)—(g)(1) when it determines, in its discretion, that the method is obsolete, impractical, inefficient or infrequently used.

§ 63.26. Appeal to the Secretary.

(a) If an employer files an application for review and redetermination of its contribution rate under section 301(e)(2) of the law (43 P. S. § 781(e)(2)) and the employer is aggrieved by the determination of the Office of Unemployment Compensation Tax Services (UCTS), the employer may appeal to the Secretary or the Secretary's designee within 30 days of the mailing date of the UCTS determination.

(b) If UCTS issues an assessment under section 304 of the law (43 P. S. § 784) and the person to whom the assessment is directed is aggrieved by the assessment, the person may appeal to the Secretary or the Secretary's designee by filing a petition for reassessment within the time allowed under section 304.

(c) If an employer applies for a refund or credit under section 311 of the law (43 P. S. § 791) and the employer is aggrieved by the determination of UCTS, the employer may appeal to the Secretary or

the Secretary's designee within 30 days of the mailing date of the UCTS determination.

(d) The following provisions apply to an appeal under subsection (a), (b) or (c):

(1) The appellant shall file the appeal with the Unemployment Compensation Tax Review Office at the address indicated in the UCTS determination or assessment and in the manner prescribed by the Unemployment Compensation Tax Review Office, and serve a copy on UCTS.

(2) The appellant shall set forth in the appeal all factual assertions and legal arguments that are the basis for the appeal. The Secretary or the Secretary's designee may not consider any factual or legal grounds for relief that are not set forth in the appeal.

(3) The decision of the Secretary or the Secretary's designee is the final decision of the Department.

RELIEF FROM BENEFIT CHARGES

§ 63.31. [General requirement] Applicability and definitions.

(a) [Whenever a claimant is paid unemployment compensation, his former employers shall be charged for the amount of benefits paid to him. These charges shall be made in proportion to the wages paid by the employer during the base year of the claimant as compared with the total wages paid by all of his employers during the same period.] An employer that pays contributions may be relieved of benefit charges in accordance with section 302(a) of the law (43 P. S. § 782(a)) and this chapter.

(b) [An employer may exert some control over the determination of his contribution rate by maintaining and providing necessary records and information which will enable the Bureau to charge employer accounts properly and relieve charges under certain conditions.] If an employer that makes payments in lieu of contributions satisfies the requirements of section 213 of the law (43 P. S. § 773) for a calendar year, the employer may be relieved of charges, in accordance with section 302(a) of the law and this chapter, for benefits paid on applications for benefits that take effect during that calendar year.

(c) The following words and terms, when used in §§ 63.31—63.37, have the following meanings, unless the context clearly indicates otherwise:

Material change—A substantial reduction in wages or in the number of hours or days ordinarily worked by the claimant employed in part-time work.

Return to work—Resumption of employment with an employer from whom the claimant had been separated, at the level of employment that existed immediately prior to the separation.

Separation from employment—A termination of the employment relationship, a suspension of active employment, or a reduction in the number of hours worked by the claimant.

§ 63.32. Reasons for [separation] relief from benefit charges.

(a) [Section 302(a) of the law (43 P. S. § 782(a)) provides that a base year employer may obtain

relief from the charges for benefits paid to an ex-employee as explained in § 63.31 (relating to general requirement) if the claimant has separated from his most recent work for such employer due to one of the following reasons:

(1) When the claimant leaves work without good cause attributable to his employment.

(2) When the claimant is discharged for willful misconduct connected with his work.

(b) A base-year employer may obtain relief from charges for benefits paid as explained in § 63.31 (relating to general requirement) when the claimant works part-time for a base-year employer in addition to his full-time job, and such claimant, subsequent to a separation from his full-time job, continues his part-time work with the employer without a material change.]

Under section 302(a)(1) of the law (43 P. S. § 782(a)(1)), an employer may be granted relief from benefit charges in the following circumstances:

(1) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(e) of the law (43 P. S. § 802(e)), which provides that an individual is ineligible for benefits if the individual is unemployed due to willful misconduct.

(2) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(b) of the law, which provides that an individual is ineligible for benefits if the individual voluntarily left work without a necessitous and compelling reason.

(3) When the claimant was separated from employment with the employer under conditions that would not be disqualifying under section 402(b) of the law, but do not involve good cause attributable to the claimant's employment.

(4) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 3 of the law (43 P. S. § 752)), which provides that an individual must be unemployed through no fault of his own to be eligible for benefits.

(5) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(e.1) of the law, which provides that an individual is ineligible for benefits if the individual is unemployed due to failure to submit to or pass a drug test.

(6) When the claimant was separated due to a major natural disaster declared by the President of the United States.

(b) Under section 302(a)(2) of the law, an employer may be granted relief from benefit charges when the claimant continues to work part-time for the employer after being separated from other employment.

(c) Under section 302(a)(2.1) of the law, an employer may be granted relief from benefit charges when the claimant was separated due to a cessation of business of 18 months or less caused by a disaster.

§ 63.33. [Information accompanying requests] Request for relief from benefit charges.

(a) [A Form UC-44FR "Request for Relief from Charges" under section 302(a) of the law (43 P. S. § 782(a)) shall be submitted in writing to the Bureau of Employment Security, Department of Labor and Industry, Harrisburg, Pennsylvania 17121.

(b) The request for relief from charges shall contain the following information:]

An employer shall file a request with the Department to be granted relief from benefit charges.

(b) An employer's request for relief from benefit charges must contain the information required by the Department, including the following:

* * * * *

[(4) The date of valid application for benefits by the claimant.

(5) The local office number.

(6) The date of financial decision.

(7) The signature of the employer or that of his authorized representative.

(8) The last day of work of the claimant.

(9) The reason for the separation of the claimant from employment.]

(c) In addition to the information required under subsection (b), a request for relief from benefit charges based on a claimant's separation from employment must contain a statement of the facts surrounding the most recent separation of the claimant from the employer requesting relief and the date of the separation.

