PROPOSED RULEMAKING

BOARD OF COAL MINE SAFETY

[25 PA. CODE CH. 208]

Requirements for High-Voltage Continuous Mining Machines

The Board of Coal Mine Safety (Board) is proposing to add §§ 208.81—208.93 (relating to high-voltage continuous mining machine standards for underground coal mines) to read as set forth in Annex A. The proposed rulemaking, with one exception, conforms Commonwealth regulations to Federal regulations, thereby establishing standards for the use of high-voltage continuous mining machines of up to 2,400 volts in underground bituminous coal mines.

Sections 106 and 106.1 of the Bituminous Coal Mine Safety Act (BCMSA) (52 P. S. §§ 690-106 and 690-106.1) authorize the adoption of regulations implementing the BCMSA, including additional safety standards. The Board is authorized to promulgate regulations that are necessary or appropriate to implement the requirements of the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines.

This proposed rulemaking is given under Board order at its meeting of June 26, 2013.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Joe Sbaffoni, Director, Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown PA 15401, (724) 439-7469, jsbaffoni@pa.gov; or Susana Cortina de Cárdenas, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060, scortina@pa.gov.

C. *Statutory Authority*

The proposed rulemaking is authorized under sections 106 and 106.1 of the BCMSA, which grant the Board the authority to adopt regulations implementing the BCMSA, including additional safety standards. The Board is authorized to promulgate regulations that are necessary or appropriate to implement the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines.

D. *Background and Purpose*

This proposed rulemaking would establish electrical safety standards for the installation, use and maintenance of high-voltage continuous mining machines in underground bituminous coal mines. On April 6, 2010, the Federal Mine Safety and Health Administration (MSHA) issued a final rulemaking addressing electrical safety standards for the installation, use and maintenance of high-voltage continuous mining machines in underground coal mines. See 75 FR 17529 (April 6, 2010). Previously, the MSHA's standards did not specifically address high-voltage continuous mining machines because those machines were not available when the Federal standards were developed. To use high-voltage equipment in underground mines, the MSHA required mine operators to submit a Petition for Modification (PFM), as provided for under section 101(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C.A. § 811(c)). Since 1997, the MSHA has granted 52 PFMs to allow mine operators to use high-voltage continuous mining machines. The final rulemaking issued by the MSHA includes most of the requirements that were granted in the PFMs and new requirements to enhance safety associated with the operation of continuous mining machines, including provisions to protect against fires, explosions and shock hazards. The final rulemaking became effective on June 7, 2010, and superseded all PFMs issued prior to the effective date of the final rulemaking.

In developing the final rulemaking, the MSHA considered the experience of mine operators who had been using high-voltage continuous mining machines in underground coal mines. The MSHA also considered the comments, hearing testimony and its previous experience in reviewing and issuing PFMs in its development of the final rulemaking. The final Federal rulemaking is codified in 30 CFR 75.823—75.834 and 75.1002 and establishes mandatory electrical safety standards for the installation of high-voltage continuous mining machines, electrical and mechanical protection of the equipment, handling of trailing cables and procedures for performing electrical work. In promulgating the final rulemaking, the MSHA attested that the regulatory requirements are technologically and economically feasible and will reduce the potential for electrical-related accidents, thereby offering greater protection for underground coal miners against electrical shock, cable overheating, fire hazards, unsafe work and repair practices, and back injuries and other sprains caused by handling trailing cables.

On July 7, 2008, the General Assembly enacted the BCMSA. The BCMSA is the first significant update of the Commonwealth's underground bituminous coal mine safety laws since 1961. See section 103(a) of the BCMSA (52 P. S. § 690-103(a)). One of the significant changes made by the BCMSA is the authority to promulgate regulations for mine safety. The General Assembly established the Board to promulgate the regulations. Under section 106 of the BCMSA, this seven-member board consists of the Secretary of the Department of Environmental Protection (Department) as Chairperson, three members representing the viewpoint of mine workers and three members representing the viewpoint of underground bituminous coal mine operators. Section 106.1(a) of the BCMSA contains broad rulemaking authority to adopt regulations that are necessary or appropriate to implement the requirements of the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines. Moreover, the Board may promulgate regulations consistent with Federal standards under section 106.1(c) of the BCMSA.

After learning of the revised MSHA standards concerning high-voltage continuous mining machines in underground coal mines, the Board determined it should promulgate an identical requirement with the exception of provisions concerning the mandatory distance between a spliced high voltage trailing cable and a continuous mining machine. Under section 316(d)(6) of the BCMSA (52 P. S. § 690-316(d)(6)), spliced trailing cables are prohibited within 50 feet of a continuous mining machine. In contrast, 30 CFR 75.830(b)(1) (relating to splicing and repair of trailing cables) prohibits the splicing of high-

voltage trailing cables within 35 feet of a continuous mining machine. Because Commonwealth law provides a more protective standard that enhances miner safety, the more stringent State requirement is proposed for inclusion in this proposed rulemaking. The Board developed the proposed rulemaking to, among other things, obtain independent authority necessary to implement the Federal regulations.

Revising electrical safety standards for the use, installation and maintenance of high-voltage continuous mining machines plays an important role in enhancing safety protection against fires, explosions and shock hazards in underground bituminous coal mines. In addition, it facilitates the use of advanced equipment designs. By proposing to adopt the Federal MSHA regulations, with certain exceptions, the Board believes it will enhance the Department's ability to ensure the safety of miners by reducing the potential or severity of fires, explosions and shock hazards in bituminous coal mines, and allow the Department to have independent authority to enforce the Federal requirements.

E. *Summary of Proposed Regulatory Requirements*

The rulemaking proposes to add §§ 208.81—208.93 to establish requirements for the use, installation and maintenance of high-voltage continuous mining machines in underground bituminous coal mines.

Proposed § 208.81 (relating to scope) incorporates by reference 30 CFR 75.823 (relating to scope), which provides that the standard addresses requirements for the use of high-voltage continuous mining machines of up to 2,400 volts in underground coal mines.

