

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 102 ]

#### Erosion and Sediment Control and Stormwater Management

[CORRECTION]

An error occurred in the final-form rulemaking adding 25 Pa. Code § 102.14(a) (relating to riparian buffer requirements) which appeared at 40 Pa.B. 4861, 4894 (August 21, 2010). The correct version of § 102.14(a) is as follows:

#### § 102.14. Riparian buffer requirements.

(a) *General requirements for mandatory riparian buffers.*

(1) Except as in accordance with subsection (d), persons proposing or conducting earth disturbance activities when the activity requires a permit under this chapter may not conduct earth disturbance activities within 150 feet of a perennial or intermittent river, stream, or creek, or lake, pond or reservoir when the project site is located in an exceptional value or high quality watershed attaining its designated use as listed by the Department at the time of application and shall protect any existing riparian buffer in accordance with this section.

(2) Except as in accordance with subsection (d), persons proposing or conducting earth disturbance activities when the activity requires a permit under this chapter where the project site is located in an Exceptional Value or High Quality watershed where there are waters failing to attain one or more designated uses as listed in Category 4 or 5 on Pennsylvania's Integrated Water Quality Monitoring and Assessment report, as amended and updated, at the time of the application, and the project site contains, is along or within 150 feet of a perennial or intermittent river, stream, or creek, lake, pond or reservoir shall, in accordance with the requirements of this section do one of the following:

- (i) Protect an existing riparian forest buffer.
- (ii) Convert an existing riparian buffer to a riparian forest buffer.
- (iii) Establish a new riparian forest buffer.

The remaining text of the section was accurate as printed.

[Pa.B. Doc. No. 10-1573. Filed for public inspection August 20, 2010, 9:00 a.m.]

### ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 301, 302, 303 AND 305 ]

#### Administration of the Water and Wastewater Systems Operators' Certification Program

The Environmental Quality Board (Board) adds Chapter 302 (relating to administration of the water and wastewater systems operators' certification program) and rescinds Chapters 301—303 and 305 to read as set forth in Annex A. This final-form rulemaking describes the process the State Board for Certification of Water and Wastewater System Operators (Certification Board) will follow to administer the Water and Wastewater Systems Operators' Certification Program (Program) and identifies the duties and responsibilities of the Department of Environmental Protection (Department) and the operators and owners of drinking water and wastewater treatment systems in this Commonwealth. Additionally, it establishes standards for operator certification, recertification, certification renewal and security training; defines the certification renewal period and requirements for certification renewal; establishes appropriate fees; and defines classifications and subclassifications for certification.

This order was adopted by the Board at its meeting on June 15, 2010.

#### A. *Effective Date*

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

#### B. *Contact Persons*

For further information, contact Veronica Kasi, Chief, Division of Technical and Financial Assistance, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4053; or William Cumings, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. *Statutory Authority*

The final-form rulemaking is being made under the authority of section 4(c) of the Water and Wastewater Systems Operators' Certification Act (act) (63 P. S. § 1004(c)), which directs the adoption of rules and regulations necessary to implement the act, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to promulgate rules and regulations necessary for the performance of the work of the Department.

#### D. *Background and Purpose*

This final-form rulemaking describes the policies and procedures the Certification Board and the Department will follow to implement their responsibilities and duties under the act. This includes the procedures to be followed by applicants to become certified to operate a water or wastewater treatment system for the first time, to renew their certifications and to apply for reciprocity based on certification received from another state. The regulations

also describe the procedure the Certification Board will follow for the review of applications for certification, including the review of criminal history records (CHR). The regulations also define requirements for the suspension or revocation of an operator's certificate, upon petition by the Department and for the review of Department decisions related to operator training programs and courses. The final-form rulemaking also establishes the standards and requirements for operators of water and wastewater systems to become certified and maintain their certification. It also establishes the duties and responsibilities of operators and owners related to the operation of a community or nontransient, noncommunity water system, water distribution system, wastewater treatment system treating more than 2,000 gallons per day and a satellite wastewater collection system with a pump station. Finally, fees to cover the costs of Program administration are established.

This final-form rulemaking ensures that the Commonwealth's Program will continue to meet the Federal requirements established in the 1996 amendments to the Federal Safe Drinking Water Act for state drinking water programs. This final-form rulemaking is more stringent than the Federal guidelines in one area. The Federal guidelines apply only to drinking water system operators; this final-form rulemaking also applies to wastewater system operators. The decision to include wastewater system operators in the new requirements was made early in the process by the Certification Board and the Department after significant public input. This was done to improve Program consistency and implementation.

The Department and the Certification Board worked very closely with the Small Systems Technical Assistance Center for Small Systems (TAC) and the Certification Program Advisory Committee (CPAC) to draft Chapter 302. The elements of the overall structure of the Program were discussed in-depth with the respective committees. This resulted in consensus on the essential requirements and standards for certification and the roles and responsibilities of operators and system owners.

#### *E. Summary of Final-Form Rulemaking and Changes from Proposed to Final Form-Rulemaking*

The Board approved the proposed rulemaking with a 30-day public comment period on April 21, 2009. A notice of proposed rulemaking was published at 39 Pa.B. 3591 (July 11, 2009). Public comments were accepted from July 11, 2009, through September 9, 2009. The comment period was extended at the request of the regulated community and the Independent Regulatory Review Commission (IRRC). The Department received comments from 77 commentators.

Based on comments received during this official comment period and because the proposed rulemaking contained significant changes in several areas, the Department prepared an Advanced Notice of Final Rulemaking (ANFR) package for additional public comment. A notice of the availability of the ANFR was published at 40 Pa.B. 560 (January 23, 2010). The ANFR was optional, as it is not required by the Regulatory Review Act (71 P.S. §§ 745.1—745.12). However, this procedure allowed the Department to solicit additional comments prior to presenting a final-form rulemaking package to the Board. Comments submitted to the Department on the ANFR are summarized and responded to by the Department in this preamble and in a separate more detailed comment and response document. Comments from the ANFR were received through February 26, 2010, with the Department receiving comments from 13 commentators. In addition to

the previous opportunities for public comment on the proposed rulemaking, the public was again provided an opportunity to comment at the Certification Board meeting on March 19, 2010. These comments were taken into consideration by the Certification Board in the preparation of their final comments on the regulations and both comment response documents prepared by the Department.

The following is a summary of each subchapter and the changes made from proposed to final-form rulemaking.

*Subchapter A.* This subchapter defines the universe of the regulated community impacted by these regulations, establishes definitions and clarifies the standards that shall be met for certification. This subchapter was restructured to split the universe of the regulated community between drinking water and wastewater systems and to highlight the standards of certification. A number of definitions were deleted. The following terms were added or edited: "Activated sludge," "Administrative hearing," "Board-designated agent," "Board guidelines," "Board Secretary," "Certificate program," "Client ID," "Contact hour," "Conventional filtration," "Department," "Direct filtration," "Environmental Hearing Board," "Environmental Quality Board," "Environmental statute," "Fee," "Groundwater," "Membrane filtration," "PLC—Programmable logic controls," "Permitted average daily discharge flow," "Person," "Political subdivision," "Post-presentation credit," "Public water system," "Recertification," "SCADA System—Supervisory control and data acquisition system," "Satellite collection system," "Single entity collection system," "Site-specific," "Ultraviolet disinfection" and "Upgrade."

*Subchapter B.* This subchapter prescribes what a complete application should include for certification, recertification, upgrade, renewal and reciprocity along with how to obtain the appropriate Department approved application forms. In addition, this subchapter discusses program fees. Revisions to this subchapter were made to clarify how to obtain appropriate Department-approved application forms from the Board Secretary or through the Department's web site and to refine how the fees will be applied.

*Subchapter C.* This subchapter covers the procedures the Certification Board will follow in implementing its powers and duties as defined in the act. These include the issuance of certificates for certification or recertification, upgrade, reciprocity, renewal and extensions. Also, this subchapter prescribes the actions the Board can take to suspend, revoke, modify or reinstate an operator's certificate upon petition by the Department or review Department training decisions. Revisions to this subchapter were made to provide more definitive time frames for these procedures.

*Subchapter D.* This subchapter identifies and explains the requirements for submission of a CHR, the investigation and review procedures the Board will adhere to, the prescribed actions the Board can take as a result of a CHR and the time frame for action by the Certification Board. Changes in this subchapter further clarified the requirements and responsibilities of the applicant, the Department and the Certification Board.

*Subchapter E.* This subchapter prescribes the general requirements for administrative hearings. These hearings will be conducted by the Certification Board in accordance with these procedures whenever the Department petitions the Certification Board to suspend, modify or revoke an operator's license. There were no substantive changes to this subchapter.

*Subchapter F.* This subchapter discusses the examination requirements. This includes general provisions for developing and administering valid certification examinations (using psychometric principles and recognized industry standards) to measure an applicant's knowledge, skills and abilities to make process control decisions. Additionally, this subchapter discusses the roles and responsibilities for the Department, the Certification Board and approved examination providers in the preparation and administration of these examinations. Eligibility requirements that an applicant shall comply with to take an examination are also defined. Revisions to this subchapter were made to limit the situations when an operator shall retake an examination.

*Subchapter G.* This subchapter discusses the minimum education, examination and experience requirements; defines the methodology for determining qualifying experience and creates an accelerated certification option for systems having to upgrade the system for various reasons that will require the available operators to also upgrade their license. Provisions for accelerated certification were modified in response to comments to clarify that operators who meet the requirements for accelerated certification do not have to meet additional experience requirements.

*Subchapter H.* This subchapter establishes standards for the training approval program, establishes the continuing education requirements for certificate renewal and defines the system security training requirements. Significant revisions were made to § 302.804 (relating to system security training requirements) in response to comments to add criteria to define when the Department would require additional training. The Department will also be required to notify the operators needing to take this additional training in writing.

*Subchapter I.* This subchapter deals with the classification and subclassification of water and wastewater systems. Revisions to §§ 302.901 and 302.902 (relating to classification and subclassifications of water systems; and classifications and subclassifications of wastewater systems) identified what conditions or circumstances the Department will consider when defining a change in classification or subclassification, or both, of a water or wastewater system. These include an increase in capacity that changes the class of the system, the addition or loss of a treatment technology, other Federal or State regulatory changes regarding a treatment technology used at a system and the issuance of a permit changing the class or subclassification of a system.

*Subchapter J.* This subchapter outlines the certification classes and subclassifications for water and wastewater operators. Also, operator-in-training status, grandparented operators and laboratory supervisor certification are discussed. Section 302.1006 (relating to laboratory supervisor certification) was revised to ensure consistency with Chapter 252 (relating to environmental laboratory accreditation).

*Subchapter K.* This subchapter applies to a professional engineer registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148—158.2) who has been successfully examined in civil, environmental or sanitary engineering and is a certified operator or an applicant for operator certification. Also, provisions for issuance of initial certification and experience requirements for professional engineers are discussed.

*Subchapter L.* This subchapter defines the duties owners and operators may perform, identifies who can make

process control decisions, lists the components of a process control plan, defines standard operating procedures and its contents, characterizes the number of operators required at a system and defines the role of the operator in responsible charge. In addition, this subchapter defines the conditions under which an owner can choose to use a circuit rider or a programmable logic controls and supervisory control and data acquisition system (SCADA) to ensure process control decisions are made properly by a certified operator. Significant changes were made to this subchapter to refine the duties of operators and owners to address concerns of commentators about the level of operator liability, define criteria under which the Department would require a process control plan, to further refine who can make process control decisions at a system and to eliminate the need for an operator to submit written reports to the owner when the operator suspects conditions exist that are, or may, result in a violation. The operator would still be required to report these conditions to the owner, orally or otherwise. Required compliance was clarified to only include those Federal or State laws or rules and regulations promulgated or permit conditions and requirements applicable to the operation of water or wastewater systems. Section 302.1209 (relating to assessment of fines and penalties) was added to provide that fines and penalties for violations of certain sections of the act will only be assessed after an order of the Department has been violated.

#### *F. Summary of Comments and Responses Regarding the Proposed Rulemaking*

The Board approved the proposed rulemaking with a 30-day public comment period on April 21, 2009. A notice of proposed rulemaking was published at 39 Pa.B. 3591. Public comments were accepted from July 11, 2009, through September 9, 2009. The comment period was extended at the request of the regulated community and IRRC. The Department received comments from 77 commentators.

Based on comments received during this official comment period and because the proposed rulemaking contained significant changes from existing regulations in several areas, the Department prepared an ANFR package for additional public comment. A notice of the availability of the ANFR was published at 40 Pa.B. 560. Comments from the ANFR were received through February 26, 2010, with the Department receiving comments from 13 commentators. In addition to the previous opportunities for public comment on the proposed rulemaking, the public was provided an opportunity to comment at the Certification Board meeting on March 19, 2010. These comments were taken into consideration by the Certification Board in the preparation of their final comments on the regulations and both comment response documents prepared by the Department.

The major changes made to the final-form rulemaking in response to comments received during the public comment period are categorized as follows:

*Definitions.* A number of definitions were revised as suggested by the commentators. In addition, the definitions for "Conventional filtration," "Membrane filtration" and "Ground water" were revised to ensure continued consistency with Chapter 109 (relating to safe drinking water).

*Scope.* This section was revised to more accurately capture the standards that shall be met to ensure compliance.

*Fees.* While the actual fee structure did not change, further clarification as to how the fees would be applied

was added. Several commentators requested that a dedicated fund for the program fees be established.

*Collection systems.* The section distinguishing the requirement for a certified operator based on ownership was deleted. The definitions for single entity and satellite collection systems were revised to parallel statutory language.

*Laboratory supervisor subclassification.* Sections referring to this subclassification were revised to ensure consistency between Chapter 302 and Chapter 252. Provisions for the grandparenting of existing laboratory supervisors were added. In addition, existing certified operators who want to continue as the laboratory supervisor will have 12 months after the Certification Board starts offering this subclass to satisfy the standards for certification.

*Operator liability.* Section 302.1209 replaced proposed § 302.1209, regarding satellite collection systems. Section 302.1209 was added to provide the Department's assessment of a penalty for violations of certain sections of the act will be based on a person's failure to comply with an order of the Department. This has always been the intention of the Department and the way the Program has been implemented since 2002. In addition, operator responsibility for compliance was limited to only those laws, rules and regulations and permit conditions regarding the operation of a water or wastewater system. Responsibility for results of standard operating procedures was limited to only those actions taken by operators under the direct supervision of the operator in responsible charge.

*Duties of operators.* The duties of operators were revised to parallel statutory language. Additional language to further clarify the statutory requirement for a report from the operator to an owner regarding violations and potential violations was deleted.

*Process control decisions.* Language pertaining to Department staff making process control decisions under specific situations was deleted.

*Process control plans.* Language was added to clarify when the Department would ask for the development of these plans and who would be responsible for their development.

*Security training.* Further definition as to when and how the Department could require additional security training beyond the initial training course was added.

The major changes made to the final-form rulemaking in response to comments received during the ANFR are categorized as follows:

*Scope.* This section was revised to more accurately capture who is impacted by the regulations.

*SCADA systems.* Language was revised to more accurately reflect the level of input an available operator should have in the programming, operation and maintenance of a SCADA system and how the use of these systems impact the operation of a water or wastewater system.

*Circuit riders.* Language was changed to ensure the requirements for the use of a circuit rider only apply to those systems owned by different entities but operated by the same available operator. In addition the content and requirements for a general workplan were modified.

The following were comments received during the public comment period that did not result in a change in the final-form rulemaking. The same topic was also raised by some commentators as part of the ANFR:

*Available operator report.* Commentators wanted the submittal of this report eliminated. However, the Department feels this report is an essential tool to ensure accuracy of the Department's records to comply with Federal and statutory requirements.

*Consequences of process control decisions.* A complete level of comfort with the issue of operator liability and the consequences of process control decisions cannot be reached in regulation because of the need to consider each situation on a case-by-case basis. Language provided by commentators as part of the ANFR process would have transferred much of this responsibility to the owner, instead of the operator. Federal guidelines and requirements do not allow for this transference.

The following comment was received during the ANFR process that did not result in a change in the final-form rulemaking:

*Automatic extensions.* Commentators wanted an automatic 90-day extension of an operator's renewal cycle if the operator had completed some, but not all, of the continuing education hours needed for certificate renewal. The existing framework allows for these extensions to be awarded upon request to the Certification Board. The Certification Board needs to continue to review these situations on a case-by-case basis and award the extensions when warranted.

One final issue identified by the commentators during the public comment period that did not result in a change to the final-form rulemaking at this time is allowing operators to "bank" extra continuing education credits from one renewal cycle to the next cycle. At the request of CPAC, TAC and the Certification Board, the Department initiated further research on the feasibility of implementing a "banking" option. To that end, the Department committed to working with CPAC, TAC, the Certification Board and other representatives of the regulated community, including approved training providers and certified operators, to explore issues relevant to the successful implementation of a "banking" option. If an option appears to be feasible, the Department may initiate regulatory revisions to allow for the banking of extra continuing education credits. The Department's analysis will be done as soon as possible, but no later than 3 years from now when the Department is required to submit its first review of the proposed fee structure.

#### G. *Benefits, Costs and Compliance*

*Benefits.* The intended results of these regulations are to protect the environment, ensure the public's health and safety and promote the long-term sustainability of this Commonwealth's drinking water and wastewater treatment systems by ensuring that certified operators with the appropriate knowledge, skills and abilities are available to make the necessary process control decisions. Therefore, the biggest beneficiary of these regulations is the general public.

The classification and subclassification framework more accurately reflects what the operator needs to understand to operate a system effectively and successfully. This framework was developed in partnership with representatives of the regulated community to meet their needs. In addition, in some instances, once certified, many operators will receive an increase in pay. Finally, the system

owners may also benefit from cost savings realized through more effective and efficient operation of their water or wastewater system.

Implementation of these regulations will ensure continued approval of the program by the United States Environmental Protection Agency (EPA). This approval is reviewed on an annual basis. If the EPA chooses not to approve the Program, the Commonwealth stands to lose approximately \$5.8 million per year in Federal funding for the State Revolving Loan Fund, administered by the Pennsylvania Infrastructure Investment Authority.

*Compliance costs.* An individual responsible for making process control decisions at a drinking water or wastewater

ter treatment system in this Commonwealth shall be appropriately certified for that system. A process control decision is a decision that changes or maintains water quality or water quantity to protect public health or the environment. Owners of a drinking water community or nontransient noncommunity water system, drinking water distribution system, wastewater treatment system treating more than 2,000 gallons per day or a satellite wastewater collection system with a pump station shall designate at least one certified operator to make all the process control decisions for the system.

The estimated costs to the operator to comply with provisions of these regulations are summarized in Table 1.

Table 1. Estimated Costs to the Operator

<i>Requirement</i>	<i>Cost</i>	<i>Description/Comments</i>
Initial certification	\$150	Paid to the Department. This fee is incurred when a person submits an application to become a certified operator. This certification is valid for 3 years.
Certification renewal	\$60	Paid to the Department. This cost is incurred once every 3 years after the initial certification period.
Examination fee for both initial certification and certain upgrades to license	\$35 per examination session	Paid to the Department. Operators are allowed to take as many examinations as they think they can complete in 4 hours. Most operators are able to complete the necessary examinations needed for the more common treatment systems within one or two sessions.
Examination provider registration fee	Varies	Paid to the approved examination provider. These fees are not established by the Department. However, the Department recommends less than \$100. Fees are designed to allow the approved examination provider the ability to recover incurred costs.
CHR	\$10	Onetime fee charged by the Pennsylvania State Police.
Continuing education	\$240—\$900	Paid to one of the Department's approved training providers. Depends on number of hours needed and average cost per hour for training

These regulations authorize an annual service fee for system owners, based on the amount of flow the system is permitted to treat. The assessment of this fee is tied to the classification of the system and the certification class needed by the system owner's designated available operators. The maximum fee that any one owner of more than one system pays is \$10,000. The only other cost for compliance for the owner is the actual cost for hiring a certified operator. The average cost to hire a certified operator is between \$30,000 and \$80,000 per year (based on a limited survey of operators completed in 2003). It is strongly advised that owners hire more than one certified operator. However, unless there are problems at the system, this responsibility is left to the owner. If necessary, the Department does have the authority to order the owner to hire additional certified operators to address specific environmental compliance problems. In addition, the owner may choose to cover the operator's costs for obtaining continuing education contact hours. This is an arrangement negotiated between the owners and their certified operators.