(d) In addition to the information required under subsection (b), an employer making a request for relief from benefit charges based on continuing part-time work shall include a statement of the facts concerning the part-time employment of the claimant which contains the following information:

(1) The date the claimant was hired.

(2) The number of hours or days of work and the pay available to the claimant before and after the claimant's separation from other employment.

(e) An employer shall file a request for relief from benefit charges with the Department in the same manner that documents shall be filed with the Office of Unemployment Compensation Tax Services (UCTS) under § 63.25 (relating to filing methods). The filing date of the request will be determined in accordance with § 63.25.

(f) Notwithstanding subsection (e), the Department may prescribe additional filing methods that it determines to be advisable or expedient. If the Department prescribes an additional filing method, it will designate the date on which a request is filed by that method.

§ 63.34. [Requests as to voluntary separations or discharge of employe for willful misconduct] (Reserved).

[(a) A request filed under section 302(a)(1) of the law (43 P. S. § 782(a)(1)) shall contain a concise but comprehensive statement of facts surrounding the

most recent separation of the claimant and the date of such separation from the employer requesting relief.

(b) If an employer who has applied for relief from charges because of the separation or discharge of an employe subsequently reemploys the employe, the employer shall notify the Bureau of the fact and of the date of rehire within 15 days thereof. The notification shall state the name and social security account number of the claimant and the name and account number of the employer.]

§ 63.35. [Requests as to part-time workers] (Reserved).

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

Material change—A substantial reduction in wages or in the number of hours or days ordinarily worked by the claimant employed in part-time work.

Part-time work—Work other than normal full-time work of a claimant with a regular base-year employer which is ordinarily performed for less than the total number of hours or days customarily worked in the business, occupation or industry.

(b) *Information.* A request filed under the provisions of this section shall contain a concise but comprehensive statement of facts concerning the part-time employment of the claimant. The statement shall include the following information:

(1) The date the claimant was hired.

(2) The number of hours or days of work and the pay available to the claimant before and after separation from the full-time job.

(c) *Certification.* The request shall be certified that the information provided is true and correct. The certification shall be signed by the employer making the request or his authorized representative.

(d) *Changes of employment situation.* If an employer who has applied for relief under section 302(a)(2) of the Law (43 P. S. § 782(a)(2)) subsequently changes the employment situation of a part-time employe, it shall be the duty of the employer to notify the Bureau of such fact within 15 days. The notification shall state the name and social security account number of the claimant and the name and account number of the employer.]

§ 63.36. Time limits for [filing for] requesting relief from benefit charges.

(a) [Where the last separation is the basis for establishing an application for benefits, a Form UC-44FR (Request for Relief from Charges) shall be filed] If an employer is requesting relief from benefit charges on the basis of a separation that occurs on or before the date the claimant files an application for benefits or on the basis of continuing part-time work, the employer shall file the request with the [Bureau] Department within 15 days after the date of ["Financial Decision" shown on the face of] the first eligible [Form UC-44F () Notice of Financial Determination[) as] issued by the [Bu-

reau on the basis of this] Department under the claimant's application for benefits.

(b) [If a claimant returns to work for a base-year employer after establishing a benefit year, that is a 52-week period beginning with the date of the first valid Application for Benefits, and is subsequently separated from employment during the benefit year, any request made by the separating employer for relief from charges must be filed within 30 days from the last day worked] If an employer is requesting relief from benefit charges on the basis of a separation that occurs after the claimant files an application for benefits, the employer shall file the request within 15 days after the date of the Department's earliest notice indicating that the claimant is claiming benefits subsequent to the separation and that the employer may request relief from benefit charges.

(c) The following apply to employer requests for relief from benefit changes:

(1) If an employer requests relief from benefit charges in accordance with subsection (a) and the Department grants relief, relief will begin with the earliest week for which the claimant is eligible for benefits pursuant to the claimant's application for benefits.

(2) If an employer requests relief from benefit charges in accordance with subsection (b) and the Department grants relief, relief will begin with the earliest week for which the claimant is eligible for benefits following the last day worked.

(3) A request for relief from benefit charges not filed within the time limitations prescribed in subsections (a) or (b) [shall be] is effective only with respect to charges resulting from benefits paid for weeks ending [15 or more days subsequent to] on or after the date the late request is filed with the [Bureau] Department.

[(d) A request for relief from charges will be considered as filed with the Bureau on the date the request is postmarked or, if the request is otherwise delivered, on the date such request is received in the central office or in the local or district office of the Bureau.]

§ 63.36a. Duration of relief from benefit charges and notice of changed circumstances.

(a) Subject to the requirements of §§ 63.33 and 63.36 (relating to request for relief from benefit charges; and time limits for requesting relief from benefit charges), relief from benefit charges granted to an employer on the basis of a claimant's separation from employment remains in effect until the claimant returns to work for the employer or until the end of the period for which relief is authorized under section 302(a) of the law (43 P. S. § 782(a)), whichever occurs first.

(b) An employer that is granted relief from benefit charges on the basis of a claimant's separation from employment shall notify the Department within 15 days if the claimant returns to work for that employer. The employer shall include with the notification the claimant's name and Social Security number, the employer's name and account number and the date when reemployment commenced.

(c) An employer that is granted relief from benefit charges on the basis of continuing, part-time work shall notify the Department within 15 days if the employment situation of the claimant changes. The employer shall include with the notification the claimant's name and Social Security number and the employer's name and account number.

READJUSTMENT OF RESERVE ACCOUNT BALANCES

§ 63.41. Requests.

An employer who elects to have [his] its debit reserve account balance adjusted [to zero under sections 301.1(f) and] under section 302(c) of the [Law] law (43 P. S. § [§ 781.1(f) and] 782(c)) shall submit a request [in writing] for the adjustment to the Department, in the manner prescribed by the Department and containing the information required by the Department.

§ 63.42. Time period for filing and revocability.