Proposed § 208.82 (relating to electrical protection) incorporates by reference 30 CFR 75.824 (relating to electrical protection), which establishes the electrical protection requirements for high-voltage continuous mining machines including requirements associated with the use of an adequate circuit-interrupting device capable of providing short-circuit, overload, ground-fault and undervoltage protection.

Proposed § 208.83 (relating to power centers) incorporates by reference 30 CFR 75.825 (relating to power centers). The Federal provisions set forth the requirements for power centers that supply high-voltage continuous mining machines, including provisions for the disconnecting switches and devices, barriers and covers, interlocks, emergency stop switches, grounding sticks and caution labels.

Proposed § 208.84 (relating to high-voltage trailing cables) incorporates by reference 30 CFR 75.826 (relating to high-voltage trailing cables). The Federal regulation defines the requirements that high-voltage trailing cables must meet, including compliance with existing design requirements in 30 CFR 18.35 (relating to portable (trailing) cables and cords) and the approval requirements of high-voltage continuous mining machines.

Proposed § 208.85 (relating to guarding of trailing cables) incorporates by reference 30 CFR 75.827 (relating to guarding of trailing cables). Section 75.827 of 30 CFR establishes the requirements for guarding trailing cables, including the location where the cables must be guarded, the materials (nonconductive flame-resistant material or grounded metal) the guarding must be constructed from and the requirements when equipment must cross any portion of the cables.

Proposed § 208.86 (relating to trailing cable pulling) incorporates by reference 30 CFR 75.828 (relating to trailing cable pulling). Section 75.828 of 30 CFR establishes the requirements to be followed when the trailing cables are to be pulled by any equipment other than the continuous mining machine.

Proposed § 208.87 (relating to tramming continuous mining machines in and out of the mine and from section to section) incorporates by reference 30 CFR 75.829 (relating to tramming continuous mining machines in and out of the mine and from section to section). Section 75.829 of 30 CFR includes requirements associated with tramming continuous mining machines in and out of the mine or from one section to another and testing required prior to tramming.

Proposed § 208.88 (relating to splicing and repair of trailing cables) incorporates by reference 30 CFR 75.830 with the exception of requirements in 30 CFR 75.830(b)(1). Section 75.830 of 30 CFR establishes the requirements for performing splices and repairs of trailing cables and the manner in which the trailing cable shall be spliced or repaired to ensure that miners are not exposed to shock and burn hazards. Concerning 30 CFR 75.830(b)(1), which requires a mandatory distance of 35 feet between a spliced high voltage trailing cable and a continuous mining machine, the Board determined that the Federal requirement was not as protective as requirements established under the BCMSA. Therefore, § 208.88(b)(1) is consistent with the BCMSA and establishes that splicing of high-voltage trailing cables within 50 feet of a continuous mining machine is prohibited.

Proposed § 208.89 (relating to electrical work; troubleshooting and testing) incorporates by reference 30 CFR 75.831 (relating to electrical work; troubleshooting and testing).

Proposed § 208.90 (relating to frequency of examinations; recordkeeping) incorporates by reference 30 CFR 75.832 (relating to frequency of examinations; recordkeeping). Section 75.832 of 30 CFR specifies the frequency of testing certain equipment and circuits and the requirements for creating and maintaining adequate records.

Proposed § 208.91 (relating to handling high-voltage trailing cables) incorporates by reference 30 CFR 75.833 (relating to handling high-voltage trailing cables). Section 75.833 of 30 CFR sets forth the requirements for handling energized trailing cables including provisions that prohibit handling energized trailing cables unless high-voltage insulating gloves or insulating cable handling tools are used.

Proposed § 208.92 (relating to training) incorporates by reference 30 CFR 75.834 (relating to training). Section 75.834 of 30 CFR requires that miners who perform maintenance on high-voltage continuous mining machines be trained in high-voltage safety, testing and repair, and maintenance procedures. Training provisions are also included for miners who work in the vicinity of high-voltage continuous mining machines or who move the high-voltage equipment or cables.

Proposed § 208.93 (relating to installation of electric equipment and conductors; permissibility) incorporates by reference 30 CFR 75.1002 (relating to installation of electric equipment and conductors; permissibility). Section 75.1002 of 30 CFR addresses requirements for conductors and cables used in or in by the last open crosscut, as well as electrical equipment, conductors and cables used within 150 feet of pillar workings and allows the use of shielded, high-voltage cables that supply power to permissible continuous mining machines in underground coal mines.

F. *Benefits and Costs*

Benefits

The proposed rulemaking will reduce the potential for electrical-related fatalities and injuries or loss of property when using high-voltage continuous mining machines in underground bituminous coal mine operations in this Commonwealth. The design and work practice requirements included in this proposed rulemaking will result in greater protections for underground bituminous coal mine operators, including measures to reduce electrical shock, cable overheating, fire hazards, unsafe work and repair practices, and back injuries and other sprains caused by handling trailing cables. In addition, the proposed rulemaking facilitates the use of more advanced equipment designs. The proposed rulemaking incorporates with certain exceptions the provisions of Federal regulations into the Commonwealth's regulations, thus enhancing the Commonwealth's mine safety program and its reputation for excellence.

Compliance Costs

The proposed rulemaking will not add any compliance costs to those already existing, as Federal regulations are already in place in this regard. This proposed rulemaking imposes standards that the MSHA has already imposed and upon which underground bituminous coal mines in this Commonwealth shall comply.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the proposed rulemaking and how to comply with it. This will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

The proposed regulations will not increase the paperwork that is already generated because of the existing Federal regulations that are already in place.

G. *Sunset Review*

The proposed regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether it effectively fulfills the goals for which it was intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 25, 2013, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

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

I. *Public Comments*

Written comments—Interested persons are invited to submit comments, suggestions or objections regarding this proposed rulemaking to the Board of Coal Mine Safety, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board on or before November 4, 2013. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board on or before November 4, 2013. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments—Comments may be submitted electronically to the Board at RegComments@pa.gov and must also be received by the Board on or before November 4, 2013. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

E. CHRISTOPHER ABRUZZO,
Acting Chairperson

Fiscal Note: 7-482. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY

CHAPTER 208. UNDERGROUND COAL MINE SAFETY

HIGH-VOLTAGE CONTINUOUS MINING MACHINE STANDARDS FOR UNDERGROUND COAL MINES

§ 208.81. Scope.

