

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

Bonding, Civil Penalties and Areas Unsuitable for Mining

The Environmental Quality Board (Board) by this order amends Chapter 86 (relating to surface and underground coal mining; general). The amendments are the result of a comprehensive regulatory review required under Governor Ridge's Executive Order 1996-1 and the Department of Environmental Protection's (Department) Regulatory Basics Initiative (RBI). The amendments revise regulations consistent with the rulemaking principles set forth in Executive Order 1996-1 and the RBI. These amendments affect the process for designating areas unsuitable for mining, bonding and civil penalties.

This order was adopted by the Board at its meeting of September 16, 1997.

A. Effective Date

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

B. Contact Persons

For further information contact Roderick A. Fletcher, P.E., Director, Bureau of Mining and Reclamation, P. O. Box 8461, Room 209 Executive House, Harrisburg, PA 17105-8461, (717) 787-5103, or Joseph Pizarchik, Assistant Counsel, 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 AT & T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

These amendments are adopted under the rulemaking authority of the following acts: sections 4(d) and 4.2(a) of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. §§ 1396.4(d) and 1396.4b(a)); sections 5(b) and 315(b) of The Clean Streams Law (35 P. S. §§ 691.5(b) and 691.315(b)); sections 3.2(a) and 6(a) of the Coal Refuse Disposal Control Act (52 P. S. §§ 30.53b(a) and 30.56(a)); section 7(b) of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7(b)); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which authorize the Board to adopt regulations necessary for the Department to perform its work.

D. Background and Summary

In August of 1995, the Department began its RBI review of existing regulations. The RBI review includes an identification of regulations which are more stringent than Federal law and regulation. Under Executive Order 1996-1 and the RBI, regulations which are more stringent than Federal requirements are being revised, unless the Department determined that more stringent State requirements are justified by a compelling and articulable Pennsylvania interest or required by state statute. As part of its regulatory review, the Department solicited

public input through a notice in the *Pennsylvania Bulletin* and the Department's web site. These amendments are the result of suggestions from the public and the Department's own review of its regulations.

The amendments revise the definitions of "related party" and "owned or controlled and owns or controls," and create a definition for "willful violation." The procedures for petitioning an area to be designated unsuitable for mining are revised to allow the Department discretion on whether to process a petition received after the first public notice of a permit application on the same area. This change narrows the time period in which submission of a petition will block issuance of a permit involving the same area.

Changes in the sections on bonding include notice to the operator and surety of a proposed bond adjustment, the use of self-bonds in combination with other types of bonds, limiting the reasons that the Department may delay bond release inspections to weather conditions, and notifying the permittee and surety of an intent to forfeit bonds.

The proposed amendment included a new § 86.182(a)(2) which required the Department to advise the permittee and, if applicable, the surety, of the conditions under which forfeiture may be avoided. This language was based on the Federal regulations. Upon closer examination it has been determined that proposed § 86.182(a)(2) is contrary to Pennsylvania mining statutes and it has been deleted.

Section 4(h) of SMCRA (52 P. S. § 1396.4(h)) provides "If the operator fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the Department shall declare such bond forfeited. . . ." Similar language is found in section 6(b) of the Coal Refuse Disposal Control Act and section 315(b) of The Clean Streams Law. Section 4(h) of SMCRA provides a surety, upon the consent and approval of the Department, the option of reclaiming the forfeited site in lieu of paying the bond amount to the Department. It does not give the surety the option to avoid the forfeiture action. Regulations addressing this point are included in another rulemaking.

Sections of the regulations concerning the calculation of civil penalties are revised by increasing the dollar amount at which a civil penalty becomes mandatory, and by eliminating certain mandatory civil penalties. These amendments also allow the Department to revise civil penalties for exceptional factors. Civil penalties against corporate officers are revised to provide for a stay and withdrawal of individual civil penalties under certain conditions.

In an attempt to reflect the Federal Office of Surface Mining Reclamation and Enforcement (OSM) system for determining the amount of a civil penalty, the proposed amendments reduced the maximum civil penalties assessed for seriousness of the violation and negligence of the operator. Upon closer examination the Department finds that the proposed changes are not consistent with dollar amounts which could be assessed under the OSM system. The OSM uses a point system for determining civil penalties. For each violation, points are accumulated based on history of previous violations, seriousness of the violation and negligence on the part of the operator. Negative points may be added for exceptional speed of compliance. The dollar amount of the civil penalty under

the OSM system is \$20 per point up to, and including, 25 cumulative points. Above 25 points, each additional point is assessed at \$100. The proposed amendments to the Commonwealth's regulations were based solely on \$20 per point. Since these amendments set the maximum amount which may be assessed for seriousness and negligence, those dollar amounts are revised to be equivalent to \$100 per point, the maximum amount possible under the OSM system. Even these newly revised maximums for seriousness and negligence are below the amounts currently set by § 86.194 (relating to system for assessment of penalties).

The Department also found and has corrected a \$10 error in the minimum amount which may be assessed for willful violations.

Amendments to the regulations which establish procedures for assessing civil penalties allow operators to submit additional information concerning a violation, and restrict the use of certain evidence in formal appeals. Another change revises the title of one section of the regulations to clearly identify that section as relating to a final action of the Department.

The regulations being revised in this rulemaking deal with administrative and procedural matters. Impacts will be limited to coal mining operators and any person who may submit a petition to have an area designated as unsuitable for mining.

These amendments were discussed with the Mining and Reclamation Advisory Board (MRAB). The MRAB recommended approval of these amendments at its meeting on July 10, 1997.

E. Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking was published in the *Pennsylvania Bulletin* on February 8, 1997. The public comment period expired on March 10, 1997. There were no public hearings. The only comments received were from the Independent Regulatory Review Commission (IRRC). However, the Harrisburg Field Office of the OSM provided comments after the close of the public comment period.

The OSM comments were informal in nature and simply stated that the proposed regulations appeared to be consistent with, and no less effective than, the corresponding Federal rules. As mentioned in Section D of this Preamble, a detailed evaluation of the civil penalty provisions in proposed § 86.194 disclosed that the proposed changes were less effective than the OSM civil penalty system. Those provisions have been corrected.

IRRC had two comments relating to procedures. They noted that proposed § 86.124(a)(6) (relating to procedures: initial processing, recordkeeping and notification requirements), which deals with the determination not to process a petition, paralleled the Federal regulation at 30 CFR 764.15(a)(6) with one exception. The proposal did not require the Department to tell the petitioner why the Department would not consider the petition.

Although the Department routinely notifies petitioners and intervenors of its activities concerning the petition, the Board agrees that the Department should tell the petitioner why the Department will not consider the petition. Language has been incorporated in § 86.124(a)(6) which requires the Department to notify the petitioner of its findings.

IRRC also suggested that language be added to § 86.124(a)(6) which outlines the criteria that the Depart-

ment will use to determine if a petition will be considered. The criteria for designation of lands as unsuitable for mining are found in § 86.122 (relating to criteria for designating lands as unsuitable). The Department had previously considered amending the discretionary criteria contained in § 86.122(b) to define more clearly how the Department would use its discretion in determining the merits of a petition. However, an informal review by OSM Reclamation and Enforcement indicated that doing so would result in criteria which would be more restrictive than Federal regulations. Accordingly, no change to the discretionary criteria in § 86.122(b) is proposed.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires an analysis of the costs and benefits of the final rulemaking.

Benefits

These amendments are intended to improve the Commonwealth's coal mining regulations under the principles set forth in Executive Order 1996-1 and the Department's RBI when there is no compelling State interest to be more stringent than the Federal counterpart. This Commonwealth's coal mining industry will benefit from these amendments by receiving prior notice of Department actions on bond adjustments and bond forfeiture and from having an opportunity to provide additional information concerning circumstances related to civil penalty assessments.

Compliance Costs

The proposed changes are primarily procedural and administrative in nature. They will impose no additional compliance costs on the regulated community.

Compliance Assistance Plan

Since coal mining regulations are an established program in this Commonwealth, compliance assistance will be limited to a simple effort to inform the industry of the specific changes in the program. This will be accomplished by mailing fact sheets directly to coal mine operators.

The Department also conducts informal public information workshops for organizations and persons who may be interested in petitioning to have an area declared unsuitable for mining. The workshops are available upon request and will be modified to describe the change to the petition process made by these amendments.

Paperwork Requirements

These amendments impose no additional paperwork on the regulated community. It will be necessary for the Department to revise several existing forms and technical guidance documents.

G. Sunset Review

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

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 29, 1997, the Board submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committee on October 14, 1997. IRRC met on October 23, 1997, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Findings of the Board

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 at 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) These amendments do not enlarge the purpose of the proposal published at 27 Pa.B. 730 (February 8, 1997).

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

K. Order of the Board

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

(a) The regulations of the Department, 25 Pa. Code Chapter 86, are amended by amending §§ 86.1, 86.152, 86.156, 86.160, 86.171, 86.193, 86.195, 86.201 and 86.202 to read as set forth at 27 Pa.B. 730 and by amending §§ 86.124, 86.182 and 86.194 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Chairperson of the Board shall submit this order, 27 Pa.B. 730 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 shall submit this order, 27 Pa.B. 730 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 27 Pa.B. 730 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication.

JAMES M. SEIF,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 5840 (November 8, 1997).)

Fiscal Note: 7-302. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter D. AREAS UNSUITABLE FOR MINING CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

§ 86.124. Procedures: initial processing, record-keeping and notification requirements.

(a) Within 30 days of receipt of a petition, the Department will notify the petitioner by certified mail whether or not the petition is complete as required by § 86.123 (relating to procedures: petitions). If the 30-day requirement of this subsection cannot be met due to the staff limitations of the Department, the Department may process the petition in accordance with the priority system authorized by subsection (b)(2). Within the 30-day period, the Department will also notify an applicant with pending surface mining permit applications in the area covered by the petition.

* * * * *

(6) The Department may determine not to process any petition for a designation under § 86.122 (relating to criteria for designating lands as unsuitable) insofar as it pertains to an area for which an administratively complete surface mining operation permit application has been filed and the first newspaper notice has been published. The Department will provide written notice to the petitioner with a statement of its findings. Once a petition has been returned to the petitioner under this section, the Department may proceed to issue a decision on a permit application received for mining in the area included within the petition.

* * * * *

BOND FORFEITURE

§ 86.182. Procedures.

(a) The Department will send written notification by mail to the permittee, and the surety on the bond of the Department's intent to forfeit the bond and the reasons for the forfeiture.

(b) If forfeiture of the bond is required, the Department will:

(1) Send written notification by mail to the permittee, and the surety on the bond of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the permittee and surety of their right to appeal to the EHB under section 4 of the Environmental Hearing Board Act of 1988 (35 P. S. § 7514).

(3) Notify the surety of the requirement to pay the amount of the forfeited bond over to the Department within 30 days after notice by certified mail from the Department. The money shall be held in escrow with any interest accruing to the Department pending the resolution of any appeals. If it is determined, by a court of competent jurisdiction, after exhaustion of appeals, that the Commonwealth was not entitled to all or a portion of

the amount forfeited, the interest shall accrue proportionately to the surety in the amount determined to be improperly forfeited by the Department.

(4) Proceed to collect on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section, if timely appeal is not filed or if an appeal is filed and the appeal is unsuccessful.

(c) The written determination to forfeit the bond, including the reasons for forfeiture, will be a final decision by the Department.

(d) The Department will forfeit bonds deposited for a permit area, including designated phases of a permit area and amended permit areas, except for that portion of the bond which has been released as provided in §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond). Liability on every bond posted for a permit area, designated phase of a permit area, or an amendment thereof, shall cover violations within the permit area or resulting from mining of the permit area.

(e) In lieu of paying the amount of the forfeited bond within 30 days after notice, a surety may reclaim the forfeited site upon the consent and approval of the Department. The surety shall notify the Department of its intent to reclaim the site within 30 days after the notice of forfeiture. The notification shall include a time frame within which the surety will submit a proposal which describes both the reclamation work to be done and a schedule for completion of the reclamation. Subject to the Department's approval of the time frame and the subsequent reclamation proposal, the Department and the surety will enter into a consent order and agreement specifying the terms of the reclamation work to be done.

(f) If the Department declares a collateral bond forfeited, it will pay, or direct the State Treasurer to pay, the collateral funds into the Surface Mining Conservation and Reclamation Fund. If upon proper demand and presentation, the banking institution or other person or municipality which issued the collateral refuses to pay the Department the proceeds of a collateral undertaking, such as a certificate of deposit, letter of credit or government negotiable security, the Department will take appropriate steps to collect the proceeds.

(g) The Department will use funds collected from bond forfeiture to complete the reclamation plan, or remaining portion thereof, on the permit area or increment to which bond coverage applies.

(h) If the amount forfeited is:

(1) Insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Department may complete, or authorize completion of, the reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

(2) More than the amount necessary to complete the reclamation, the excess funds will be used by the Department, as approved by the Secretary, for any of the purposes provided in section 18(a) of the act (52 P. S. § 1397.18(a)).

§ 86.194. System for assessment of penalties.

(a) The Department and, in event of appeal, the EHB, will use the system described in this section to determine the amount of the penalty and whether a mandatory penalty will be assessed as provided in § 86.193 (relating

to assessment of penalty). Unless otherwise indicated in this section, the penalty may be set at any amount from zero through the maximum amount specified in this section.

(b) Civil penalties will be assessed as follows:

(1) Seriousness. Up to \$3,000 will be assessed based on the seriousness of the violation, including:

* * * * *

(vi) An additional amount up to the statutory maximum may be assessed in extraordinary circumstances.