(a) [A] An employer shall file a request for adjustment of a debit reserve account balance [to zero shall be filed on or after January 1,] on or after the date of the Contribution Rate Notice for the calendar year immediately following the computation date corresponding to the adjustment, but not later than April 30 of [the] that calendar year [immediately following the computation date for the determination of contribution rates].

(b) The [request may not be revocable] employer may not revoke the request for any cause [after] more than 10 days [from] after the date of filing.

§ 63.43. [Date of filing] (Reserved).

[The date of filing of a request shall be considered as the date on which the request is postmarked. Should the request be delivered in some other way the date of receipt in any field or administrative office of the Bureau shall be considered the date of filing.]

REPORTS TO BE FILED

§ 63.51. [Form UC-1] Initial and renewed registration.

[Form UC-1, Employer's Initial Statement, shall be filed by each employer, whether or not he is liable for the payment of contributions, for whom any individual has performed services in this Commonwealth subsequent to December 31, 1935. The form shall be filed immediately after services are first performed for the employer.]

(a) Under section 315(a)(1) of the law (43 P. S. § 795(a)(1)), an employer shall register with the Department within 30 days after services are first performed for the employer.

(b) If an employer that has stopped filing reports in accordance with § 63.52(b) (relating to quarterly reports from employers) or has not provided employment for 1 year or longer resumes providing employment, the employer shall file a new registration with the Department within 30 days after it resumes providing employment.

§ 63.52. [Form UC-2] Quarterly reports from employers.

(a) [Form UC-2, Employer's Report for Unemployment Compensation, and Form UC-2A, Employer's Quarterly Report of Wages Paid to Each Employee, shall be filed by each employer liable for the payment of contributions, on or before the last day of the month which immediately follows the end of the calendar quarter for which the reports are filed.

(b) Form UC-2 and Form UC-2A shall be filed for each calendar quarter, whether or not the employer has paid wages during the calendar quarter.

(c) The Bureau may require an employer who has discontinued operation of his organization, trade or business in this Commonwealth to file reports immediately upon discontinuance of an operation.

(d) If the day on which Forms UC-2 and UC-2A are otherwise required to be filed is a Saturday, Sunday or a legal holiday, the reports may be filed on the first subsequent day which is not a Saturday, Sunday or a legal holiday.

(e) The day on which reports are postmarked shall be deemed the day on which they are filed.

(f) An employer who has been required to file Form UC-2 may be relieved of filing the report only upon written application to the Bureau to be so relieved. The application shall certify that he no longer furnishes employment as defined in the Law (43 P. S. § 753). The Bureau may, however, relieve an employer from filing reports upon finding that the employer no longer furnishes employment as defined in the Law (43 P. S. § 753), at any time, on its own motion.]

Required reports. An employer shall file the following reports for each calendar quarter, regardless of whether the employer has paid wages during the calendar quarter:

(1) The periodic report to establish the amount of contributions due, known as the Employer's Report for Unemployment Compensation.

(2) The periodic report showing the amount of wages paid to each employee, known as the Employer's Quarterly Report of Wages Paid to Each Employee.

(b) **Termination of reporting.** An employer may stop filing reports required under subsection (a) if it certifies in writing that it no longer provides employment as defined in section 4 of the law (43 P. S. § 753) or the Department determines that the employer no longer provides the employment.

(c) **Contents of reports.** An Employer's Report for Unemployment Compensation must contain the total amount of wages paid during the calendar quarter, the amount of wages paid during the calendar quarter that does not exceed the limitation in section 4(x)(1) of the law, the amount of contributions due, and other information the Department requires. An Employer's Quarterly Report of Wages Paid to Each Employee must contain the following:

(1) The name and Social Security number of each employee to whom wages were paid during the calendar quarter.

(2) The amount of wages paid to each employee.

(3) The number of credit weeks for each employee.

(4) Other information the Department requires.

(d) *Due date.*

(1) An employer shall file reports required under subsection (a) on or before the last day of the month that immediately follows the end of the calendar quarter for which the reports are filed. If the day on which the reports are required to be filed is a Saturday, Sunday or legal holiday, the employer may file them on the first subsequent day that is not a Saturday, Sunday or legal holiday.

(2) The Department may require an employer that has discontinued operation of its organization, trade or business in this Commonwealth to file the reports required under subsection (a) immediately.

(e) **Reporting methods.** Except as otherwise prescribed by the Department under subsection (g), for calendar quarters beginning on or after January 1, 2011, an employer shall make the reports required under subsection (a) through an electronic filing system that the Department prescribes.

(f) **Filing date.** The filing date of a report made under subsection (e) is the receipt date recorded by the electronic filing system.

(g) **Additional reporting methods.**

(1) The Department may prescribe additional methods for employers to make the reports required under subsection (a). If the Department prescribes an additional method to make a report, it will designate the date on which a report made by that method is filed. The Department may suspend use of one or more of the methods of making reports prescribed in subsection (e) or under this paragraph when it determines, in its discretion, that the method is obsolete, impractical or infrequently used.

(2) The Department may limit a class of employers to one or more methods of making the reports required under subsection (a), or limit a method of making the reports to a class or classes of employers.

(h) **Waiver.** Upon a showing of good cause, the Department may allow an employer to make the reports required under subsection (a), to file the reports, or both, by a method other than as provided in subsections (e), (f) and (g).

§ 63.58. [Penalties for failure to file] (Reserved).

[The penalty for failure to file reports as provided in section 206 of the Law (43 P. S. § 766) may not apply to the filing of Form UC-2 with respect to any reporting period during which the employer paid no wages subject to contributions.]

§ 63.59. PEO quarterly reports.

(a) **Method and content of report.** A report required under section 315(a)(4) of the law (43 P. S. § 795(a)(4)) shall be made through the electronic filing system prescribed by the Department for that purpose, and include the information required by that system.

(b) **Filing date.** The filing date of a report required under section 315(a)(4) of the law is the date

indicated on the confirmation page displayed upon completion of the filing process.

§ 63.60. Mass layoff report.