The provisions of 30 CFR 75.823 (relating to scope) are incorporated by reference.

§ 208.82. Electrical protection.

The provisions of 30 CFR 75.824 (relating to electrical protection) are incorporated by reference.

§ 208.83. Power centers.

The provisions of 30 CFR 75.825 (relating to power centers) are incorporated by reference.

§ 208.84. High-voltage trailing cables.

The provisions of 30 CFR 75.826 (relating to high-voltage trailing cables) are incorporated by reference.

§ 208.85. Guarding of trailing cables.

The provisions of 30 CFR 75.827 (relating to guarding of trailing cables) are incorporated by reference.

§ 208.86. Trailing cable pulling.

The provisions of 30 CFR 75.828 (relating to trailing cable pulling) are incorporated by reference.

§ 208.87. Tramming continuous mining machines in and out of the mine and from section to section.

The provisions of 30 CFR 75.829 (relating to tramming continuous mining machines in and out of the mine and from section to section) are incorporated by reference.

§ 208.88. Splicing and repair of trailing cables.

(a) *Incorporation by reference.* The provisions of 30 CFR 75.830(a) (relating to splicing and repair of trailing cables) are incorporated by reference.

(b) *Splicing limitations.*

(1) Splicing of the high-voltage trailing cable within 50 feet of the continuous mining machine is prohibited.

(2) The provisions of 30 CFR 75.830(b)(2) are incorporated by reference.

§ 208.89. Electrical work; troubleshooting and testing.

The provisions of 30 CFR 75.831 (relating to electrical work; troubleshooting and testing) are incorporated by reference.

§ 208.90. Frequency of examinations; recordkeeping.

The provisions of 30 CFR 75.832 (relating to frequency of examinations; recordkeeping) are incorporated by reference.

§ 208.91. Handling high-voltage trailing cables.

The provisions of 30 CFR 75.833 (relating to handling high-voltage trailing cables) are incorporated by reference.

§ 208.92. Training.

The provisions of 30 CFR 75.834 (relating to training) are incorporated by reference.

§ 208.93. Installation of electric equipment and conductors; permissibility.

The provisions of 30 CFR 75.1002 (relating to installation of electric equipment and conductors; permissibility) are incorporated by reference.

[Pa.B. Doc. No. 13-1850. Filed for public inspection October 4, 2013, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 1187 AND 1189]

Rate Setting for County Nursing Facilities that Change Ownership

The Department of Public Welfare (Department), under the authority of sections 201(2), 206(2), 403(b) and 443.1 of the Public Welfare Code (62 P. S. §§ 201(2), 206(2), 403(b) and 443.1), proposes to amend Chapters 1187 and 1189 (relating to nursing facility services; and county nursing facility services) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The purpose of this proposed rulemaking is to amend § 1187.97 (relating to rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities) to codify the rate setting methodology used when a county nursing facility has a change of ownership from county ownership to a nonpublic nursing facility provider. The Department is also proposing to amend the terminology used in certain definitions in §§ 1187.2 and 1189.2 (relating to definitions).

The proposed rulemaking is needed to codify the methodology for setting rates for county nursing facilities that change ownership to a nonpublic nursing facility provider. Since county nursing facilities have been phased-out of the rate-setting process under Chapter 1187, updated cost data audited to verify compliance with Chapter 1187 is no longer available to establish a per diem rate for a former county nursing facility.

Background

Beginning July 1, 2006, the Department established a new payment methodology for county nursing facility providers, as described in Chapter 1189. From July 1, 2006, through June 30, 2012, when a county nursing facility changed ownership, the per diem rate for the nursing facility was computed in accordance with § 1187.96 (relating to price- and rate-setting computations), using the cost data contained in the Nursing Information System (NIS) database. Since county nursing facilities have been fully phased-out of the rate-setting process for nonpublic nursing facilities under § 1187.98 (relating to phase-out median determination), their cost data is no longer audited to verify compliance under Chapter 1187; hence, county nursing facility cost data is not updated in the NIS database. In addition, per diem rates for county nursing facilities calculated in accordance with § 1189.91 (relating to per diem rates for county nursing facilities) do not contain identifiable net operating or capital rates which would otherwise be assigned to a new provider when a nursing facility changes ownership as referenced in § 1187.97(2)(i). Therefore, the Department proposes to codify the use of peer group prices to determine the net operating portion of the per diem rate until audited cost report data from the new provider is available for use in the rebasing process. In addition, the Department proposes to codify the use of the fixed property component, when applicable, to determine the capital portion of the per diem rate until audited cost report data from the new provider is available for use in the rebasing process.

A public notice was published at 42 Pa.B. 6839 (October 27, 2012) in which the Department announced it was amending its methods and standards for payment of Medical Assistance (MA) nursing facility services to a county nursing facility that changes ownership to a nonpublic nursing facility provider. Also, State Plan Amendment 12-031 was submitted by the Department on December 21, 2012. It was approved by the Centers for Medicare and Medicaid Services on February 25, 2013.

Requirements

This rulemaking proposes to amend § 1187.97 to codify the rate setting methodology for changes of ownership when a county nursing facility has a change in ownership to a nonpublic nursing facility provider.

For county nursing facilities that change ownership, the Department is proposing to determine the per diem rate using the peer group price for resident care, other resident related and administrative costs from the appropriate peer group until the nursing facility's cost report submitted by the new provider is audited for use in the rebasing process. The resident assessment data from the former county nursing facility will be used to establish the MA Case-Mix Index (CMI) to calculate the resident care rate. The fixed property component will be the only component of the capital portion of the case-mix rate, if the nursing facility's beds are eligible, until the nursing facility's cost report submitted by the new provider is audited for use in the rebasing process. Under

§ 1187.97(2), the Department is also proposing to add "or county nursing facility" after each reference of "old nursing facility provider" in subparagraphs (ii) and (iii) (proposed subparagraphs (iii) and (iv)).