#### *Compliance Assistance Plan*

The Department is implementing a comprehensive training and compliance assistance strategy to assist operators and owners who are required to comply with the program. This includes web-based training through the Department's EarthWise Academy, additional classroom training as needed, a comprehensive training approval process and packaged training programs. This comprehensive strategy is designed to take advantage of existing training expertise in the industry and promote a market for training providers to meet the training needs of this program. Additional compliance assistance is available through the Drinking Water Capability Enhancement Program, the Wastewater Diagnostics Program and the Drinking Water and Wastewater Outreach Assistance Provider Programs.

#### *Paperwork Requirements*

The following is a list of paperwork requirements for the operator in Chapter 302. Beyond the operator's time and the Program fees previously identified, there are no additional costs for this rulemaking.

1. Certification examination registration form (to register to take an examination).

2. Application for certification action (for certification, recertification, certification upgrade or certification through reciprocity).

3. Application for certification renewal (done once every 3 years).

4. CHR from the Pennsylvania State Police.

5. Application for exemption (only needed if operator will not be able to complete requirements for initial certification or certification renewal due to extenuating circumstances such as military service or health problems).

6. The development and approval of standard operating procedures if the operator and owner choose to utilize this tool to ensure all process control decisions are made by an available operator.

7. The development and approval of a process control plan that describes the operational procedures for a drinking water or wastewater treatment system. This will only be required by the Department on a case-by-case basis; depending on the level of noncompliance at the system and the existence of equivalent plans, such as an operation and maintenance plan, an emergency response plan or standard operating procedures.

8. The development of a management plan or contract, if an operator wants to serve as a circuit rider, when the owner is responsible for more than one drinking water or wastewater treatment system. The management plan or contract should identify the systems, their characteristics, points of contact and the number of visits or expected hours the operator will complete in a designated time frame. System specific plans shall also be developed for each system to include procedures to be followed by personnel at the system when the circuit rider is not at the system.

9. The operator shall notify the owner of violations or potential violations at the system. Recommendations, if the operator has any, for resolving the problem should also be included.

The owner will need to report the names, addresses and level of certification of all operators designated as available operators for the system upon written request from the Department. Changes in available operators shall be reported within 10 days. If the owner chooses to designate an operator in responsible charge to utilize standard operating procedures, the name, address and level of certification of the operator shall also be reported to the Department upon request.

A training provider who would like to provide training to operators to meet the training or continuing education requirements shall become an approved training sponsor and have courses approved. This process is documented in the "Training Provider Manual for the Pennsylvania Water and Wastewater System Operator Training Program," DEP ID: 383-2300-002.

An entity which would be an approved examination provider shall become approved and comply with the Certification Board guidelines for the scheduling of examinations and the registration of applicants.

H. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The De-

partment encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking incorporated the following pollution prevention incentives by ensuring that qualified, certified operators are making all operational decisions in this Commonwealth's drinking water and wastewater treatment systems. The water and wastewater treatment system operator is the key element in overall process control. By improving the certified operator's capabilities, more effective treatment and removal of pollutants and better use of available resources will result. Testing and training programs are designed to focus on different ways the operator can more effectively operate the system to minimize and prevent pollution and conserve energy.

I. *Sunset Review*

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

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 30, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 3591, to IRRC and to the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 4, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 5, 2010, and approved the final-form rulemaking.

K. *Findings*

The Board finds that:

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

(2) A public comment period was provided as required by law and all comments were considered. Also, the Department undertook an ANFR, optional process not required by law, to allow an additional 30 day comment period. Notice of the ANFR was published at 40 Pa.B. 560.

(3) These regulations do not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 3591.

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

## L. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapters 301—303 and 305, are amended by deleting §§ 301.1—301.3, 301.11—301.13, 303.1—303.3, 303.11—303.14, 303.21—303.28, 303.31—303.34 and 305.1—305.7 and by adding §§ 302.101—302.104, 302.201, 302.202, 302.301—302.309, 302.401—302.404, 302.501, 302.601—302.605, 302.701—302.705, 302.801—302.804, 302.901, 302.902, 302.1001—302.1006, 302.1101—302.1103 and 302.1201—302.1209 to read as set forth in Annex A.

(*Editor's Note:* The addition of § 302.104 was not included in the proposed rulemaking published at 39 Pa.B. 3591.)

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

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

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

(e) This order shall take effect immediately.

JOHN HANGER,  
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4814 (August 21, 2010).)

**Fiscal Note:** Fiscal Note 7-443 remains valid for the final adoption of the subject regulations.

## Annex A

## TITLE 25. ENVIRONMENTAL PROTECTION

## PART II. STATE BOARD FOR CERTIFICATION OF SEWAGE TREATMENT PLANT AND WATERWORKS OPERATORS

## CHAPTER 301. (Reserved)

## §§ 301.1—301.3. (Reserved).

## §§ 301.11—301.13. (Reserved).

## CHAPTER 302. ADMINISTRATION OF THE WATER AND WASTEWATER SYSTEMS OPERATORS' CERTIFICATION PROGRAM

## Subch.

A.	GENERAL PROVISIONS
B.	GENERAL REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATION ACTIONS
C.	BOARD PROCEDURES AND ACTIONS
D.	CRIMINAL HISTORY RECORDS
E.	ADMINISTRATIVE HEARINGS OF THE BOARD
F.	PREPARATION AND ADMINISTRATION OF CERTIFICATION EXAMINATIONS
G.	EDUCATION, EXAMINATION AND EXPERIENCE REQUIREMENTS
H.	CONTINUING EDUCATION AND TRAINING
I.	SYSTEM CLASSIFICATION AND SUBCLASSIFICATIONS
J.	OPERATOR CLASSES AND SUBCLASSIFICATIONS
K.	PROFESSIONAL ENGINEERS
L.	SYSTEM OPERATION

## Subchapter A. GENERAL PROVISIONS

Sec.	
302.101.	Definitions.
302.102.	Purpose.
302.103.	Scope.
302.104.	Certification requirements.

## § 302.101. Definitions.

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

*Accelerated certification*—A method of upgrading a system's available operators' certificates to accommodate a change in the system's capacity or treatment technology.

*Act*—The Water and Wastewater Systems Operators' Certification Act (63 P. S. §§ 1001—1015.1).

*Activated carbon adsorption*—A water treatment process designed to improve the quality of water being treated by using activated granular or powdered carbon to remove specific organic chemical compounds by adsorption.

*Activated sludge*—The treatment technology that mechanically introduces air into wastewater to achieve microbiological suspended growth treatment such as extended aeration, sequential batch reactors, contact stabilization, conventional, step feed or oxidation ditch.

*Administrative hearing*—A meeting of the Board, or Board-designated agent, held upon petition of the Department to revoke, suspend, modify or reinstate an operator's certificate in accordance with 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth agencies).

*Aeration*—A water treatment process designed to improve the quality of water being treated by introducing air or oxygen into water to remove undesirable dissolved gases, to remove volatile organic compounds or to oxidize inorganic compounds so they can be removed as particulates.

*Applicant*—A person seeking certification as a water or wastewater system operator.

*Application for certification action*—A written request for the Board to take a certification action using approved Department forms.

*Available operator*—A certified operator who is onsite or able to be contacted as needed to make process control decisions in a timely manner to protect public health and the environment.

*Bioperable operator*—A certified operator who holds a valid certificate for both water and wastewater systems.

*Bioperable training*—Department-approved continuing education training that has content that is applicable to both water and wastewater systems.

*Board*—The State Board for Certification of Water and Wastewater Systems Operators.

*Board-designated agent*—A Board member, Certification Program Advisory Committee member or Department staff person who completes certain duties on behalf of the Board.

*Board guidelines*—The guidelines established to carry out the powers and duties of the Board.

*Board Secretary*—A Department staff member elected by the Board to implement administrative aspects of the Drinking Water and Wastewater System Operators' Certification Program.

*CHR—Criminal history record*—A report of criminal history record issued by the Pennsylvania State Police under 18 Pa.C.S. Chapter 91 (relating to criminal history record information).

*Cartridge or bag filtration*—For drinking water, a process for the purpose of substantial particulate removal by straining with bag or cartridge filters manufactured of various materials and pore sizes.

*Certificate program*—A Department-approved curriculum or series of training courses leading to a certificate or diploma in water or wastewater treatment.

*Certification*—The process by which an individual obtains a water or wastewater system operator's certificate.

*Certification action*—Action taken by the Board related to a certification examination or recertification or the issuance of an initial certificate, certificate renewal or certificate through reciprocity.

*Certification Program Advisory Committee*—The advisory committee created under the act.

*Certified operator*—An operator who holds a valid certificate in accordance with the act.

*Chemical addition*—A water treatment process designed to improve the quality of the water being treated through the addition of chemicals such as lime, soda ash, caustic soda and permanganate.

*Circuit rider*—A management program in which a certified operator may make process control decisions at more than one system of different ownership.

*Class*—An alphabetic letter assigned by the Department to a water or wastewater system based upon the classification of a system or an alphabetic letter assigned to an individual's certificate.

*Classification*—The size or type of a water or wastewater system.

*Clean Streams Law*—The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Client ID*—The unique data management system generated identification number assigned to the operator used to track the operator's certification records.

*Collection system*—A system of pipelines or conduits, pumping stations and force or gravity mains used for collecting and conveying wastes to a point of treatment and disposal.

*Community water system*—A public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

*Consecutive system*—

(i) A public water system that obtains all of its water from another public water system and resells the water to a person, provides treatment to meet a primary maximum contaminant level or provides drinking water to an interstate carrier.

(ii) The term does not include bottled water and bulk water systems as defined in § 109.1 (relating to definitions).

*Contact hour*—The standard unit of measure assigned by the Department for participation in a Department-approved training event based on the amount of instruction time received.

*Continuing education*—Approved activities to include training, outreach programs, contact hours, meetings,

presentations and other activities designed to increase the knowledge, skills and abilities of system operators.

*Conventional filtration*—For drinking water, the series of processes for the purpose of substantial particulate removal consisting of coagulation, flocculation, clarification and granular media filtration. The clarification step must be a solid/liquid separation process where accumulated solids are removed during this separate component of the treatment system.

*Corrosion control and sequestering*—A water treatment process designed to mitigate the adverse effects of corrosion in drinking water.

*Department*—The Department of Environmental Protection of the Commonwealth.

*Diatomaceous earth filtration*—For drinking water, a process for the purpose of substantial particulate removal, in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum) and, while the water is filtered by passing through the cake on the septum, additional filter media, known as body feed, is continuously added to the feed water, to maintain the permeability of the filter cake.

*Direct filtration*—For drinking water, a series of processes implemented for the purpose of substantial particulate removal consisting of coagulation and filtration. The term includes flocculation after coagulation, but does not include sedimentation.

*Distribution system*—Pipelines, appurtenances, devices and facilities that convey potable water under pressure to customers.

*Drinking water environmental laboratory supervisor*—An individual having the knowledge, skills and abilities necessary to supervise laboratory procedures and the reporting of analytical data for an environmental laboratory operated by a drinking water system in accordance with industry, State and Federal standards.

*Environmental Hearing Board*—The board established under the Environmental Hearing Board Act (35 P. S. §§ 7511—7516).

*Environmental laboratory*—A facility engaged in the testing or analysis of environmental samples.

*Environmental Quality Board*—The board established under section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510—20).

*Environmental sample*—A solid, liquid, gas or other specimen taken for the purpose of testing or analysis as required by an environmental statute.

*Environmental statute*—A statute administered by the Department or the EPA relating to the protection of the environment or protection of public health, safety and welfare.

*Examination*—A test module or grouping of test modules administered by the Board or its designated agent used in part to determine the competency of applicants for certification or recertification.

*Fee*—A nonrefundable cost assigned to cover the expenses of the program.

*Fixed film treatment*—A wastewater treatment technology that uses a fixed contact media to achieve treatment such as trickling filters and rotating biological contactors.

*GED*—General equivalency diploma.



*Gaseous chlorine disinfection*—A water treatment process designed to inactivate pathogenic organisms from water being treated utilizing gaseous chlorine.

*Grandparented*—The temporary exemption for an existing operator of an existing system, as of February 21, 2002, from the initial educational and examination requirements for certification where a system was not required by prior law to have a certified operator. A grandparented operator may be the operator in responsible charge.

*Groundwater*—Water that is located within the saturated zone below the water table and is available to supply wells and springs.

*Hydraulic design capacity*—The maximum monthly design flow at which a drinking water or wastewater system is expected to consistently provide the required treatment or at which a distribution or collection system is expected to properly function without creating a backup, surcharge or overflow.

*Industrial wastewater treatment system*—Any system that treats industrial waste or pollution, but not sewage, as those terms are defined in section 1 of The Clean Streams Law (35 P. S. § 691.1).

*Investigation*—A detailed inquiry as to the nature, circumstances and official records regarding an applicant or certified operator's criminal conviction as identified in a criminal history record.

*Ion exchange and greensand*—A water treatment process such as greensand filtration, ion exchange or activated alumina designed to improve the quality of water being treated by removal of inorganic constituents.

*Master certificate*—A certificate authorizing an operator to make process control decisions at any water or wastewater system of a specific size, regardless of the treatment technology subclassifications used by that system.

*Membrane filtration*—For drinking water:

(i) A pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test.

(ii) The term includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration and reverse osmosis.

*NPDES*—The National Pollutant Discharge Elimination System as authorized under section 402 of the Federal Clean Water Act (33 U.S.C.A. § 1342).

*Noncommunity water system*—A public water system which is not a community water system.

*Nongaseous chemical disinfection*—A water treatment process designed to inactivate pathogenic organisms from water being treated utilizing nongaseous chemical elements or compounds.

*Nontransient noncommunity water system*—A noncommunity water system that regularly serves at least 25 of the same persons over 6 months per year.

*Operator*—

(i) An individual who works with water or wastewater system processes or portions thereof.

(ii) The term includes, but is not limited to, an individual who may be gaining experience to obtain certification in appropriate subclassifications within classifica-

tions of certification. These individuals will have a working knowledge of system operation.

*Operator-in-responsible-charge*—An individual designated by the owner to be the certified operator who makes the process control decisions that directly impact the quality or quantity, or both, of water.

*Operator-in-training*—An applicant for certification who has passed the certification examination but does not meet the experience requirements.

*Order of the Department*—An order of the Department issued under section 4(b)(2) of the act (63 P. S. § 1004(b)(2)) and orders of the Department issued under section 4(b)(1.1) of the act.

*Owner*—A person who owns or is the holder of an applicable permit for the operation of a water or wastewater system.

*Ozonation*—The water treatment process designed to inactivate pathogenic organisms from water being treated utilizing ozone.

*PLC—Programmable logic controls*—A small computer used for automated control of machinery used for water and wastewater treatment. The PLC replaces the many timers, relays and other devices used to control start/stop, run time and level controls of this machinery.

*Permitted average daily discharge flow*—The permitted annual average daily discharge flow, as stated in the NPDES or Water Quality Management (WQM) permit.

*Person*—

(i) An individual, company, corporation, municipality, municipal authority, partnership, firm, association, trust, estate, public or private institution, or any agency of Federal or State government.

(ii) The term also includes the officers, directors, employees and agents of any partnership, firm, association, company, corporation, municipality, municipal authority, public or private institution or any agency of Federal or State government.

*Petition*—A written request from the Department to the Board to take an action to modify, suspend, revoke or reinstate a certified operator's certificate.

*Post-presentation credit*—Contact hours for precertification or continuing education credit for a training course not previously approved by the Department. An operator may obtain post-presentation credit upon application to the Department.

*Process control decision*—A decision that maintains or changes the water quality or quantity of a water system or wastewater system in a manner that may affect the public health or environment.

*Process control plan*—A plan developed by an operator in responsible charge that outlines the facilities, methods, activities and treatment alternatives necessary to meet permit requirements and provide long term and reliable system operations.

*Professional engineer*—An engineer registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148—158.2), who has been examined in civil, sanitary or environmental engineering and determined proficient.

*Psychometrics*—The analytical methodology and design of tests to evaluate and measure psychological variables such as intelligence and aptitude.

*Public water system—*

(i) A system which provides water to the public for human consumption which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The term includes collection, treatment, storage and distribution facilities under control of the operator of the system and used in connection with the system.

(ii) The term includes collection or pretreatment storage facilities not under control of the operator which are used in connection with the system.

(iii) The term also includes a system which provides water for bottling or bulk hauling for human consumption. Water for human consumption includes water that is used for drinking, bathing and showering, cooking, dishwashing or maintaining oral hygiene

*Recertification—*The process by which an individual previously certified under the act, obtains a new certificate following expiration, suspension or revocation of the previous certificate.

*Renewal of certification—*The process by which an individual extends for another period of time an existing, valid water system or wastewater system operator's certificate under the act.

*SCADA—Supervisory control and data acquisition system—*A specialized computer system designed to monitor and control many of the processes and operations for water and wastewater treatment. A SCADA system controls equipment based on predetermined criteria, monitors the status of treatment processes and equipment and initiates commands automatically based on conditions or thresholds defined by the available operator. The available operator can also initiate process control changes from a workstation connected to the SCADA system.

*Satellite collection system—*A wastewater system consisting only of collection facilities with at least one pump station, which is designed to convey in excess of 2,000 gallons per day of untreated wastewater to a wastewater system owned by a different entity.

*Serving an average—*The hydraulic design capacity of a water system.

*Single entity collection system—*A wastewater system consisting only of collection facilities with at least one pump station which is designed to convey in excess of 2,000 gallons per day of untreated wastewater to a wastewater treatment system owned by the owner of the collection system.

*Slow sand filtration—*For drinking water, a process for the purpose of substantial particulate removal by physical and biological mechanisms during the passage of raw water through a bed of sand at low velocity, generally less than 0.4 meter per hour.

*Subclassification—*A number assigned by the Department to a water or wastewater system based upon the treatment process used by that system or the number assigned to an operator's certificate based upon meeting the certification requirements for a specific treatment process.

*System—*A water or wastewater system.

*Track—*A combination of approved education and experience requirements necessary to qualify for operator certification.

*Training approval process guidelines—*Department guidelines authorized by the act that set standards for

training sponsors, courses, course content, training approval criteria and training provider approval criteria.

*Training provider—*A person who designs or delivers any type of education or training activities, courses or programs.

*Training sponsor—*A training provider approved by the Department to provide training to water and wastewater system operators in this Commonwealth in accordance with the Department's training approval process guidelines.

*Treatment—*The physical, chemical or biological process necessary to change, modify or maintain the chemical or biological nature of water.

*Treatment ponds and lagoons—*A wastewater treatment technology that utilizes a pond, lagoon or wetlands with anaerobic or facultative biological processes for the treatment of wastewater and meets the following criteria:

(i) A design hydraulic detention time in the treatment process of 15 days or greater.

(ii) A biological treatment process that does not have any return activated sludge system.

(iii) A biological treatment process that is impacted by diurnal fluctuations as a result of photosynthesis.

*Trigger parameter—*A set-point for a designated biological, chemical or physical parameter that requires a response by the operator in responsible charge.

*Ultraviolet disinfection—*A water treatment process that inactivates pathogenic organisms using light with a wavelength range of 1,000 to 4,000 angstroms.

*Upgrade—*The certification process an existing certified operator follows to increase the operator's ability to make process control decisions at a system with a higher flow or additional treatment technologies.

*Wastewater—*A substance that contains the waste products or excrement or other discharge from the bodies of human beings or animals and noxious or deleterious substances being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation, or which constitutes pollution under The Clean Streams Law.