(a) An employer that lays off or separates 50 or more individuals within any 7-day period shall provide the information that the Department requires for processing the individuals' applications and claims for unemployment compensation.

(b) The employer shall file the report required under subsection (a) in accordance with the following.

(1) The employer shall file the report no later than 5 business days prior to the first layoff or separation, unless the Department extends the due date for the report for good cause.

(2) The employer shall file the report in the same manner that documents shall be filed with Office of Unemployment Compensation Tax Services under § 63.25 (relating to filing methods). The filing date of the report will be determined in accordance with § 63.25.

MISCELLANEOUS PROVISIONS

§ 63.61. [Voluntary contributions to Unemployment Compensation Fund] (Reserved).

[(a) Any employer who wishes to take advantage of the privilege afforded by voluntary contributions to the Unemployment Compensation Fund shall pay his voluntary contribution in strict conformity with section 302(b) of the Law (43 P. S. § 782(b)). The amount shall be included in the computation or recomputation of the rate for any calendar year only if it is paid within 120 days after the beginning of the year.

(b) Irrespective of any action by the Bureau, the employer shall be responsible for determining the amount he wishes to pay and he shall pay that amount, unconditionally, within the 120-day period.

(c) After voluntary contributions are accepted by the Bureau, they will not be refunded or allowed as a credit to pay contributions due on taxable wages.]

§ 63.62. [Assignment of contribution credit] (Reserved).

[(a) Contribution credit which arose as a result of the 1949 and 1951 experience rating amendments to the Law (43 P. S. §§ 781 and 781.1) may be transferred to a successor-in-interest or to any assignee. The credit shall be used solely for the payment of contributions, interest or penalties owing under the Law and may not be refunded.

(b) Request for the assignment of nonrefundable credit shall be made by submitting the request in duplicate and shall contain the essential information required.

(c) Credit may be transferred to more than one assignee, in which case the request shall be submitted in duplicate for each assignee.]

§ 63.63. Agreement to compromise.

(a) [Application] An employer's application for compromise of contributions, interest or penalties under [the provisions of] section 309.1 of the [Law] law

(43 P. S. § 789.1) shall be made [to the Bureau on Form UC-168, Application for Agreement to Compromise. The application shall be properly executed under oath, by the employer or his authorized representative, and shall have attached thereto and made a part thereof such additional information as the Bureau may require] in the manner that the Department prescribes, and containing the information that the Department requires.

(b) [All contributions, interest or penalties, other than those for which application for compromise is being made, and all legal costs incurred by the Bureau shall be paid in full before the Bureau will give consideration to an employer's application. The amount offered in compromise shall accompany each application but the Bureau may waive this requirement when the circumstances justify the exception.] An application for compromise is effective only if both of the following occur:

(1) The Department notifies the employer that the application is approved.

(2) The employer pays the contributions, reimbursement, interest, penalties and legal costs that it owes, other than those amounts the Department has agreed to forgo in the compromise, within the time and in the manner that the Department specifies.

§ 63.64. Records to be kept by employer.

(a) *Content of records.* Each employer, whether or not liable for the payment of contributions, shall keep clear, accurate and complete employment and payroll records. The records [shall include] must contain the following information on each worker, including workers whom the employer considers to be independent contractors, workers whom the employer considers not "employees" under the law, and workers covered by an arrangement described in section 4(j)(2.1) of the law (43 P. S. § 753(j)(2.1)):

* * * * *

(4) Total remuneration paid for each pay period by type of payment (cash and [cash value of payments in kind] fair market value of noncash remuneration).

* * * * *

(7) [Full-time] All scheduled hours and hours worked.

* * * * *

(10) Number of credit weeks.

(11) Documentation of payments made to the worker, including bank statements, cancelled checks, copies of cancelled checks, check stubs, and electronic funds transfer records.

(12) If the worker is covered by an arrangement described in section 4(j)(2.1) of the law, the contract between the employer and the other party to the arrangement.

(13) Any contract between the employer and the worker.

(14) If the employer considers the worker to be an independent contractor or otherwise not an "employee" under the law, records, documentation and evidence supporting that position.

(15) Federal and State tax returns for the periods when the worker was employed.

(b) *Location [and], retention and inspection of records.*

(1) [All] The employment and payroll records [and supporting evidence, as well as all other business records such as cash books, journals, ledgers and corporate minutes,] required under subsection (a) shall be retained either at the place of employment or at an established central recordkeeping office for at least 4 years after contributions relating to [such] the records have been paid.

* * * * *

(3) [The records shall be open for inspection and transcription by authorized representation of the Bureau] The Department's authorized representatives may inspect, transcribe or photocopy all employment and payroll records required under subsection (a) and all other business records, including, without limitation, cash books, journals, ledgers and corporate minutes at any reasonable time and as often as may be deemed necessary. [They shall be] The employer or entity in possession of the records shall keep the records in [such] a condition that the information required may readily be obtained by representatives of the [Bureau] Department.

(c) *Scope.* For purposes of this section, the term "employer" includes any person for whom services are performed by an individual for remuneration.

§ 63.66. Power of attorney.

(a) *Power of attorney.* An employer may appoint an agent with full or limited power and authority to act on its behalf with the Department.

(b) *Form of power of attorney.* An employer's appointment of an agent shall be made in the manner prescribed by the Department and contain the information required by the Department.

Subchapter B. MULTISTATE AGREEMENTS MISCELLANEOUS

§ 63.75. [Approval of reciprocal coverage elections] (Reserved).

[The Assistant Director for Tax Operations shall have the authority to approve or disapprove reciprocal coverage elections in accordance with the provisions of this subchapter.]

Subchapter C. NONPROFIT ORGANIZATIONS MAKING PAYMENTS IN LIEU OF CONTRIBUTIONS

§ 63.91. [Purpose] Elections.

[This subchapter is intended to effectuate those provisions of the law which deal with filing a surety bond or depositing money or securities of equal value with the Department when a nonprofit organization elects to become liable for payments in lieu of contributions.]