(2) Culpability. If the violation was caused, contributed to or allowed to continue due to negligence on the part of persons working on the exploration or surface mining site, a penalty of up to \$1,200 will be assessed depending on the degree of negligence of the persons. If the violation was willful or the result of reckless conduct on the part of the person working on the exploration or surface mining site, a penalty of up to the statutory maximum but at least \$260, will be assessed.

(3) Speed of compliance. A credit will be given of up to \$1,000 based on the person's attempt to achieve rapid compliance after the person knew or should have known of the violation. If the violation is abated within the time period in an abatement order, a credit will not be given under this paragraph unless the violation is abated in the shortest possible time, in which case a credit of up to \$1,000 will be given. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) Cost to the Commonwealth. A penalty of up to the statutory maximum may be assessed based on the costs expended by the Commonwealth as a result of the violation. The costs may include:

(i) Administrative costs.

* * * * *

(6) History of previous violations. In determining a penalty for a violation, the Department will consider previous violations of the applicable laws for which the same person or municipality has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree which become final within the previous 1-year period on the permit where the violation has occurred. The penalty otherwise assessable for each violation shall be increased by a factor of 5% for each previous violation. The total increase in assessment based on history of previous violation will not exceed \$1,000.

* * * * *

(f) Revision of civil penalty.

(1) The Department, upon its own initiative or upon written request received within 15 days of issuance of an order or cessation order, may revise a civil penalty calculated in accordance with the dollar limits in subsection (b), if the Department determines that, taking into account exceptional factors present in the particular case, the civil penalty is demonstrably unjust, the Department will not reduce the civil penalty on the basis of an argument that a reduction in civil penalty could be used to abate violations of the acts. This chapter, Chapter 87, 88, 89 or 90, or a condition of a permit or exploration approval. The basis for every revision of a civil penalty shall be fully explained and documented in the records of the case.

(2) If the Department revises the civil penalty, the Department will use the general criteria in subsection (b)

to determine the appropriate civil penalty. When the Department has elected to revise a civil penalty, the Department will give a written explanation of the basis for the revised civil penalty to the person to whom the order was issued.

[Pa.B. Doc. No. 97-1895. Filed for public inspection November 28, 1997, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 271—273, 277, 279, 281, 283, 285, 287—289, 291, 293, 295, 297 and 299]

Municipal, Residual and Infectious and Chemotherapeutic Waste Recordkeeping and Reporting; Substantial Plan Revisions

The Environmental Quality Board (Board) by this order amends Chapters 271—273, 277, 279, 281, 283, 285, 287—289, 291, 293, 295, 297 and 299. The amendments streamline recordkeeping and reporting requirements of the regulated community by eliminating duplicate data submission requirements and reducing unnecessary or duplicative recordkeeping requirements, while maintaining environmental protection and public access to information. In addition, the amendments implement a recommendation of the Municipal Waste Stakeholders Group regarding county municipal waste plan revisions.

This order was adopted by the Board at its meeting of September 16, 1997.

A. Effective Date

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

B. Contact Persons

For further information contact Keith Kerns, Chief, Division of Waste Minimization and Planning, P. O. Box 8472, Rachel Carson State Office Building, Harrisburg, PA 17105-8472, (717)877-7382, or electronically at Kerns.Keith@A1.dep.state.pa.us or Kristen Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717)787-7060 or electronically at Campfield.Kristen@A1.dep.state.pa.us. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). These amendments are available electronically through the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The final rulemaking is being made under the authority of the following:

- The Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.101—6018.1003), which in section 105(a) grants the Board the power and duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA.

- The Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904), which in section 302 gives the Board the power and duty to adopt the regulations of the Department to accomplish the purposes and to carry out the provisions of that act.

- The Clean Streams Law (35 P. S. §§ 691.1—691.1001), which in section 5(b) grants the Department

the authority to formulate, adopt, promulgate and repeal the rules and regulations as are necessary to implement the provisions of that act.

- The Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6), which in sections 2(b) and 4(b) grants the Department the authority to propose regulations as may be necessary or appropriate to accomplish the purposes of the act and grants the Board the authority to adopt rules and regulations of the Department to accomplish the purposes and to carry out the provisions of that act.

D. Background and Summary

Recordkeeping and Reporting Requirements

These final-form regulations are designed to reduce recordkeeping requirements for the regulated community and to eliminate duplicative data submissions to the Department while continuing to provide adequate access to information to the public and the Department and continuing to protect the environment. They are the result of an in-depth study by a committee of Department management and technical staff, with significant opportunity for input from the general public and the regulated community. The study began in 1995.

The Department has consulted on a number of occasions with its Solid Waste Advisory Committee (SWAC). Before the proposed amendments were published, SWAC recommended that the Department develop a table showing an alternate source of data for each reporting requirement the Department proposed to eliminate. The table appeared in the Preamble to the proposed amendments and appears again in this Order.

The package also includes the addition of a section to the municipal waste regulations (§ 271.4) authorizing the submission of data electronically. Electronic submissions are allowed under the existing residual waste regulations.

Revised reporting forms for use with these final-form regulations are available through the contact persons listed in Section B and may also be viewed on the Department's World Wide Web site (<http://www.dep.state.pa.us>).

Plan Revisions

This final rulemaking implements a recommendation of the Municipal Waste Stakeholders Group regarding county municipal waste management plan revisions. The regulations now authorize a county to add or delete a facility to or from a plan without having to follow the substantial plan revision process. In addition, the final-form regulations indicate that any notice of revision submitted to the Department must explain how disposal and processing capacity will be assured, and any revision submitted to the Department for approval will be reviewed fully to the extent it revises the original plan.

Entire Package

The final-form regulations were approved by SWAC at its June 12, 1997, meeting.

None of these revisions exceeds Federal requirements. Related municipal waste Federal regulations can be found in the United States Environmental Protection Agency's (EPA) "Criteria for Municipal Landfills," 40 CFR 258, at 258.29. The EPA requires submission of records upon request, to the State Director (that is, the Secretary of the Department). The Department has obtained EPA

approval of its landfill permitting program (including recordkeeping and reporting under Part 258). These regulatory amendments do not jeopardize EPA approval.

There are no companion Federal residual waste regulations. Because the Department is responsible for program administration, including compliance monitoring, detailed periodic reporting is necessary.

Deletion

Chapter 273. Municipal waste landfills

§ 273.313. Annual operation report.

- (b)(1) Weight or volume of solid waste received.
- (b)(2) Type and weight or volume of solid waste received by county or state.
- (b)(3) Type and weight or volume of solid waste received by transporter.
- (b)(4)(ii, iv, v, vi) Location of groundwater monitoring wells, access roads, erosion and sedimentation control structures and devices, leachate storage or treatment facilities, property lines, boundaries of permitted fill areas and boundaries of lined areas.
- (b)(10) A description of emergency disposal areas or methods approved by the Department and used by the operator, which are not described in the permit.
- (b)(11) Notification of critical stages of facility construction requiring professional engineer certification in the next year.
- (b)(12) An analysis of special handling or residual waste received at the facility in the previous year.
- (b)(15) Counties that have used the facility during the past year.

Chapter 277. Construction/demolition waste landfills

§ 277.312. Annual operation report.

- (b)(1) Weight or volume of the types of solid waste received.
- (b)(2) The type and weight or volume of solid waste received by county or state.
- (b)(3) Type and weight or volume of solid waste received from each transporter that delivered waste to the facility.
- (b)(4)(ii, iv, v, vi) Groundwater monitoring wells, access roads, facility office, erosion and sedimentation control structures, leachate storage or treatment facilities, property lines, boundaries of permitted fill areas and boundaries of lined areas.
- (b)(10) A description of emergency disposal areas or methods approved by the Department and used by the operator, which are not described in the permit.
- (b)(11) Notification of critical stages of facility construction or operation that require professional engineer certification.

Alternate Source Table

This Table is provided upon SWAC's recommendation. It lists the reporting items deleted (a section (§) reference is given along with a summary of the requirement) and at least one alternate location where the information can be found. The Table indicates regulatory changes made in the proposed rulemaking which have been retained in this final rulemaking as well as changes made in the final rulemaking itself.

Alternate Information Source

- Daily record. § 273.311(b)(1).
- Quarterly fee report. § 273.312(b)(1).
- Daily record. § 273.311(b)(2).
- Quarterly fee report. § 273.312(b)(2).
- Daily record. § 273.311(b) (1) and (3) require recording of the amount and type of waste and the transporters but not the amount or type of waste received from each transporter.
- Maps and related information. § 273.113.
- Map and grid requirements. § 273.133.
- Water quality monitoring plan. § 273.152.
- Recordkeeping. § 273.288.
- Permit modification. § 271.222.
- Daily record. § 273.311(b)(5).
- Operation plan. § 273.132(1).
- Permit modification. § 271.222.
- Facility is required to receive these analyses and keep them as part of their approval to receive these wastes. § 271.621.
- Daily operational record. § 273.311(b)(2).
- Daily record. § 277.311(b)(1).
- Daily record. § 277.311(b)(2).
- Daily records. § 277.311(b)(1) and (3) require recording the amount and type of waste and the transporters but not the amount and type of waste received from each transporter
- Map and grid requirements. § 277.133.
- Map and related information. § 277.113.
- Leachate treatment plan. § 277.162.
- Permit modification. § 271.222.
- Daily operational record. § 277.311(b)(5).
- Operation plan. § 277.132(1).
- Map and grid requirements. § 277.133(a)(1).

*Deletion**Alternate Information Source*

Chapter 279. Transfer facilities

§ 279.252. Annual Operation Report

(b)(1) The weight or volume of each waste received.

Daily record. § 279.251(b)(1).

(b)(2) The county or state in which the solid waste originated.

Daily record. § 279.251(b)(2).

(b)(3) The transporters of the solid waste.

Daily record. § 279.251(b)(3).

(b)(4) The weight or volume of each material recycled or marketed.

Daily record. § 279.251(b)(5) requires information on materials recycled but not materials marketed.

(b)(5) The destination of the solid waste.

Daily record. § 279.251(b)(4).

(b)(9) A description of emergency disposal areas.

Daily record. § 279.251(b)(6).

(b)(10) An analysis of special handling waste received at the facility in the previous year.

Facility is required to receive these analyses and keep them as part of their approval to receive these wastes. § 271.621.

Chapter 281. Composting facilities

§ 281.272. Annual operation report.

(b)(2) The transporters of the waste.

Daily record. § 281.271(b)(3).

(b)(4) The type and weight or volume of waste received by transporter.

Daily records. § 281.271(b) (1) and (3) require recording of the amount and type of waste and the transporters but not the amount or type of waste received from each transporter.

(b)(10) Certification that the operator has received the chemical analysis of waste for each type of residual waste or special handling waste received at the facility.

Facility is required to receive these analyses and keep them on file as part of its permit to receive residual and/or special handling municipal waste. § 271.621.

Chapter 283. Resource recovery and other processing facilities

§ 283.262. Annual operation report.

(b)(2) The county or state in which the solid waste originated.

Daily record. § 283.261(b)(2).

(b)(3) The transporters of the solid waste.

Daily record. § 283.261(b)(3).

(b)(4) The weight or volume of each material recycled or marketed as a result of the process.

Daily record. § 283.261(b)(4).

(b)(5) For bypassed wastes and waste products, the name and county or state of the facility where the solid waste is ultimately disposed.

Daily record. § 283.261(b)(5).

(b)(6) A description of handling problems or emergency disposal activities.

Daily record. § 283.261(b)(6).

(b)(7) The type and weight or volume of solid waste received from each transporter.

Daily record. § 283.261(b) (1) and (3) require recording of the amount and type of waste and the transporters but not the amount or type of waste received from each transporter.

(b)(11) A description of emergency disposal areas or methods.

Daily record. § 283.261(b)(6).

(b)(12) An analysis of special handling waste received at the facility in the previous year.

Facility is required to receive these analyses and keep them as part of their approval to receive these wastes. § 271.621.

Chapter 285. Storage, collection and transportation of municipal waste

Subchapter C. Transporter licensing for infectious and chemotherapeutic waste

§ 285.334. Annual report.

(b)(1) The name, mailing address and telephone number for each generator from whom the transporter accepted infectious or chemotherapeutic waste.

Manifest. § 285.412(a)(1).

(b)(2) Telephone number of the processing or disposal facility.

Manifest. § 285.412(a)(10).

(b)(3) The State manifest document number for each shipment of infectious or chemotherapeutic waste transported.

Document number is not needed. The Department does not receive a copy of the manifest.

Deletion

(b)(5) When more than one transporter is used to transport a single shipment of infectious or chemotherapeutic waste from the generator to the processing or disposal facility, the name, mailing address, telephone number and infectious or chemotherapeutic waste license number for each transporter.

Chapter 287. Residual waste management—general provisions.

§ 287.51. Scope

(Threshold for submitting biennial report and source reduction strategy now based on average generation rate over 1 year, rather than generation rate per month.

Chapter 288. Residual waste landfills

§ 288.282. Quarterly operation report. Deleted.

(b)(1) The type and weight or volume of solid waste received.

(b)(2) For noncaptive facilities, the name, mailing address, county and state of each generator of residual waste.

(b)(3) An analysis of the quality and quantity of leachate flowing from the landfill into the leachate storage and treatment system.

§ 288.283. Annual Operation Report.

(b)(2)(ii) The location of groundwater monitoring wells, access roads and the facility office.

(b)(2)(iv) Erosion and sedimentation control structures and devices.

(b)(2)(v) Leachate storage or treatment facilities, or both.

(b)(2)(vi) Property lines, boundaries of permitted fill areas and boundaries of lined areas.