*Wastewater environmental laboratory supervisor—*An individual having the necessary knowledge, skills and abilities necessary to supervise laboratory procedures and reporting of analytical data for an environmental laboratory operated by a wastewater or industrial waste system in accordance with industry, State and Federal standards.

*Wastewater system—*A structure designed to collect, convey or treat wastewater and from which effluent in excess of 2,000 gallons per day is discharged into waters of this Commonwealth.

*Water system—*A community water system or a nontransient noncommunity water system as those terms are defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

**§ 302.102. Purpose.**

(a) The purpose of this chapter is to protect the environment and the public's health and safety by ensuring that certified operators with the appropriate knowledge, skills and abilities make appropriate process control decisions during the operation of water and wastewater treatment systems, water distribution systems and wastewater collection systems.

(b) This chapter establishes the training, education, experience and examination standards necessary for operator certification.

(c) This chapter also establishes the administrative processes and procedures the Board will follow to implement the Board's duties and responsibilities under the act.

**§ 302.103. Scope.**

(a) Owners and operators of the following public water systems shall comply with this chapter:

- (1) Community water systems.
- (2) Nontransient noncommunity water systems.
- (3) Consecutive systems.

(b) Owners and operators of the following wastewater systems shall comply with this chapter:

- (1) Wastewater systems.
- (2) Collection systems with pump stations.

(c) Owners and operators of the following systems are exempt from the requirements of this chapter:

(1) A wastewater treatment system with a permitted average daily discharge flow of less than 2,000 gallons per day.

(2) A wastewater treatment system regulated under Chapter 73 (relating to standards for onlot sewage treatment facilities).

(3) An industrial wastewater system used to treat, recycle or impound industrial or agricultural wastes within the boundaries of the industrial or agricultural property.

(4) An industrial wastewater pretreatment system in which treated wastewater is released to a collection system of a wastewater treatment plant that is regulated by this chapter.

(5) An industrial wastewater treatment system that is an NPDES permitted point source discharge.

(6) A system designed to only collect and treat stormwater.

(7) Other systems that are exempted by the Department by rules and regulations, guidelines or policy.

(d) Operators of industrial wastewater treatment facilities may voluntarily obtain a wastewater system operator's certificate consistent with this chapter.

**§ 302.104. Certification requirements.**

(a) A person may not make a process control decision at a water or wastewater system unless that person is Board-certified with a valid certificate with the appropriate class and subclassifications for the size and treatment technologies of a water or wastewater system and is designated by the owner as an available operator as defined in § 302.1202 (relating to duties of owners).

(b) To become certified by the Board, the applicant shall:

(1) Apply for certification in accordance with § 302.201 (relating to form of application).

(2) Pass the appropriate examinations as defined in § 302.702 (relating to examination requirements) or an equivalent examination as defined in § 302.304 (relating to issuance of a certificate through reciprocity).

(3) Meet minimum education requirements as defined in § 302.701 (relating to minimum education requirements).

(4) Meet the experience requirements as defined in § 302.703 (relating to experience requirements).

**Subchapter B. GENERAL REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATION ACTIONS**

Sec.

302.201. Form of application.

302.202. Operator certification program fees.

**§ 302.201. Form of application.**

(a) An applicant for examination or a certification action shall submit a complete application with required documentation using the appropriate Department-approved forms to the Board's Secretary. These forms can be obtained by contacting the Board Secretary, P. O. Box 8454, Harrisburg, PA 17105-8454 or through the Department's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us), Keyword: "Operators."

(b) In addition to the forms described in subsection (a), an application for certification action for either certification or recertification must include:

(1) An original or copy of the applicant's Pennsylvania State Police CHR, issued no more than 90 days prior to the date the application is received by the Board Secretary.

(2) For education purposes, one of the following:

(i) A copy of the applicant's high school diploma or GED or a statement of completion of high school or achievement of GED.

(ii) Written verification by the applicant's supervisor or another certified operator with direct knowledge of the applicant's experience working as an operator in a water or wastewater system before February 21, 2002.

(3) Documentation of the applicant's experience as defined in § 302.704 (relating to determining qualifying experience) and verified by the applicant's supervisor or another certified operator with the knowledge of the applicant's experience.

(4) An official copy of the applicant's college transcripts, if applicable.

(5) Copies of certificates of completion of Department-approved training courses if applicable.

(6) The applicant's notarized signature.

(7) The applicable fees specified in § 302.202 (relating to operator certification program fees).

(c) In addition to the forms described in subsection (a), an application for certification action for certificate upgrade must include:

(1) An official copy of the applicant's college transcripts, if applicable.

(2) Documentation of the applicant's additional experience for the additional class or subclassification as defined in §§ 302.703 and 302.704 (related to experience requirements; and determining qualifying experience), verified by the applicant's supervisor or another certified operator with the knowledge of the applicant's experience.

(3) Copies of certificates of completion of Department-approved training courses, if applicable.

(4) The applicant's notarized signature.

(5) The applicable fees specified in § 302.202.

(d) In addition to the forms described in subsection (a), an application for certification action for certificate renewal must include:

- (1) Proof of completed continuing education.
- (2) The applicant's notarized signature.
- (3) The applicable fees specified in § 302.202.

(e) In addition to the forms described in subsection (a), an application for certification action for reciprocity must include:

- (1) An original or copy of the applicant's Pennsylvania State Police CHR, issued no more than 90 days prior to the date the application is received by the Board Secretary.
- (2) A copy of the applicant's operator certificate issued by another state, territory or Board-approved register as defined in § 302.305 (relating to Board-approved reciprocity register).
- (3) For education purposes, one of the following:
  - (i) A copy of the applicant's high school diploma or GED or a statement of completion of high school or achievement of GED.
  - (ii) Written verification by the applicant's supervisor or another certified operator with direct knowledge of the applicant's experience working as an operator in a water or wastewater system before February 21, 2002.
- (4) Documentation of the applicant's experience as defined in § 302.704 and verified by the applicant's supervisor or another certified operator with the knowledge of the applicant's experience.
- (5) A copy of the applicant's official transcripts from college, if applicable.
- (6) Copies of certificates of completion of Department-approved training courses if applicable.
- (7) The applicant's notarized signature.
- (8) The applicable fees specified in § 302.202.

**§ 302.202. Operator certification program fees.**

- (a) An application for a certification action or post-presentation credit must be accompanied by a nonrefundable check or money order payable to the "Commonwealth of Pennsylvania." The applicant's client ID should be printed on the check or money order.
- (b) Applications to become an approved training provider, course and conference approvals, course rosters and requests for examination sessions must be accompanied by a nonrefundable check or money order payable to the "Commonwealth of Pennsylvania."
- (c) The annual service fee paid by system owners must be accompanied by a nonrefundable check or money order payable to the "Commonwealth of Pennsylvania." The system Public Water Supply ID or NPDES Permit Number should be printed on the check or money order. The annual service fee for systems in subsection (d) is a fee per public water supply ID, NPDES permit number (for discharge systems), Clean Streams Law permit number (for nondischarge systems) or satellite collection system. If this annual service fee is not remitted within 60 days of notification by the Department that the fee is due, interest shall accrue on the entire amount from the original date payment was due, at a rate of 12% per annum until payment is remitted.
- (d) Fees shall be paid into the State Treasury into a special restricted revenue account in the General Fund

known as the Safe Drinking Water Account administered by the Department for use in protecting the public from the hazards of unsafe drinking water and which funds are hereby appropriated to the Department for purposes authorized in the act.

(e) The fees are as follows:

*Operators:*

Initial Certification Class A, B, C, D .....	\$150
Initial Certification Class Dc, Class E .....	\$100
Certification through Reciprocity Class A, B, C, D ..	\$150
Certification through Reciprocity Class Dc; Class E .	\$100
Certificate Renewal .....	\$60
Examination Session .....	\$35
Replacement of Certificate or Pocket Card .....	\$25
Post-presentation Credit Application .....	\$250

*Training:*

Training Provider Approval Application .....	\$90
Brief Course Approval .....	\$115
Full Course Approval .....	\$300
Conference Approval .....	\$70
Course Rosters .....	\$1 per name
Classroom Courses offered by the Department are \$10 per contact hour maximum per person.	
Web-based Courses offered by the Department are \$30 per contact hour maximum per person.	

Onsite Training offered by the Department is \$1,600 per event.

*Approved Examination Providers:*

Ten or more examination sessions per year .....	\$800
Five to ten examination sessions per year .....	\$700
Two to five examination sessions per year .....	\$600
One examination session per year .....	\$400

*Owners:*

Annual Service Fee Class A System .....	\$500
Annual Service Fee Class B System .....	\$150
Annual Service Fee Class C System .....	\$100
Annual Service Fee Class D and E Systems .....	\$65

(f) An operator holding a valid certificate as of September 18, 2010, is not required to pay the initial certification fees identified in subsection (e). This operator is subject to all other fees in this section.

(g) The fees identified in subsection (e) are in addition to any fees charged by an approved examination provider as defined in § 302.602 (relating to approved examination providers)

(h) The fees identified in subsection (e) related to course approval are a one-time fee assessed for the course. Training providers that have courses approved as of September 18, 2010, are not required to pay this fee for these approved courses.

(i) A conference approval fee is a one-time fee assessed for the entire conference and is not based on the number of training sessions in the conference.

(j) Persons regulated by the act will not pay more than a total of \$10,000 annually to the Commonwealth for operator certification fees specified under subsection (e).

(k) Federal or State agencies that provide funding to the Department through terms and conditions of a mutual agreement for the administration of this program will not be subject to the fees in subsection (e).

(l) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it will contain recommendations to modify fees to eliminate the disparity, including recommendations for regulatory amendments to modify program fees.

### Subchapter C. BOARD PROCEDURES AND ACTIONS

Sec.

- 302.301. Board procedures for certification action.
- 302.302. Issuance of certificate for certification or recertification.
- 302.303. Issuance of upgraded certificate.
- 302.304. Issuance of certificate through reciprocity.
- 302.305. Board-approved reciprocity register.
- 302.306. Certificate renewal.
- 302.307. Extensions.
- 302.308. Suspensions, revocation or modification of an operator's certificate.
- 302.309. Board review of Department training decisions.

#### § 302.301. Board procedures for certification action.

(a) The Board Secretary will review the application for certification action for completeness.

(b) If the application is not complete, the applicant will be notified within 14 days from receipt of the application, of the specific information required to make the application complete.

(c) When an application is complete, the Board Secretary will review the application using policy and procedures defined by the Board in guidelines and make a recommendation for action to the Board designating the appropriate class and subclassification.

(d) The Board, or the Board Secretary, as authorized by the Board, will take action on an application for certification within 120 days of receipt of a complete application. If the Board determines additional information from the applicant is necessary to complete the review of the Board Secretary's recommendation, final action on the application will be delayed until this information is provided. Within 120 days of receipt of the requested information, the Board will take final action on the application for certification.

(e) The Board Secretary will issue the operator's certificate within 60 days of Board action. A certificate will include the issuance and expiration dates, class and subclassifications, client ID and certification identification numbers and pocket card for identification purposes.

(f) The issuance date on the certificate corresponds with the date of Board action and the operator is assigned to the current 3-year renewal cycle (either the first day of January, April, July or October). The certificate is valid for a 3-year period and will expire on the date indicated unless suspended, modified or revoked by the Board prior to expiration.

(g) The Board will deny an application for certification action for failure to meet the requirements of the act, this chapter, and any other Federal or State law or rules and regulations promulgated thereto applicable to the operation of water and wastewater systems.

(h) The Board authorizes the Board Secretary to deny an application for certification action without Board review for failure to:

(1) Meet the requirements for reciprocity as defined in § 302.304 (relating to issuance of certificate through reciprocity).

(2) Meet processing deadlines.

(3) Successfully pass an examination for certification.

(i) When the Board denies an application for certification action, the Board Secretary will notify the applicant in writing within 60 days of the Board decision, describing the applicant's right to appeal the action to the Environmental Hearing Board.

(j) Within 4 weeks of receiving a written request of a certified operator and payment of a fee as established in § 302.202 (relating to operator certification program fees) for the replacement of a certificate or wallet card, the Board Secretary will fulfill the request.

#### § 302.302. Issuance of certificate for certification or recertification.

The Board may approve a complete application for certification action for either certification or recertification with a designated class and subclassification when the applicant has met the requirements for certification as defined in § 302.104 (relating to certification requirements). The Board will also complete the review of the applicant's CHR in accordance with §§ 302.402 and 302.403 (relating to CHR investigations; and review of CHRs by the Board) before approving a complete application for certification action for certification or recertification.

#### § 302.303. Issuance of upgraded certificate.

(a) The Board will approve a complete application for certification action to upgrade an existing certificate to the appropriate class when the applicant meets the additional experience requirements defined in § 302.703 (relating to experience requirements) for the upgrade in class. The Board will also approve a complete application for certification action to upgrade an operator-in-training as defined in § 302.1004 (relating to operator-in-training status) when the operator-in-training has met the minimum experience requirements for certification defined in § 302.703.

(b) The Board will approve a complete application for certification action to upgrade an existing certificate to add another subclassification when the applicant passes the Part II Treatment Technology Specific Examination as defined in § 302.601 (relating to general provisions) that corresponds to a subclassification defined in §§ 302.1002 and 302.1003 (relating to the certification classes and subclassifications of water system operators; and certification classes and subclassifications of wastewater system operators) and completes 1-year additional experience requirement, if applicable, as defined in § 302.703 and § 302.704 (relating to experience requirements; and determining qualifying experience).

(c) The Board will replace the applicant's existing certificate with an upgraded certificate that maintains the operator's current 3-year renewal cycle. Those applicants that were upgraded from the operator-in-training status will be issued a certificate in accordance with procedures defined in § 302.301 (relating to Board procedures for certification action).

(d) Additional changes in continuing education requirements as defined in § 302.803 (relating to phased sched-

ule for continuing education requirements) resulting from an upgrade will not be enforced until the certified operator's next full 3 year renewal cycle.

(e) Class Dc, Dn and grandparented drinking water system certificates will not be upgraded.

**§ 302.304. Issuance of certificate through reciprocity.**

(a) The Board may issue a certificate to an applicant holding a valid water or wastewater, or both, operator certificate from another state, territory, the District of Columbia or a Board-approved reciprocity register, when the applicant meets the requirements for certification defined in § 302.104 (relating to certification requirements) and demonstrates the out-of-State certificate was issued as the result of passing an examination comparable to one administered by the Board.

(b) The Department will determine whether the content of the examination is comparable to an examination prepared by the Department and obtain confirmation from the state, territory or Board approved registry that issued the applicant's certificate that the applicant holds a valid certificate, and is in compliance with applicable laws, regulations and other requirements.

(c) Operators previously certified in this Commonwealth are not eligible to apply for reciprocity if:

(1) The Board revoked, suspended or modified their certificate in accordance with § 302.308 (relating to suspensions, revocation or modification of an operator's certificate).

(2) The operator failed to meet the continuing education requirements for its most recent 3 year renewal cycle.

**§ 302.305. Board-approved reciprocity register.**

(a) The Board recognizes the Association of Boards of Certification Registry and United States Military or Coast Guard discharge papers documenting water or wastewater operation as reciprocity registers.

(b) The Board may recognize additional certification registers upon request by an applicant or the entity maintaining the register.

**§ 302.306. Certificate renewal.**

(a) Certified operators meeting the requirements of the act, this chapter, and any other Federal or State law or rules and regulations promulgated thereto applicable to the operation of water and wastewater systems and any orders of the Board or the Department relative to certification will be eligible for certificate renewal without further examination.

(b) The Board will attempt to notify certified operators when renewal is due at least 60 days prior to certificate expiration. Failure to receive a renewal application from the Board does not release a certified operator from the requirements of the act, this chapter, and other Federal or State law or rules and regulations promulgated thereto applicable to the operation of water and wastewater systems.

(c) Certified operators shall meet the continuing education requirements as defined in § 302.803 (relating to phased schedule for continuing education requirements) as a condition of renewal.

(d) Continuing education must be successfully obtained during the certified operator's 3-year certification period.

A certified operator who fails to complete the continuing education requirements within the 3-year cycle shall apply for recertification.

(e) The Board will not renew a certificate for an operator who fails to meet the continuing education requirements, unless the operator has applied for and been granted an extension in accordance with § 302.307 (relating to extensions).

(f) A certificate will not be deemed expired if the Board Secretary has received a complete application for certification action for renewal before the expiration date of the certificate. This provision will be in force until the Board takes action on the application. If approved, the certificate will be issued with an expiration date that maintains the operator's prior 3-year cycle.

(g) A certificate renewal issued by the Board after the certificate has expired will have the effective issuance date of when the Board Secretary finalizes the renewed certificate as authorized by the Board. The Board Secretary will send the renewed certificate no later than 90 days after receiving a complete application. The expiration date will be 3 years after the expiration date of the lapsed certificate.

(h) Within 24 months following the date of expiration, an operator who has completed the continuing education, but whose certificate has expired, may renew the certificate by submitting a complete application for certification action for renewal. A certified operator who fails to renew the certificate within 24 months of the expiration date shall apply for recertification.

(i) The Board Secretary will submit a listing of applicants for certificate renewal to the Board that the Department has determined have not met the continuing education requirements as defined in § 302.802 (relating to continuing education requirements for certificate renewal). The listing will include the applicants' names, their classes and subclassifications of certification and the number of approved hours of continuing education completed.

(j) An operator shall submit any post-presentation credit applications for training that were not preapproved by the Department in accordance with training approval process guidelines within 90 days after certificate expiration.

(k) After the Board has taken action to deny an application for certificate renewal due to lack of continuing education, the Board Secretary will send a certified letter to the operator notifying it of the Board's decision. The Board Secretary will send a copy of this letter to the appropriate Department regional program manager and the owners of any systems who identified the operator as an available operator for their systems.

(l) The operator has 14 days from receipt of the certified letter to submit additional documentation of completed continuing education for review by the Department to the Board Secretary. If the Department approves the additional documentation showing compliance with the requirement for continuing education, the Board Secretary will issue a valid certificate to the operator. If not, the operator is no longer certified, and shall apply for recertification.

**§ 302.307. Extensions.**

(a) The Board may grant a time extension to a certified operator to meet the requirements of the act, this chapter, and other Federal or State law or rules and regulations

promulgated thereto applicable to the operation of water and wastewater systems provided that:

(1) The certified operator requests an extension in writing with appropriate justification no later than 90 days after certificate expiration, except in extenuating circumstances.

(2) The certified operator agrees to meet all requirements within a specific time period established by the Board.

(b) Within 14 days of Board action, the Board Secretary will provide an explanation of the Board's decision and any requirements for compliance in writing to the certified operator.

(c) Circumstances that justify an extension include:

(1) Military service that curtails an operator's ability to access continuing education, mandated training or Board testing.

(2) Health related circumstances that curtail an operator's ability to participate in continuing education, mandated training or Board testing.

(3) Other extreme circumstances.

**§ 302.308. Suspensions, revocation or modification of an operator's certificate.**

(a) The Board may take action to suspend, revoke, modify or reinstate an operator's certificate upon petition by the Department.

(b) The Board may suspend, revoke or modify a certificate for misconduct for reasons including:

(1) Negligence in the operation of a water or wastewater system.

(2) Fraud.

(3) Falsification of an application or other State, local or Federal documents or records relating to the operation of a water or wastewater system.

(4) Incompetence or failure to use reasonable care and professional judgment in performing the duties of a certified operator as described in § 302.1201 (relating to duties of operators).

(5) Violation of State or Federal laws and the rules and regulations promulgated thereunder associated with the operation of a water or wastewater treatment system.

(c) Suspension, revocation, modification or reinstatement of an operator's certificate will become effective immediately upon the Board's action.

(d) The Board may suspend or modify a certificate for a specific time period or require additional education, training or reexamination as a condition of reinstatement.

(e) Within 5 days of the Board taking an action to suspend, revoke, modify or reinstate an operator's certificate, the Board Secretary will notify the Department, the certified operator and the certified operator's employer in writing of the Board action to suspend, revoke or modify an operator's certificate.

(f) Final actions taken by the Board related to this section are appealable to the Environmental Hearing Board.