(a) *Duration.* A nonprofit organization electing to make payments in lieu of contributions shall make its election effective for a period of 2, 3 or 4

calendar years. This subsection does not prevent a nonprofit organization from filing one or more successive elections.

(b) *Transitional provision.* An election that is effective prior to _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*) terminates on the later of the following dates, unless sooner terminated in accordance with the law:

(1) December 31 of the third calendar year following the calendar year in which the election became effective.

(2) December 31 of the calendar year in which this regulation takes effect, if this regulation takes effect from January 1 through June 30, or December 31 of the calendar year immediately following the calendar year in which this regulation takes effect, if this regulation takes effect from July 1 through December 31.

§ 63.93. Filing of surety bond.

Nonprofit organizations subject to [the provisions of] this subchapter electing to file a surety bond shall file with the [local Field Accounting Office of the Bureau] Department a surety bond [equal to 1.0% of the employer's taxable wages paid for subject employment for the most recent four calendar quarters prior to the election to make payments in lieu of contributions or a surety bond in an amount set by the Department, such bond to be executed by an approved bonding company] issued by an insurance company with a certificate of authority to provide such coverage in the Commonwealth. The term of the surety bond must coincide with the period for which the employer elects to make payments in lieu of contributions. The surety bond must secure reimbursement of benefit payments that are based on wages paid during the period of the election, including benefit payments made after the period of the election, together with interest and penalties.

§ 63.94. Filing of security deposit.

(a) In lieu of a surety bond, as prescribed in § 63.93 (relating to filing of surety bond), nonprofit organizations subject to this subchapter may deposit [moneys] money, in [the] a form [of bank-guaranteed checks payable] acceptable to the Department [of Labor and Industry] or securities [of equal present monetary value,] of a kind acceptable to the [Bureau, with the local Field Accounting Office of the Bureau, for transmittal to the Department in Harrisburg] Department. [A written receipt will be given to the employer depositing such moneys or securities. A copy of the receipt will be forwarded to the Bureau Accounting Division in Harrisburg and a copy retained in the local Field Accounting Office. Reference should also be made to §§ 63.95—63.97 (relating to moneys or securities received, securities pledged and return or sale of moneys or securities).]

(b) If a nonprofit organization deposits money or securities in connection with an election to make payments in lieu of contributions, it shall file a surety bond or deposit new collateral in connection with any subsequent election.

(c) Money or securities deposited with the Department in connection with an election to make payments in lieu of contributions secures reimbursement of both of the following, together with interest and penalties:

(1) Benefit payments that are based on wages paid during the period of the election, including benefit payments made after the period of the election.

(2) If the money or securities constitute new collateral in accordance with subsection (b), benefit payments that are based on wages paid during the period of the previous election, including benefit payments made after the period of the previous election.

§ 63.95. [Moneys] Money or securities received.

(a) [*Moneys*] *Money received*. The Department will deposit all [moneys] money received with the State Treasurer, Commonwealth of Pennsylvania. Any interest [thereon] paid by the State Treasurer on money received from an employer shall accrue to the employer, subject to § 63.97 (relating to return or sale of money or securities).

(b) *Securities received*. Securities received will be deposited with the State Treasurer of the Commonwealth. The securities shall be assigned to the Department and be negotiable by the Department at any time. Interest or dividends accruing thereon shall be the property of the owner of the securities, subject to § 63.97.

§ 63.96a. Conversion to contributory status.

(a) If an employer that elects to make payments in lieu of contributions fails to provide a surety bond, money or securities in accordance with section 1106(d) of the law (43 P. S. § 906(d)) and this subchapter, the employer's election is void.

(b) If an employer that elects to make payments in lieu of contributions provides a surety bond that ceases to be effective during the period of the election, and the employer does not provide a replacement bond for the remainder of the period of the election within 30 days after the Department requests the replacement bond, the Department will terminate the election. The Department will specify the effective date of the termination, which may be retroactive to the first day of the calendar quarter in which the bond ceases to be effective. A termination of an election under this subsection is not governed under section 1107(b) of the law (43 P. S. § 907(b)).

(c) If an employer who elects to make payments in lieu of contributions subsequently becomes a contributory employer, and the employer owes reimbursement for benefit payments, or interest or penalties, the unpaid reimbursement, interest or penalties constitute unpaid contributions, interest or penalties for purposes of section 301(a)(2) of the law (43 P. S. § 781(a)(2)). The date when benefits are paid is used to determine if the unpaid reimbursement, interest or penalties correspond to the period through the second calendar quarter of the preceding calendar year.

(d) If an employer who elects to make payments in lieu of contributions subsequently becomes a contributory employer, the employer remains liable to reimburse the Department for benefit payments

made after the period of the election that are based on wages paid during the period of the election, in addition to the employer's liability for contributions on wages paid after the period of the election.

§ 63.97. Return or sale of [moneys] money or securities.

Any deposit of [moneys] money or securities received will be held until the organization's liability for payments is terminated. Upon termination of liability the deposit will be returned, minus any amount, including interest and penalty, due the Department. The Department is authorized to sell securities deposited to satisfy any amount due, in which event any interest and increase in value accruing on the securities will be applied to the amount due to the Department. [All securities pledged to the Department but held in escrow will be released through written advice by the Department upon termination of liability as a reimbursing nonprofit employer, but only if all amounts due have been paid.]

§ 63.99. Assignment of rate of contribution.

[A 2% rate will be assigned to employers who elect the reimbursement method of payment and subsequently choose to convert to contributory status. The employer will be treated as a "new or newly covered" employer during the period in which he was in reimbursement status, and this period will not be taken into account for any of the purposes of experience rating. The entry rate of 2% is available only on the occasion of the first conversion from reimbursement to contributory status. Thereafter, the rate of contribution may not be less than the standard rate subject to adjustment under section 301.1 of the Law (43 P. S. § 801.1).]

If an employer who elects to make payments in lieu of contributions subsequently becomes a contributory employer, the employer's rate of contribution shall be determined in accordance with the following:

(1) Wages paid by the employer during the period of the election, employee contributions paid on those wages, and benefit payments based on those wages are not taken into account for purposes of experience rating.