In addition, under § 1187.97(1)(i), references to a former county nursing facility are proposed to be deleted because the proposed amendments to § 1187.97(2) specifically address county nursing facilities that change ownership. Clause (B) is proposed to be deleted and the following clause is proposed to be renumbered.

The Department also added clarifying language to the definitions of "county nursing facility" in § 1187.2 and "new county nursing facility" in § 1189.2 to define the word "controlled" for purposes of these definitions. The Department proposes to replace the outdated language "mentally retarded" with "intellectual disability."

Affected Individuals and Organizations

This proposed rulemaking will affect a county nursing facility that changes ownership from county ownership to a nonpublic nursing facility provider and remains in the MA Program.

Accomplishments and Benefits

This proposed rulemaking will codify the rate setting methodology for county nursing facilities that change ownership to a nonpublic nursing facility provider and remain in the MA Program.

Fiscal Impact

Cost to the Commonwealth, local government, nursing facility providers or MA recipients is not anticipated as a result of this proposed rulemaking.

Paperwork Requirements

There are no new or additional paperwork requirements.

Effective Date

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Office of Long-Term Living, Bureau of Policy and Regulatory Management, Attention: Marilyn Yocum, P.O. Box 8025, Harrisburg, PA 17105-8025 within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-536 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 20, 2013, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

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

BEVERLY D. MACKERETH,
Secretary

Fiscal Note: 14-536. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1187.2. Definitions.

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

* * * * *

County nursing facility—

(i) A long-term care nursing facility that is:

(A) Licensed by the Department of Health.

(B) Enrolled in the MA program as a provider of nursing facility services.

(C) Controlled by the county institution district or by county government if no county institution district exists.

(ii) **For the purposes of this definition, "controlled" in clause (C) means the power to direct or cause to direct the management and policies of the nursing facility, whether through equitable ownership of voting securities or otherwise.**

(iii) The term does not include intermediate care facilities for **[the mentally retarded] persons with an intellectual disability** controlled or totally funded by a county institution district or county government.

* * * * *

Nursing facility—

* * * * *

(ii) The term does not include intermediate care facilities for **[the mentally retarded] persons with an intellectual disability**, Federal or State-owned long-term care nursing facilities, Veteran's homes or county nursing facilities.

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Target applicant or resident—An individual with a serious mental illness, **[mental retardation] intellectual disability** or other related condition seeking admission to or residing in a nursing facility.

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Subchapter G. RATE SETTING

§ 1187.97. Rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities.

The Department will establish rates for new nursing facilities, nursing facilities with a change of ownership,

reorganized nursing facilities and former prospective payment nursing facilities as follows:

(1) *New nursing facilities.*

(i) The net operating portion of the case-mix rate is determined as follows:

(A) A new nursing facility**[, unless a former county nursing facility,]** will be assigned the Statewide average MA CMI until assessment data submitted by the nursing facility under § 1187.33 (relating to resident data and picture date reporting requirements) is used in a rate determination under § 1187.96(a)(5) (relating to price- and rate-setting computations). Beginning, July 1, 2010, the Statewide average MA CMI assigned to a new nursing facility will be calculated using the RUG-III version 5.12 44 group values in Appendix A and the most recent classifiable assessments of any type. When a new nursing facility has submitted assessment data under § 1187.33, the CMI values used to determine the new nursing facility's total facility CMIs and MA CMI will be the RUG-III version 5.12 44 group values and the resident assessment that will be used for each resident will be the most recent classifiable assessment of any type.

(B) **[For a former county nursing facility, the county nursing facility's assessment data and MA CMI will be transferred to the new nursing facility.**

(C)] The nursing facility will be assigned to the appropriate peer group. The peer group price for resident care, other resident related and administrative costs will be assigned to the nursing facility until there is at least one audited nursing facility cost report used in the rebasing process. Beginning July 1, 2010, a new nursing facility will be assigned the peer group price for resident care that will be calculated using the RUG-III version 5.12 44 group values in Appendix A and the most recent classifiable assessments of any type.

* * * * *

(2) *Nursing facilities with a change of ownership and reorganized nursing facilities.*

(i) *New provider*. The new nursing facility provider will be paid exactly as the old nursing facility provider, except that, if a county nursing facility becomes a nursing facility between July 1, 2006, and June 30, 2012, the per diem rate for the nursing facility will be computed in accordance with § 1187.96, using the data contained in the NIS database. Net operating and capital rates for the old nursing facility provider will be assigned to the new nursing facility provider.

(ii) **If a county nursing facility has a change of ownership from county ownership to a nonpublic nursing facility provider, the nursing facility will be assigned to the appropriate peer group in accordance with § 1187.94 (relating to peer grouping for price setting) and the per diem rate for the nursing facility will be calculated as follows:**

(A) The net operating portion of the case-mix rate is determined in accordance with § 1187.96 using the peer group price for resident care, other resident related and administrative costs until a nursing facility's cost report submitted by the new nursing facility provider is audited for use in the rebasing process.

(B) The capital portion is determined using only the fixed property component to the extent the facility is eligible for the capital portion of the case mix rate, in accordance with § 1187.96(d)(1), until a nursing facility's cost report submitted by the new nursing facility provider is audited for use in the rebasing process.

(iii) *Transfer of data*. Resident assessment data will be transferred from the old nursing facility **or the county nursing facility** provider number to the new nursing facility provider number. The old nursing facility's **or county nursing facility's** MA CMI will be transferred to the new nursing facility provider.

[(iii)] (iv) *Movable property cost policies.*

(A) The acquisition costs of items acquired by the old nursing facility provider **or county nursing facility** on or before the date of sale are costs of the old nursing facility provider **or county nursing facility**, and not the new nursing facility provider.

(B) Regardless of the provisions of any contract of sale, the amount paid by the new nursing facility provider to acquire or obtain any rights to items in the possession of the old nursing facility provider **or county nursing facility** is not an allowable cost.

(C) If the new nursing facility provider purchases an item from the old nursing facility provider **or county nursing facility**, the cost of that item is not an allowable cost for cost reporting or rate setting purposes.

(D) If the new nursing facility provider rents or leases an item from the old nursing facility provider **or county nursing facility**, the cost of renting or leasing that item is not an allowable cost for cost reporting or rate setting purposes.