**§ 302.309. Board review of Department training decisions.**

(a) A training provider or sponsor may request the Board to review a Department action to do the following:

(1) Approve, disapprove, revoke or suspend a training provider's status as an approved sponsor of training for certification and continuing education.

(2) Approve, deny, revoke or suspend the approval of any course for certification and continuing education.

(3) Assess an instructor's qualifications.

(4) Assign appropriate continuing education contact hours.

(b) Within 75 days of receiving notification from the Department, a training provider or sponsor may submit a request to the Board to review the Department's decision. The request must include the following:

(1) The reasons for the Department's decision.

(2) The reasons why the Board review is necessary.

(3) Circumstances that merit consideration by the Board to reverse or modify the Department's decision.

(4) The desired action from the Board.

(c) The Board will take action on any training decision request within 120 days of completion of a scheduled Board meeting dealing with the training action.

(d) Final actions taken by the Board related to this section are appealable to the Environmental Hearing Board.

**Subchapter D. CRIMINAL HISTORY RECORDS**

Sec.

302.401. Submission of CHRs.

302.402. CHR investigations.

302.403. Review of CHRs by the Board.

302.404. Board actions as the result of a CHR.

**§ 302.401. Submission of CHRs.**

(a) The Board requires a CHR to accompany an application whenever an applicant does one or more of the following:

(1) Submits an application for certification. A CHR is not required for subsequent renewals.

(2) Submits an application requesting certification by reciprocity.

(3) Submits an application for recertification.

(b) An applicant holding a bioperable certification shall meet the requirements in subsection (a) for each separate water and wastewater certificate.

(c) The date of issuance on a CHR must be no more than 90 days before the date when the application is received by the Board Secretary.

**§ 302.402. CHR investigations.**

The following criminal activities require further investigation:

(1) A felony.

(2) A misdemeanor that appears to be related directly to activities associated with carrying out the duties and responsibilities as a certified operator.

**§ 302.403. Review of CHRs by the Board.**

(a) The Board will review all CHRs submitted with applications for certification action in accordance with the act and this chapter.

(b) A preliminary review committee will conduct a review, and if necessary, conduct appropriate investigations and make a recommendation to the Board for action. The membership of this committee will include:

- (1) A Board member.
- (2) A Department employee.
- (3) Board legal counsel.

(c) The Board or Board-designated agent will conduct an evaluation of all applicants with a conviction noted on their CHR to determine the appropriate category in this section. Convictions meeting the criteria in § 302.402 (relating to CHR investigations) require the Department to conduct an investigation and submit a written report to the Board or Board-designated agent.

(d) If the preliminary review committee feels the conviction may be related to the operation of a drinking water or wastewater treatment system, it will instruct the Board Secretary to send the applicant a certified letter notifying them of this potential and offering them the opportunity to appear at the next regularly scheduled Board meeting to present any information they feel is relevant or related to the conviction. The Department employee on the committee will also solicit further information from the appropriate regional office as it relates to the circumstances that resulted in the conviction and the applicant's record as an operator.

(e) The preliminary review committee will present the reasons for its recommendation and any associated documentation to the Board before the Board takes action on the application for certification action.

(f) These recommendations will be assigned into the following two categories:

- (1) Recommend approval of the application for certification action.
- (2) Recommend that the full Board review the CHR and investigation findings.

(g) An applicant for certification will not be denied admittance to the certification exam pending a final action on a CHR.

(h) The Department will complete the investigation within 120 days unless granted an extension by the preliminary review committee based on circumstances related to the necessary collection of information needed to make a recommendation.

**§ 302.404. Board actions as the result of a CHR.**

(a) The Board will act on all CHRs submitted with an application for certification action.

(b) The Board will find no further action is necessary when an applicant's CHR shows no convictions.

(c) Based on the Board's authority under 18 Pa.C.S. Chapter 91 (relating to criminal history record information), the Board may deny an application for certification action based on a conviction of either:

- (1) A felony related to the trade, occupation or profession for which the certification is sought.
- (2) A misdemeanor related to the trade, occupation or profession for which the certification is sought.

(d) The Board will review the recommendations of the preliminary review committee before taking action. Based on this review, the Board will do one of the following:

- (1) Agree with the preliminary review committee and take action on the CHR accordingly.
- (2) Disagree with the preliminary review committee and take action on the CHR accordingly.

(e) Within 14 days of Board action, the Board Secretary will notify an applicant in writing of the Board's action to

deny an application for certification action based on the applicant's CHR. This notification will also identify the Board's reasons for the decision.

(f) Final actions taken by the Board related to this section are appealable to the Environmental Hearing Board.

**Subchapter E. ADMINISTRATIVE HEARINGS OF THE BOARD**

Sec. 302.501. General requirements.

**§ 302.501. General requirements.**

(a) The Department may file with the Board Secretary a written petition under section 4(b)(1) of the act (63 P. S. § 1004(b)(1)), by submitting a written request containing the following information:

(1) The factual basis of the petition including the dates, times and places of the occurrences and the names of the responsible parties with sufficient specificity that the respondent can file an answer and prepare a defense to the allegations.

(2) The statutes or regulations, or both, allegedly violated and underlying the petition.

(3) The relief requested.

(4) An identification of the Department attorney or contact person, including the address and telephone number, who can receive service on behalf of the Department.

(b) Upon receipt of a petition, the Board Secretary will:

(1) Provide a copy of the petition to the operators named in the petition, sent by certified mail.

(2) Schedule the petition for hearing before the Board or a hearing officer appointed by the Board. As necessary, the Board Secretary may schedule prehearing conferences and issue orders needed to dispose of prehearing issues.

(c) Requests to reschedule or cancel a hearing must be in writing and be received by the Board Secretary at least 14 days prior to the date of the hearing. Continuance of a hearing is at the discretion of the Board. The Board may continue a hearing upon its own motion.

(d) The hearings of the Board will be in accordance with 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth agencies).

(e) The Chairperson of the Board is authorized to sign decisions and orders on behalf of the Board.

(f) An order of the Board will be effective immediately unless otherwise indicated within the order.

(g) Final Board actions on the petition may be appealed to the Environmental Hearing Board.

**Subchapter F. PREPARATION AND ADMINISTRATION OF CERTIFICATION EXAMINATIONS**

Sec. 302.601. General provisions.  
 302.602. Approved examination providers.  
 302.603. Examination eligibility.  
 302.604. Examination administration.  
 302.605. Use of materials and electronic devices by the applicant during examination.

**§ 302.601. General provisions.**

(a) The Department will prepare and the Board will administer valid certification examinations using industry recognized psychometric principles and standards to measure the applicant's knowledge, skills and abilities necessary to make process control decisions that meet



permit requirements, maintain system reliability and ensure the protection of the environment, public health and safety.

(b) Certification and recertification examinations will consist of a two part examination. Part I of the examination will measure the applicant's knowledge, skills and abilities common to all water or wastewater systems regardless of size. Part II of the examination will measure the applicant's knowledge, skills and abilities necessary to operate specific treatment technologies or system components.

(c) There will be separate stand-alone examinations for wastewater collection systems, either satellite or single entity; water distribution or consecutive systems without treatment and Dc systems.

(d) There will be a Part II examination for laboratory supervisor for a water system and a Part II examination for laboratory supervisor for a wastewater system.

(e) There will be a master examination for either water or wastewater systems for operators wanting a master certificate to operate all available treatment technologies and system components.

(f) The Department will annually review examinations for relevancy. The Department may use third party contractors, members of the Board or the Certification Program Advisory Committee, Department staff or any other qualified individuals as subject matter experts for the content and validation of the examinations.

(g) The Board may use third-party examination proctors for administration of examinations, provided the proctors have completed the necessary training defined by Board guidelines.

(h) Paper and test materials remain the property of the Board.

(i) The Board, Board Secretary or the Department will not disclose individual examination scores to the public.

#### **§ 302.602. Approved examination providers.**

(a) The Board may use consultants, nonprofit water and wastewater industry associations and organizations, the Department or educational institutions to assist in the administration of the examinations for certification. The Board Secretary will approve all examination providers in accordance with Board guidelines.

(b) Approved examination providers may charge a fee to an applicant to cover the cost of personnel, facility rental and other incurred costs related to the registration and administration of the examination.

(c) Approved examination providers will not at any time be in possession of any Department-developed examination materials or examination content.

(d) Approved examination providers will administer examinations in accordance with Board guidelines.

#### **§ 302.603. Examination eligibility.**

(a) An applicant for examination shall submit a request for examination using approved Board forms to one of the approved examination providers. The applicant shall also pay any fees defined by the approved examination provider for processing this request.

(b) An individual is not required to meet experience requirements of the act, regulations or guidelines as a condition for examination.

(c) An individual is not required to successfully attain any training as a condition for examination.

(d) An individual that attends five or more examination sessions without applying for certification shall pay the examination session fees as defined in § 302.202 (relating to operator certification program fees) before being allowed to attend additional examination sessions.

(e) A certified operator is not required to retake an examination already successfully passed unless either one of the following conditions occurs:

(1) The individual fails to renew his certification within 2 years from the expiration date of the certification.

(2) The individual fails to complete the required amount of continuing education within the 3-year renewal cycle.

#### **§ 302.604. Examination administration.**

(a) The proctors and Department staff will follow all procedures for the administration of an examination as defined in Board guidelines.

(b) The examination proctor will provide a written report to the Board regarding any applicant violating this section or Board guidelines.

(c) The Board may make exceptions to a written examination or other examination requirements when an applicant or representative makes a "reasonable accommodation" request under the Americans With Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213) in written form to the Board, the request documents the reason for the accommodation and the request is submitted to the Board Secretary in writing. The Board Secretary will notify the applicant within 14 days after Board action on the request.

(d) The Board may make exceptions to the scheduled date and location of an examination upon written request by an applicant based on religious preference, jury duty or other compelling reasons.

#### **§ 302.605. Use of materials and electronic devices by the applicant during examination.**

(a) The use of nonprogrammable calculators by applicants during the examination is permitted.

(b) The use of hand held computers or other devices that can store technical information, electronic communication devices, personal music players or other memory storage devices or printed materials other than the materials provided by the examination proctor during the examination is not permitted during the examination.

(c) An applicant may use special electronic devices, if the applicant has submitted a written request to the Board Secretary for approval and has received written approval from the Board.

### **Subchapter G. EDUCATION, EXAMINATION AND EXPERIENCE REQUIREMENTS**

Sec.

302.701. Minimum education requirements.

302.702. Examination requirements.

302.703. Experience requirements.

302.704. Determining qualifying experience.

302.705. Accelerated certification requirements for system modifications.

#### **§ 302.701. Minimum education requirements.**

(a) An applicant for certification shall obtain a high school diploma or a GED to meet one of the minimum education requirements.

(b) The Board may grant an education exemption to the requirements in subsection (a) if the applicant provides written verification by the applicant's supervisor or

another certified operator with direct knowledge of the applicant's experience working as an operator in a water or wastewater system before February 21, 2002.

(c) Experience used to meet the equivalency for a high school diploma or GED cannot be used as experience for certification.

**§ 302.702. Examination requirements.**

(a) An applicant for certification in wastewater shall obtain a passing score on a Part I General Examination and one or more of the Part II Treatment Technology Specific Examinations, a Master Examination or a Collection System Examination.

(b) An applicant for certification in drinking water shall obtain a passing score on a Part I General Examination and one or more of the Part II Treatment Technology Specific Examinations for Class A, B and C, a Part I General Examination for Class D, a Master Examination, a Dc or Dn Small System Examination or a Distribution Examination.

(c) An applicant shall obtain a minimum numerical score of correctly answered questions based on industry recognized psychometric principles and standards to pass an examination for certification.

(d) An applicant's score on an examination is independent and not conditional on the results of any other type of certification examination.

(e) Test results are valid indefinitely, unless the applicant must apply for recertification as determined by the Board.

**§ 302.703. Experience requirements.**

(a) To meet the requirements for certification, the Department will provide an applicant with two different experience tracks.

(b) Track I identifies the experience requirement necessary to qualify for certification when the applicant meets the basic educational requirement in § 302.701 (relating to minimum education requirements).

(1) *Track I experience requirements for wastewater treatment system operators.*

Class	Minimum Experience
A	4 years
B	3 years
C	2 years
D	1 year
E	1 year

(2) *Track I experience requirements for water system operators.*

Class	Minimum Experience
A	4 years
B	3 years
C	2 years
D	1 year
E	1 year
Dc	6 months
Dn	6 months

(c) An applicant for operator certification using Track I may supplement up to 50% of the required experience by successfully completing additional education beyond the minimum education requirement defined in § 302.701.

One month of experience can be credited for the successful completion of every 10 contact hours of Department-approved training courses in water or wastewater treatment, as applicable, or 1.5 months experience may be credited for the successful completion of one college credit in water or wastewater treatment related courses from an accredited college or university. The Department will approve these courses in accordance with its training approval process guidelines.

(d) Track II provides a reduction in the experience requirements defined in subsection (b) when the applicant has successfully earned one of the following:

(1) A certificate of completion of a Department-approved certificate program in water or wastewater treatment, or both (CP). The Department will approve this program in accordance with its training approval process guidelines.

(2) An associate degree in a water or wastewater operations program, or both, approved by the Department (ASP). The Department will approve this program in accordance with its training approval process guidelines.

(3) An associate degree in environmental sciences, physical sciences, engineering or engineering technology not approved by the Department (AS).

(4) A bachelor's or graduate degree in biology, chemistry, environmental sciences, physical sciences, sanitary or environmental engineering or engineering technology from a Nationally accredited college or university (BS/BA).

(e) The required experience under Track II is:

(1) *Track II experience requirements for wastewater treatment system operators.*

Class	CP	ASP	AS	BS/BA
A	2 years	1 year	3.5 years	2 years
B	1 year	6 months	2.5 years	1 year
C	6 months	6 months	1.5 years	6 months
D	6 months	6 months	6 months	6 months
E	6 months	6 months	6 months	6 months

(2) *Track II experience requirements for water system operators.*

Class	CP	ASP	AS	BS/BA
A	2 years	1 year	3.5 years	2 years
B	1 year	6 months	2.5 years	1 year
C	6 months	6 months	1.5 years	6 months
D	6 months	6 months	6 months	6 months
E	6 months	6 months	6 months	6 months
Dc	0	0	6 months	0
Dn	0	0	6 months	0

(f) When education is applied to meet the experience requirements for certification under Track II, the credit can only be applied once and is not cumulative.

**§ 302.704. Determining qualifying experience.**

(a) The Board will determine if the applicant's experience meets the experience requirements defined in § 302.703 (relating to experience requirements).

(b) Experience for certification is achieved by participating in a combination of activities related to process control under the supervision of a certified operator who holds the appropriate subclassifications.

(c) The Board will consider the following activities for qualifying experience:

(1) Operating mechanical equipment related to process control.

(2) Maintaining mechanical equipment related to process control.

(3) Collecting and analyzing chemical and biological samples related to process control and regulatory compliance activities.

(4) Performing calculations related to process control.

(5) Preparing or standardizing chemical and biological solutions.

(6) Interpreting, compiling and completing monitoring data.

(7) Recommending appropriate process control measures.

(8) Participating in onsite assessment, inspection or evaluation of plant processes.

(9) Calibrating chemical feed systems.

(10) Using equipment to monitor and measure flows through a water or wastewater system.

(d) An applicant for a wastewater certificate may apply experience as defined in subsection (c) as follows:

(1) Experience working at an activated sludge wastewater system qualifies an applicant for an activated sludge wastewater certificate (Subclassification 1), the fixed film wastewater certificate (Subclassification 2) and the treatment pond and lagoon wastewater certificate (Subclassification 3).

(2) Experience working at a fixed film wastewater system qualifies an applicant for a fixed film wastewater certificate (Subclassification 2) and a treatment pond and lagoon wastewater certificate (Subclassification 3).

(3) Experience working at a treatment pond and lagoon wastewater system qualifies the applicant for the treatment pond and lagoon wastewater certificate (Subclassification 3).

(4) Experience working at a satellite collection system or a single entity collection system qualifies the applicant for a Class E Subclassification 4 wastewater certificate.

(5) Experience for class may be obtained at a wastewater system with the classification level requested or two classification levels alphabetically lower.

(e) An applicant for a water certificate may apply experience as defined in subsection (c) as follows:

(1) Experience working at a conventional filtration, direct filtration, diatomaceous earth filtration or slow sand filtration water system qualifies an applicant for any of the following:

(i) The filtration water certificates (Subclassifications 1, 2, 3, 4, 5 and 6).

(ii) The chemical treatment water certificates (Subclassifications 7, 8, 9 and 10).

(iii) The gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(2) Experience working at a cartridge or bag filtration or membrane filtration water system qualifies an applicant for any of the following:

(i) The cartridge or bag filtration and the membrane filtration water certificates (Subclassifications 5 and 6).

(ii) The chemical treatment water certificates (Subclassifications 7, 8, 9 and 10).

(iii) The gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(3) Experience working at a corrosion control and sequestering, chemical addition, ion exchange and greensand or aeration and activated carbon adsorption water system qualifies an applicant for any of the following:

(i) The chemical treatment water certificates (Subclassifications 7, 8, 9 and 10).

(ii) The gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(4) Experience working at a gaseous chlorine disinfection or nongaseous chemical disinfection water system qualifies an applicant for the gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(5) Experience working at an ultraviolet water system qualifies an applicant for the ultraviolet water treatment certificate (Subclassification 13).

(6) Experience working at an ozonation water system qualifies an applicant for the ozonation water treatment certificate (Subclassification 14).

(7) Experience for a class may be obtained at a water system at the classification level requested or two classification levels alphabetically lower.

(8) Experience working at a Dc water system qualifies an applicant for only the Class D water certificate with the gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(9) Experience working at a Dn water system qualifies an applicant for only the Class D water certificate without any subclassifications.

(f) One year of experience is equal to 220 working days or 1,760 hours of employment.

(g) Experience will be prorated for time periods less than 1 year.

(h) Experience is counted up to the first day of the month after the applicant submits an application for certification action.

(i) An applicant's experience at a wastewater system may be used to meet no more than half the experience requirement for a drinking water certification of the same classification level or a level alphabetically lower. The remaining experience must be operating experience at a drinking water system as defined in subsection (c).

(j) An applicant's experience at a water system may be used to meet no more than half the experience requirement of a wastewater certification of the same classification level or a level alphabetically lower. The remaining experience must be operating experience at a wastewater system as defined in subsection (c).

**§ 302.705. Accelerated certification requirements for system modifications.**

(a) An operator certificate upgrade is required when an increase in treatment capacity of the system no longer

qualifies the available operator to make process control decisions for that system. When the capacity of the system is increased so as to change the classification of the system, the existing available operators will qualify for an accelerated certification upgrade by applying for an upgrade in class before the larger system becomes operational. Additional experience or training is not required.

(b) An operator certificate upgrade is required when the addition of a different treatment technology to a system no longer qualifies the available operators to make process control decisions for that system. When a different treatment technology is added that results in a change of the subclassification of the system, the existing available operators may qualify for an accelerated certification upgrade if:

(1) The owner obtains the appropriate NPDES, public water supply or The Clean Streams Law permit from the Department.

(2) The operator successfully completes an onsite, Department-approved training program from the manufacturer or consulting engineer on the proper operation and maintenance of the new treatment technology.

(3) The operator passes, or previously passed, the appropriate Part II Technology Specific examination for the new treatment technology. Additional experience required under § 302.303(b) (relating to issuance of upgraded certificate) would be waived.

(4) The manufacturer or consulting engineer provides the Board and the Department with written documentation that the available operators for the system have successfully completed the formalized startup training and assistance program and are competent in the operation of the treatment technology.

(c) The available operators of the system undergoing an upgrade may continue to make process control decisions for the system if the conditions for accelerated certification as defined in subsection (a) or (b) are met. If not, the owner of the system will find another available operator with the appropriate class and subclassifications to make process control decisions until the existing certified operators at the system meet the additional examination requirements defined in § 302.702 (relating to examination requirements) and any additional experience requirements defined in § 302.703 (relating to experience requirements).