(2) If the employer was a contributory employer before the period of the election and the employer's reserve account has not been terminated under section 302(d) of the law (43 P. S. § 782(d)), the employer is assigned a rate of contribution in accordance with section 301(a)(1) or 301.1 of the law (43 P. S. § 781(a)(1) and § 781.1)), whichever is applicable.

(3) If the employer was a contributory employer before the period of the election and the employer's reserve account has been terminated under section 302(d) of the law, or the employer was not a contributory employer before the period of the election, the employer is assigned a rate of contribution in accordance with section 301(a)(3) or (4) of the law, whichever is applicable, until the employer is no longer subject to those provisions.

(4) A rate of contribution determined in accordance with paragraph (2) or (3) is subject to any adjustments required under the rate provisions of the law.

(Editor's Note: The following subchapter is new and printed in regular type to enhance readability.)

Subchapter D. PAYMENT BY ELECTRONIC TRANSFER

Sec.	
63.111.	Definitions.
63.112.	Electronic transfer requirement, waiver and penalty.
63.113.	Voluntary participation.
63.114.	Date of payment.
63.115.	Miscellaneous provisions.

§ 63.111. Definitions.

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

ACH—Automated clearing house—A Federal reserve bank, or an organization established by agreement with the National Automated Clearinghouse Association, which operates as a clearing house for transmitting or receiving entries between financial institutions and financial institution accounts, and which authorizes an electronic transfer of funds between the financial institutions or financial institution accounts.

ACH credit—A transaction in which the payer, through its own financial institution, originates an ACH transaction crediting the Department's financial institution account and debiting its own financial institution account for the amount of the payment to the Department.

ACH debit—A transaction in which the Department, through its designated depository financial institution, originates an ACH transaction debiting the payer's financial institution account and crediting the Department's financial institution account for the amount of the payment to the Department.

Card processor—An entity which provides credit card and debit card payment services on behalf of the Department.

Credit card—A device or instrument which entitles the holder to obtain money, goods, services or anything of value on credit and is accepted by the card processor.

Debit card—A device or instrument which entitles the holder to obtain and transfer money from an account or accounts with a financial institution and is accepted by the card processor.

Electronic transfer—A transfer of funds by ACH credit, ACH debit, credit card or debit card.

§ 63.112. Electronic transfer requirement, waiver and penalty.

(a) An employer shall make payment for a calendar quarter by electronic transfer if the employer's liability for contributions, interest and penalty for that calendar quarter equals or exceeds \$5,000 and continue to pay by electronic transfer thereafter regardless of whether the liability threshold is reached or exceeded for any subsequent quarter.

(b) An employer that has elected to make payments in lieu of contributions shall make payment for a billing period by electronic transfer if the employer's liability for reimbursement, interest and penalties for that billing period equals or exceeds \$5,000 and continue to pay by electronic transfer thereafter regardless of whether the liability threshold is reached or exceeded for any subsequent billing period.

(c) Upon a showing of good cause, the Department may exempt an employer from the electronic transfer payment requirements of this subchapter.

(d) If an employer subject to the electronic transfer payment requirements of this subchapter makes payment other than as required, the Department will charge a penalty of 10% of the payment, up to a maximum of \$500 with a minimum of \$25 per occurrence. The sums will be collectible in the manner provided in sections 308.1, 308.2, 308.3 and 309 of the law.

§ 63.113. Voluntary participation.

An employer that is not required to make payments by electronic transfer, and an individual liable for an overpayment of unemployment compensation benefits, may make payments by electronic transfer in accordance with this subchapter.

§ 63.114. Date of payment.

(a) A payment by ACH debit is made on the earliest date when the following apply:

(1) The Department may exercise the payer's authorization to debit its financial institution account.

(2) The information necessary to process the payment has been received by the Department in the manner prescribed by the Department.

(b) A payment by credit card or debit card is made on the date when the information necessary to effectuate the payment is given to the card processor in a manner prescribed by the card processor.

(c) A payment by ACH credit is made on the date when the payment is received in the Department's financial institution account.

(d) If the date when a payment is made by electronic transfer, as determined under subsections (a)—(c), is delayed as a result of a human error or a technological failure by the Department, the Department's agents or the banking system that is beyond the employer's control, the Department will redetermine the date of payment as if the error or failure had not occurred.

§ 63.115. Miscellaneous provisions.

(a) Information necessary to effectuate a payment by ACH debit includes the name of the financial institution, the financial institution's routing number and the account number of the account to be debited. Information necessary to effectuate a payment by credit card or debit card shall be determined by the card processor.

(b) If a payment is made by electronic transfer and subsequently the transfer of funds to the Department is rescinded, the liability to which the payment was applied will be reinstated as if the payment was not made.

(c) The Department will provide one or more methods for payers to verify that payments by electronic transfer have been received by the Department.

(d) The Department may provide refunds by ACH credit.

[Pa.B. Doc. No. 10-1682. Filed for public inspection September 10, 2010, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Education

The State Real Estate Commission (Commission) proposes to amend §§ 35.201, 35.271—35.273, 35.275, 35.341, 35.359, 35.384 and 35.385 to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The amendments are proposed under the authority of section 404.1 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. § 455.404a).

C. Background and Purpose

In a previous rulemaking published at 34 Pa.B. 6530 (December 11, 2004), the Commission consolidated duplicative prelicensure and continuing education provisions and amended outdated, burdensome and unnecessary provider requirements in §§ 35.203, 35.228, 35.229, 35.271—35.273, 35.275, 35.341—35.363 and 35.381—35.392. Since that time, the Commission has reviewed the effectiveness of its regulations and determined that several provisions require additional amendment. Specifically, the Commission determined that the provider provisions in §§ 35.271—35.273 and 35.275 require additional consolidation; the continuing education provider requirements in §§ 35.352(b), 35.353(a), 35.355, 35.358(a) and 35.359(b) require cross-referencing in § 35.385 (relating to continuing education providers); the transcript/certificate requirements in § 35.359 (relating to course documentation) require amendment; and a required course needs to be added for new licensees in § 35.384(b) (relating to qualifying courses).