(b)(11)(ii) For noncaptive facilities the type and weight or volume of solid waste received from each transporter.

Chapter 289. Residual waste disposal impoundments

§ 289. 303. Annual Operation Report

(b)(2)(i) The contours at the beginning and the end of the year.

(b)(2)(ii) The location of groundwater monitoring wells, access roads and the facility office.

(b)(2)(iii) The completed area of the site as well as areas partially filled but not active during the previous years.

(b)(2)(iv) Erosion and sedimentation control structures and devices.

(b)(2)(v) The location of treatment facilities.

(b)(2)(vi) Property lines, boundaries of permitted disposal areas and boundaries of lined areas.

(b)(8) Notification of critical stages of facility construction or operation that require certification by a registered professional engineer which will occur the next year.

Alternate Information Source

Manifest. § 285.412(a)(3) and § 285.411(c)(2) and (3).

Insignificant change: exempts reporting data on only 0.01% of residual waste.

Daily record. § 288.281(b)(1).

Daily record. § 288.281(b)(8)(ii).

Added to daily record. § 288.281(b)(8)(iii).

Permit modification. § 287.222.

Application map and grid requirements. § 288.133(a).

Permit modification. § 287.222.

Application map and grid requirements. § 288.133(a)(6).

Permit modification. § 287.222.

Leachate treatment plan. § 288.413.

Leachate treatment plan. § 288.513.

Permit modification. § 287.222.

Application map and grid requirements. § 288.133.

Daily record. § 288.281(b)(1) and (b)(8)(i) require recording of the amount and type of waste and the transporters but not the amount or type of waste received from each transporter.

Not appropriate for an impoundment.

Map and grid requirements. § 289.133.

Operation plan. § 289.132.

Permit Modification. § 287.222.

Not appropriate for an impoundment.

Operation plan. § 289.132.

Map and grid requirements. § 289.133(a)(6).

Permit Modification. § 287.222.

Map and grid requirements. § 289.133(a)(6).

Postclosure land use plan. § 289.172.

Permit modification. § 287.222.

Permit application. § 289.133.

Permit modification. § 287.222.

Certification. § 289.202.

Deletion

(b)(10) Certification that the operator has received the waste analysis or certification required by § 287.54 (relating to chemical analysis of waste) for special handling waste received at the facility, and that the special handling waste that is received at the facility meets the conditions in the facility's permit.

(b)(11)(ii) For noncaptive facilities, the type and weight or volume of solid waste received from each transporter.

Chapter 293. Transfer facilities for residual waste

§ 293.252. Annual operational record.

(b)(2) The type and weight or volume of solid waste received from each generator, including the name, mailing address, county and the state of each generator.

(b)(3) The transporters of the solid waste.

Chapter 295. Composting facilities for residual waste

§ 295.271. Daily operational records.

(b)(5) A record of deviation from the approved design or operational plans.

(b)(6) A record of activities for which entries are needed to comply with the annual operation report required in § 295.272 (relating to annual operation report).

§ 295.272. Annual operation report.

(b)(2) The transporters of the waste.

(b)(4) The type and weight or volume of waste received from each transporter.

Chapter 297. Incinerators and other processing facilities

§ 297.262. Annual operation report.

(b)(3) The transporters of the solid waste.

(b)(5). The name, county and state of the facility where bypass wastes and waste products are ultimately disposed.

(b)(6) The type and weight or volume of solid waste received from each transporter.

Chapter 299. Storage and transportation of residual waste

§ 299.219(b) Annual report. Deleted.

(b)(1) A summary of the types or classifications of residual wastes transported each month of the year by weight or volume and annual totals.

(b)(2) The name, mailing address, county and state of each generator of the transported waste, including the type or classification of the waste, and weight or volume of the waste.

(b)(3) The destination or facility to which the wastes were delivered by the name, mailing address, county, state, type or classification of the waste and the weight or volume of the waste.

Alternate Information Source

Special handling wastes are not permitted to be disposed at a residual waste impoundment. § 289.423 and § 289.523.

Daily records. § 289.301(b) (1) and (b)(7)(i) require recording of the amount and type of waste and the transporters but not the amount or type of waste received from each transporter.

Daily record. § 293.251(1) and (2) requires this information be recorded by type and amount but not by each generator.

Daily record. § 293.251(b)(3).

Any deviation from the permit must be reported to the Department immediately. § 287.222.

The information remaining in § 295.271 after this revision will meet the requirements of § 295.272.

Daily operational record. § 295.271(b)(3).

Daily operational record. § 295.271(b)(1) and (b)(3) require recording of waste received by amount and recording of transporters, but not waste received by each transporter.

Daily operational record. § 297.261(b)(3).

Daily operational record. § 297.261(b)(5).

Daily operational record. § 297.261(b)(1) and (3) require recording of waste received by amount and recording of transporters, but not waste received by each transporter.

Daily record. § 299.219(a)(2). Annual totals would not appear on the daily record.

Daily record. § 299.219(a)(1), (2) and (3) requires this information, but without classification.

Daily record. § 299.219(a)(4). Identification of the quantity of waste delivered to a specific destination will no longer be required.

E. Summary of Comments and Responses on the Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa.B. 893 (February 15, 1997). The proposal set forth a 60-day public comment period. The Board held one public hearing in Harrisburg on April 1, 1997.

During the public comment period, the Board received written comments from eight individuals or organizations and one organization presented testimony at the public hearing.

The Board and the Department considered the comments received at the public hearing and the written comments in formulating the final regulations. The Department has completed a review of the comments and has prepared a comment and response document that addresses each comment on the proposed amendments.

The following is a summary of major comments received and changes which have been made to the proposed rulemaking. The summary is listed in the same order as the final regulations.

Article VIII. Municipal Waste

Chapter 271 (relating to municipal waste management—general provisions)

Electronic data submission—§ 271.4 (relating to alternate data submission)

Section 271.4 authorizes data required under the municipal waste regulations to be submitted electronically or on magnetic or optic storage media. The Board received one comment requesting more specificity as to how this amendment will be implemented and when its use will be authorized. The Board declined to revise the proposed amendment as requested because the rapidly changing nature of technology could quickly render it moot. The Department intends to encourage the electronic submission of data under this amendment. The Department is developing a policy which identifies standard industry and government rules and protocols for use in electronic reporting that will apply across all programs to enable persons to submit electronic data in a standard format. The policy will be more readily revised to keep up with industry changes than would a regulation.

Chapter 272 (relating to municipal waste planning, recycling and waste reduction).

County plan revisions—§§ 272.251 and 272.252 (relating to submission of revisions; and development of plan revisions)

The Municipal Waste Stakeholders Group recommended that counties be authorized to add or delete disposal or processing facilities, or both, to or from their municipal waste management plans without having to perform a substantial plan revision. Several revisions in this final-form rulemaking implement this recommendation, as follows.

Section 272.251 has been amended in subsection (c) to clarify that the Department will subject a substantial as well as a nonsubstantial plan revision to a full review under § 272.244 (relating to Departmental review of plans) to the extent that the plan is affected by the revision. The review will focus on the portions of the plan which are affected by the plan revision.

The Board amended § 272.252 in order to strengthen the plan revision process by requiring that when a county submits to the Department a notice that it intends to

revise its plan, the county must describe in the notice the way in which capacity will be assured for the remainder of the planning period.

Section 272.252 was amended in the proposed rulemaking to eliminate from the list of items that require a substantial plan revision the addition or deletion of a facility to or from a county municipal waste management plan. No comments were received on this revision, and it remains in the final-form regulation. Now a facility may be added to or deleted from a plan without a substantial revision.

Chapter 273 (relating to municipal waste landfills)

Enlargement of purpose—§ 273.202 (relating to areas where municipal waste landfills are prohibited)

One commentator requested that the regulation concerning siting landfills in the vicinity of airports (§ 273.202) should be changed. The Board believes that the change would enlarge the purpose of this rulemaking because § 273.202 and landfill siting criteria were not included in the proposed rulemaking. The Board, therefore, has not included it in this rulemaking although it will consider it in a later rulemaking.

Daily records—§ 273.311 (relating to daily operational records)

The proposed rule stated that daily records were to be retained for the life of the facility bond, or longer if directed by the Department. The Board received one comment questioning the need to keep daily records longer than the life of the facility bond or the 5 years required by section 704 of the Municipal Waste Planning, Recycling and Waste Reduction Act. The comment applied to all daily records sections addressed in this rulemaking. The commentator recommended that if a longer retention period were justified, then the final regulation should describe circumstances when it will be invoked. The Board revised § 273.311 to indicate that the longer retention period will be required for municipal waste landfills if the Department determines it to be necessary to meet the standards of the environmental protection acts. This standard will be particularly useful when an environmental problem or other incursion is suspected or discovered near the end of the regular records retention period. The language is drawn from section 505(a) of the SWMA.

One commentator stated that the regulations should require that all daily operational records be retained by the operator for a minimum of 5 years, in light of section 704 of the Municipal Waste Planning, Recycling and Waste Reduction Act, which requires this of municipal waste landfills and resource recovery facilities. The Board amended § 273.311 accordingly.

One commentator suggested that the sections of the proposed amendments concerning retention of daily operational records for the life of the facility bond or longer cross-reference the particular bond being referred to. The Board declined to make this change for municipal waste landfills and for all other facilities in this rulemaking because it is unnecessary. Under the SWMA, the affected facilities only operate under one bond.

Annual reports—§ 273.313 (relating to annual operation report)

One commentator requested that the requirement to record the “type and weight or volume of solid waste received from each transporter that delivered waste to the facility” be reinserted in the annual operation reports sections. The Board declined to make this change for

municipal waste landfills and for all other facilities in this rulemaking because the information is generally available in the daily records and is available to the Department and host municipalities (of which the commentator is one). In addition, there has been no expression of interest in obtaining this information from annual operation reports in the past.

Chapter 277 (relating to construction/demolition waste landfills)

Daily records—§ 277.311 (relating to daily operational records)

The Board received one comment questioning the need to keep daily records longer than the life of the facility bond or the 5 years required by section 704 of the Municipal Waste Planning, Recycling and Waste Reduction Act. Section 704 is not relevant, however, because it only applies to municipal waste landfills and resource recovery facilities. The comment applied to all daily records sections addressed in this rulemaking. The commentator recommended that if a longer retention period were justified, then the final regulation should describe circumstances when it will be invoked. The Board revised § 277.311 to indicate that the longer retention period will be required for construction/demolition waste landfills if the Department determines it to be necessary to meet the standards of the environmental protection acts. This standard will be particularly useful when an environmental problem or other incursion is suspected or discovered near the end of the regular records retention period. The language is drawn from section 505(a) of the SWMA.

Chapter 279 (relating to transfer facilities)

Daily Records—§ 279.251 (relating to daily operational records)

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 277.311), the Board revised § 279.251 to indicate that the longer retention period will be required for transfer facilities if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Chapter 281 (relating to composting facilities)

Daily records—§ 281.271 (relating to daily operational records)

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 277.311), the Board revised § 281.271 to indicate that the longer retention period will be required for composting facilities if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Chapter 283 (relating to resource recovery and other processing facilities)

Daily records—§ 283.261 (relating to daily operational records)

One commentator stated that the regulations should require that all daily operational records be retained by the operator for a minimum of 5 years, in light of section 704 of the Municipal Waste Planning, Recycling and Waste Reduction Act. The Board amended § 283.261 accordingly.

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 273.311), the Board revised § 283.261 to indicate that the longer retention period will be required for resource

recovery facilities if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Chapter 285 (relating to storage, collection and transportation of municipal waste)

Municipal waste transporter records and reports—§ 285.217 (relating to recordkeeping and reporting)

The Board revised § 285.217 so that a person or municipality that collects or transports municipal waste, other than infectious and chemotherapeutic waste, is only required to make and maintain one record instead of two. The operator must keep this record in the cab of the vehicle on the date of collection or transportation. The record must be retained for 5 years. The Board revised the contents of the record slightly to provide consistency with the residual waste collection or transportation record required by § 299.219 (relating to recordkeeping and reporting). To do this, the Board added the requirement that the record describe any handling problems or emergency activities. The Board also changed the title of this section from "Recordkeeping" to "Recordkeeping and reporting."

Article IX—Residual Waste

Chapter 287 (relating to residual waste management—general provisions)

Generator recordkeeping requirements—§ 287.51 (relating to scope)

The Board received one comment suggesting that the "waive or modify" language in § 287.51 be deleted. In response to this comment, the Board made several changes to this Section. Under the final regulation, a person or municipality that generates more than an average of 2,200 pounds of residual waste per generating location per month based on generation in the previous year shall submit a biennial report and source reduction strategy. In subsection (b), any person or municipality that generates more than 2,200 pounds of residual waste per generating location in any single month in the previous year (not an average) shall continue to submit a chemical analysis in accordance with § 287.54 (relating to chemical analysis of waste). This requirement was inadvertently altered in the proposed rulemaking. The authority of the Department to "waive or modify" the requirements of § 287.51 for individual types of waste generated in quantities of less than 2,200 pounds per month per generating location is eliminated to the extent that it pertains to the biennial report and the source reduction strategy. This is a change from the proposed amendment which inadvertently altered the threshold determination for a chemical analysis.

Biennial report—§ 287.52 (relating to biennial report)

The Board received one comment asking the Department to eliminate its practice of requiring generators to report the volume of water discharged through a National Pollutant Discharge Elimination System (NPDES) outfall as residual waste in the biennial report under § 287.52. The Board declined to make this change because the information is helpful to the Department. After evaluation by the Department of the 1997 biennial report data, the Board will be in a better position to consider whether there is a need to revise the requirement to report wastewater as residual waste.