**Subchapter H. CONTINUING EDUCATION AND TRAINING**

- Sec.
- 302.801. Training and continuing education.
- 302.802. Continuing education requirements for certificate renewal.
- 302.803. Phased schedule for continuing education requirements.
- 302.804. System security training requirements.

**§ 302.801. Training and continuing education.**

(a) The Department will designate all approved training and continuing education into one of the following categories:

- (1) Wastewater.
- (2) Water.
- (3) Bioperable.
- (4) Security training as established in § 302.804 (relating to system security training requirements).

(b) The Department may approve, deny, suspend or revoke any training sponsor, training program, training course or conference session.

(c) The Department may audit, examine, inspect, and review the activities and documentation of approved training sponsors, training programs, approved instructors, courses, course content, conference sessions, teaching materials and facilities as related to water operator training and wastewater operator training and continuing education.

(d) The Department will develop training approval process guidelines that define the standards for the approval of training providers as training sponsors, training programs, instructors, courses and course content, conference sessions and other teaching materials and facilities used for the development and delivery of water and wastewater operator training and continuing education.

(e) Decisions of the Department related to this section are reviewable by the Board.

**§ 302.802. Continuing education requirements for certificate renewal.**

(a) Only contact hours for training approved by the Department will be used by a certified operator to meet the continuing education requirements for certificate renewal.

(b) A certified operator is required to successfully obtain the designated continuing education contact hours as defined in § 302.803 (relating to phased schedule for continuing education requirements) for certification renewal for the appropriate class.

(c) Bioperable operators will meet the continuing education requirements for each water and wastewater certificate held.

(d) A certified operator may not apply excess contact hours to a subsequent 3 year renewal cycle.

(e) For the purpose of meeting the continuing education requirement, the contact hours associated with a Department-approved course may only be applied once within an operator's 3 year renewal cycle.

(f) A Department-approved instructor holding an operator's certificate may be granted continuing education contact hours for teaching a Department-approved training course provided the instructor delivers the course within the instructor's 3 year renewal cycle and provides documentation to the Department that the course was completed, with the total amount of hours of training delivered. The contact hours for a specific course can be granted only once within the 3 year renewal cycle in which the course is taught.

(g) A certified operator is credited continuing education contact hours in the 3 year renewal cycle in which the training was completed, as documented by the training provider.

(h) Certified operators that have successfully completed the Department's Drinking Water Corrosion Control Treatment Course or Bio-solids Management Course may be granted a one-time credit for the contact hours for continuing education during the initial renewal cycle, regardless of the date of completion.

**§ 302.803. Phased schedule for continuing education requirements.**

(a) The number of required contact hours of continuing education for certificate renewal is as follows:

(1) *Contact hour requirements for wastewater system certified operators.*

<i>Operator Class</i>	<i>Contact Hours for First 3-Year Renewal Cycle</i>	<i>Contact Hours for Subsequent 3-Year Renewal Cycle</i>
A	15	30
B	15	30
C	15	30
D	8	15
E	8	15
Grandparented	8	15

(2) *Contact hour requirements for water system certified operators.*

<i>Operator Class</i>	<i>Contact Hours for First 3-Year Renewal Cycle</i>	<i>Contact Hours for Subsequent 3-Year Renewal Cycle</i>
A	15	30
B	15	30
C	15	30
D	8	15
E	8	15
Dc	4	9
Dn	3	6
Grandparented	8	15

(b) The first 3-year renewal cycle is defined as either the first 3-year period in which a certified operator holds a valid certificate after being transferred from an annual renewal cycle, or the first cycle after receiving certification.

(c) The subsequent 3-year renewal cycle is every 3-year period after the operator's first three-year renewal cycle.

**§ 302.804. System security training requirements.**

(a) Every certified operator shall successfully complete a Department-approved system security training course.

(b) A certified operator shall meet the system security training requirement in the certified operator's first renewal period commencing on or after September 18, 2010.

(c) A certified operator shall successfully demonstrate the knowledge, skills and abilities contained in the Department's system security training course using a Department-approved learning assessment method.

(d) The contact hours associated with the system security training also qualifies as approved continuing education within an operator's 3-year renewal cycle.

(e) A Department-approved training sponsor may, upon written agreement with the Department, deliver the Department's system security course that is approved to meet the requirements of this section.

(f) Bioperable operators need to successfully complete the Department-approved system security training course only once.

(g) The Department may require certified operators to attend and successfully complete additional Department-approved system security courses upon written notification when any of the following occur:

(1) The operator failed the Department-approved system security course required in subsection (a).

(2) There is a history of security issues at a water or wastewater system where the certified operators work.

(3) There is a history of security issues with the certified operator.

(4) New or updated security courses become available.

(5) The Department determines a situation or threat (Federal, State, local) exists that requires additional specific security courses.

(h) When establishing additional security training requirements as provided for in subsection (g), the Department will include the following in the written notification:

(1) Identification of the certified operators who must complete the training.

(2) The deadline for completing the security training.

(3) The amount and type of security training to be completed.

**Subchapter I. SYSTEM CLASSIFICATION AND SUBCLASSIFICATIONS**

Sec.

302.901. Classification and subclassifications of water systems.

302.902. Classifications and subclassifications of wastewater systems.

**§ 302.901. Classification and subclassifications of water systems.**

(a) Water systems will be classified into one of five classifications being designated as Classification A, B, C, D or E as follows:

(1) *Classification A.* Water systems serving an average of more than 5 million gallons per day.

(2) *Classification B.* Water systems serving an average of greater than 1 million gallons per day but less than or equal to 5 million gallons per day.

(3) *Classification C.* Water systems serving an average of greater than 100,000 gallons per day but less than or equal to 1 million gallons per day.

(4) *Classification D.* Water systems serving an average of less than or equal to 100,000 gallons per day.

(5) *Classification E.* Distribution and consecutive water systems, without treatment.

(b) Upon written request by the owner, the Department may reclassify a water system serving no more than 500 individuals or having no more than 150 connections, where the source of water for the system is exclusively groundwater, as a Dc water system. A water system that requires only disinfection will be classified as a Dc system.

(c) Each water system Classification A, B and C must be assigned one or more of the following 14 treatment subclassifications that identifies the treatment methods used to process water at that system. Classifications D and E may have one or more of the following 14 treatment subclassifications if the system or operator uses the specified treatment methods to process drinking water at that system.

(1) Subclassification 1—Conventional Filtration.

(2) Subclassification 2—Direct Filtration.

(3) Subclassification 3—Diatomaceous Earth Filtration.

(4) Subclassification 4—Slow Sand Filtration.

(5) Subclassification 5—Cartridge or Bag Filtration.

(6) Subclassification 6—Membrane Filtration.

(7) Subclassification 7—Corrosion Control and Sequestering.

(8) Subclassification 8—Chemical Addition.

(9) Subclassification 9—Ion Exchange and Greensand.

(10) Subclassification 10—Aeration and Activated Carbon Adsorption.

(11) Subclassification 11—Gaseous Chlorine Disinfection.

(12) Subclassification 12—Nongaseous Chemical Disinfection.

(13) Subclassification 13—Ultraviolet Disinfection.

(14) Subclassification 14—Ozonation.

(d) Upon written notice provided to the owners and available operators of the system, the Department may change the classification or subclassification of a water system because of changes in the conditions or circumstances at the system, including, but not limited to:

(1) An increase in capacity that changes the class of the system.

(2) The addition or loss of a treatment technology.

(3) Other Federal or State regulatory changes in requirements relating to the treatment technology used at the system.

(4) The issuance of a permit changing the class or subclassification of a system.

**§ 302.902. Classifications and subclassifications of wastewater systems.**

(a) Wastewater systems will be classified into one of five classifications being designated as Classification A, B, C, D or E as follows:

(1) *Classification A.* Wastewater systems with a permitted average daily discharge flow greater than 5 million gallons per day or unlimited permitted discharge flows.

(2) *Classification B.* Wastewater systems with a permitted average daily discharge flow greater than 1 million gallons per day but less than or equal to 5 million gallons per day.

(3) *Classification C.* Wastewater systems with a permitted average daily discharge flow greater than 100,000 gallons per day but less than or equal to 1 million gallons per day.

(4) *Classification D.* Wastewater systems with a permitted average daily discharge flow equal to or less than 100,000 gallons.

(5) *Classification E.* A satellite collection system.

(b) Each wastewater system Classification A, B, C and D must be assigned one or more of 4 treatment subclassifications that identifies the treatment or collection methods, or both, used to process wastewater at that system:

(1) Subclassification 1—Activated Sludge.

(2) Subclassification 2—Fixed Film.

(3) Subclassification 3—Treatment Ponds and Lagoons.

(4) Subclassification 4—Single Entity Collection System.

(c) Upon written notice provided to the owners and available operators of the system, the Department may change the classification or subclassification of a waste-

water system because of changes in the conditions or circumstances at the system, including, but not limited to:

(1) An increase in capacity that changes the class of the system.

(2) The addition or loss of a treatment technology.

(3) Other Federal or State regulatory changes in requirements relating to treatment technology used at the system.

(4) The issuance of a permit changing the class or subclassification of a system.

**Subchapter J. OPERATOR CLASSES AND SUBCLASSIFICATIONS**

Sec.

302.1001. General provisions.

302.1002. Certification classes and subclassifications of water system operators.

302.1003. Certification classes and subclassifications of wastewater system operators.

302.1004. Operator-in-training status.

302.1005. Grandparented operators.

302.1006. Laboratory supervisor certification.

**§ 302.1001. General provisions.**

(a) A certified operator may hold only one valid water certificate and one valid wastewater certificate. Each valid certificate may include one or more appropriate classes and subclassifications.

(b) A certified operator holding a valid Class A, B, C or D and the Class E water or wastewater certificate and all the water or wastewater treatment technology subclassifications, will be issued either a water or wastewater master certificate for that class.

**§ 302.1002. Certification classes and subclassifications of water system operators.**

(a) There are 6 water classes and 14 water treatment technology subclassifications that correspond to the water system classifications and treatment technology subclassifications defined in § 302.901 (relating to classification and subclassifications of water systems).

(b) To hold a valid Class A, B or C water certificate, the operator shall meet the certification requirements set forth in § 302.104 (relating to certification requirements) for at least one water treatment technology subclassification defined in § 302.901.

(c) To hold a valid Class D or E water certificate, the operator shall meet the certification requirements in § 302.104 but is not required to have a subclassification, unless the operator is involved in making process control decisions involving one of the subclassification treatment technologies defined in § 302.901.

(d) A Dc or Dn certificate is a stand-alone certificate and does not include any water treatment technology subclassifications.

(e) Water operators with a Class A, B, C or D water certificate that also make process control decisions in the distribution system shall also have the Class E certificate.

**§ 302.1003. Certification classes and subclassifications of wastewater system operators.**

(a) There are five wastewater classifications and four wastewater treatment technology subclassifications that correspond to the wastewater treatment system classifications and treatment technology subclassifications defined in § 302.902 (relating to classifications and subclassifications of wastewater systems).

(b) Certified wastewater operators holding an A, B, C or D classification will have at least one wastewater treatment technology subclassification.

(c) The Class E wastewater classification will be combined with Subclassification 4 as a standalone certificate for operators of wastewater collection systems who meet the requirements for certification as defined in § 302.104 (relating to certification requirements).

(d) Wastewater operators with a Class A, B, C or D wastewater certificate that also make process control decisions in the collection system shall also have the E4 certificate.

**§ 302.1004. Operator-in-training status.**

(a) The operator-in-training status applies to an individual passing the certification examinations who has not yet met the minimum education and experience requirements in §§ 302.701 and 302.703 (relating to minimum education requirements; and experience requirements).

(b) An operator-in-training status is valid until the individual demonstrates the education and experience requirements as defined in §§ 302.701 and 302.703 have been met and the Board issues a certificate.

(c) An individual with operator-in-training status will not independently make process control decisions or serve as the available operator for a water or wastewater system.

(d) An operator-in-training may concurrently hold a water and wastewater operator-in-training status.

**§ 302.1005. Grandparented operators.**

(a) This section applies to those operators of nontransient noncommunity water systems, satellite wastewater collection systems containing a pump station or single entity wastewater collection systems who were granted a grandparented certificate by the Board.

(b) Grandparented certificates are site, size and technology specific and not transferable to any other water or wastewater system.

(c) A grandparented certificate is temporary and will expire within 3 years of the date of issuance. A certified operator who was grandparented shall meet the conditions for certification renewal including the submittal of an application for certification action for renewal defined in § 302.201 (relating to form of application) and completion of the continuing education requirements defined in § 302.802 (relating to continuing education requirements for certificate renewal).

(d) The grandparented certificate is no longer valid if one of the following applies:

(1) The certified operator moves to another water or wastewater system.

(2) The system subclassification changes because of a modification or addition, or both, of treatment technology.

(3) The Board modifies, suspends or revokes the certificate upon petition of the Department.

(e) If a grandparented certificate is no longer valid, the operator shall meet the requirements for certification as identified in § 302.104 (relating to certification requirements).

**§ 302.1006. Laboratory supervisor certification.**

(a) There will be a laboratory supervisor subclassification (15) for individuals responsible for the supervision of testing or analysis of environmental samples and report-

ing of analytical data for water supply systems in a Pennsylvania-accredited environmental laboratory operated by a water system.

(b) There will be a laboratory supervisor subclassification (5) for individuals responsible for supervision of the testing or analysis of environmental samples and reporting of analytical data for wastewater systems in a Pennsylvania-accredited environmental laboratory operated by a wastewater or industrial waste system.

(c) A certified operator, including those holding a master certificate, will not be qualified by the Department for a laboratory supervisor certificate without meeting the requirements in this section.

(d) Laboratory supervisor certification is not required to qualify for a master certificate in water or wastewater.

(e) An applicant for laboratory supervisor's certification for drinking water or wastewater shall have 2 years of experience in the testing and analysis of environmental samples for water or wastewater systems.

(f) An applicant for laboratory supervisor's certification for drinking water or wastewater systems shall hold a valid operator's certificate and demonstrate the knowledge, skills and abilities needed to be a laboratory supervisor by obtaining a passing score on either the Part II Laboratory Supervisor for Water Systems or Part II Laboratory Supervisor for Wastewater Systems examination.

(g) In accordance with § 252.302(h)(3) (relating to qualifications of the laboratory supervisor), certified operators who are serving as the laboratory supervisor for a drinking water or wastewater system on September 18, 2010, will have 12 months after the Board makes the water or wastewater laboratory subclassification examination available to meet the standards for certification as defined in this section.

(h) Certified operators who meet the other qualifications defined in § 252.302 or § 252.303 (relating to grandfathering provisions for laboratory supervisors) do not need to obtain the laboratory supervisor certification to continue serving as a laboratory supervisor for a water or wastewater system.

**Subchapter K. PROFESSIONAL ENGINEERS**

Sec.

302.1101. General provisions.

302.1102. Issuance of initial certification for a professional engineer.

302.1103. Experience requirements for professional engineers.

**§ 302.1101. General provisions.**

(a) This subchapter applies to a professional engineer registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148—158.2) who has been successfully examined in civil, environmental or sanitary engineering and is a certified operator, or an applicant for operator certification.

(b) A professional engineer applying for certification action shall meet the same requirements as provided for by the act, this chapter, and any other Federal or State law or rules and regulations promulgated thereto applicable to the operation of water and wastewater systems except for those provided for in this subchapter.

**§ 302.1102. Issuance of initial certification for a professional engineer.**

A professional engineer shall submit an application for certification action in accordance with § 302.201 (relating to form of application). The engineer shall also meet the

requirements for certification in § 302.104 (relating to certification requirements). When requesting a certificate under this subchapter, the applicant shall provide a copy of, or other written proof of, a valid professional engineer's license.

**§ 302.1103. Experience requirements for professional engineers.**

In addition to those activities defined in § 302.704 (relating to determining qualifying experience), other activities specifically associated with the responsibilities and duties of a professional engineer may be eligible as qualifying experience for an applicant. These activities include the following:

- (1) Plant start-up activities.
- (2) Development of standard operating procedures.
- (3) Development of an operation and maintenance plan or an emergency response plan for a water or wastewater system.
- (4) Consulting activities associated with water or wastewater system operations.
- (5) Activities associated with testing pilot technology.
- (6) Activities related to operational inspections completed by a professional engineer.

**Subchapter L. SYSTEM OPERATION**

Sec.

- 302.1201. Duties of operators.
- 302.1202. Duties of owners.
- 302.1203. Process control decisions.
- 302.1204. Standard operating procedures.
- 302.1205. Number of required certified operators.
- 302.1206. Operator in responsible charge.
- 302.1207. Operation of multiple treatment systems.
- 302.1208. PLCs and SCADA.
- 302.1209. Assessment of fines and penalties.

**§ 302.1201. Duties of operators.**

(a) A certified operator shall comply with the act, this chapter, and other Federal or State law or rules and regulations promulgated thereto applicable to the operation of water and wastewater systems to protect the environment and public health and safety. A certified operator shall provide for the suitable operation and maintenance of a water or wastewater system utilizing available resources needed to comply with applicable laws, rules and regulations and permit conditions or requirements. The Department will consider reports submitted to the owner in accordance with subsection (c) and the owner's response as defined in § 302.1202(a)(4) (relating to duties of owners) when deciding if a certified operator is in compliance.

(b) Available operator tasks necessary to control the operation and provide for the maintenance of a water or wastewater system may include:

- (1) Controlling the selection of, or flow from, an existing permitted source to a water system.
- (2) Controlling the selection of flow to a water distribution system.
- (3) Controlling the flow from a wastewater system to the waters of this Commonwealth as defined in the NPDES or The Clean Streams Law permit for the system.
- (4) Controlling the processing of raw, treated or finished water or wastewater.
- (5) Preparing and controlling chemical or biological, or both, addition for water or wastewater treatment.

(6) Observing and taking the necessary actions in response to variations in operating conditions.

(7) Adjusting system processes based on monitoring data.

(8) Performing calculations for process control.

(9) Operating valves or gates, or both, either manually or by remote control.

(10) Starting or stopping pumps or increasing or decreasing pump rates.

(11) Providing for proper source water protection.

(12) Directing the actions of certified and noncertified operators.

(13) Taking an action to maintain a system's equipment to prevent pollution or a permit violation.

(14) Overseeing or performing the collection, analysis and interpretation of all process control and compliance monitoring samples of the water or wastewater systems.

(15) Preparing, reviewing and submitting applicable notices and reports to the appropriate persons or agencies.

(16) Developing, approving or using a process control plan that is specific to the treatment needs and conditions of the system.

(c) Certified operators shall report to the system owner known violations or system conditions that may be or are causing violations of Federal or State law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems. When submitted, the report must include the following:

- (1) The name of the certified operator making the report.
- (2) The date.
- (3) The nature of the violation or system conditions.
- (4) The suspected cause of the violation or system conditions, including the lack of needed resources.
- (5) The degree of severity or threat to public health, safety or the environment of the violation or system conditions.

(6) Actions or mitigating measures associated with process control necessary to prevent or eliminate a violation of Federal or State law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems.

(d) The available operators making process control decisions are responsible for those decisions and consequences, unless the owner fails to respond to a report as required in subsection (c) or there is a deliberate action with malice or negligence on the part of an employee under the supervision of the available operator.

**§ 302.1202. Duties of owners.**

(a) An owner of a water or wastewater system shall:

(1) Comply with the Federal or State law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems.

(2) Insure process control decisions at the systems are made by available operators with a valid operator's certificate with the appropriate classes and subclassifications.



(3) Post the names of the available operators in the treatment area of the system, including the method of contacting them if they are not onsite.

(4) Take appropriate action in a timely manner in response to reports required under § 302.1201(c) (relating to duties of operators) from certified operators.

(5) Provide a copy of all current, relevant water and wastewater permits to all available operators, unless the owner submits a written request to the Department. Upon receipt of this written request, the Department will provide the current water and wastewater permits to the available operator designated by the owner.