As part of its prior amendments, the Commission removed the requirement in § 35.359 that continuing education providers give transcripts or certificates of instruction to attendees because, at the time, a roster of attendees was being provided to the Commission directly by the providers following the courses. The Commission believed that this would eliminate an unnecessary paperwork requirement for providers and assist licensees and the Commission during renewal. However, having completed two renewals applying this method, the Commission determined that the electronic transfer system created additional administrative problems and abandoned electronic transfer in favor of the renewal and audit system used by other licensing boards within the Bureau of Professional and Occupational Affairs.

Another change made in the prior amendments was to eliminate the mandatory course requirement in § 35.384(b) in all but prenotified instances and replace it with all elective courses. As the Commission explained, except for instances when the RELRA or the regulations have been substantively modified or when, in the Commission's view, licensees require specific Commission guidance, the Commission believed that licensees should be able to take continuing education in subjects that directly benefit their practice or interest. The Commission continues to hold this belief generally; however, it believes that new licensees require additional guidance about agency, real estate law and real estate documents

regarding their specific practice area during their first years of practice that is not included in the prelicensure courses. Instead of allowing these new licensees to take elective courses to satisfy their continuing education requirement, the Commission believes that these licensees should take a required 14-hour course designed specifically for new licensees during the first renewal cycle in which they are required to complete continuing education. The Commission discussed this requirement with real estate education providers, its Voluntary Education Advisory Committee, real estate companies and licensees who agree that a required continuing education course for new licensees is beneficial. A course has been developed and is being offered during the 2009-2011 biennial period.

D. Description of Proposed Amendments

§ 35.201. Definitions

The Commission proposes adding a definition for “accredited college” in § 35.201 (relating to definitions) to simplify the educational requirements in Subchapter D (relating to licensing examinations).

Subchapter D. Licensing examinations

The Commission proposes consolidating the provider requirements in §§ 35.271(b)(iii) and (iv), 35.272(b)(2) and (3), 35.273(b)(2), (3) and (4) and 35.275(b)(2) and (3). In addition, in each of these sections, the Commission proposes cross-referencing the new definition of “accredited college” in § 35.201. Also, the Commission proposes adding the course transcript information currently in §§ 35.271, 35.272 and 35.275 (relating to examination for broker's license; examination for salesperson's license; and examination for rental listing referral agent's license) to § 35.273 (relating to examination for cemetery broker's license).

For each licensure class, the Commission determined that prelicensure education courses shall be taken from one of four sources: an accredited college; a real estate education provider in this Commonwealth; a real estate education provider outside of this Commonwealth that has been approved by the Commission in the jurisdiction where the provider is located; or a real estate industry organization outside of this Commonwealth that has been approved by the Commission in the jurisdiction where the organization is located. In this proposed rulemaking, the Commission consolidated § 35.271(b)(3)(iii) and (iv) and added “industry organizations” to §§ 35.272(b)(3)(iii), 35.273(b)(4)(iii) and 35.275(b)(3)(iii). In addition, the Commission proposes removing redundant language and consolidating the requirements in §§ 35.272(b)(2) and (3), 35.273(b)(2), (3) and (4) and 35.275(b)(2) and (3).

§ 35.341—Approval of real estate education provider

Because real estate education providers can be limited liability corporations and limited liability partnerships as well as corporations, the Commission proposes amending the documentation required to be submitted with a provider application in § 35.341(6)(iv) (relating to approval of real estate education provider) to require a copy of the registration documentation approved by the Department of State's Corporation Bureau.

§ 35.359—Course documentation

The Commission proposes amending the continuing education documentation requirements in § 35.359(b) by removing the electronic transfer requirement and requiring continuing education providers to again provide signed course transcripts/certificates of instruction to

course attendees and instructors. Proposed paragraph (1) institutes a 2-year retention requirement for continuing education documentation. Proposed paragraph (2) imposes an affirmative requirement on licensees to produce the transcripts/certificates verifying completion of the continuing education requirement to the Commission if audited.

§ 35.384—Qualifying courses

§ 35.385—Continuing education providers

The Commission proposes amending § 35.384(b) to require that in addition to required courses mandated by the Commission, licensees complete the Commission developed 14 hour post-licensure education course as satisfaction of the continuing education requirement within the first biennial period in which continuing education is required for new licensees. Additionally, the Commission proposes adding § 35.385(b) to cross reference §§ 35.352(b), 35.353(a), 35.355, 35.358(a) and 35.359(b) pertaining to standards for real estate education providers, because those sections are equally applicable to continuing education providers.

E. Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have fiscal impact on the Commonwealth, its political subdivisions or the public. The proposed rulemaking will impose a paperwork requirement which may have a slight fiscal impact on the regulated community because the amendments require real estate education providers to provide signed transcripts/certificates of completion to continuing education participants/instructors at the end of each course, and licensees are required to retain this documentation for 2 years following the end of the biennial renewal period for purposes of audit.

F. Sunset Date

The Commission reviews the effectiveness of its regulations on an ongoing basis. Therefore, a sunset date has not been assigned.

G. Regulatory Review

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 27, 2010, 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 must 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.

I. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Judith Pachter Schulder, Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649, jschulderstate.pa.us within 30 days

of publication of this proposed rulemaking. Reference No. 16A-5613 (Continuing Education) when submitting comments.

JOSEPH TARANTINO, Jr.,
Chairperson

Fiscal Note: 16A-5613. 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 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.201. Definitions.

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

Accredited college—A college, university or institute of higher learning accredited by the Middle States Commission on Higher Education or an equivalent accrediting body.

* * * * *

Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(4):

* * * * *

(3) To be counted toward the education requirement, a real estate course shall have been offered by:

(i) An accredited college [, university or institute of higher learning, whether in this Commonwealth or outside this Commonwealth] as defined in § 35.201 (relating to definitions).