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CHAPTER 1189. COUNTY NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1189.2. Definitions.

* * * * *

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

* * * * *

New county nursing facility—

(i) One of the following:

[(i)] (A) A newly constructed, licensed and certified county nursing facility.

[(ii)] (B) An existing nursing facility that through a change of ownership, is controlled by the county institution district or by county government if no county institution district exists.

(ii) For the purposes of this definition, "controlled" in clause (B) means the power to direct or cause to direct the management and policies of the nursing facility, whether through equitable ownership of voting securities or otherwise.

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[Pa.B. Doc. No. 13-1851. Filed for public inspection October 4, 2013, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 7]

Conversion of Suspension to Fine

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend § 7.10 (relating to conversion of suspension to fine).

Summary

The proposed rulemaking will amend § 7.10 by increasing the minimum amount of fines acceptable to the Board when the Board converts an unserved suspension to a fine.

Section 468(a)(4) of the Liquor Code (47 P. S. § 4-468(a)(4)) authorizes the Board to convert pending unserved suspensions in citation cases into monetary fines at the request of a transferee, and to make the payment of a fine a condition for the transfer of the license, if the current licensee is unable to serve the suspension. Under § 7.10, the Board adopted a methodology whereby it would base the fine on 1/2 of the average daily gross receipts of the transferor in its last year of operation. Currently, a minimum fine of $100 per each day of unserved suspension is imposed unless the citation is one in which the minimum fine would have been $1,000; in those situations, the minimum fine acceptable is $1,000 per each day of unserved suspension.

The minimum fine is imposed when a licensee does not possess or fails to provide tax returns to demonstrate the gross revenue for the last calendar year of operation or when the formula results in an amount that is lower than the previously-referenced minimum. Fines received by the Board instead of the suspension may not cover the cost, in work hours, of processing the conversion. Further, converting a suspension into a fine of $100 diminishes the deterrent effect that was intended by the initial suspension order. If the minimum fines were increased to $1,000 a day for nonenhanced penalty citations and $3,000 a day for enhanced penalty citations, these concerns would be alleviated.

Affected Parties

Retail and other licensees who must comply with the Liquor Code and the Board's regulations will be affected by this proposed rulemaking. Enforcement is the province of the Pennsylvania State Police, Bureau of Liquor Control Enforcement. Increasing the minimum fines in conversion of suspension to fine actions would only affect those licensees which would have incurred a lesser fine amount under the current regulation. In 2012, the Board converted suspensions to fines in six cases, five of which would have been affected by the proposed amendment. As of May 31, 2013, the Board has converted suspensions to fines in two cases, both of which would have been affected by the proposed amendment.

Paperwork Requirements

The Board does not anticipate that this proposed rulemaking will affect the amount of paperwork or administrative costs of the regulated community.

Fiscal Impact

This proposed rulemaking is not expected to have a substantial adverse fiscal impact on the regulated community since the proposed amendment only affects licensees that would have been subject to the lower fine amount that is in the current statute. In 2012, the Board converted suspensions to fines in six cases, five of which would have been affected by the proposed amendment. As of May 31, 2013, the Board has converted suspensions to fines in two cases, both of which would have been affected by the proposed amendment.

This proposed rulemaking is not expected to have adverse fiscal impact on State and local governments. In fact, this proposed rulemaking will have a small, positive fiscal impact on Board revenues, nominally increasing the amount the Board remits to the Commonwealth.

Effective Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be addressed to Alan Kennedy-Shaffer, Assistant Counsel, or Rodrigo Diaz, Executive Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 24, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and the Senate Law and Justice Committee. A copy of this material is available to the public upon request.

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

JOSEPH E. BRION,
Chairperson

Fiscal Note: 54-74. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND SUSPENSION OF LICENSES

Subchapter A. TRANSFER OF LICENSES

§ 7.10. Conversion of suspension to fine.

* * * * *

(d) The fine will be calculated by application of the following formula: **[Gross earnings of the transferor divided by 365 (or the number of days in operation in the transferor's last year of operation) multiplied by .50. The resulting figure is the amount of the fine per day of suspension, subject to the following exceptions:]**

(1) **[If the amount is less than $100 per day, a fine of $100 per day will be set.] If the suspension was issued for a citation for which the minimum fine, if a fine had been imposed, is $100, a minimum fine of $1,000 per day will be set.**

(2) **[If the suspension was issued for a citation that required a minimum fine amount of $1,000 per day, a minimum fine of $1,000 per day will be set.] If the suspension was issued for a citation for which the minimum fine, if a fine had been imposed, is $1,000, a minimum fine of $3,000 per day will be set.**

* * * * *

[Pa.B. Doc. No. 13-1852. Filed for public inspection October 4, 2013, 9:00 a.m.]

[40 PA. CODE CH. 11]

Sale by Limited Winery Licensees

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend § 11.111 (relating to sale by limited winery licensees).

Summary

The proposed rulemaking will amend § 11.111 by deleting the prohibition on limited wineries selling a specific code of wine listed for sale by the Board as a stock item at a price lower than that charged by the Board.

The act of July 31, 1968 (P. L. 902, No. 272) first authorized the Board to issue licenses to limited wineries. License holders could produce no more than 50,000 gallons of wine per year and could sell their wines directly to the Board, licensees and the general public. In 1982, the Board amended § 11.111(a)(10) to prohibit a limited winery from selling a specific code of wine which is listed for sale as a stock item by the Board at a price which is lower than that charged by the Board. The proposed rulemaking would delete § 11.111(a)(10) to allow licensed limited wineries to sell a specific code of wine at a price which is lower than the Board's price for the same code. This proposed amendment will benefit licensed limited wineries, who may be able to sell their wines at lower prices than the Board, as they are not subject to the same mark-up and taxes.

Affected Parties

Approximately 254 limited wineries currently licensed by the Board, of which 210 are currently active, will affected by this proposed rulemaking. The limited wineries will have increased pricing flexibility as a result of the proposed rulemaking. However, a licensee will not be required to take action due to this proposed rulemaking.