Chemical analysis—§ 287.54 (relating to chemical analysis of waste)

Two commentators requested that the requirement to prepare and submit an annual Chemical Analysis of

Residual Waste Report by the Generator under § 287.54 be eliminated. The Board made no change to this section because the section already provides the generator with an opportunity to certify that the physical and chemical properties of its waste stream have not changed over the previous year in lieu of performing an annual analysis. The requirement for a basic chemical analysis report or the certification that there has been no change is necessary for the generator, the solid waste facility accepting the generator's waste and the Department to determine the appropriate options for waste disposal, reuse and source reduction.

One commentator noted that § 287.54(b)(2) requires that a generator submit the volume of each waste stream sent to each facility annually, and that during the Biennial Report year this results in two reports that supply the same information. The Board declined to make a change because the two reports have different uses. The Biennial Report provides statistical data which is compiled by the Department and is available for use by industry and the Department to make management decisions, while the annual report is used by the Department's regional staff for compliance purposes. Information relating to the volume required under the chemical analysis report can be easily inserted into the Biennial Report, but both reports must be submitted.

Small quantity generators—§ 287.55 (relating to small quantity generator recordkeeping requirements)

The Board received two comments suggesting that the "an average of" language in § 287.51 be repeated in § 287.55. The Board made this amendment to § 287.55 to parallel § 287.51.

Chapter 288 (relating to residual waste landfills)

Daily records—§ 288.281 (relating to daily operational records)

The Board received one comment suggesting that keeping a daily record is onerous for a captive landfill that receives waste generated only by the owner's operations. The Board has revised § 288.281 to provide the option of preparing a monthly operations log for captive facilities for each month in which residual waste is received, processed or disposed, and each month that construction, monitoring or postclosure activity occurs.

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 277.311), the Board revised § 288.281 to indicate that the longer retention period will be required for daily records or monthly logs for residual waste landfills if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Annual operation report—§ 288.283 (relating to annual operation report)

One commentator requested that § 288.283 be revised to allow an exemption from reporting for residual waste captive landfills that did not accept waste for a calendar year. The Board declined to revise the regulation because under the existing regulations an operator may indicate which information, such as weight or volume, does not apply for a given year. The reporting requirements include information beyond waste volumes that make the reports important even when a landfill has not accepted waste.

Chapter 289 (relating to residual waste disposal impoundments)

Daily records—§ 289.301 (relating to daily operational records)

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 277.311), the Board revised § 289.301 to indicate that the longer retention period will be required for residual waste disposal impoundments if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Chapter 291 (relating to land application of residual waste)

Daily records—§ 291.221 (relating to daily operational records)

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 277.311), the Board revised § 291.221 to indicate that the longer retention period will be required for the land application of residual waste if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Chapter 293 (relating to transfer facilities for residual waste)

Daily records—§ 293.251 (relating to daily operational records)

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 277.311), the Board revised § 293.251 to indicate that the longer retention period will be required for residual waste transfer facilities if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Chapter 295 (relating to composting facilities for residual waste)

Daily records—§ 295.271 (relating to daily operational records)

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 277.311), the Board revised § 295.271 to indicate that the longer retention period will be required for residual waste composting facilities if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Chapter 297 (relating to incinerators and other processing facilities)

Daily records—§ 297.261 (relating to daily operational records)

In response to the comment questioning the need for a longer daily record retention period (see discussion under § 277.311), the Board revised § 297.261 to indicate that the longer retention period will be required for residual waste incinerators and other processing facilities covered by the subchapter if the Department determines it to be necessary to meet the standards of the environmental protection acts.

Chapter 299 (relating to storage and transportation of residual waste)

Residual waste transporter records and reports—§ 299.219 (relating to recordkeeping and reporting)

One commentator stated that § 299.219 should require that daily records of residual waste transporters be retained for a minimum of 5 years, in light of section 704

of the Municipal Waste Planning, Recycling and Waste Reduction Act. While section 704 is not applicable to waste transporters, the Board amended the section to include the 5 year minimum in order to be consistent with the requirements for municipal waste transporters in § 285.217. Under the final regulations, a person or municipality that collects or transports residual waste must keep a record in the cab of the vehicle on the date of collection or transportation. The record must be retained for 5 years. To achieve consistency with the municipal waste requirements, the residual waste record now requires identification of the solid waste processing or disposal facility where the waste will ultimately be disposed or processed, and identification of the person or municipality collecting or transporting the waste. As in the proposed amendments, the annual report is eliminated.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost-benefit analysis of the final regulations.

Benefits

Reporting Requirements—The regulated community will benefit since the amount of information reported and the frequency will lessen—approximately 2,500 facilities completing 185,508 fewer pages of reports per year. The Department will benefit since only information maintained and submitted will be what is needed to administer the waste programs.

Plan Revisions—The counties, municipalities, waste facilities and the general public will benefit since the shorter plan revision process will allow counties to take advantage of competitive pricing in the waste management industry.

Compliance Costs

Reporting Requirements—The number of persons, groups or entities required to comply will not change from those currently regulated. There will be a significant reduction in the efforts required to comply. Cost savings to the regulated community are estimated to be nearly \$400,000 per year. The amendments eliminate 15 forms formerly required of approximately 2,326 facilities.

Plan Revisions—All 67 Pennsylvania counties are required to prepare a county municipal waste management plan. Only those who will be revising their plan to add or delete a waste management facility will need to comply with the final regulations. Since plan revisions are initiated by the county, it is not possible to estimate how many will be affected at any given time. Counties will realize a time saving in revising their plans which should translate into a cost savings because of fewer meetings and notices.

Compliance Assistance Plan

Reporting Requirements—Because these revisions do not require any new reports, no specific hearings or meetings were scheduled. To assist the public in its review of this proposal, the Department prepared “mock-ups” of what the various report forms would look like. The draft forms were available through the contact persons listed in the Preamble, Section B or could be viewed on the Department’s World Wide Web site (<http://www.dep.state.pa.us>). The final forms are likewise available. No financial assistance was needed or offered.

Plan Revisions—The Department will conduct State-wide training on county municipal waste planning. Plan revision is an eligible expense under the Act 101, section

901 planning grant program. Counties are encouraged to consider submission of a grant application to cover plan revision expenses.

Entire Package—The Department intends to provide educational, technical and compliance assistance directly to interested parties through the regional offices, articles in its weekly *Update* newsletter, distribution of information through trade associations, and electronically by having all the report forms available on the Department’s World Wide Web site.

Paperwork Requirements

Reporting Requirements—These amendments eliminate duplicate data submission and reduce unnecessary or duplicative recordkeeping requirements for the regulated community while maintaining environmental protection and public access to information. No additional forms or paperwork will be needed.

Plan Revisions—These amendments will allow counties to add or delete a waste management facility to or from their county municipal waste management plan as a nonsubstantial plan revision. No additional forms or paperwork will be needed.

G. *Sunset Review*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble.

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committee on October 14, 1997. IRRC met on October 23, 1997, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

I. *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 at 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) These amendments do not enlarge the purpose of the proposal published at 27 Pa.B. 893 (February 15, 1997).

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

J. Order

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

(a) The regulations of the Department of Environmental Protection, 25 Pa. Code Chapters 271—273, 277, 279, 281, 283, 285, 287—289, 291, 293, 295, 297 and 299, are amended by (i) amending §§ 273.313, 277.312, 279.252, 283.262, 285.334, 288.283, 289.303, 293.252, 295.272 and 297.262; deleting § 288.282 and adding § 271.4 to read as set forth at 27 Pa.B. 893 (February 15, 1997); and by (ii) Amending §§ 272.251, 272.252, 273.311, 277.311, 279.251, 281.271, 283.261, 285.217, 287.51, 287.55, 288.281, 289.301, 291.221, 293.251, 295.271, 297.261 and 299.219 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order, 27 Pa.B. 893 and Annex A to the Office of General Counsel and the Office of the 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, 27 Pa.B. 893 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 27 Pa.B. 893 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

(Editor's Note: The amendments to §§ 272.251 and 287.55, amended in this document, were not included in the proposal at 27 Pa.B. 893.)

JAMES M. SEIF,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 5840 (November 8, 1997).)

Fiscal Note: Fiscal Note 7-304 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VIII. MUNICIPAL WASTE

CHAPTER 272. MUNICIPAL WASTE PLANNING, RECYCLING AND WASTE REDUCTION

Subchapter C. MUNICIPAL WASTE PLANNING PLAN REVISIONS

§ 272.251. Submission of revisions.

(a) A county with an approved municipal waste management plan shall submit a revised plan to the Department in accordance with this subchapter as follows:

(1) At least 3 years prior to the time that the remaining available permitted capacity for the county will be exhausted.

(2) By September 26, 1990, for plans approved under § 272.211(b) (relating to general requirement). The plan revisions shall be consistent with the requirements of this subchapter except to the extent that the county demonstrates to the Department's satisfaction that irrevocable

contracts made by or under the approved plan preclude compliance with this subchapter.

(3) When otherwise required by the Department.

(b) A county with an approved municipal waste management plan may submit a revised plan to the Department in accordance with this subchapter at any other time.

(c) A proposed plan revision will be reviewed by the Department under the criteria in § 272.244 (relating to Departmental review of plans) to the extent that the plan is affected by the proposed revision.

§ 272.252. Development of plan revisions.

(a) A county shall provide written notice to the Department when plan revision development begins. The notice shall describe the proposed plan revisions the county intends to undertake, including a description of how capacity will be assured for the remainder of the planning period.

(b) Within 30 days after receipt of written notice submitted under subsection (a), the Department will notify the county if it determines the proposed revision is substantial.

(c) A county submitting a plan revision shall comply with:

(1) Sections 272.221—272.233 (relating to plan content), to the extent changes from the approved plan are proposed.

(2) Sections 272.201 and 272.204 (relating to purposes; and format of plans).

(3) Section 272.203 (relating to notice to municipalities). At least 30 days before submitting a proposed, nonsubstantial plan revision to the Department, the county shall submit a copy of the proposed revision to the advisory committee and each municipality within the county. Nonsubstantial plan revisions will be deemed approved within 30 days of receipt by the Department unless the Department responds in writing.

(d) If the Department determines that the plan revision is substantial, the county shall also:

(1) Comply with §§ 272.202, 272.241—272.243 and 272.245.

(2) Identify and describe the facilities where municipal waste is currently being disposed or processed, and the remaining available permitted capacity of the facilities. The plan revision shall also consider the capacity which could be made available through the reasonable expansion of the facilities.

(e) For purposes of this section, substantial plan revisions shall include, but not be limited to:

(1) The elimination of a recycling program, contained in a county plan and operating in a county resulting in reduced volume of recycling.

(2) The addition of municipal waste streams not originally included in the plan.

CHAPTER 273. MUNICIPAL WASTE LANDFILLS

Subchapter C. OPERATING REQUIREMENTS RECORDKEEPING AND REPORTING

§ 273.311. Daily operational records.

(a) The operator of a facility shall make and maintain an operational record for each day that municipal waste is received, processed or disposed, and each day that construction, monitoring or postclosure activity occurs.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The particular grid location of the area currently being used for disposal of solid waste.

(5) A description of waste handling problems or emergency disposal activities.

(6) A record of deviations from the approved design or operational plans.

(7) A record of activities for which entries are needed in order to comply with the annual operation report required in § 273.313 (relating to annual operation report).

(8) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) The operator shall maintain accurate operational records sufficient to determine whether municipal waste is being stored under Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts, but in no case less than 5 years. These records shall be made available to the Department upon request.

CHAPTER 277. CONSTRUCTION/DEMOLITION WASTE LANDFILLS

Subchapter C. OPERATING REQUIREMENTS RECORDKEEPING AND REPORTING

§ 277.311. Daily operational records.

(a) The operator of a facility shall make and maintain an operational record for each day that construction/demolition waste is received, processed or disposed, and for each day that construction, monitoring or postclosure activity occurs.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside of this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The particular grid location of the area currently being used for disposal of solid waste.

(5) A description of waste handling problems or emergency disposal activities.

(6) A record of deviations from the approved design or operational plans.

(7) A record of activities for which entries are needed in order to comply with the annual operation report required in § 277.312 (relating to annual operation report).

(8) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) The operator shall maintain accurate operational records sufficient to determine whether construction/demolition waste is being stored under Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

CHAPTER 279. TRANSFER FACILITIES

Subchapter C. OPERATING REQUIREMENTS FOR TRANSFER FACILITIES

RECORDKEEPING AND REPORTING

§ 279.251. Daily operational records.

(a) A person or municipality that operates a transfer facility shall make and maintain an operational record for each day that municipal waste is received, processed or transported offsite.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside of this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The destination of the solid waste, including the facility name, the county and state in which it is located, and the type and weight or volume of waste transported.

(5) The type and weight or volume of materials which are recycled.

(6) A description of waste handling problems or emergency disposal activities.

(7) A record of deviations from the approved design or operational plans.

(8) A record of activities for which entries are needed in order to comply with the annual operation report required in § 279.252 (relating to annual operation report).

(9) A report of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) The operator shall maintain accurate operational records sufficient to determine whether municipal waste is being stored in accordance with Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

CHAPTER 281. COMPOSTING FACILITIES

Subchapter C. OPERATING REQUIREMENTS FOR GENERAL COMPOSTING FACILITIES

RECORDKEEPING AND REPORTING

§ 281.271. Daily operational records.

(a) A person or municipality that operates a general composting facility shall make and maintain an operational record for each day that municipal waste is received, processed or transported offsite.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside of this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The weight or volume of each material recycled, marketed or disposed of as a result of the process.