* * * * *

(iii) A real estate education provider or industry organization outside this Commonwealth, that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider or industry organization is located. The course transcript or certificate of completion [shall] must state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider or industry organization is located.

[(iv) A real estate industry organization outside this Commonwealth, if the course is approved by the licensing jurisdiction of another state. The course transcript or certificate of completion shall state that the course is approved by the licensing jurisdiction which has approved it.]

* * * * *

§ 35.272. Examination for salesperson's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(2):

* * * * *

(2) Credits will be allowed for [each of the Commission-developed real estate courses—]Real Estate Fundamentals and Real Estate Practice[—when offered by:

(i) An accredited college, university or institution of higher learning located outside this Commonwealth.

(ii) A real estate education provider in this Commonwealth approved by the Commission.

(3) Credits will be allowed for] and all acceptable basic real estate courses when offered by:

(i) An accredited college[, university or institution of higher learning located outside this Commonwealth] as defined in § 35.201 (relating to definitions).

(ii) A real estate education provider in this Commonwealth approved by the Commission.

(iii) A real estate education provider or industry organization outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider or industry organization is located. The course transcript or certificate of completion must state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider or industry organization is located.

[(4)] (3) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

* * * * *

§ 35.273. Examination for cemetery broker's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(3):

* * * * *

(2) Credits will be allowed for [each of the Commission-developed real estate courses—]Real Estate Fundamentals and Real Estate Practice[—when offered by:

(i) An accredited college, university or institute of higher learning in this Commonwealth.

(ii) A real estate education provider approved by the Commission in this Commonwealth.

(3) Credits will be allowed for], cemetery courses [when offered by:

(i) An accredited college, university or institute of higher learning in this Commonwealth.

(ii) A real estate education provider in this Commonwealth approved by the Commission.

(4) Credits will be allowed for acceptable] and all basic real estate courses when offered by:

(i) An accredited college[, university or institute of higher learning located outside this Commonwealth] as defined in § 35.201 (relating to definitions).

(ii) A real estate education provider in this Commonwealth approved by the Commission.

(iii) A real estate education provider or industry organization outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider or industry organization is located. The course transcript or certificate of completion must state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider or industry organization is located.

[(iii)] (iv) A cemetery association outside this Commonwealth, if the course taught by the cemetery association is equivalent to a course taught by a real estate [school] education provider in this Commonwealth approved by the Commission.

[(5)] (3) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

* * * * *

§ 35.275. Examination for rental listing referral agent's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(2):

* * * * *

(2) Credits will be allowed for [each of the Commission-developed real estate courses—]Real Estate Fundamentals and Real Estate Practice[—when offered by:

(i) An accredited college, university or institute of higher learning in this Commonwealth.

(ii) A real estate education provider in this Commonwealth approved by the Commission.

(3) Credits will be allowed for] and all acceptable basic real estate courses when offered by:

(i) An accredited college[, university or institute of higher learning in this Commonwealth] as defined in § 35.201 (relating to definitions).

(ii) A real estate education provider in this Commonwealth approved by the Commission.

(iii) A real estate education provider or industry organization outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider or industry organization is located. The course transcript or certificate of completion must state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider is located.

[(4)] (3) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

* * * * *

Subchapter F. REAL ESTATE EDUCATION PROVIDERS

APPROVAL OF REAL ESTATE EDUCATION PROVIDERS

§ 35.341. Approval of real estate education provider.

A real estate education provider shall obtain the Commission's approval before commencing operations in this Commonwealth. To obtain approval from the Commission, the real estate education provider shall:

* * * * *

(6) Submit a completed real estate education provider approval application to the Commission with:

* * * * *

(iv) A [certificate of incorporation] copy of the registration documentation approved by the Department's Corporation Bureau, if the real estate education provider is a corporation, limited liability partnership, limited partnership or limited liability company.

* * * * *

ADMINISTRATION OF REAL ESTATE EDUCATION PROVIDERS

§ 35.359. Course [transcripts] documentation.

* * * * *

(b) *Continuing education.* [Effective with the renewal period commencing June 1, 2004, within] Within 30 days after a continuing education course has ended, the continuing education provider shall provide [the Commission with a roster in a format approved by the Commission, listing] each licensee who satisfactorily completed/taught the course[. Continuing education providers shall be required to issue course] transcripts/certificates of instruction [to students only upon request] that contain the information in § 35.360(a)(5)(i)—(viii) signed by the provider.

(1) Licensees shall retain the transcripts/certificates of instruction for 2 years following the biennial renewal period during which the courses were taken to renew the license.

(2) Licensees shall provide a copy of the transcripts/certificates of instruction to the Commission verifying completion of the continuing education requirement upon request.

Subchapter H. CONTINUING EDUCATION

§ 35.384. Qualifying courses.

(a) Except as provided in subsection (b), a licensee shall complete 14 hours of continuing education in acceptable courses in a minimum of 2-hour increments. [A standard license holder shall satisfy the continuing education requirement by doing one of the following:]

(b) The Commission may, for a given biennial license period and with adequate notice to standard license holders, require that all or part of the 14 hours be completed in required topics. In addition, during the first biennial period that continuing education is required, a new licensee shall complete the Commission-developed 14-hour required course for new licensees in satisfaction of the continuing education requirement.

* * * * *

§ 35.385. Continuing education providers.

(a) The following providers may offer instruction for continuing education:

(1) An accredited college[, university of institute of higher learning, whether in this Commonwealth or outside this Commonwealth] as defined in § 35.201 (relating to definitions).

* * * * *

(3) A real estate education provider or industry organization outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider or industry organization is located.

(b) Continuing education providers shall comply with the standards for real estate education providers in §§ 35.352(b), 35.353(a), 35.358(a), 35.355 and 35.359(b).

[Pa.B. Doc. No. 10-1683. Filed for public inspection September 10, 2010, 9:00 a.m.]