(b) Upon written request, a system owner shall report to the Department:

(1) The system name, address, phone number and e-mail address (if available).

(2) The name and title of the system representative providing the information.

(3) The system owner name, address, phone number and e-mail address (if available).

(4) The Public Water System Identification number, NPDES permit numbers or Water Quality Management Part II permit numbers for the system.

(5) The name, client ID, address, phone number and email address (if available) of available operators employed by the owner at the system and the operators' classes and subclassifications.

(6) The designation of an operator in responsible charge if the owner chooses to develop and utilize standard operating procedures.

(c) A system owner shall notify the Department in writing within 10 calendar days of the addition, loss, change or replacement of an available operator. The owner shall provide at that time the name, client ID, and class and subclassification of all operator changes.

#### **§ 302.1203. Process control decisions.**

(a) An available operator shall make all process control decisions. These decisions may be made onsite, from a remote site, by the use of standard operating procedures approved by the operator in responsible charge, or by using a PLC system as provided under § 302.1208 (relating to PLCs and SCADA).

(b) A certified operator can make process control decisions for systems with a smaller hydraulic design capacity, provided they are certified with the appropriate treatment technology-based subclassifications.

(c) The Department may require a system to have a process control plan that includes, as necessary, the following:

- (1) A flow diagram of the entire treatment process.
- (2) The identification of individual treatment units by type.
- (3) A description of the treatment process provided by each treatment unit.
- (4) The anticipated level of treatment provided by each treatment unit.
- (5) The normal influent and effluent operating ranges for each wastewater or water treatment unit.
- (6) A description of the average and seasonal characteristics of the raw water or wastewater influent.
- (7) Any standard operating procedures.

(8) The methods to be utilized to monitor and adjust treatment processes

(9) The identification of the key processes and equipment associated with these processes.

(10) An outline of how key processes and equipment will be monitored if the system is without staff during daily operations.

(11) The trigger parameters for each unit that requires a process control decision.

(12) A preventive and emergency maintenance plan for all process control-related equipment including a replacement parts inventory and emergency repair method.

(13) The procedures for emergency operations when security has been breached or natural disasters threaten public safety, the environment and property.

(14) The wastewater treatment methods and strategies to assure proper treatment during wet weather operations.

(15) A plan for wasting, treating and disposing of solids associated with wastewater treatment.

(d) Plans required under other Department rules and regulations applicable to the operation of a drinking water or wastewater system may satisfy the requirement for a process control plan as determined by the Department.

(e) The Department will consider the following criteria when determining whether or not to require a process control plan:

- (1) The system has a significant history of noncompliance.
- (2) The system is having difficulty with a new treatment technology.
- (3) Another unique situation where the development of a process control plan is warranted.

(f) The Department will notify the owner in writing when it is determined a process control plan is needed.

#### **§ 302.1204. Standard operating procedures.**

(a) Standard operating procedures are written documents outlining the actions necessary to make process control decisions given established operational quantitative and qualitative parameters for the system or treatment units within the system.

(b) Standard operating procedures must:

- (1) Include the name of the operator in responsible charge.
- (2) Identify the operators that may utilize the standard operating procedures to make process control decisions.
- (3) State which treatment processes are covered by the standard operating procedures for treatment process that are not covered by the standard operating procedures, the operator must be instructed to contact the operator in responsible charge to make any necessary process control decisions.

(4) Identify the trigger parameters for the treatment processes and the appropriate actions to be taken for each treatment process.

(c) Standard operating procedures shall be approved in writing and dated by the operators in responsible charge, and available at the system for review.

(d) The use of standard operating procedures is an optional method, available to the operator in responsible charge, to allow operators under the operator in responsible charge's direct supervision to implement process control decisions. The decision to use standard operating procedures depends on the complexity and personnel of the system.

(e) An operator in responsible charge using standard operating procedures shall notify the system owner that these standard operating procedures are in use.

(f) The Department may request a copy of a system's standard operating procedures to determine the use of the procedures by the operators or the effectiveness of the procedures to insure compliance with Federal or State law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems.

(g) Standard operating procedures may be in an electronic form to facilitate searching for, and retrieval of, information by an operator. These standard operating procedures must be in an electronic form that cannot be changed without evidence of tampering. The standard operating procedures must also indicate where the original signed paper copy or copies are maintained and the name of the operator in responsible charge who signed them. The content of the electronic version of the standard operating procedures must be identical to the current signed paper standard operating procedures. If differences are found between the electronic form and the original signed paper copy of the standard operating procedures, the original signed paper copy will be considered the official version of the standard operating procedures.

**§ 302.1205. Number of required certified operators.**

A system shall have the number of available operators necessary to comply with Federal and State laws, and rules and regulations associated with water or wastewater systems to protect the environment and public health and safety.

**§ 302.1206. Operator in responsible charge.**

(a) The system owner shall notify the Department of changes in the operator in responsible charge within 10 days of the change, including the name, client ID, and certificate number of the operators in responsible charge. System owners shall notify the operators in responsible charge of this designation in writing.

(b) Upon request of the Department, a system owner shall provide the name, client ID, and certificate number of any operators in responsible charge.

(c) An operator in responsible charge shall hold a valid certificate with the classes and subclassifications as defined in §§ 302.1002 and 302.1003 (relating to certification classes and subclassifications of water system operators; and certification classes and subclassifications of wastewater system operators) that correspond to the system's classification and subclassification as defined in §§ 302.901 and 302.902 (relating to classification and subclassifications of water systems; and classification and subclassifications of wastewater systems).

(d) A grandparented operator can be designated as the operator in responsible charge.

(e) The duty of the operator in responsible charge will be to approve any standard operating procedures developed for the system.

(f) The operator in responsible charge as designated in subsection (a), is accountable for violations of Federal or State law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems which may occur when an operator follows these standard operating procedures, provided that the violation occurred as a direct result of a provision in the standard operating procedure approved by the operator in responsible charge.

**§ 302.1207. Operation of multiple treatment systems.**

(a) An available operator may make process control decisions at more than one system.

(b) Any available operator operating more than one system, including a circuit rider, shall meet the requirements of the act, this chapter, and Federal or State law or rules and regulations promulgated thereto applicable to the operation of water or wastewater systems.

(c) An owner may use the services of a circuit rider to meet the requirements of the act, this chapter, and Federal or State law or rules and regulations promulgated thereto applicable to the operation of water or wastewater systems.

(d) A system owner shall notify the Department within 10 days when a circuit rider is employed to operate the system.

(e) Unless the following information is specified in a contract between the circuit rider and the owner, the circuit rider shall develop and submit a general work plan to the owner of each system that includes:

(1) The name and location of the circuit rider's primary business.

(2) The name and location of each system to be included in the circuit rider program.

(3) The classification and subclassification of each system included in the circuit rider program.

(4) The number of estimated hours per week the circuit rider works at each system, with the method of documentation to be used for each visit.

(f) A circuit rider shall develop and submit a system specific management plan to the owner of each system describing the information relevant to the owner's system. This management plan must include:

(1) The names and contact information of the available operators for that system, with a copy of the operators' certificate to be prominently displayed at the system.

(2) The standard operating procedures and a process control plan for the system.

(3) The name and method of contacting the circuit rider in case of an emergency.

(4) An estimate of the response time necessary to be physically present at the system.

(g) An available operator may not make process control decisions at more than one system until the owner has provided approval through signature for the specific management plan for the system.

(h) The general work plan and the system specific management plans developed for a circuit rider program shall be made available to the Department upon request.

(i) The circuit rider shall report any changes to the general work plan and provide appropriate documentation within 10 days to the owners of all the participating systems.

(j) The circuit rider shall report changes to the system specific management plan and provide appropriate documentation within 10 days to the owner of the system identified in the management plan.

(k) The Department may require the circuit rider to be present at a system for the purposes of Department inspection or investigation.

(l) The Department may direct an owner or available operator to cease participation in a circuit rider program if one of the following applies:

(1) The system is in violation for failure to meet the requirements of the act, this chapter, and Federal or State law or rules and regulations promulgated thereto applicable to the operation of water or wastewater systems.

(2) There is a threat to public health, safety and the environment due to the actions of the circuit rider.

(3) Changes have occurred at the system that are not included in the system specific management plan.

**§ 302.1208. PLCs and SCADA.**

(a) An owner may use a PLC or SCADA system to monitor, maintain or make decisions regarding any process control activity within the water or wastewater system.

(b) The available operator shall monitor a PLC or SCADA system that is used for process control, and have the ability to adjust, or direct the adjustment of, these systems when necessary to maintain compliance with Federal or State law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems.

(c) A system utilizing a PLC or SCADA system shall have a backup emergency plan for making process control decisions when, or if, the PLC or SCADA system is inoperable.

(d) If an owner wants to have a PLC or SCADA system oversee more than one water or wastewater system simultaneously, the system specific management plan developed under § 302.1207 (relating to the operation of multiple treatment systems) must also identify and demonstrate how process control decisions not performed by the PLC or SCADA system will be made and demonstrate how continual staffing and monitoring of systems controlled by a PLC or SCADA system will be maintained.

**§ 302.1209. Assessment of fines and penalties.**

The assessment of a civil penalty for noncompliance with section 5(d), 6(d) or 13 of the act (63 P. S. §§ 1005(d), 1006(d) and 1013) will be assessed only upon the person's failure to comply with an order of the Department issued under section 4(b)(1.1) (63 P. S. § 1004(b)(1.1)) of the act.

**CHAPTER 303. (Reserved)**

**§§ 303.1—303.3. (Reserved).**

**§§ 303.11—303.14. (Reserved).**

**§§ 303.21—303.28. (Reserved)**

**§§ 303.31—303.34. (Reserved).**

**CHAPTER 305. (Reserved)**

**§§ 305.1—305.7. (Reserved).**

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## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[ 49 PA. CODE CHS. 47, 48 AND 49 ]

#### Code of Ethical Practice and Standards of Professional Conduct

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) adds §§ 47.71—47.80, 48.71—48.80 and 49.71—49.80 (relating to code of ethical practice and standards of professional conduct) to read as set forth in Annex A.

*Effective Date*

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

*Statutory Authority*

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)).

*Background and Purpose*

Section 6(2) of the act authorizes the Board to adopt rules and regulations establishing standards of professional practice and conduct for licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors in this Commonwealth. The Board, through this final-form rulemaking, is implementing section 6(2) of the act.

In developing this code of ethical practice and standards of professional conduct, the Board looked at codes of conduct established by professional associations and organizations as well as other state codes. In particular, the Board modeled these regulations after codes of conduct and professional practice adopted by the following associations and organizations: the National Association of Social Workers (NASW); the Pennsylvania Society for Clinical Social Work (PSCSW); the Association of State Social Work Boards; the Clinical Social Work Federation; the Pennsylvania State Board of Psychology; the American Association for Marriage and Family Therapy (AAMFT); the American Counseling Association (ACA); the National Board for Certified Counselors; the Professional Counseling Board; the Commission on Rehabilitation Counselor Certification; and the American Psychological Association. In addition, the Board looked at standards promulgated by other state licensing boards.

The Board adopts this final-form rulemaking with a code of ethical practice and standards of professional conduct for each of the three professions within its jurisdiction. In drafting the final-form rulemaking, the Board sought the greatest possible consistency among the three chapters. The Board recognized that the National associations representing each of the professions had previously issued its own codes of ethics. The Board also recognized that each group of licensed stakeholders would seek the highest level of consistency between the specific provisions of the Board's code of ethics and those of that profession's National association's code of ethics.

*Summary of Comments and Responses to Proposed Rule-making*

Notice of the proposed rulemaking was published at 38 Pa.B. 3253 (June 14, 2008). The Board received comments from the following entities: the Pennsylvania Counseling Association (PCA); the Pennsylvania Association for Marriage and Family Therapy (PAMFT); the North Atlantic Region of the ACA; the Pennsylvania Chapter of the NASW (NASW-PA); and the PSCSW. In addition, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) in response to their review of the regulations under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). Responses to the comments have been grouped under general categories, as follows:

*Need for the Final-Form Rulemaking*

In general, the HPLC questioned the need for the rulemaking. However, the public commentators expressed general support for the proposed rulemaking. PSCSW “welcome[d] the ethical standards of the regulations and [found] them to be clear and acceptable practice.” NASW-PA agreed “with the need to establish standards of professional practice and conduct” and appreciated the Board’s consideration of the codes of conduct established by the various professional associations. The PAMFT was “pleased to see the publication of” the proposed rulemaking and “urges the adoption of the proposed regulation” with minor changes. The PCA appreciated “the work that has gone into the development of this Code of Ethics for LPCs” and offered comments they hoped would be useful to the Board. The ACA (North Atlantic Region) recognized “the work that went into putting together this proposed code” and noted that it would “serve Licensed Professional Counselors and the public well,” but likewise offered comments to strengthen the final-form rulemaking.

The HPLC opined that these regulations are “unnecessary especially considering that only the Psychology Board has similar regulations.” The Board notes that the State Board of Occupational Therapy promulgated a code of ethics in § 42.24 (relating to Code of Ethics) as has the State Board of Examiners in Speech-Language and Hearing in § 45.102 (relating to Code of Ethics). The State Board of Veterinary Medicine also has similar rules of professional conduct in § 31.21 (relating to Rules of Professional Conduct for Veterinarians). The State Board of Accountancy regulations in §§ 11.21—11.36 (relating to relations with clients and public) regarding independence, integrity and objectivity, competence, fees, confidential client information, records, advertising and solicitation are similar to a code of ethics. As IRRC pointed out, many boards have similar provisions, although not necessarily in a “code of ethics.” Many boards define unprofessional conduct to include ethics violations. The Board elected to follow the State Board of Psychology’s lead because psychology is a related profession and many of the ethical principles are similar. In addition, the State Board of Psychology’s code of ethics has been tested in court and has withstood judicial scrutiny.

The HPLC suggested that the Board consider adopting a National standard for ethics currently established by the National associations. Likewise, NASW-PA requested that the Board “adopt by reference the current codes of professional conduct for each profession under the Board.” By promulgating its own code of ethics, the Board intended to provide more specific guidance than that of the National associations, as well as impose stricter

standards than the National associations when appropriate. In addition, the National codes are written in nonregulatory language, which was one of IRRC’s concerns about certain provisions in the proposed rulemaking. To address the HPLC’s and other commentators’ concerns, the Board indicated its intention to adhere to each licensee group’s National codes of ethics and standards of practice in resolving ambiguities that may arise under the regulations, but that conflict will be resolved in favor of these regulations.

*Format of the Final-Form Rulemaking*

IRRC expressed concerns about the format of the proposed rulemaking in that the entire code of ethics for each profession is in one section containing a variety of topics. IRRC suggested that it would improve clarity and ease implementation to set forth some of the subject areas separately. The Board agreed and restructured the final-form rulemaking by dividing it into ten sections to aid clarity. IRRC also pointed out the use of “non-regulatory” language at various places throughout the proposed rulemaking. The Board revised the final-form rulemaking to clarify that its requirements are mandatory by replacing “should” with “shall” throughout.

Additionally, IRRC and PAMFT suggested that the only applicable National code of ethics that should be referenced in Chapter 48 is the AAMFT. The other organizations listed were professional counseling groups. The Board agreed and amended the provision so that only the AAMFT Code of Ethics is referenced. IRRC, the PCA and the ACA (North Atlantic Region) further noted the conspicuous absence of the code of ethics of the ACA from Chapter 49. The Board corrected this oversight.

The HPLC questioned the use of the term “licensee” throughout the proposed rulemaking, when the opening paragraph in each chapter specifies which licensees to which the regulation applies. In fact, the regulations apply to all licensees. Chapter 47 applies to licensed social workers and licensed clinical social workers; Chapter 48 applies to licensed marriage and family therapists; and Chapter 49 applies to licensed professional counselors. These are all of the licensee classifications currently regulated by the Board. The Board has often used the shorthand phrase “licensee” throughout its regulations and does not feel the use of the term adversely affects the clarity of the final-form rulemaking.

*Responsibility to clients/patients*

IRRC noted that there are two sections in the regulations that relate to misrepresentation of professional qualifications and suggested that they be combined to avoid duplication in the final-form rulemaking. Instead, because the Board separated the topics of “responsibility to clients/patients” and “advertising” in separate sections, the Board has to retain and amend the provisions. The first provision relates to communications with specific existing or prospective clients/patients whose identity is known to the licensee. The advertising provision, now contained §§ 47.80, 48.80 and 49.80 (relating to advertising) applies specifically to general informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis. Both provisions were amended to clarify the Board’s intent.

The PCA inquired as to why the proposed code did not prohibit licensed professional counselors who hold doctorate degrees in noncounseling areas from representing themselves as having a doctorate. The regulations prohibit licensees from misrepresenting their professional

qualifications. To clarify the Board's intent, the advertising provisions were amended to provide that licensees may not advertise or misrepresent their services and credentials in a manner that is false, misleading, deceptive or fraudulent.

IRRC and the HPLC also questioned the definition of the "appropriate standard of care." Commentators asked whether the Board should promulgate a regulation that requires a licensee to provide "effective" care. Obviously the goal of social work, marriage and family therapy and professional counseling services is to be effective. However, the Board has concerns about establishing a regulation, the violation of which could result in disciplinary action, regarding the effectiveness of care. The Board believes that the standard should be what the ordinary, reasonable licensee would do under the circumstances; and while, as one commentator noted, this definition may seem to be weak and open to interpretation, the courts have been dealing with the "reasonable person" standard for centuries. These regulations seek to establish minimum standards, the violation of which could result in disciplinary action against a licensee. Finally, the Board notes that the National codes of ethics will be used in resolving ambiguities that arise under these regulations.

IRRC expressed concerns about how the two public members of the Board would be able to ascertain what a "reasonable licensee" would do under similar circumstances. In addition, NASW-PA and PSCSW suggested that "standards of care" cases should be reviewed by a licensee's peers and not by another profession. In general, when a "standard of care" case comes before the Board, it is the usual circumstance that the prosecution and defense have "experts" testify as to what standard of care should have been followed by the licensee under the circumstances. The Board believes the public members are capable of evaluating the testimony objectively, in spite of the fact that they are not licensees with comparable training. A professional board made up of a majority of licensees is the entity that ultimately decides these issues. Under section 5(a) of the act (63 P. S. § 1905(a)), the 13-member Board is comprised as follows: 10 who are licensees—5 who are either licensed social workers or licensed clinical social workers, 2 or 3 licensed marriage and family therapists and 2 or 3 licensed professional counselors; 2 public members; and the Commissioner of Professional and Occupational Affairs. The Board believes that due to the great degree of consistency among these regulations, a professional member that is, for example, a licensed professional counselor, will be able to review a matter involving a licensed social worker, licensed clinical social worker or marriage and family therapist with little difficulty. In addition, as noted previously, each profession's National code of ethics will be used to resolve ambiguities arising in matters under these regulations. Finally, NASW-PA raised concerns that attorneys and paralegals review complaints to determine whether a violation of the regulations has occurred. NASW-PA suggested that ethics-related complaints be reviewed by a committee of the same licensed professionals who are familiar with the code of ethical practice and professional conduct. PSCSW supports the NASW-PA proposal and notes that enforcement and prosecution "should be ultimately done by peer review not by another profession." PSCSW suggests that, in a case of "a therapeutic ethical [lapse] or disregard entirely, a jury of ones' (sic) peers is more appropriate and responsible." As noted previously, the prosecution division has access to experts who review matters to determine whether a violation of a standard of practice has been violated and who later testify in

hearings before the Board. Neither the Board nor its professional members may preview a complaint or provide advice to the Commonwealth's prosecutors as to what complaints deserve to be prosecuted. To do so would be an improper commingling of the prosecutorial and adjudicatory functions. See *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992).

IRRC noted that the State Board of Psychology's standards provide for areas in which recognized standards do not yet exist. To address IRRC's and the HPLC's specific concerns, the Board added language conceding that, although in some areas recognized standards do not yet exist, protection of the client's/patient's welfare remains the paramount consideration.