(5) A record of deviations from the approved design or operational plans.

(6) A record of activities for which entries are needed to comply with the annual operation report required in § 281.272 (relating to annual operation report).

(7) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) The operator shall maintain accurate operational records sufficient to determine whether municipal waste is being stored in compliance with Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

CHAPTER 283. RESOURCE RECOVERY AND OTHER PROCESSING FACILITIES

Subchapter C. OPERATING REQUIREMENTS

RECORDKEEPING AND REPORTING

§ 283.261. Daily operational records.

(a) The operator of a facility subject to this chapter shall make and maintain an operational record for each day that municipal waste is received, processed or transported offsite.

(b) The daily operation record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside of this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The weight or volume of each material recycled or marketed as a result of the process.

(5) For bypassed wastes and waste products, the name and county or state of the facility where the solid waste is ultimately disposed and the weight or volume of waste disposed.

(6) A description of waste handling problems or emergency disposal activities.

(7) A record of deviations from the approved design or operational plans.

(8) A record of activities for which entries are needed in order to comply with the annual operation report required in § 283.262 (relating to annual operation report).

(9) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) The operator shall maintain accurate operation records sufficient to determine whether municipal waste is being stored under Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts, but in no case less than 5 years. These records shall be made available to the Department upon request.

CHAPTER 285. STORAGE, COLLECTION AND TRANSPORTATION OF MUNICIPAL WASTE

Subchapter B. COLLECTION AND TRANSPORTATION OF MUNICIPAL WASTE

GENERAL PROVISIONS

§ 285.217. Recordkeeping and reporting.

(a) *General.* A person or municipality that collects or transports municipal waste other than infectious and chemotherapeutic waste shall make and maintain an operational record each day that municipal waste is collected or transported, or both. The daily operational record shall be kept in the cab of each transportation vehicle on the date of collection or transportation. The record shall include the following:

(1) The county and state where the waste was originally collected.

(2) The name and address of the person or municipality collecting or transporting the waste.

(3) The name and location of a transfer facility that has received, or will receive, the waste.

(4) The name and location of the solid waste processing or disposal facility where the waste will be ultimately disposed or processed.

(5) The weight or volume of the types of municipal waste transported.

(6) A description of handling problems or emergency disposal activities.

(b) The records required in subsection (a) shall be made available to the Department upon request and shall be retained for at least 5 years.

ARTICLE IX. RESIDUAL WASTE MANAGEMENT

CHAPTER 287. RESIDUAL WASTE MANAGEMENT—GENERAL PROVISIONS

Subchapter B. DUTIES OF GENERATORS

§ 287.51. Scope.

(a) A person or municipality that generates more than an average of 2,200 pounds of residual waste per generating location per month based on generation in the previous year shall submit a biennial report and source reduction strategy under §§ 287.52 and 287.53 (relating to biennial report; and source reduction strategy).

(b) A person or municipality that generates more than 2,200 pounds of residual waste per generating location in any single month in the previous year shall comply with § 287.54 (relating to chemical analysis of waste). The Department may waive or modify this requirement for individual types of waste that are generated in quantities of less than 2,200 pounds per month per generating location.

(c) This subchapter does not apply to the following:

(1) Persons or municipalities that generate residual waste as a result of collecting the waste, including the collection of parts, machinery, vehicles, appliances and used oil from the repair or replacement of the parts, machinery, vehicles, appliances and used oil.

(2) Persons or municipalities that create waste from a spill, release, fire, accident or other unplanned event.

(d) Generators and collectors of used oil who are also waste oil marketers are subject to § 266.43 (relating to standards applicable to marketers of waste oil burned for energy recovery).

§ 287.55. Small quantity generator recordkeeping requirements.

(a) A person or municipality that generates an average of 2,200 pounds or less of residual waste per generating location per month based on generation in the previous year, or which is otherwise exempted from this subchapter, shall:

(1) Maintain records that include the types and amounts of waste generated, the date on which the waste was generated, the date on which the waste was disposed of or processed onsite, the name, address and telephone number of a person or municipality that transported the waste and the name, address and phone number of the processing or disposal facility or other destination to which the waste was transported.

(2) Retain the records on the premises where the residual waste was generated for 5 years after the waste was generated.

(3) Make the records available for inspection upon request to a representative of the Department.

(b) This section does not apply to residual waste generated in a house or residence.

CHAPTER 288. RESIDUAL WASTE LANDFILLS

Subchapter C. OPERATING REQUIREMENTS

RECORDKEEPING AND REPORTING

§ 288.281. Daily operational records.

(a) The operator of a facility shall make and maintain an operational record for each day that residual waste is received, processed or disposed, and each day that construction, monitoring or postclosure activity occurs. The operator of a captive residual waste facility may maintain a monthly operational record instead of a daily operational record for each month in which residual waste is received, processed or disposed, and each month that construction, monitoring or postclosure activity occurs. The monthly operational record shall contain the information required in subsection (b)(1)–(7).

(b) The operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The particular grid location of the area currently being used for disposal of solid waste.

(3) A description of waste handling problems or emergency disposal activities.

(4) A record of deviations from the approved design or operational plans.

(5) A record of activities for which entries are needed to comply with the annual operation report required in § 288.283 (relating to annual operation report).

(6) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(7) A record of rejected waste loads, and the reason for rejecting the loads. For noncaptive facilities, the name of the transporter and the name, mailing address and county of the generator shall also be included.

(8) For noncaptive facilities, the following:

(i) The transporters of the waste.

(ii) The name, mailing address, county and state of each generator of residual waste.

(iii) An analysis of the quality and quantity of leachate flowing from the landfill into the leachate storage and treatment system.

(c) The operator shall maintain accurate operational records sufficient to determine whether residual waste is being stored under Chapter 299, Subchapter A (relating to standards for storage of residual waste).

(d) Daily and monthly operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

CHAPTER 289. RESIDUAL WASTE DISPOSAL IMPOUNDMENTS

Subchapter C. OPERATING REQUIREMENTS

RECORDKEEPING AND REPORTING

§ 289.301. Daily operational records.

(a) The operator of a facility shall make and maintain an operational record for each day that residual waste is received, processed or disposed, and each day that construction, monitoring or postclosure activity occurs.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) A description of waste handling problems or emergency disposal activities.

(3) A record of deviations from the approved design or operational plans.

(4) A record of activities for which entries are needed to comply with the annual operation report required in § 289.303 (relating to annual operation report).

(5) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(6) A record of rejected waste loads, the reason for rejecting the loads, and for noncaptive facilities, the name of the transporter and the name, mailing address, county and state of the generator shall also be included.

(7) For noncaptive facilities, the following:

(i) The transporters of the waste.

(ii) The name, mailing address, county and state of each generator of residual waste.

(c) The operator shall maintain accurate operational records sufficient to determine whether residual waste is being stored under Chapter 299, Subchapter A (relating to standards for storage of residual waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the

environmental protection acts. These records shall be made available to the Department upon request.

CHAPTER 291. LAND APPLICATION OF RESIDUAL WASTE

Subchapter C. GENERAL OPERATING REQUIREMENTS FOR THE LAND APPLICATION OF RESIDUAL WASTE

RECORDKEEPING AND REPORTING

§ 291.221. Daily operational records.

(a) A person or municipality that disposes of residual waste by land application shall make and maintain an operational record for each day that the residual waste is applied.

(b) The daily operational record shall include the following:

(1) The type, percent solids and weight or volume of the residual waste that was applied.

(2) The name, mailing address, county and state of each generator of residual waste.

(3) The transporters of the residual waste.

(4) The particular map location of the area being used for land application of residual waste, and the weight or volume of residual waste this area received in the previous calendar year.

(5) A record of deviations from the permit.

(6) General weather conditions during disposal.

(7) The application rate for residual waste.

(8) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) If residual waste is being stored at the site, the operator shall maintain, on forms provided by the Department, accurate operational records sufficient to determine whether the waste is being stored in accordance with § 291.204 (relating to storage of residual waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

CHAPTER 293. TRANSFER FACILITIES FOR RESIDUAL WASTE

Subchapter C. OPERATING REQUIREMENTS FOR TRANSFER FACILITIES

RECORDKEEPING AND REPORTING

§ 293.251. Daily operational records.

(a) A person or municipality that operates a transfer facility shall make and maintain an operational record for each day that residual waste is received, processed or transported offsite.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The name, mailing address, county and state of each generator of residual waste.

(3) The transporters of the solid waste.

(4) The destination of the solid waste, including the facility name, the county and state in which it is located and the type and weight or volume of waste transported.

(5) The type and weight or volume of materials which are used or reclaimed.

(6) A description of waste handling problems or emergency activities.

(7) A record of deviations from the approved design or operational plans.

(8) A record of activities for which entries are needed in order to comply with the annual operation report required in § 293.252 (relating to annual operation report).

(9) A report of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) The operator shall maintain accurate operational records sufficient to determine whether residual waste is being stored in accordance with Chapter 299, Subchapter A (relating to standards for storage of residual waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer is determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

CHAPTER 295. COMPOSTING FACILITIES FOR RESIDUAL WASTE

Subchapter C. OPERATING REQUIREMENTS FOR COMPOSTING FACILITIES

RECORDKEEPING AND REPORTING

§ 295.271. Daily operational records.

(a) A person or municipality that operates a composting facility shall make and maintain an operational record for each day that residual waste is received, processed or transported offsite. Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The name, mailing address, county and state of each generator of residual waste.

(3) The transporters of the solid waste.

(4) A record of activities for which entries are needed to comply with the annual operation report required in § 295.272 (relating to annual operation report).

(5) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) The operator shall maintain accurate operational records sufficient to determine whether residual waste is being stored under Chapter 299, Subchapter A (relating to standards for storage of residual waste).

**CHAPTER 297. INCINERATORS AND OTHER
PROCESSING FACILITIES**

**Subchapter C. OPERATING REQUIREMENTS FOR
PROCESSING FACILITIES**

RECORDKEEPING AND REPORTING

§ 297.261. Daily operational records.

(a) The operator of a residual waste processing facility shall make and maintain an operational record for each day that residual waste is received, processed or transported offsite.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The name, mailing address, county and state of each generator of residual waste.

(3) The transporters of the solid waste.

(4) The weight or volume of each material used, reclaimed or marketed as a result of the process.

(5) The name and county or state of the facility where the solid waste is ultimately disposed and the weight or volume of waste disposed for bypass wastes and waste products.

(6) A description of waste handling problems or emergency disposal activities.

(7) A record of deviations from the approved design or operational plans.

(8) A record of activities for which entries are needed in order to comply with the annual operation report required in § 297.262 (relating to annual operation report).

(9) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(c) The operator shall maintain accurate operational records sufficient to determine whether residual waste is being stored under Chapter 299, Subchapter A (relating to standards for storage of residual waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

**CHAPTER 299. STORAGE AND TRANSPORTATION
OF RESIDUAL WASTE**

**Subchapter B. STANDARDS FOR COLLECTING
AND TRANSPORTING OF RESIDUAL WASTE**

GENERAL PROVISIONS

§ 299.219. Recordkeeping and reporting.

(a) A person or municipality that transports residual waste shall make and maintain an operational record each day that residual waste is collected or transported, or both. The daily operational record shall be kept in the cab of each transportation vehicle on the date of collection or transportation. The record shall include the following:

(1) The types or classifications of residual waste transported.

(2) The weight or volume of the types of wastes transported.

(3) The name, mailing address, telephone number, county and state of each generator of transported waste.

(4) The name and location of a transfer facility that has received, or will receive, the waste.

(5) The name and location of the solid waste processing or disposal facility where the waste will be ultimately disposed or processed.

(6) A description of handling problems or emergency disposal activities.

(7) The name and address of the person or municipality collecting or transporting the waste.

(b) The records required in subsection (a) shall be made available to the Department upon request and shall be retained for at least 5 years.

[Pa.B. Doc. No. 97-1896. Filed for public inspection November 28, 1997, 9:00 a.m.]

**Title 49—PROFESSIONAL
AND VOCATIONAL
STANDARDS**

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

Volunteer License

The State Board of Chiropractic (Board) amends § 5.11a (relating to licensure and certification offered by the Board) and adding § 5.20 (relating to volunteer license).

A. Effective Date

The amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

Section 5 of the Volunteer Health Services Act (VHSA) (35 P. S. § 449.45) mandates regulations governing: (1) qualifications for placing an active license on volunteer status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is authorized to adopt regulations necessary to the administration of its enabling statute under sections 302 and 1104 of the Chiropractic Practice Act (63 P. S. §§ 625.302 and 625.1104).

C. Background and Purpose

The purpose of the VHSA is to increase the availability of primary health services by establishing a procedure for chiropractors and other health care practitioners who have retired from active practice to provide professional services as volunteers in approved clinics. Primary health services are defined in the VHSA as including services such as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing and health education.

The VHSA permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for volunteer status. A volunteer license will be issued to a retired individual who documents to the

satisfaction of the Board that the individual will practice without remuneration in approved clinics.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa. B. 3232 (July 5, 1997). The Board received comments from Representative Patricia H. Vance, the prime sponsor of the VHSA, one public commentator, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC).