Paperwork Requirements

The Board does not anticipate that this proposed rulemaking will affect the amount of paperwork or administrative costs of the regulated community.

Fiscal Impact

The Board does not anticipate that this proposed rulemaking will have any adverse fiscal impact on the regulated community, since licensed limited wineries will have increased pricing flexibility. A licensee will not be required to take any action due to this change.

This proposed rulemaking is not expected to have a substantial adverse fiscal impact on State and local governments, although there may be a nominal fiscal impact on Board revenues if increased licensed limited winery sales lead to reduced sales by the Board.

Effective Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be addressed to Alan Kennedy-Shaffer, Assistant Counsel, or Rodrigo Diaz, Executive Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 24, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and the Senate Law and Justice Committee. A copy of this material is available to the public upon request.

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

JOSEPH E. BRION,
Chairperson

Fiscal Note: 54-76. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 11. PURCHASES AND SALES

Subchapter C. WINES

LIMITED WINERIES

§ 11.111. Sale by limited winery licensees.

(a) A limited winery licensee, licensed under § 3.62 (relating to creation), may sell wines produced on the licensed premises in accordance with the Liquor Code and this part, under the conditions in this subsection.

* * * * *

(10) **[A specific code of wine which is listed for sale as a stock item by the Board in State Liquor Stores may not be offered for sale at a licensed winery location at a price which is lower than that charged by the Board.**

(11)] Mail or telephone orders may be accepted. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited winery licensees or through properly licensed transporters. It is the

responsibility of the limited winery licensee to insure that wine is not delivered to minors and that proper invoices are maintained under § 5.103 (relating to limited wineries).

* * * * *

[Pa.B. Doc. No. 13-1853. Filed for public inspection October 4, 2013, 9:00 a.m.]

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Biennial License Fee for Licensed Appraiser Trainees

The State Board of Certified Real Estate Appraisers (Board) proposes to amend § 36.6 (relating to fees) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. It is anticipated that the biennial renewal fees for licensed appraiser trainees will be implemented with the June 30, 2015, biennial renewal.

Statutory Authority

Section 5(6) of the Real Estate Appraisers Certification Act (act) (63 P. S. § 457.5(6)) authorizes the Board to establish fees for the operation of the Board, including fees for the issuance and renewal of certificates and licenses. Section 9 of the act (63 P. S. § 457.9) provides that fees established under the act shall be fixed by the Board by regulation.

Background and Need for Amendment

The Board published a final-form rulemaking at 40 Pa.B. 3956 (July 17, 2010) establishing a regulatory scheme for the appraiser trainee license, which was added to the act by the act of July 8, 2008 (P. L. 833, No. 59) and the act of October 9, 2008 (P. L. 1380, No. 103). At that time, the Board established an initial application fee of $75 for the appraiser trainee license. However, although an appraiser trainee license may be renewed biennially up to four times, the Board did not establish a biennial renewal fee for this class of license at that time. The Board corrects that oversight in this proposed rulemaking.

Description of Proposed Amendments

This rulemaking proposes to amend § 36.6 to establish a biennial renewal fee for licensed appraiser trainees at $150.

Fiscal Impact

The proposed rulemaking will impact licensed appraiser trainees who elect to renew their licenses. There are currently 435 actively licensed appraiser trainees. Small businesses will be impacted to the extent that they elect to pay the fees on behalf of their licensed employees. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. 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 September 20, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Christopher K. McNally, Counsel, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 16A-7020—Fees on comments.

PAUL C. KAUFMAN,
Chairperson

Fiscal Note: 16A-7020. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Subchapter A. GENERAL PROVISIONS

GENERAL PROVISIONS

§ 36.6. Fees.

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

* * * * *

Licensed Appraiser Trainee

Application $75

Biennial renewal $150

[Pa.B. Doc. No. 13-1854. Filed for public inspection October 4, 2013, 9:00 a.m.]

STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

[49 PA. CODE CH. 45]

Continuing Education

The State Board of Examiners in Speech-Language and Hearing (Board) proposes to amend §§ 45.1, 45.501—45.505 and 45.507 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 5(2) of the Speech-Language and Hearing Licensure Act (act) (63 P. S. § 1705(2)) authorizes the Board to adopt and revise rules and regulations consistent with the act as may be necessary to implement the provisions of the act. Section 5(7) of the act specifically authorizes the Board to establish standards of eligibility for license renewal, which include demonstration of satisfactory completion of continuing education.

Background and Need for the Proposed Rulemaking

In 2006, the Board promulgated initial regulations concerning continuing education. Having now applied the continuing education requirements during two subsequent renewal cycles, the Board has identified areas of the regulations where clarity or completeness could be improved.

Description of Proposed Amendments

Under § 45.501(a) (relating to credit hour requirements), each speech-language pathologist, audiologist or teacher of the hearing impaired is required to complete 20 clock hours of continuing education during each biennial renewal period. However, because some individuals are licensed in more than a single profession regulated by the Board, the question was raised whether a licensee is required to complete 20 clock hours of continuing education for each license or only a total of 20 clock hours. The Board proposes to amend § 45.501(a) to make clear that 20 clock hours of continuing education are required during each biennium for each license held. Also, the current regulations do not address carry-over of excess credit from one biennium to the next or repeating continuing education activities. The Board proposes to amend § 45.501(a) to prohibit the carry-over of credit to a subsequent biennium and to add § 45.501(d) to prohibit a licensee from receiving credit for participation in substantially the same program more than once during a single renewal cycle.

Under § 45.501(b), a licensee who serves as a lecturer or speaker or who publishes an article or book relating to the practice may receive up to 10 clock hours of approved continuing education per biennial renewal period. Because the regulations do not currently address the method for determining the amount of credit, the Board proposes to amend § 45.501(b) to provide that an instructor of an approved or preapproved program will receive credit to the same extent as an attendee will receive credit. The proposed amendment would also clarify that the instructor is not required to apply separate from the provider's application for course approval to obtain teaching credit. A licensee seeking credit for instruction, presentation or publication is required to submit a written request for approval along with supporting documentation. Although the current regulations do not clearly specify a fee to be charged for review of the request, the Board has charged for review of continuing education credit for speaking or publication the same fee that it charges a provider for review of a course or program of continuing education. The Board proposes to amend § 45.501(b) to clearly require that the fee specified in § 45.1 (relating to fees) be paid. Under § 45.1(a)(5), the Board charges an application fee of $40 for "continuing education course approval." To include speaker and publication credit and to make clear that this fee is not charged to preapproved providers, the Board proposes to amend this description as "continuing education approval (other than preapproved provider)." Additionally, the Board proposes to delete as obsolete § 45.1(b), which addresses payment of an initial fee by an individual licensed before 1988.