IRRC and the HPLC expressed concern with the requirement to make "appropriate" referrals "in a timely manner" as being ambiguous and asked for a more specific rule for a minimum time period in the final-form rulemaking. The Board responded by amending the language to provide that licensees refer a client/patient to another professional and take steps to facilitate an orderly transfer of responsibility whenever the client's/patient's needs exceed the licensee's competence level. The amendment further provides that the licensee shall notify the client/patient promptly of the need to refer and seek the referral and transfer of services in relation to the client's/patient's needs and preferences. The Board felt that it was impossible to establish a strict timetable for referrals that would be applicable in all cases. Thus, to address the HPLC's concerns, the disciplinable offense becomes not making a referral at all when a client's/patient's needs exceed the licensee's competence level.

The PCA suggested that the regulations should require licensed professional counselors to be competent in the use and interpretation of the instruments they use and no requirement to utilize current instruments. The ACA (North Atlantic Region) also pointed out that the code of ethics failed to address assessment. The Board responded by amending the competency provisions in Chapter 49 to require licensees to use only those testing and assessment instruments relevant to the needs of the client/patient and for which the licensee has been trained. The Board also added a provision requiring licensees to maintain knowledge of current scientific and professional information regarding the services they render. The Board also noted that it will refer to the ACA code of ethics to resolve ambiguities.

#### *Informed consent*

The HPLC and IRRC questioned the informed consent provisions and IRRC asked if the Board would consider providing a written disclosure form for licensees to use in discussing services and other issues with the patient/client. In response, rather than promulgate a form which would have to be adapted to every situation, the Board redrafted the section to include a list setting forth the type of information that shall be provided to clients/patients in writing, to include billing and collection policies, as suggested by PSCSW. In response to the HPLC's concerns, the redrafted provision no longer requires a licensee to notify a client/patient of every service available, or the limits, rights, opportunities and obligations. The new provision requires the licensee to inform the client/patient of the purpose of the services being provided, risks and limits to the services being provided that are known to the licensee; reasonable alternatives to the services being provided; the costs, billing and overdue collections policies and their potential effect on the continuation of the professional relationship; the client's/

patient's right to refuse or withdraw consent and the time frame covered by the consent; and other information the licensee reasonably expects would affect the client's/patient's decision to enter into or continue the professional relationship.

IRRC questioned whether a spouse, domestic partner or adult child would be able to provide informed consent on behalf of someone who is not competent due to age or mental condition. To address this concern, the Board clarified that either a parent, guardian, court-appointed representative or the holder of a client's/patient's power of attorney could provide consent to treatment.

The PCA questioned the provision regarding a client/patient receiving services involuntarily. The PCA suggested that this standard challenges the very essence of autonomy. The ACA (North Atlantic Region) also noted that although some individuals might be mandated to treatment, they still have the option of refusing even if doing so has serious consequences that are considerably less appealing than counseling. In response, the Board clarified that the provision was intended to address clients/patients who are engaged in legally-mandated services. The Board also clarified that the licensee shall provide information about the nature and extent of the services and about the client's/patient's rights to the client/patient or to the client's/patient's legal representative, when applicable. The PCA also opined that this provision also suggests that releases of information can be made without the involuntary client's written consent in violation of other laws. The Board noted that the provisions regarding confidentiality clearly provide that licensees have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and professional standards of practice. Therefore, specific laws requiring certain conditions be met before information can be released without written consent must continue to be followed.

#### *Confidentiality and privacy*

IRRC and the HPLC asked the Board to cite to specific "other laws" that govern confidentiality and privacy. The Board is wary of omitting future statutory developments by setting forth a current listing of applicable privacy-related statutes and regulations. The Board noted that it gave consideration to certain specific statutes, including those pertaining to confidentiality of drug and alcohol use records, HIV-related status and records and the Health Insurance Portability and Accountability Act. The Board declined to attempt to identify and cite every possible Federal or State law or regulation that governs privacy and confidentiality of mental health information in this final-form rulemaking. Instead, the Board amended the provision to provide that confidential information may only be revealed with consent, unless the failure to do so would violate a court order or a specific Federal or State privacy statute or regulation. Thus, in a proceeding alleging that a licensee released confidential information without consent, the licensee could defend by pointing to a court order or a specific statute or regulation requiring disclosure.

IRRC also questioned the Board's use of the terms "legally authorized person" and "person legally authorized" to give consent. In the final-form rulemaking, the Board amended the language to refer to the client's/patient's parent, guardian, court-appointed representative or holder of power of attorney.

PAMFT raised concerns regarding confidentiality in providing services to families, couples or groups. IRRC

asked whether the Board should amend the regulation to ensure that each family member's confidentiality is protected. The Board believes the proposed rulemaking adequately protects the confidentiality of participants in family, group or couples counseling. A licensee has an affirmative duty not to disclose confidential information without consent. This general provision would extend to participants in group or family counseling situations. As noted by PAMFT, family members who are included in sessions are considered part of the client group. Each of the regulated professions' National association's codes of ethics has its own provisions regarding confidentiality of each member of a family treatment group. The specific concerns raised by PAMFT are addressed within the consent provisions of these regulations when read in concert with the AAMFT code of ethics.

#### *Termination*

The PCA suggested that licensees should be allowed to terminate or discharge a patient/client for nonpayment of fees. IRRC noted that this issue does not appear to be addressed in the proposed rulemaking. In response, the Board added language providing that a licensee may terminate services for nonpayment if the financial contractual arrangements have been made clear to the client/patient, the client/patient does not pose an imminent danger to self or others and the clinical and other consequences of the current nonpayment have been addressed and discussed with the client/patient. The PCA also suggested that the provision should address termination of treatment due to lack of client progress. It is very difficult to set standards, the violation of which could result in disciplinary action, based on subjective measure such as effectiveness of treatment or lack of progress by the client/patient. The Board, instead, will rely on the National codes of ethics to resolve ambiguities.

In addition, IRRC suggested that the Board eliminate language requiring "appropriate" referral and "reasonable" notification regarding interruption or termination of services and, instead, establish a specific minimum time period for advance notice of termination to provide time for referrals and the search for a new provider. The Board elected to eliminate the offending language and rely on the National codes of ethics to resolve ambiguities.

#### *Sexual harassment*

The PCA and the ACA (North Atlantic Region) noted that nothing in this code of ethics addressed limitations on sexual or romantic relationships with current or former clients. The Board notes that its existing regulations dealing with sexual misconduct in §§ 47.61—47.65, 48.21—48.25 and 49.21—49.25 (relating to sexual misconduct) adequately address those issues.

IRRC noted that the Board already addresses sexual misconduct in its regulations and suggests that sexual harassment should rely on the definition of sexual intimacies already included in the definitions section of each chapter in prohibiting this type of behavior. IRRC also suggested that the Board define the term "sexual harassment" in the final-form rulemaking. In the final-form rulemaking, the Board moved sexual harassment to its own section and amended the regulations to clarify that sexual misconduct applies to clients/patients while the prohibition on sexual harassment addresses employment or academic relationships in the professional work environment and draws its definition directly from the Human Relations Commission's guidelines on sexual harassment.

*Discrimination*

IRRC noted that there are numerous State and Federal antidiscrimination laws and suggested that the Board reference these existing laws rather than designing a new antidiscrimination rule. In response, the Board amended the provision on discrimination to provide that licensees comply with existing Federal and State antidiscrimination laws and may not practice, condone, facilitate or collaborate with any form of discrimination prohibited by those laws.

The PCA suggested that gender identity should be added to the list of protected classes. As noted previously, the Board elected to rely on existing antidiscrimination laws, which renders unnecessary a recitation of each protected group or prohibited behavior. The PCA also suggested that the Board include an affirmative duty to be competent in working with diverse clients/patients. The Board feels that the general competency provisions are adequate. The ACA (North Atlantic Region) suggested renaming this provision "nondiscrimination." The Board elected to retain the heading to be consistent with most codes of ethics.

*Dual or multiple relationships affecting the licensee's judgment*

IRRC agreed with the HPLC's concerns about terms and phrases in this section being vague or ambiguous. IRRC suggested that the Board provide specific examples of situations that this provision seeks to address. The Board has had numerous cases brought before it that revolve around licensees whose other relationships (social, professional, business, financial, and the like) with clients/patients and their family members interfere with the therapeutic relationship. For example, a licensee begins providing marriage counseling to a husband and wife, eventually becoming a close personal friend of the wife, and rather than provide counseling to the couple, ends up seeing the wife in therapy sessions three or four times a week, going out to dinner and shopping with the wife and checking in on the wife numerous times during the day. When their social relationship fails, the wife is distraught and feels that she had lost a friend, a mother figure and her therapist all at once. In this case, the licensee fails to maintain appropriate therapeutic boundaries and engages in improper dual or multiple relationships with a client/patient. There have been other cases of licensee's loaning money to or accepting loans from clients/patients, investing in business ventures with clients/patients and so on. The Board intends, by this final-form rulemaking, to restrict these types of relationships with clients/patients which are engaged in to satisfy the licensee's needs, rather than the client's/patient's needs. The Board believes that practitioners in the field are familiar with the terms used in the final-form rulemaking and understand the behaviors being regulated. Each of the National codes of ethics contains similar provisions prohibiting dual or multiple relationships that affect the licensee's professional judgment. To respond to the HPLC's concerns, the Board revised the language regulating dual or multiple relationships to be more certain and to clarify that the concern is with the effect on the client/patient and not everyone with whom they deal.

*Research and publication*

In the proposed rulemaking, a lengthy provision on the subject of research and publication was included as part of the responsibility of a licensee to clients/patients. IRRC and the HPLC expressed concerns regarding the defini-

tion of certain terms, citation to pertinent applicable laws, implementation and enforcement. The ACA and the PCA also commented regarding the effect of deception upon informed consent for research. Upon consideration of these comments, the Board chose to rewrite the entire section, specifically and succinctly emphasizing its major categorical concerns (protection of human subjects, informed consent, confidentiality and publication responsibilities) in the final-form rulemaking. In response to the HPLC's concerns, the language that remains has been amended to clarify that the "pertinent ethical principles" are those in this chapter and the National codes of ethics; that the informed consent form must use language that the licensee believes would be understandable to the research participants; and that only those attendant discomforts and risks that are most likely to occur and which are known to the licensee must be described.

*Payment for services*

The HPLC asked the Board to clarify what it meant by providing that records may not be withheld due to nonpayment for past services "except as otherwise provided by law." In response, the Board deleted that language to clarify that a licensee may not withhold a client's/patient's records due solely to nonpayment for services.

*Recordkeeping*

The HPLC noted that the proposed rulemaking required licensees to keep records regarding termination but did not specify as to what is being terminated. The Board amended the language to clarify that it is the termination of the professional relationship that must be recorded. The HPLC also noted that the Board sought to require that documentation protect privacy to the extent "possible and appropriate." The Board clarified that documentation shall protect clients'/patients' privacy to the extent that it is consistent with applicable Federal and State laws and regulations. The PCA raised the subject of security of records, leading the Board to adopt Federal and State legal standards for retention and storage. The Board also specified protections to persons other than the client/patient in considering whether certain records should be released.

*Mandatory reporting*

Both NASW-PA and PSCSW suggested that the mandatory reporting requirement consider the client's/patient's right to confidentiality. The Board determined that the confidentiality provisions sufficiently address that issue and would be inherently a part of a licensee's considerations. The Board, on its own initiative, amended the change of name or mailing information provision to remove the language "failure to do so may result in disciplinary action by the Board" as the violation of a regulation may result in disciplinary action by the Board and is superfluous.

*Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will not have fiscal impact and will not impose additional paperwork requirements on the Board or its licensees.

The final-form rulemaking should not impose legal, accounting or reporting requirements on the regulated community.

*Sunset Date*

The Board continuously monitors its regulations. Therefore, 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 June 4, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 3253, to IRRC and to the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 18, 2010, the final-form rulemaking was approved by the HPLC. On August 18, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 19, 2010, and approved the final-form rulemaking.

*Contact Person*

Interested persons may obtain information regarding the final-form rulemaking by writing to Beth Sender Michlovitz, Board Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649, bmichlovit@state.pa.us.

*Findings*

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The amendments to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 38 Pa.B. 3253.
- (4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in this Preamble.

*Order*

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapters 47, 48 and 49, are amended by adding §§ 47.71—47.80, 48.71—48.80 and 49.71—49.80 to read as set forth in Annex A.

*(Editor's Note: The addition of §§ 47.72—47.80, 48.72—48.80 and 49.72—49.80 was not included in the proposed rulemaking published at 38 Pa.B. 3253.)*

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

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

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

DONNA A. TONREY, LMFT,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5106 (September 4, 2010).)*

**Fiscal Note:** Fiscal Note 16A-6911 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS**

**CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT**

**§ 47.71. Codes of ethical practice and professional conduct.**

The Board subscribes to the codes of ethics and practice standards promulgated by the National Association of Social Workers (NASW), the Pennsylvania Society for Clinical Social Work and the Model Social Work Practice Act of the Association of State Social Work Boards. Licensed social workers and licensed clinical social workers (licensees) shall adhere to these codes and standards, except when they conflict with this chapter. The Board will use these codes and standards in resolving ambiguities which may arise in the interpretation of this chapter, except that whenever any conflict exists between this chapter and the professional associations' codes and standards, this chapter shall prevail.

**§ 47.72. Responsibilities to clients/patients.**

(a) *Competency.*

(1) In all communications with, or regarding, specific existing or prospective clients/patients, licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or areas of competence.

(2) Licensees may practice only within the competency areas for which they are qualified by education, training and experience.

(3) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable licensee would have done in a similar circumstance. In areas in which recognized standards do not yet exist, licensees shall take whatever precautions are necessary to protect the welfare of their clients/patients.

(4) Licensees shall maintain knowledge of current scientific and professional information related to the services they render.

(5) Licensees shall refer a client/patient to another professional and take steps to facilitate an orderly transfer of responsibility when the client's/patient's needs exceed the licensee's competence level. Licensees shall notify client/patient promptly of the need to refer and seek the referral and transfer of services in relation to the client's/patient's needs and preferences.

(b) *Informed consent.*

(1) Licensees shall inform clients/patients in writing of:

- (i) The purpose of the services being provided.



(ii) Risks and limits related to the services that are known to the licensee.

(iii) Reasonable alternatives to the services being provided.

(iv) Relevant costs, billing and overdue collection policies and their potential effect on the continuation of the professional relationship.

(v) The clients'/patients' right to refuse or withdraw consent, and the time frame covered by the consent.

(vi) Other information the licensees reasonably might expect to affect the clients'/patients' decisions to enter into or continue the professional relationship.

(2) Licensees shall use clear and understandable language when providing the information in paragraph (1) to clients/patients.

(3) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent.

(4) In instances when the client/patient is unable to read or understand the informed consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney.

(5) When a client/patient is receiving legally-mandated services, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client/patient or the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, as applicable.

(6) Licensees who provide services by means of electronic means shall inform the client/patient of the reasonably foreseeable limitations and risks associated with those services.

(c) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(d) *Confidentiality and privacy.*

(1) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, has given informed consent, except in those circumstances in which failure to do so would violate a court order or specific Federal or State privacy statutes or regulations, or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(2) Licensees shall discuss with clients/patients and the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of

attorney, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion shall occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(3) When licensees provide services to families, couples or groups, licensees shall seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(4) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(e) *Termination of services.*

(1) Licensees may terminate services only after giving careful consideration to factors affecting the professional relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, notification and referral for continued services shall be provided to the client/patient.

(2) Licensees may terminate services to a client/patient who has not paid an overdue fee balance if the following conditions are met:

(i) The financial contractual arrangements have been made clear to the client/patient.

(ii) The client/patient does not pose an imminent danger to self or others.

(iii) The clinical and other consequences of the current nonpayment have been addressed and discussed with the client/patient.

(f) *Discrimination.* Licensees shall comply with existing Federal and State antidiscrimination laws and may not practice, condone, facilitate or collaborate with any form of discrimination prohibited by those laws.

(g) *Conduct with clients/patients.*

(1) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(2) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in communications to and about clients/patients.

#### **§ 47.73. Dual or multiple relationships affecting the licensee's judgment.**

(a) *Dual or multiple relationships defined.* Dual or multiple relationships occur when the licensee engages in multiple or ongoing interactions with clients/patients, the clients'/patients' romantic partners or immediate family members of clients/patients in more than one context, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively.

(b) *Dual or multiple relationships prohibited.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient, which could impair the licensee's professional judgment or increases the risk of client/patient exploitation.

(2) A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative.

(3) A licensee shall carefully consider familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient to assure that impaired judgment or exploitation does not occur within the professional relationship.

(4) Licensees shall always carefully consider the potentially harmful effects of dual or multiple relationships on their practice and on their clients/patients. A licensee shall refrain from entering into, or promising another to enter into, professional, social or business relationships with another person if it appears reasonably likely that the relationship might impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness or might harm or exploit the client/patient.

(5) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(6) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(c) *Conflicts of interest.* When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates or should reasonably anticipate a conflict of interest among the individuals receiving services, or who anticipates or should reasonably anticipate having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

**§ 47.74. Sexual harassment.**

(a) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(b) Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when any one of the following occurs:

(1) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic association with a licensee.

(2) Submission to or rejection of the conduct by an individual is used as the basis for employment-related decisions affecting the individual or academic decisions affecting the individual.

(3) The conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive working or academic environment.

**§ 47.75. Impaired practice.**

A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of the termination in writing and assist the client/patient in obtaining services from another professional.

**§ 47.76. Research and publication.**

(a) *Protection of human subjects.*

(1) A licensee shall plan, design, conduct and report research in a manner consistent with this chapter, the codes of ethics in § 47.71 (relating to codes of ethical practice and professional conduct), Federal and State laws, host institutional rules and scientific standards governing research with human subjects.

(2) A licensee shall obtain informed consent from participants by using language that the licensee believes would be understandable to the research participants and that:

(i) Accurately explains the purpose and procedures to be followed.

(ii) Identifies any procedures that are experimental or relatively untried.

(iii) Describes the attendant discomforts and risks that are most likely to occur, which are known to the licensee.

(iv) Describes the benefits or changes in individuals or organizations that might be reasonably expected.

(v) Discloses appropriate alternative procedures that may be advantageous for the subject.

(vi) Offers to answer inquiries concerning the procedures.

(vii) Instructs that subjects are free to withdraw their consent and discontinue participation in the research project at any time.

(3) When a participant is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a participant's parent, guardian, court-appointed representative or the holder of the participant's power of attorney.

(4) Information obtained about research participants during the course of the research is confidential. The licensee shall explain to the participant whether the possibility exists that others may obtain access to the information, and also explain the plans for protecting the participant's confidentiality as part of the procedure for obtaining informed consent.

(b) *Reporting and publication of results.*

(1) Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

(2) Licensees shall plan, conduct, report and publish accurately and in a manner that minimizes the possibility that results will be misleading.

(c) *Other ethical obligations.* In addition to the provisions of this section, a licensee's ethical obligations with regard to research and publication are governed by this chapter and those codes of ethics and standards of practice to which the Board subscribes in § 47.71.

**§ 47.77. Payment for services.**

(a) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

(b) Licensees may not accept goods or services as payment for professional services.

(c) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

(d) Prior to entering into the therapeutic or supervisory relationship, a licensee shall clearly disclose and explain to clients/patients and supervisees the following:

(1) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

(2) The use of collection agencies or legal measures for nonpayment.

(3) The procedure for obtaining payment from the client/patient, to the extent allowed by law, if payment is denied by the third-party payor.

(e) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

(f) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When this action is taken, licensees may not disclose clinical information.

(g) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

(h) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services.

**§ 47.78. Recordkeeping.**

(a) For each client/patient, a licensee shall keep records of the dates of social work services, types of social work services, details of the services provided, termination of the professional relationship, and billing information.

(b) Records kept by the licensee shall be retained for at least 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

(c) Licensees shall take reasonable steps to ensure that documentation in records is accurate, legible and reflects the services provided.

(d) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to the client/patient in the future.