Both Representative Vance and IRRC noticed that proposed § 5.20(b) (relating to volunteer license), as published, was incongruent with the VHSA which makes retired persons, or persons intending to retire, eligible for a volunteer license. Editorial changes to the proposed rulemaking filed with the Legislative Reference Bureau erroneously created, on publication, three, rather than two, pathways by which a Board-regulated practitioner could qualify for a volunteer license. Representative Vance correctly noted that proposed § 5.20(b)(3) would be applicable to both paragraphs (1) and (2) and suggested paragraph (3) be incorporated into the text of subsection (b). The House Committee supported Representative Vance's suggestion. IRRC recommended that paragraph (3) be deleted in its entirety and suggested that parts of it be incorporated into a new definitional section. In final rulemaking, the Board has accepted both suggestions, adding a definitional subsection in § 5.20(a) and restructuring § 5.20(b). The Board also accepted the suggestion of IRRC to move subsection (c)(1)(ii) to subsection (a)(2).

The Pennsylvania Academy of Family Physicians commented that the VHSA may be interpreted as permitting nonphysicians to perform acts which require a medical license and, accordingly, requested that the issue be clarified and resolved through regulation. The Board does not concur in the view that the VHSA creates an ambiguity regarding the scope of practice for any licensee. The Board has found no language in the VHSA which creates a different scope of practice for a volunteer license in any of the enumerated categories for which a volunteer license may be granted. Therefore, the Board has determined that additional rulemaking on this subject is not needed.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendments, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals and to nonprofit organizations who represent qualified providers of volunteer services.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The amendments create a new license for which no fee will be charged. The expenses of the program will be borne as a part of the Board's overall operating expenses which are financed through biennial renewals of active licensees. Therefore, the administration and enforcement of a new license category may have a fiscal impact on overall Board costs. The net effect, however, is estimated to be minimal, owing to the relatively small number of the licensee population who will seek a volunteer license compared with the number of active licensees. Additional paperwork will be incurred by the Board and the private sector to complete and file application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—The amendments will have a positive fiscal impact on individual licensees who restrict their professional activities to volunteer work since these individuals are exempt from maintaining professional liability insurance required under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and the biennial renewal fee for licensure. The amendments should impose no additional fiscal or paperwork requirements.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on June 24, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa. B. 3232, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing these final-form regulations the Board has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were approved by the House Committee on October 22, 1997 and by the Senate Committee on October 28, 1997. IRRC met on November 6, 1997 and approved the final-form regulations in accordance with section 5(e) of the Regulatory Review Act.

I. Public Information

Interested persons may obtain information regarding the amendments by writing to Deborah Smith, Board Administrator, State Board of Chiropractic, P.O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

J. 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 at 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) These amendments do not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 3232.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 5, are amended by amending § 5.11a to read as set forth at 27 Pa.B. 3232 and by adding 5.20 to read as set forth in Annex A.

(b) The Board shall submit this order, 27 Pa.B. 3232 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, 27 Pa.B. 3232 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MARY ANNE CRAWFORD, D.C.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-439 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 5. STATE BOARD OF CHIROPRACTIC

Subchapter B. LICENSURE, CERTIFICATION, EXAMINATION AND REGISTRATION PROVISIONS

§ 5.20. Volunteer license.

(a) Purpose and definitions.

(1) The following subsections implement the Volunteer Health Services Act (35 P.S. §§ 449.41–449.50) and provide for the issuance of a volunteer license to a qualified individual who retires from active practice and seeks to provide professional services as a volunteer. A volunteer license authorizes the holder to practice only in an organized community-based clinic and without remuneration.

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

Approved clinic—An organized community-based clinic offering primary health care services to individuals and families who cannot pay for their care, to Medical Assistance clients or to residents of medically underserved areas or health professionals shortage areas. The term includes a State health center, nonprofit community-based clinic and Federally qualified health center, as designated by Federal rulemaking or as approved by the Department of Health or the Department of Public Welfare.

Unrestricted license—A license which is not restricted or limited by order of the Board under its disciplinary power.

(b) *License.* A volunteer license may be issued to a licensee of the Board who documents to the satisfaction of the Board that the applicant will practice without personal remuneration in approved clinics and meets one of the following conditions:

(1) Holds a currently renewed, active, unrestricted license in this Commonwealth and retires from active practice at the time the applicant applies for a volunteer license.

(2) Retires from active practice in this Commonwealth in possession of an unrestricted license which was allowed to lapse by not renewing it. A retired licensee shall meet any requirements of the act or the regulations pertaining to continued education or continued competency to be eligible for renewal.

(c) *Applications.* An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice exclusively:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(d) *Validity of license.* A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the volunteer license holder shall notify the Board of any change in clinic or volunteer status within 30 days of the date of the change, or at the time of renewal, whichever occurs first.

(e) *Biennial renewal.* A volunteer license shall be renewed biennially on forms provided by the Board.

(1) As a condition of biennial renewal, the applicant shall satisfy the same continuing education requirements as the holder of an active, unrestricted license.

(2) The applicant shall be exempt from § 5.6 (relating to fees) pertaining to the biennial renewal fee and shall be exempt from section 508 of the Chiropractic Practice Act (63 P.S. § 625.508) with regard to the maintenance of liability insurance coverage under section 701 of the Health Care Services Malpractice Act (40 P.S. § 1301-701).

(f) *Return to active practice.* A volunteer license holder who desires to return to active practice shall notify the Board and apply for biennial registration on forms provided by the Board in accordance with § 5.17 (relating to biennial registration; unregistered status and inactive status; failure to renew; address of record).

(g) *Disciplinary provisions.* A volunteer license holder shall be subject to the disciplinary provisions of the act and this chapter. Failure of the licensee to comply with the Volunteer Health Services Act (35 P.S. §§ 449.41–449.50) or this section may also constitute grounds for disciplinary action.

[Pa.B. Doc. No. 97-1897. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Examination

The State Board of Funeral Directors (Board) amends §§ 13.71 and 13.72 (relating to examinations requirements; and examination before internship is completed) to read as set forth in Annex A. The object of these amendments is to codify the Board's determination that application procedures and deadlines in the existing regulations are unnecessary and overly burdensome.

Sections 5 and 16 of the Funeral Director Law (63 P.S. §§ 479.5 and 479.16), authorize the Board to promulgate

regulations pertaining to when an applicant for licensure may sit for the examinations of the Board. The Board has determined to permit applicants to sit for the examination prior to completion of the post-education 1 year internship.

Currently, § 13.71 requires applicants to complete the internship before the examination date. Section 13.72 authorizes applicants to take the examination before completing their 1-year internship, if the internship will be completed within 21 days from the date of the examination, if the applicant shows, at least 60 days prior to the examination date, that he has participated in providing all aspects of funeral directing services for at least 30 funerals. The Board has noted that each year several applicants are unable to sit for the examination because the beginning of their internship was delayed, often because of factors out of the applicants' control. Accordingly, the Board routinely waived the requirements of the regulation and granted applicants permission to take the examination prior to completion of the post-education 1-year internship.

It is the Board's opinion that applicants who believe they are sufficiently prepared to take the examination should have the option to do so. Allowing applicants to sit for the examination prior to the completion of the internship will help reduce the loss of employment and income opportunities for individuals who would otherwise have to wait several months for the next available examination. Because the applicant must still complete the internship prior to licensure, the Board does not believe these amendments will negatively affect the competency of the funeral directors who are licensed.

Public notice of intention to amend the Board's regulations under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL) has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary and impracticable. At its Board meeting held on December 7, 1994, the Board adopted as a policy the position set forth in the final-form regulations. Accordingly, since that time the Board has provided actual notice of this policy to interns and has granted interns permission to sit for examination consistent with the final-form regulations. Therefore, because actual notice has been provided to applicants, it is unnecessary and impractical to issue a public notice of intention to amend the Board's regulations.

The two deadlines imposed on applicants created confusion and, at times, financial hardship. The deadlines set forth in § 13.72 were more responsive to the management and administrative needs of the Board than to the needs of the regulated community. The Board believes that applicants for licensure are capable of deciding when they are prepared to sit for the licensure examination on the basis of their educational preparation and resident internship experience. The Board has therefore determined that continuing to require resident interns to meet specific application deadlines before taking the examination is contrary to the public interest.

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered the purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

These amendments are authorized under sections 5 and 16 of the Funeral Director Law (63 P. S. §§ 479.5 and 479.16).

Fiscal Impact and Paperwork Requirements

The amendments will have no fiscal impact on the Commonwealth or its political subdivisions. Although it cannot be quantified, individual applicants for licensure and the regulated community should experience greater flexibility in planning which the Board anticipates will result in savings.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on October 8, 1997, a copy of the amendments was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition, at the same time, the amendments were submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) and (e) of the Regulatory Review Act, the amendments were deemed approved by the House and Senate Committees on October 28, 1997, and were approved by IRRC on November 6, 1997.

Additional Information

Individuals who desire information are invited to submit inquiries to Linda Dinger, Board Administrator, State Board of Funeral Directors, Post Office Box 2649, Harrisburg, PA 17105-2649, (717) 783-3397.

Findings

The Board finds that:

(1) Public notice of intention to amend its regulations as adopted by this order, under the procedures specified in sections 201 and 202 of the CDL, has been omitted under the authority contained in section 204(3) of the CDL. The Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, unnecessary, impracticable and contrary to the public interest.

(2) The amendment of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 13, are hereby amended by amending §§ 13.71 and 13.72, to read as set forth in Annex A.

(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 approval as to legality as required by law.

(c) The Chairperson of 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 become effective immediately upon publication in the *Pennsylvania Bulletin*.

LEANDRO N. ANGELONE,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: 16A-381. 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 13. STATE BOARD OF FUNERAL DIRECTORS

EXAMINATION

§ 13.71. Examination requirements.

To qualify for licensure, an applicant shall successfully complete the following examinations:

(1) The National Board Examination prepared and administered by the Conference of Funeral Service Examining Boards.

(2) Written and oral examinations on the clinical practice of funeral directing, the act and this chapter, prepared and administered by a qualified and approved professional testing organization authorized by the Bureau. These examinations will be offered twice yearly.

§ 13.72. Examination before internship is completed.

An applicant may take the examination prior to the completion of the internship. An applicant who is examined under this section and who passes the examination will not be issued a funeral director license until documentation evidencing completion by the applicant of the resident intern training requirement is received by the Board or its designee.

[Pa.B. Doc. No. 97-1898. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Volunteer License

The State Board of Medicine (Board) amends § 16.11 (relating to licenses and certification) and adds § 16.18 (relating to volunteer license).

A. Effective Date

The amendments will be effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

Section 5 of the Volunteer Health Services Act (VHSA) (35 P.S. § 449.45) mandates regulations governing: (1) qualifications for placing an active license on volunteer status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is

authorized to adopt regulations necessary to the administration of its enabling statute under section 8 of the Medical Practice Act (63 P.S. § 422.8).

C. Background and Purpose

The purpose of the VHSA is to increase the availability of primary health services by establishing a procedure for physicians and other health care practitioners who have retired from active practice to provide professional services as volunteers in approved clinics. Primary health services are defined in the VHSA as including services such as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing, and health education.

The VHSA permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for a volunteer license. A volunteer license will be issued to a retired individual who documents to the satisfaction of the Board that the individual will practice without remuneration in approved clinics.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa.B. 2947 (June 21, 1997). The Board received comments from Representative Patricia H. Vance, the prime sponsor of the VHSA, three public commentators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC).

Both Representative Vance and IRRC noticed that proposed § 16.18(b), as published, was incongruent with the VHSA which makes retired persons, or persons intending to retire, eligible for a volunteer license. Editorial changes to the proposed rulemaking filed with the Legislative Reference Bureau erroneously created, on publication, three, rather than two, pathways by which a Board-regulated practitioner could qualify for a volunteer license. Representative Vance correctly noted that proposed § 16.18(b)(3) would be applicable to both paragraphs (1) and (2), and suggested paragraph (3) be incorporated into the text of subsection (b). The House Committee supported Representative Vance's suggestion. IRRC recommended that paragraph (3) be deleted in its entirety and suggested that parts of it be incorporated into a new definitional section. In final rulemaking, the Board has accepted both suggestions, adding a definitional subsection in § 16.18(a) and restructuring § 16.18(b). The Board also accepted the suggestion of IRRC to move subsection (c)(1)(ii) to subsection (a)(2).

As proposed, § 16.18(b)(2) required retired licensees to meet continuing education requirements. Currently, continuing education for medical doctors is not provided for under the Medical Practice Act of 1985 (63 P.S. §§ 422.1—422.45). Accordingly, the Board has deleted references to continuing education to avoid confusion or conflict with the Medical Practice Act.

The Pennsylvania Academy of Family Physicians commented that the VHSA may be interpreted as permitting nonphysicians to perform acts which require a medical license and, accordingly, requested that the issue be clarified and resolved through regulation. The Board does not concur in the view that the VHSA creates an ambiguity regarding the scope of practice for any licensee. The Board has found no language in the VHSA which creates a different scope of practice for a volunteer license in any of the enumerated categories for which a volunteer

license may be granted. Therefore, the Board has determined that additional rulemaking on this subject is not needed.

Finally, the Pennsylvania Medical Society and the Hospital and HealthSystem Association of Pennsylvania supported the amendments, but did not comment on the need for change in final rulemaking.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendments, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals and to nonprofit organizations who represent qualified providers of volunteer services.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The amendments create a new license for which no fee will be charged. The expenses of the program will be borne as a part of the Board's overall operating expenses which are financed through biennial renewals of active licensees. Therefore, the administration and enforcement of a new license category may have a fiscal impact on overall Board costs. The net effect, however, is estimated to be minimal, owing to the relatively small number of the licensee population who will seek a volunteer license compared with the number of active licensees. Additional paperwork will be incurred by the Board and the private sector to generate and file application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—The amendments will have a positive fiscal impact on individual licensees who restrict their professional activities to volunteer work since these individuals are exempt from maintaining professional liability insurance required under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1306.1006) and the biennial renewal fee for licensure. The amendments should impose no additional fiscal or paperwork requirements.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on June 6, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 2947, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing these final-form regulations the Board has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were approved by the House Committee on October 22, 1997, and by the Senate Committee on October 28, 1997. IRRC met on November 6, 1997, and approved the final-form regulations in accordance with section 5(e) of the Regulatory Review Act.