Current § 45.502(a) (relating to exemption and waiver) exempts "an individual applying for initial licensure . . . from the continuing education requirement for biennial renewal in the period following that in which the license is granted." This language could be interpreted to mean that a new licensee could receive a license, renew it as much as 20 or more months later and then not be required to complete continuing education during the following 24-month renewal period. The Board's intent in promulgating this subsection was that a new licensee would not be required to complete continuing education during the balance of that first biennium to renew the license for a full biennial renewal period. To fully effectuate this intent, the Board is proposing to rewrite § 45.502(a) to provide that "a licensee is not required to complete continuing education during the biennial renewal period in which the licensee was first licensed to renew for the next biennium."

Section 5(7) of the act authorizes the Board to waive all or part of the continuing education requirement for a licensee who shows to the satisfaction of the Board that the licensee was unable to complete the requirement due to illness, emergency or hardship and requires the licensee to make the request in writing, with appropriate documentation, describing the circumstances sufficient to show why the licensee is unable to comply with the requirement. Current § 45.502(b) addresses this process. Because the Board has received requests so late in the biennial renewal period that it has not been able to rule before the beginning of the new biennium, the Board is proposing to amend § 45.502(b) to require that the request be submitted at least 60 days prior the license's expiration date, except for good cause shown. In addition to the circumstances that cause the licensee's hardship, the Board typically considers the extent to which the licensee has already completed continuing education in deciding whether to waive the requirement or grant an extension for a temporary hardship. Also, because oftentimes the circumstances result from unexpected events at the last minute that keep a licensee from participating in continuing education as planned, the Board will sometimes grant a limited extension of time in which to complete continuing education rather than waive the requirement entirely. To obtain this necessary information up front, the Board also proposes amending § 45.502(b) to require the request for waiver to include a statement of how much continuing education has been completed

already and, if seeking only an extension of time, the licensee's plan to complete the continuing education requirement.

Under § 45.503 (relating to continuing education requirement for reactivation of inactive and lapsed licenses), a licensee seeking to reinstate an inactive or lapsed license is required to provide proof of compliance with the continuing education requirement for the preceding biennium. Because the purpose of continuing education is to ensure the licensee's continued competence, a licensee who is seeking to reactivate late in the current biennium should not be able to rely upon continuing education completed early in the prior cycle, as much as 48 months earlier, to show current competence. Accordingly, the Board proposes to add a provision to this section to require a licensee seeking to reactivate a license to show a cycle's worth of continuing education in the 24-month period immediately preceding the application for reactivation. However, consistent with the proposed prohibition in § 45.501(a) against carry-over of credit, it would also prohibit the licensee from satisfying the subsequent renewal requirement with any of the continuing education completed for reactivation. Also, because the appropriate action is to reactivate, rather than renew, a license that is inactive or lapsed, the Board proposes to amend § 45.503 and to use "reactivate" or "reactivation" rather than "renew" or "renewal."

Current § 45.504(a) (relating to reporting completion of continuing education) requires "applicants at the time of license renewal" to certify completion of required continuing education. To clarify that this requirement is for existing licensees seeking renewal and not applicants seeking licensure coincidentally at the change in renewal periods, the Board proposes to amend § 45.504(a) to refer to "licensees applying for biennial license renewal."

The Board has set up in § 45.505 (relating to approval of continuing education programs) a process for the Board to review and approve continuing education programs. Under § 45.505(c)(4), the provider's application must contain a schedule of the program, including the title and description of each subject and the name of the lecturers. However, because the title and description of each subject are not always sufficient for the Board to determine the appropriateness of the program content, the Board proposes to amend § 45.505(c)(4) to require the application to include the course content. The Board also proposes to amend this paragraph to require the application to include with the name of lecturers a brief synopsis of the lecturer's qualifications, because the reviewing Board members cannot be expected to be familiar with every possible lecturer. This is not duplicative of the requirement of § 45.505(b)(3) for faculty names and credentials, as the lecturer and the course planner may be different individuals. Moreover, this synopsis is not a full curriculum vitae that the Board might request under § 45.505(b)(3).

Under § 45.505(d)(3), the Board has provided that courses and programs offered by academic programs in speech-language pathology, audiology or teaching of the hearing impaired associated with accredited institutions are preapproved. This provision was intended to apply to courses that are part of the academic training and not the "not-for-credit" courses that an institution might provide. Accordingly, the Board proposes to amend this paragraph to limit preapproved status to courses and programs offered for credit by academic programs. In considering this point, the Board further reviewed the documentation of successful completion of such a program, typically a transcript rather than a traditional continuing education certificate. Licensees are required under § 45.504(b) to maintain a certified continuing education record in the event of an audit. Although concluding that a transcript would satisfy the requirements in § 45.506(b) as a continuing education record, the Board proposes to add § 45.504(d) to make clear that an official transcript of a for-credit course in an accredited institution is adequate proof of successful completion.

Current § 45.507 (relating to disciplinary action authorized) provides for disciplinary action for licensees who submit fraudulent continuing education records to the Board or who fail to complete the required continuing education requirement within a particular biennial renewal period. Through the Commissioner of Professional and Occupational Affairs, the Board previously established a schedule of civil penalties for continuing education violations in § 43b.16a (relating to schedule of civil penalties—audiologists, speech-language pathologists and teachers of the hearing impaired) to make use of the more streamlined "citation" process for continuing education violations. The Board has determined that there is a need to codify the Board's practice of requiring individuals disciplined for failure to complete continuing education to make up all deficiencies within 6 months of receiving notice of the deficiency, especially in citation proceedings. To that end, the Board proposes to add subsection (c), which imposes a duty to make up deficient continuing education hours, notwithstanding any disciplinary taken for the violation. The Board also proposes to add subsection (d) to provide notice that failure to make up the deficient continuing education as required may subject the licensee to further disciplinary action.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would not have a fiscal impact on, or create additional paperwork for, the regulated community, the general public or the Commonwealth and its political subdivisions.