(e) Licensees' documentation shall protect clients'/patients' privacy to the extent that it is consistent with applicable Federal and State laws and regulations and should include information that is directly relevant to the delivery of services.

(f) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be retained and stored as required by applicable Federal and State law and regulations.

(g) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious harm to the client/patient or another person shall provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees may limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that the access would cause serious harm to the client/patient or another person. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients'/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in the records.

(h) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

**§ 47.79. Mandatory reporting.**

(a) Licensees, supervisors and trainees have a responsibility to report alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board. Licensees shall make these reports in a manner that does not violate a client's/patient's right to confidentiality.

(b) Licensees shall comply with the mandatory reporting requirements in this chapter, including §§ 47.51—47.57 (relating to child abuse reporting requirements).

(c) Licensees shall notify the Board within 30 days of changes of name or mailing information to ensure that the Board has the licensee's current name and mailing address.

**§ 47.80. Advertising.**

(a) *Definition.* Advertising is defined as the engagement in general informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

(b) *Engagement in advertising.*

(1) Licensees may engage in advertising that accurately represents their competencies, education, training and experience relevant to their professional practice. Licensees may not advertise their services and credentials in a manner that is false, misleading, deceptive or fraudulent.

(2) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is neces-

sary for the public to make an appropriate selection of professional services. This information may include the following:

- (i) Office information, such as name, address, telephone number and credit card acceptability.
  - (ii) Earned degrees and State or provincial licensures or certifications.
  - (iii) Professional association member status.
  - (iv) Description of practice.
- (3) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(4) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(5) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(6) A licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(7) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(8) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

**CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS**

**CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT**

**§ 48.71. Code of ethical practice and professional conduct.**

The Board subscribes to the code of ethics and practice standards for licensed marriage and family therapists (licensees) promulgated by the American Association for Marriage and Family Therapy (AAMFT) and the Board will use the AAMFT Code of Ethics in resolving ambiguities which may arise in the interpretation of this chapter, except that whenever any conflict exists between this chapter and the AAMFT Code of Ethics, this chapter shall prevail.

**§ 48.72. Responsibilities to clients/patients.**

(a) *Competency.*

(1) In all communications with, or regarding, specific existing or prospective clients/patients, licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or areas of competence.

(2) Licensees may practice only within the competency areas for which they are qualified by education, training and experience.

(3) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable licensee would have done in a similar circumstance. In areas in which recognized standards do not yet exist, licensees shall take whatever precautions are necessary to protect the welfare of their clients/patients.

(4) Licensees shall maintain knowledge of current scientific and professional information related to the services they render.

(5) Licensees shall refer a client/patient to another professional and take steps to facilitate an orderly transfer of responsibility when the client's/patient's needs exceed the licensee's competence level. Licensees shall notify client/patients promptly of the need to refer and seek the referral and transfer of services in relation to the clients'/patients' needs and preferences.

(b) *Informed consent.*

(1) Licensees shall inform clients/patients in writing of:

- (i) The purpose of the services being provided.
- (ii) Risks and limits related to the services that are known to the licensee.
- (iii) Reasonable alternatives to the services being provided.
- (iv) Relevant costs, billing and overdue collection policies and their potential effect on the continuation of the professional relationship.

(v) The clients'/patients' right to refuse or withdraw consent, and the time frame covered by the consent.

(vi) Other information the licensees reasonably might expect to affect the clients'/patients' decisions to enter into or continue the professional relationship.

(2) Licensees shall use clear and understandable language when providing the information in paragraph (1) to clients/patients.

(3) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent.

(4) In instances when the client/patient is unable to read or understand the informed consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney.

(5) When a client/patient is receiving legally-mandated services, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client/patient or the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, as applicable.

(6) Licensees who provide services by means of electronic means shall inform the client/patient of the reasonably foreseeable limitations and risks associated with those services.

(c) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(d) *Confidentiality and privacy.*

(1) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, has given informed consent, except in those circumstances in which failure to do so would violate a court order or specific Federal or State privacy statutes or regulations or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(2) Licensees shall discuss with clients/patients and the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion shall occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(3) When licensees provide services to families, couples or groups, licensees shall seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(4) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(e) *Termination of services.*

(1) Licensees may terminate services only after giving careful consideration to factors affecting the professional relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, notification and referral for continued services shall be provided to the client/patient.

(2) Licensees may terminate services to a client/patient who has not paid an overdue fee balance if the following conditions are met:

(i) The financial contractual arrangements have been made clear to the client/patient.

(ii) The client/patient does not pose an imminent danger to self or others.

(iii) The clinical and other consequences of the current nonpayment have been addressed and discussed with the client/patient.

(f) *Discrimination.* Licensees shall comply with existing Federal and State antidiscrimination laws and may not practice, condone, facilitate or collaborate with any form of discrimination prohibited by those laws.

(g) *Conduct with clients/patients.*

(1) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(2) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in communications to and about clients/patients.

**§ 48.73. Dual or multiple relationships affecting the licensee's judgment.**

(a) *Dual or multiple relationships defined.* Dual or multiple relationships occur when the licensee engages in multiple or ongoing interactions with clients/patients, the clients'/patients' romantic partners or immediate family members of clients/patients in more than one context, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively.

(b) *Dual or multiple relationships prohibited.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient, which could impair the licensee's professional judgment or increases the risk of client/patient exploitation.

(2) A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative.

(3) A licensee shall carefully consider familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient to assure that impaired judgment or exploitation does not occur within the professional relationship.

(4) Licensees shall always carefully consider the potentially harmful effects of dual or multiple relationships on their practice and on their clients/patients. A licensee shall refrain from entering into, or promising another to enter into, professional, social or business relationships with another person if it appears reasonably likely that the relationship might impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness or might harm or exploit the client/patient.

(5) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(6) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(c) *Conflicts of interest.* When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individu-

als who are receiving services. A licensee who anticipates or should reasonably anticipate a conflict of interest among the individuals receiving services or who anticipates or should reasonably anticipate having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

**§ 48.74. Sexual harassment.**

(a) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(b) Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when one of the following occurs:

(1) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic association with a licensee.

(2) Submission to or rejection of the conduct by an individual is used as the basis for employment-related decisions affecting the individual or academic decisions affecting the individual.

(3) The conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive working or academic environment.

**§ 48.75. Impaired practice.**

A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is or could reasonably be expected to be impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of termination in writing and assist the client/patient in obtaining services from another professional.

**§ 48.76. Research and publication.**

(a) *Protection of human subjects.*

(1) A licensee shall plan, design, conduct and report research in a manner consistent with this chapter, the AAMFT Code of Ethics, applicable Federal and State laws, host institutional rules and scientific standards governing research with human subjects.

(2) A licensee shall obtain informed consent from participants by using language that the licensee believes would be understandable to the research participants and that:

(i) Accurately explains the purpose and procedures to be followed.

(ii) Identifies any procedures that are experimental or relatively untried.

(iii) Describes the attendant discomforts and risks that are most likely to occur and which are known to the licensee.

(iv) Describes the benefits or changes in individuals or organizations that might be reasonably expected.

(v) Discloses appropriate alternative procedures that may be advantageous for the subject.

(vi) Offers to answer any inquiries concerning the procedures.

(vii) Instructs that subjects are free to withdraw their consent and discontinue participation in the research project at any time.

(3) When a participant is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a participant's parent, guardian, court-appointed representative or the holder of the participant's power of attorney.

(4) Information obtained about research participants during the course of the research is confidential. The licensee shall explain to the participant whether the possibility exists that others may obtain access to the information, and also explain the plans for protecting the participant's confidentiality as part of the procedure for obtaining informed consent.

(b) *Reporting and publication of results.*

(1) Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

(2) Licensees shall plan, conduct, report and publish accurately and in a manner that minimizes the possibility that results will be misleading.

(c) *Other ethical obligations.* In addition to the provisions of this section, a licensee's ethical obligations with regard to research and publication are governed by this chapter and the AAMFT Code of Ethics.

**§ 48.77. Payment for services.**

(a) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

(b) Licensees may not accept goods or services as payment for professional services.

(c) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

(d) Prior to entering into the therapeutic or supervisory relationship, a licensee shall clearly disclose and explain to clients/patients and supervisees the following:

(1) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

(2) The use of collection agencies or legal measures for nonpayment.

(3) The procedure for obtaining payment from the client/patient, to the extent allowed by law, if payment is denied by the third-party payor.

(e) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

(f) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When this action is taken, licensees may not disclose clinical information.

(g) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

(h) Licensees may not withhold records under their immediate control that are requested and needed for a

client's/patient's treatment solely because payment has not been received for past services.

**§ 48.78. Recordkeeping.**

(a) For each client/patient, a licensee shall keep records of the dates of marriage and family therapy services, types of marriage and family therapy services, details of the services provided, termination of the professional relationship and billing information.

(b) Records kept by the licensee shall be retained for at least 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

(c) Licensees shall take reasonable steps to ensure that documentation in records is accurate, legible and reflects the services provided.

(d) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to the client/patient in the future.

(e) Licensees' documentation shall protect clients'/patients' privacy to the extent that it is consistent with applicable Federal and State laws and regulations and should include information that is directly relevant to the delivery of services.

(f) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be retained and stored as required by applicable Federal and State law and regulations.

(g) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious harm to the client/patient or another person shall provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees shall limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that the access would cause serious harm to the client/patient or another person. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients'/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in such records.

(h) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

**§ 48.79. Mandatory reporting.**

(a) Licensees, supervisors and trainees have a responsibility to report alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board. Licensees shall make these reports in a manner that does not violate a client's/patient's right to confidentiality.

(b) Licensees shall comply with the mandatory reporting requirements in this chapter, including §§ 48.51—48.57 (relating to child abuse reporting requirements).

(c) Licensees shall notify the Board within 30 days of changes of name or mailing information to ensure that the Board has the licensee's current name and mailing address.

**§ 48.80. Advertising.**

(a) *Definition.* Advertising is defined as the engagement in general informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

(b) *Engagement in advertising.*

(1) Licensees may engage in advertising that accurately represents their competencies, education, training and experience relevant to their professional practice. Licensees may not advertise their services and credentials in a manner that is false, misleading, deceptive or fraudulent.

(2) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

(i) Office information, such as name, address, telephone number and credit card acceptability.

(ii) Earned degrees and state or provincial licensures or certifications.

(iii) Professional association member status.

(iv) Description of practice.

(3) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(4) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(5) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(6) A licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(7) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(8) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

**CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS**

**CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT**

**§ 49.71. Code of ethical practice and professional conduct.**

(a) The Board subscribes to the code of ethics and practice standards for licensees promulgated by the

American Counseling Association (ACA). Licensed professional counselors (licensees) shall adhere to the ACA Code of Ethics, except when the ACA Code of Ethics conflict with this chapter. The Board will use the ACA Code of Ethics in resolving ambiguities that may arise in the interpretation of this chapter, except that whenever any conflict exists between this chapter and the ACA Code of Ethics, this chapter shall prevail.

(b) The Board acknowledges the codes of ethics and practice standards of the National Board for Certified Counselors, Inc., the Commission on Rehabilitation Counselor Certification, the Certification Board for Music Therapists, the Art Therapists Certification Board, the American Dance Therapy Association, the National Association for Drama Therapy, The Academy of Certified Clinical Mental Health Counselors, The North American Association of Master's in Psychology, the American School Counseling Association and The International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc., and the Board may elect to consider or refer to these codes and standards as advisory aids in resolving ambiguities which may arise in the interpretation of this chapter.

**§ 49.72. Responsibilities to clients/patients.**

(a) *Competency.*

(1) In all communications with, or regarding, specific existing or prospective clients/patients, licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or areas of competence.

(2) Licensees may practice only within the competency areas for which they are qualified by education, training and experience. Licensees may utilize only those testing and assessment instruments relevant to the needs of the client/patient and for which the licensees have been trained.

(3) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable licensee would have done in a similar circumstance. In areas in which recognized standards do not yet exist, licensees shall take whatever precautions are necessary to protect the welfare of their clients/patients.

(4) Licensees shall maintain knowledge of current scientific and professional information related to the services they render.

(5) Licensees shall refer a client/patient to another professional and take steps to facilitate an orderly transfer of responsibility when the client's/patient's needs exceed the licensee's competence level. Licensees shall notify the client/patient promptly of the need to refer and seek the referral and transfer of services in relation to the clients'/patients' needs and preferences.

(b) *Informed consent.*

(1) Licensees shall inform clients/patients in writing of:

- (i) The purpose of the services being provided.
- (ii) Risks and limits related to the services that are known to the licensee.
- (iii) Reasonable alternatives to the services being provided.
- (iv) Relevant costs, billing and overdue collection policies and their potential effect on the continuation of the professional relationship.

(v) The clients'/patients' right to refuse or withdraw consent, and the time frame covered by the consent.

(vi) Other information the licensees reasonably might expect to affect the clients'/patients' decisions to enter into or continue the professional relationship.

(2) Licensees shall use clear and understandable language when providing the information in paragraph (1) to clients/patients.

(3) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent.

(4) In instances when the client/patient is unable to read or understand the informed consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney.

(5) When a client/patient is receiving legally-mandated services, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client/patient, or the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, as applicable.

(6) Licensees who provide services by means of electronic means shall inform the client/patient of the reasonably foreseeable limitations and risks associated with those services.

(c) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(d) *Confidentiality and privacy.*

(1) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, has given informed consent, except in those circumstances in which failure to do so would violate a court order or specific Federal or State privacy statutes or regulations, or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by such situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(2) Licensees shall discuss with clients/patients and the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion shall occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.



(3) When licensees provide services to families, couples or groups, licensees shall seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(4) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(e) *Termination of services.*

(1) Licensees may terminate services only after giving careful consideration to factors affecting the professional relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, notification and referral for continued services shall be provided to the client/patient.

(2) Licensees may terminate services to a client/patient who has not paid an overdue fee balance if the following conditions are met:

(i) The financial contractual arrangements have been made clear to the client/patient.

(ii) The client/patient does not pose an imminent danger to self or others.

(iii) The clinical and other consequences of the current nonpayment have been addressed and discussed with the client/patient.

(f) *Discrimination.* Licensees shall comply with existing Federal and State antidiscrimination laws and may not practice, condone, facilitate or collaborate with any form of discrimination prohibited by those laws.

(g) *Conduct with clients/patients.*

(1) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(2) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in communications to and about clients/patients.

**§ 49.73. Dual or multiple relationships affecting the licensee's judgment.**

(a) *Dual or multiple relationships defined.* Dual or multiple relationships occur when the licensee engages in multiple or ongoing interactions with clients/patients, their romantic partners or immediate family members of clients/patients in more than one context, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively.

(b) *Dual or multiple relationships prohibited.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient which could impair the licensee's professional judgment or increases the risk of client/patient exploitation.

(2) A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee

is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative.

(3) A licensee shall carefully consider familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient to assure that impaired judgment or exploitation does not occur within the professional relationship.

(4) Licensees shall always carefully consider the potentially harmful effects of dual or multiple relationships on their practice and on their clients/patients. A licensee shall refrain from entering into, or promising another to enter into, professional, social or business relationships with another person if it appears reasonably likely that the relationship might impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness or might harm or exploit the client/patient.

(5) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(6) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(c) *Conflicts of interest.* When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates or should reasonably anticipate a conflict of interest among the individuals receiving services or who anticipates or should reasonably anticipate having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

**§ 47.74. Sexual harassment.**

(a) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(b) Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when any one of the following occurs:

(1) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic association with a licensee.

(2) Submission to or rejection of the conduct by an individual is used as the basis for employment-related decisions affecting the individual or academic decisions affecting the individual.

(3) The conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive working or academic environment.

**§ 49.75. Impaired practice.**

A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student

when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of termination in writing and assist the client/patient in obtaining services from another professional.

**§ 49.76. Research and publication.**

(a) *Protection of human subjects.*

(1) A licensee shall plan, design, conduct and report research in a manner consistent with this chapter, the codes of ethics in § 49.71 (relating to code of ethical practice and professional conduct), applicable Federal and State laws, host institutional rules and scientific standards governing research with human subjects.

(2) A licensee shall obtain informed consent from participants by using language that the licensee believes would be understandable to the research participants and that:

- (i) Accurately explains the purpose and procedures to be followed.
- (ii) Identifies procedures that are experimental or relatively untried.
- (iii) Describes the attendant discomforts and risks that are most likely to occur and which are known to the licensee.
- (iv) Describes the benefits or changes in individuals or organizations that might be reasonably expected.
- (v) Discloses appropriate alternative procedures that may be advantageous for the subject.
- (vi) Offers to answer any inquiries concerning the procedures.
- (vii) Instructs that subjects are free to withdraw their consent and discontinue participation in the research project at any time.

(3) When a participant is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a participant's parent, guardian, court-appointed representative or the holder of the participant's power of attorney.

(4) Information obtained about research participants during the course of the research is confidential. The licensee shall explain to the participant whether the possibility exists that others may obtain access to the information, and also explain the plans for protecting the participant's confidentiality as part of the procedure for obtaining informed consent.

(b) *Reporting and publication of results.*

(1) Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

(2) Licensees shall plan, conduct, report and publish accurately and in a manner that minimizes the possibility that results will be misleading.

(c) *Other ethical obligations.* In addition to the provisions of this section, a licensee's ethical obligations with regard to research and publication are governed by this chapter and those codes of ethics and standards of practice to which the Board subscribes in § 49.71.

**§ 49.77. Payment for services.**

(a) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

(b) Licensees may not accept goods or services as payment for professional services.

(c) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

(d) Prior to entering into the therapeutic or supervisory relationship, a licensee shall clearly disclose and explain to clients/patients and supervisees the following:

- (1) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.
- (2) The use of collection agencies or legal measures for nonpayment.

(3) The procedure for obtaining payment from the client/patient, to the extent allowed by law, if payment is denied by the third-party payor.

(e) Once services have begun, licensees shall provide reasonable notice of any changes in fees or other charges.

(f) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When this action is taken, licensees may not disclose clinical information.

(g) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

(h) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services.

**§ 49.78. Recordkeeping.**

(a) For each client/patient, a licensee shall keep records of the dates of professional counseling services, types of professional counseling services, details of the services provided, termination of the professional relationship, and billing information.

(b) Records kept by the licensee shall be retained for at least 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

(c) Licensees shall take reasonable steps to ensure that documentation in records is accurate, legible and reflects the services provided.

(d) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to the client/patient in the future.

(e) Licensees' documentation shall protect clients'/patients' privacy to the extent that it is consistent with applicable Federal and State laws and regulations and should include information that is directly relevant to the delivery of services.

(f) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be retained and stored as required by applicable Federal and State law and regulations.

(g) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Lic-

ensees who are concerned that clients'/patients' access to their records could cause serious harm to the client/patient or another person shall provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees may limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that the access would cause serious harm to the client/patient or another person. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients'/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in the records.

(h) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

**§ 49.79. Mandatory reporting.**

(a) Licensees, supervisors and trainees have a responsibility to report alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board. Licensees shall make these reports in a manner that does not violate a client's/patient's right to confidentiality.

(b) Licensees shall comply with the mandatory reporting requirements in this chapter, including §§ 49.51—49.57 (relating to child abuse reporting requirements).

(c) A licensee shall notify the Board within 30 days of changes of name or mailing information to ensure that the Board has the licensee's current name and mailing address.

**§ 49.80. Advertising.**

(a) *Definition.* Advertising is defined as the engagement in general informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

(b) *Engagement in advertising.*

(1) Licensees may engage in advertising that accurately represents their competencies, education, training and experience relevant to their professional practice.

Licensees may not advertise their services and credentials in a manner that is false, misleading, deceptive or fraudulent.

(2) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

(i) Office information, such as name, address, telephone number and credit card acceptability.

(ii) Earned degrees and state or provincial licensures or certifications.

(iii) Professional association member status.

(iv) Description of practice.

(3) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(4) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(5) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(6) The licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(7) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(8) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

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