I. Public Information

Interested persons may obtain information regarding the amendments by writing to Cindy Warner, Board Administrator, State Board of Medicine, P. O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

J. 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 at 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) This amendment does not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 2947.

(4) This amendment is necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by amending § 16.11 to read as set forth at 27 Pa.B. 2947 and by adding § 16.18 to read as set forth in Annex A.

(b) The Board shall submit this order, 27 Pa.B. 2947 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, 27 Pa.B. 2947 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

DANIEL B. KIMBALL, Jr., M.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-494 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 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.18. Volunteer license.

(a) *Purpose and definitions.*

(1) The following subsections implement the Volunteer Health Services Act (35 P. S. §§ 449.41—449.50) and provide for the issuance of a volunteer license to a qualified Board-regulated practitioner as defined in section 2 of the act (63 P. S. § 422.2), who retires from active practice and seeks to provide professional services as a

volunteer. A volunteer license authorizes the holder to practice only in an organized community-based clinic without remuneration.

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

Approved clinic—An organized community-based clinic offering primary health care services to individuals and families who cannot pay for their care, to Medical Assistance clients or to residents of medically underserved areas or health professionals shortage areas. The term includes a State health center, nonprofit community-based clinic and Federally qualified health center, as designated by Federal rulemaking or as approved by the Department of Health or the Department of Public Welfare.

Unrestricted license—A license which is not restricted or limited by order of the Board under its disciplinary power.

(b) *License*. A volunteer license may be issued to a Board-regulated practitioner of the Board who documents to the satisfaction of the Board that the applicant will practice without personal remuneration in approved clinics and meets one of the following:

(1) Holds a currently renewed, active, unrestricted license, registration or certificate in this Commonwealth and retires from active practice at the time the applicant applies for a volunteer license.

(2) Retires from active practice in this Commonwealth in possession of an unrestricted license which was allowed to lapse by not renewing it.

(c) *Applications*. An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice exclusively as follows:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(d) *Validity of license*. A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the volunteer license holder shall notify the Board of any change in clinic or volunteer status within 30 days of the date of a change, or at the time of renewal, whichever occurs first.

(e) *Renewal of license*. A volunteer license shall be renewed biennially on forms provided by the Board. The applicant shall be exempt from payment of the biennial renewal fee of § 16.13 (relating to licensure, certification, examination and registration fees), and shall be exempt from the requirements with regard to the maintenance of liability insurance coverage under section 701 of the Health Care Services Malpractice Act (40 P. S. § 1301.701) and § 16.31 (relating to notification).

(f) *Return to active practice*. A volunteer license holder who desires to return to active practice shall notify the Board and apply for biennial registration on forms provided by the Board.

(g) *Disciplinary provisions*. A volunteer license holder shall be subject to the disciplinary provisions of the act and this chapter. Failure of the licensee to comply with the Volunteer Health Services Act (35 P. S. §§ 449.41—449.50) or this section may also constitute grounds for disciplinary action.

[Pa.B. Doc. No. 97-1899. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Endorsement of Foreign Trained Nurses

The State Board of Nursing (Board) amends §§ 21.28 and 21.155 (relating to licensure by endorsement) to read as set forth in Annex A.

A. *Effective Date*

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

These amendments are adopted under the authority of section 2.1(k) of the Professional Nursing Law (63 P. S. § 212.1(k)) and section 17.6 of the Practical Nurse Law (63 P. S. § 667.6).

C. *Background*

These amendments were proposed to remove obsolete language in § 21.28(c) and to authorize a nurse to receive a license by endorsement if: (1) the nurse has been educated in a foreign nursing program; (2) the nurse has a license in another state or Canada obtained by passing the National Council Licensure Examination (NCLEX); and (3) the nurse's program of study is deemed equivalent to the program required in this Commonwealth. The amendment will obviate the need for a foreign educated nurse to retake the NCLEX if the nurse already obtained a license in another jurisdiction by passing the NCLEX. The Board's program of licensure by endorsement was set forth in the notice of proposed rulemaking at 26 Pa.B. 4652 (September 28, 1996).

D. *Public Comment*

Following publication of proposed rulemaking the Board did not receive comments either from members of the public or the House Committee on Professional Licensure or the Senate Committee on Consumer Protection and Professional Licensure. The Independent Regulatory Review Commission (IRRC) reported by letter of November 27, 1996, that it had neither objections, comments nor suggestions to offer on these amendments.

E. *Compliance with Executive Order 1996-1, Regulatory Review and Promulgation*

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. This rulemaking will expedite the process under which a qualified nurse who was educated in a foreign country and already obtained licensure by examination in another jurisdiction may obtain licensure in this Commonwealth.

F. *Fiscal Impact and Paperwork Requirements*

1. *The Commonwealth and political subdivisions*—This rulemaking will not cause an adverse fiscal impact or

additional paperwork requirements on either the Commonwealth or its political subdivisions.

2. *Private sector*—This rulemaking will result in savings of time and money to foreign educated nurses who have already obtained licensure in another jurisdiction by passing the NCLEX and wish to practice in this Commonwealth. These applicants will not have to retake the NCLEX.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 4652, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing these final-form regulations the Board has considered the comments received from IRRC, the Committees, individual legislators and the public.

These final-form regulations were deemed approved by the House and Senate Committee on October 22, 1997. IRRC met on November 7, 1997, and deemed approved the amendments in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Ann Steffanic, Administrative Assistant, State Board of Nursing, at P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7142.

J. 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 at 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) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 4652.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.28 and 21.155 to read as set forth in Annex A.

(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*.

CHRISTINE ALICHNIE, Ph.D, R.N.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-512 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 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES LICENSES

§ 21.28. Licensure by endorsement.

(a) A registered nurse who has graduated from an approved nursing program in another state or territory of the United States or Canada and who is licensed by writing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth by endorsement of the original licensing board.

(b) An applicant for licensure in this Commonwealth by endorsement shall meet the requirements as stated in the act.

(c) A registered nurse who has graduated from a nursing program in a country or territory outside of the United States or Canada and who is licensed by completing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth without examination if the applicant's program of study is deemed equivalent to the program of study required in this Commonwealth at the time the program was completed. The Board will base equivalency upon an evaluation performed by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as to the foreign nursing program.

(d) An applicant for endorsement whose license in the other jurisdiction is not current for 5 years or longer shall, prior to receiving a license in this Commonwealth, satisfy the requirements of § 21.30a(1) or (2) (relating to continued competency).

Subchapter B. PRACTICAL NURSES LICENSES

§ 21.155. Licensure by endorsement.

(a) Licensure as a practical nurse in this Commonwealth by endorsement of the original licensing board is granted to a graduate of an approved practical nursing program who is licensed in another jurisdiction by an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth.

(b) Applicants for licensure in this Commonwealth by endorsement shall meet the requirements regarding age, good moral character, preliminary education and practical nursing education as outlined in the act.

(c) An applicant for licensure by endorsement whose license in the other jurisdiction is not current for 5 years or longer shall, prior to receiving a license in this Commonwealth, satisfy the requirements of § 21.156a(1) or (2) (relating to continued competency).

(d) A practical nurse who has graduated from a practical nursing program in a country or territory outside of the United States or Canada and who is licensed by completing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth without examination if the applicant's program of study is deemed equivalent to the program of study required in this Commonwealth at the time the program was completed. The Board will base equivalency upon an evaluation performed by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as to the foreign nursing program.

[Pa.B. Doc. No. 97-1900. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE BOARD OF NURSING
[49 PA. CODE CH. 21]
Volunteer License

The State Board of Nursing (Board) adopts Subchapter F (relating to volunteer licenses).

A. Effective Date

The regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

Section 5 of the Volunteer Health Services Act (VHSA) (35 P. S. § 449.45) mandates regulations governing: (1) qualifications for placing an active license on volunteer status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is authorized to adopt regulations necessary to the administration of its enabling statute under section 2.1(k) of the Professional Nursing Law (63 P. S. § 212.1(k)) and section 17.6 of the Practical Nurse Law (63 P. S. § 667.6).

C. Background and Purpose

The purpose of the VHSA is to increase the availability of primary health services by establishing a procedure for retired nurses and other health care practitioners to provide professional services as volunteers in approved clinics. Primary health services are defined in the VHSA as including services such as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing, and health education.

The VHSA permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for volunteer status. A volunteer license will be issued to a retired individual who documents to the satisfaction of the Board that the individual will practice without remuneration in approved clinics.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa. B. 2953 (June 21, 1997). The Board received comments from Representative Patricia H. Vance, the prime sponsor of the VHSA, two public commentators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC).

Both Representative Vance and IRRC noticed that proposed § 21.602 (relating to volunteer license), as published, was incongruent with the VHSA which makes retired persons, or persons intending to retire, eligible for a volunteer license. Editorial changes to the proposed rulemaking filed with the Legislative Reference Bureau erroneously created, on publication, three, rather than two, pathways by which a Board-regulated practitioner could qualify for a volunteer license. Representative Vance correctly noted that proposed § 21.602(3) would be applicable to both paragraphs (1) and (2), and suggested paragraph (3) be incorporated into the text of § 21.602. The House Committee supported Representative Vance's suggestion. IRRC recommended that paragraph (3) be deleted in its entirety and suggested that parts of it be incorporated into a new definitional section. In final rulemaking, the Board has accepted both suggestions, adding a definitional subsection in § 21.601 (relating to purpose and definitions) and restructuring § 21.602. The Board also accepted the suggestion of IRRC to move § 21.603(1)(ii) (relating to applications) to § 21.601.

The Pennsylvania Academy of Family Physicians commented that the VHSA may be interpreted as permitting nonphysicians to perform acts which require a medical license and, accordingly, requested that the issue be clarified and resolved through regulation. The Board does not concur in the view that the VHSA creates an ambiguity regarding the scope of practice for any licensee. The Board has found no language in the VHSA which creates a different scope of practice for a volunteer license in any of the enumerated categories for which a volunteer license may be granted. Therefore, the Board has determined that additional rulemaking on this subject is not needed.

Finally, the Hospital and HealthSystem Association of Pennsylvania supported the regulations, but did not comment on the need for change in final rulemaking.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulations, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals and to nonprofit organizations who represent qualified providers of volunteer services.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations create a new license for which no fee will be charged. The expenses of the program will be borne as a part of the Board's overall operating expenses which are financed through biennial renewals of active licensees. Therefore, the administration and enforcement of a new license category may have a fiscal impact on overall Board costs. The net effect, however, is estimated to be minimal, owing to the relatively small number of the licensee population who will seek a volunteer license compared with the number of active licensees. Additional paperwork will be incurred by the Board and the private sector to generate and file application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—The regulations will have a positive fiscal impact on individual licensees who restrict their professional activities to volunteer work since these individuals are exempt from maintaining professional liability insurance required under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and the biennial renewal fee for licensure. The regulations should impose no additional fiscal or paperwork requirements.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. §745.5a(a)), on June 6, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa. B. 2953, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing these final-form regulations the Board has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were approved by the House Committee on October 22, 1997, and by the Senate Committee on October 28, 1997. IRRC met on November 6, 1997, and approved the final-form regulations in accordance with section 5(e) of the Regulatory Review Act.

I. Public Information

Interested persons may obtain information regarding the regulations by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, 124 Pine Street, Harrisburg, PA 17105-2649.

J. 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 at 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) These amendments do not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 2953.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by adding §§ 21.604—21.607 to read as set forth at 27 Pa.B. 2953 and by adding §§ 21.601—21.603 to read as set forth in Annex A.

(b) The Board shall submit this order, 27 Pa.B. 2953 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, 27 Pa.B. 2953 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*.

CHRISTINE ALICHNIE, Ph.D., R.N.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-517 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 21. STATE BOARD OF NURSING

Subchapter F. VOLUNTEER LICENSES

§ 21.601. Purpose and definitions.

(a) This subchapter implements the Volunteer Health Services Act (35 P. S. §§ 449.41—449.50) and provides for the issuance of a volunteer license to a qualified registered nurse, a certified registered nurse practitioner and a licensed practical nurse who retires from active practice and seeks to provide professional services as a volunteer. A volunteer license authorizes the holder to practice only in an organized community-based clinic without remuneration.

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

Approved clinic—An organized community-based clinic offering primary health care services to individuals and families who cannot pay for their care, to Medical Assistance clients or to residents of medically underserved areas or health professionals shortage areas. The term includes a State health center, nonprofit community-based clinic and Federally qualified health center, as designated by Federal rulemaking or as approved by the Department of Health or the Department of Public Welfare.

Unrestricted license—A license which is not restricted or limited by order of the Board under its disciplinary power.

§ 21.602. Volunteer license.

A volunteer license may be issued to a licensee of the Board who documents to the satisfaction of the Board that the applicant will practice without personal remuneration in approved clinics and meets one of the following conditions:

(1) Holds a currently renewed, active, unrestricted license as a registered nurse, a certified registered nurse practitioner or a licensed practical nurse in this Commonwealth and retires from active practice at the time the applicant applies for a volunteer license.

(2) Retires from the active practice of nursing in this Commonwealth in possession of an unrestricted license

which was allowed to lapse by not renewing it. A registered nurse whose license had lapsed or had been placed on inactive status shall comply with § 21.30a or § 21.156a (relating to continued competency).