Sunset Date

The Board continuously monitors the effectiveness of 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 September 25, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to the Regulatory Unit Counsel, De-

partment of State, P. O. Box 2649, Harrisburg, PA 17105-2649, st-speech@pa.gov within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6807 (continuing education) when submitting comments.

JAMES L. SHAFER, Au.D.,
Chairperson

Fiscal Note: 16A-6807. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 45. STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

Subchapter A. GENERAL PROVISIONS

§ 45.1. Fees.

[(a)] The following are the fees set by the State Board of Examiners in Speech-Language and Hearing:

* * * * *

(5) Application for continuing education **[course]** approval **(other than preapproved provider)** $40

[(b) The Board will require payment of the initial license fee by individuals who were issued licenses without fee prior to July 30, 1988.]

Subchapter G. CONTINUING EDUCATION

§ 45.501. Credit hour requirements.

(a) Each speech-language pathologist, audiologist or teacher of the hearing impaired shall have completed 20 clock hours of continuing education **per license** during each preceding biennial renewal period, beginning with the renewal period commencing August 1, 2008. **Excess clock hours may not be carried over to the next biennium.**

(b) Up to 10 clock hours of approved continuing education credit per biennial renewal period may be granted on a case-by-case basis for services as a lecturer or speaker, and for publication of articles, books and research relating to the practice of speech-language pathology, audiology or teaching of the hearing impaired. A licensee seeking continuing education credit under this subsection shall submit a written request with a copy of the lecture, presentation, article, book or research **and a fee for continuing education approval as required under § 45.1 (relating to fees)**. The request shall be submitted 180 days prior to the expiration of the biennial renewal period for which the licensee is seeking credit. **An instructor of a program approved under § 45.505 (relating to approval of continuing education programs) will receive credit to the same extent that an attendee will receive credit and is not required to apply for approval under this subsection.**

(c) Unless granted a waiver under § 45.502 (relating to exemption and waiver), the Board will not renew or reactivate any speech-language pathologist, audiologist or teacher of the hearing impaired license until the continuing education requirement for the current biennial renewal period has been completed.

(d) A licensee may not receive credit for participation in substantially the same program more than once during a single renewal cycle.

§ 45.502. Exemption and waiver.

(a) **[An individual applying for initial licensure shall be exempt from the continuing education requirement for biennial renewal in the period following that in which the license is granted.] A licensee is not required to complete continuing education during the biennial renewal period in which the licensee was first licensed to renew for the next biennium.**

(b) The Board may waive all or part of the continuing education requirement for a biennial renewal period upon request of a licensee. The request must be made in writing, with supporting documentation, and include **a statement of how much continuing education the licensee has completed and** a description of circumstances sufficient to show why compliance is impossible. **Except for good cause shown, a licensee seeking a waiver shall submit the request to the Board at least 60 days before the current expiration date of the license for the Board to evaluate the request prior to expiration of the license.** Waiver requests will be evaluated by the Board on a case-by-case basis. Waivers may be granted for serious illness, military service or other demonstrated hardship. **A waiver request seeking an extension of time to complete required continuing education shall include the licensee's plan to complete the required continuing education.** The Board will send written notification of its approval or denial of a waiver request.

§ 45.503. Continuing education requirement for **[biennial renewal] reactivation** of inactive and lapsed licenses.

A licensee seeking to **[reinstate] reactivate** an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennial period. **Only continuing education obtained during the 24-month period immediately preceding application for reactivation may be used to justify reactivation. This continuing education is in addition to continuing education required to subsequently renew the license under § 45.501(c) (relating to credit hour requirements).**

§ 45.504. Reporting completion of continuing education.

(a) **[Applicants at the time of] Licensees applying for biennial** license renewal shall provide, on forms provided by the Board, a signed statement certifying that the continuing education requirement has been met and information to support the certification which includes the following:

* * * * *

(c) Individuals shall retain the certified continuing education records for courses completed for a minimum of 4 years.

(d) Instead of the continuing education record required under subsection (b), a licensee who successfully completed a program preapproved under § 45.505(d)(3) (relating to approval of continuing education programs) may document completion by means of an official transcript of the institution.

§ 45.505. Approval of continuing education programs.

* * * * *

(c) An application must contain:

* * * * *

(4) A schedule of the program, including the title and description of each subject, **the course content,** the name **and brief synopsis of qualifications** of the lecturers and the time allotted.

* * * * *

(d) The following programs are deemed approved for continuing education credit:

* * * * *

(3) Courses and programs offered **for credit** by academic programs in speech-language pathology, audiology or teaching of the hearing impaired associated with institutions accredited by any state's department of education or a regional commission on institutions of higher education.

* * * * *

§ 45.507. Disciplinary action authorized.

* * * * *

(b) A licensed speech-language pathologist, audiologist or teacher of the hearing impaired who fails to complete the required continuing education requirement within any biennial renewal period may be subject to discipline unless the licensee is exempt or has been granted a waiver under § 45.502 (relating to exemption and waiver).

(c) Notwithstanding discipline imposed by the Board under subsection (b), whether by formal disciplinary proceedings or by issuance of a citation as set forth in § 43b.16a (relating to schedule of civil penalties—audiologists, speech-language pathologists and teachers of the hearing impaired), a licensed speech-language pathologist, audiologist or teacher of the hearing impaired who has been found to be deficient in continuing education hours shall make up deficiencies within 6 months of receiving notice of the deficiency.

(d) Failure to make up deficient continuing education hours as required under subsection (c) may subject the licensed speech-language pathologist, audiologist or teacher of the hearing impaired to further discipline under section 10 of the act.

[Pa.B. Doc. No. 13-1855. Filed for public inspection October 4, 2013, 9:00 a.m.]