§ 21.603. Applications.

An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice nursing exclusively:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

[Pa.B. Doc. No. 97-1901. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE BOARD OF OPTOMETRY [49 PA. CODE CH. 23] Volunteer License

The State Board of Optometry (Board) adopts § 23.26 (relating to volunteer license) to read as set forth in Annex A.

A. Effective Date

The regulation is effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

Section 5 of the Volunteer Health Services Act (VHSA) (35 P. S. § 449.45) mandates regulations governing: (1) qualifications for placing an active license on volunteer status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is authorized to adopt regulations necessary to the administration of its enabling statute under section 3(b)(14) of the Optometric Practice and Licensure Act (63 P. S. § 244.3(b)(14)).

C. Background and Purpose

The purpose of the VHSA is to increase the availability of primary health services by establishing a procedure for retired optometrists and other health care practitioners to provide professional services as volunteers in approved clinics. Primary health services are defined in the VHSA as including services such as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing, and health education.

The VHSA permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for volunteer status. A volunteer license will be issued to a retired individual who documents to the

satisfaction of the Board that the individual will practice without remuneration in approved clinics.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa.B. 2955 (June 21, 1997). The Board received comments from Representative Patricia H. Vance, the prime sponsor of the VHSA, two public commentators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC).

Both Representative Vance and IRRC noticed that proposed § 23.26(b), as published, was incongruent with the VHSA which makes retired persons, or persons intending to retire, eligible for a volunteer license. Editorial changes to the proposed rulemaking filed with the Legislative Reference Bureau erroneously created, on publication, three, rather than two, pathways by which a Board-regulated practitioner could qualify for a volunteer license. Representative Vance correctly noted that proposed § 23.26(b)(3) would be applicable to both paragraphs (1) and (2), and suggested paragraph (3) be incorporated into the text of subsection (b). The House Committee supported Representative Vance's suggestion. IRRC recommended that paragraph (3) be deleted in its entirety and suggested that parts of it be incorporated into a new definitional section. In final rulemaking, the Board has accepted both suggestions, adding a definitional subsection in § 23.26(a) and restructuring § 23.26(b). The Board also accepted the suggestion of IRRC to move subsection (c)(1)(ii) to subsection (a)(2).

The Pennsylvania Academy of Family Physicians commented that the VHSA may be interpreted as permitting nonphysicians to perform acts which require a medical license and, accordingly, requested that the issue be clarified and resolved through regulation. The Board does not concur in the view that the VHSA creates an ambiguity regarding the scope of practice for any licensee. The Board has found no language in the VHSA which creates a different scope of practice for a volunteer license in any of the enumerated categories for which a volunteer license may be granted. Therefore, the Board has determined that additional rulemaking on this subject is not needed.

Finally, the Hospital and HealthSystem Association of Pennsylvania supported the regulation, but did not comment on the need for change in final rulemaking.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals and to nonprofit organizations who represent qualified providers of volunteer services.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulation creates a new license for which no fee will be charged. The expenses of the program will be borne as a part of the Board's overall operating expenses which are financed through biennial renewals of active licensees. Therefore, the administration and enforcement of a new license category may have a fiscal impact on overall Board costs. The net effect, however, is estimated to be minimal, owing to the relatively small number of the licensee population who will seek a volunteer license compared with the number of

active licensees. Additional paperwork will be incurred by the Board and the private sector to generate and file application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—The regulation will have a positive fiscal impact on individual licensees who restrict their professional activities to volunteer work since these individuals are exempt from maintaining professional liability insurance required under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and the biennial renewal fee for licensure. The regulation should impose no additional fiscal or paperwork requirements.

G. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. *Regulatory Review*

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on June 6, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 2955, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing this final-form regulation the Board has considered the comments received from IRRC, the Committees and the public.

This final-form regulation was approved by the House Committee on October 22, 1997, and by the Senate Committee on October 28, 1997. IRRC met on November 6, 1997, and approved the regulation in accordance with section 5(e) of the Regulatory Review Act.

I. *Public Information*

Interested persons may obtain information regarding the regulation by writing to Deborah Smith, Board Administrator, State Board of Optometry, P.O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

J. *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 at 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) This amendment does not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 2955.

(4) This amendment is necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 23, are amended by adding § 23.26 to read as set forth in Annex A.

(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*.

ROBERT A. GINSBURG, O.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-526 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY

§ 23.26. Volunteer license.

(a) *Purpose and definitions.*

(1) The following subsections implement the Volunteer Health Services Act (35 P. S. §§ 449.41—449.50) and provide for the issuance of a volunteer license to a qualified individual who retires from active practice and seeks to provide professional services as a volunteer. A volunteer license authorizes the holder to practice only in an organized community-based clinic without remuneration.

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

Approved clinic—An organized community-based clinic offering primary health care services to individuals and families who cannot pay for their care, to Medical Assistance clients or to residents of medically underserved areas or health professionals shortage areas. The term includes a State health center, nonprofit community-based clinic and Federally qualified health center, as designated by Federal rulemaking or as approved by the Department of Health or the Department of Public Welfare.

Unrestricted license—A license which is not restricted or limited by order of the Board under its disciplinary power.

(b) *License.* A volunteer license may be issued to a licensee of the Board who documents to the satisfaction of the Board that the applicant will practice without personal remuneration in approved clinics and meets one of the following conditions:

(1) Holds a currently renewed, active, unrestricted license as an optometrist in this Commonwealth and retires from active practice at the time the applicant applies for a volunteer license.

(2) Retires from the active practice of optometry in this Commonwealth in possession of an unrestricted license which was allowed to lapse by not renewing it. A retired licensee shall meet the requirements of the act or the

regulations pertaining to continued education or continued competency to be eligible for renewal.

(c) *Applications.* An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice optometry exclusively:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(d) *Validity of license.* A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the licensee shall notify the Board of any change in clinic or volunteer status within 30 days of the date of a change, or at the time of renewal, whichever occurs first.

(e) *Biennial renewal.* A volunteer license shall be renewed biennially on forms provided by the Board.

(1) As a condition of biennial renewal, the applicant shall satisfy the same continuing education requirements as the holder of an active, unrestricted license.

(2) The applicant shall be exempt from payment of the biennial renewal fee of § 23.91 (relating to fees).

(f) *Return to active practice.* A volunteer license holder who desires to return to active practice shall notify the Board and apply for biennial registration on forms provided by the Board.

(g) *Disciplinary provisions.* A volunteer license holder shall be subject to the disciplinary provisions of the act and this chapter. Failure of the licensee to comply with the Volunteer Health Services Act (35 P. S. §§ 449.41—449.50) or this section may also constitute grounds for disciplinary action.

[Pa.B. Doc. No. 97-1902. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE
[49 PA. CODE CH. 25]
Volunteer License

The State Board of Osteopathic Medicine (Board) adopts Subchapter L (relating to volunteer license).

A. Effective Date

The regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

Section 5 of the Volunteer Health Services Act (VHSA) (35 P. S. § 449.45) mandates regulations governing: (1) qualifications for placing an active license on volunteer status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is

authorized to adopt regulations necessary to the administration of its enabling statute under section 16 of the Osteopathic Medical Practice Act (63 P. S. § 271.16).

C. Background and Purpose

The purpose of the VHSA is to increase the availability of primary health services by establishing a procedure for physicians and other health care practitioners who have retired from active practice to provide professional services as volunteers in approved clinics. Primary health services are defined in the VHSA as including services such as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing and health education.

The VHSA permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for a volunteer license. A volunteer license will be issued to a retired individual who documents to the satisfaction of the Board that the individual will practice without remuneration in approved clinics.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa. B. 2957 (June 21, 1997). The Board received comments from Representative Patricia H. Vance, the prime sponsor of the VHSA, two public commentators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC).

Both Representative Vance and IRRC noticed that proposed § 25.602 (relating to volunteer license), as published, was incongruent with the VHSA which makes retired persons, or persons intending to retire, eligible for a volunteer license. Editorial changes to the proposed rulemaking filed with the Legislative Reference Bureau erroneously created, on publication, three, rather than two, pathways by which a Board-regulated practitioner could qualify for a volunteer license. Representative Vance correctly noted that proposed § 25.602(3) would be applicable to both paragraphs (1) and (2) and suggested paragraph (3) be incorporated into the text of § 25.602. The House Committee supported Representative Vance's suggestion. IRRC recommended that paragraph (3) be deleted in its entirety and suggested that parts of it be incorporated into a new definitional section. In final rulemaking, the Board has accepted both suggestions, adding a definitional subsection in § 25.601 (relating to purpose and definitions) and restructuring § 25.602. The Board also accepted the suggestion of IRRC to move § 25.603(1)(ii) to § 25.601.

The Pennsylvania Academy of Family Physicians commented that the VHSA may be interpreted as permitting nonphysicians to perform acts which require a medical license and, accordingly, requested that the issue be clarified and resolved through regulation. The Board does not concur in the view that the VHSA creates an ambiguity regarding the scope of practice for any licensee. The Board has found no language in the VHSA which creates a different scope of practice for a volunteer license in any of the enumerated categories for which a volunteer license may be granted. Therefore, the Board has determined that additional rulemaking on this subject is not needed.

Finally, the Hospital and HealthSystem Association of Pennsylvania supported the regulations, but did not comment on the need for change in final rulemaking.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals and to nonprofit organizations who represent qualified providers of volunteer services.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations create a new license for which no fee will be charged. The expenses of the program will be borne as a part of the Board's overall operating expenses which are financed through biennial renewals of active licensees. Therefore, the administration and enforcement of a new license category may have a fiscal impact on overall Board costs. The net effect, however, is estimated to be minimal, owing to the relatively small number of the licensee population who will seek a volunteer license compared with the number of active licensees. Additional paperwork will be incurred by the Board and the private sector to generate and file application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—The regulations will have a positive fiscal impact on individual licensees who restrict their professional activities to volunteer work since these individuals are exempt from maintaining professional liability insurance required under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and the biennial renewal fee for licensure. The regulations should impose no additional fiscal or paperwork requirements.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on June 6, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 2957, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were approved by the House Committee on October 22, 1997 and by the Senate Committee on October 28, 1997. IRRC met on November 6, 1997 and approved the final-form regulations in accordance with section 5(e) of the Regulatory Review Act.

I. Public Information

Interested persons may obtain information regarding the regulations by writing to Gina Bittner, Board Administrator, State Board of Osteopathic Medicine, P. O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

J. 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. 204) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 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) These amendments do not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 2957.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by adding §§ 25.604—25.607 to read as set forth at 27 Pa.B. 2957 and by adding §§ 25.601—25.603 to read as set forth in Annex A.

(b) The Board shall submit this order, 27 Pa.B. 2957 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, 27 Pa.B. 2957 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

SILVIA M. FERRETTI, D.O.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-537 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 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter L. VOLUNTEER LICENSE

§ 25.601. Purpose and definitions.

(a) This subchapter implements the Volunteer Health Services Act (35 P. S. §§ 449.41—449.50) and provides for the issuance of a volunteer license to a qualified Board-regulated practitioner as defined in section 2 of the act (63 P. S. § 271.2), who retires from active practice and seeks to provide professional services as a volunteer. A volunteer license authorizes the holder to practice only in an organized community-based clinic without remuneration.

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

Approved clinic—An organized community-based clinic offering primary health care services to individuals and

families who cannot pay for their care, to Medical Assistance clients or to residents of medically underserved areas or health professionals shortage areas. The term may include a State health center, nonprofit community-based clinic and Federally qualified health center, as designated by Federal rulemaking or as approved by the Department of Health or the Department of Public Welfare.

Unrestricted license—A license which is not restricted or limited by order of the Board under its disciplinary power.

§ 25.602. Volunteer license.

A volunteer license may be issued to a Board-regulated practitioner who documents to the satisfaction of the Board that the applicant will practice without personal remuneration in approved clinics and meets one of the following conditions:

(1) Holds a currently renewed, active, unrestricted license, registration or certificate in this Commonwealth and retires from active practice at the time the applicant applies for a volunteer license.

(2) Retires from the active practice in this Commonwealth in possession of an unrestricted license which was allowed to lapse by not renewing it. A retired licensee, registrant or certificateholder shall meet any requirements of the act or the regulations pertaining to continued education or continued competency to be eligible for renewal.

§ 25.603. Applications.

An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice exclusively:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

[Pa.B. Doc. No. 97-1903. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Approval of Plans: Pharmacy Alterations

The State Board of Pharmacy (Board) amends § 27.16 (relating to construction requirements) to read as set forth in Annex A. The object of this amendment is to codify the Board's determination that two standards in the existing regulations are unnecessary and overly burdensome.

The first standard concerns the required Board approval to operate a pharmacy during alterations to the layout or fixtures of a pharmacy in § 27.16(a)(2).

The Board has entertained commentary from spokespersons for the regulated community about its standards relating to the deadline to submit plans for changes in existing pharmacies to the Board. Currently, pharmacies must give 90 days advance notice to the Board before alterations or renovations in layout or fixtures can be undertaken. Representatives of pharmacies provided the Board with an explanation of the difficulties posed by the 90 days' advance notice. A reduced time frame is more responsive to current demands on businesses' financing and construction planning.

The Board granted commentators' request to reduce the advance time frame notice to 30 days, and has directed its agents appropriately with regard to the issuance of citations for violations of the Pharmacy Act (63 P. S. §§ 390-1—390-13) and regulations. Accordingly, in this amendment, the Board revises the 90-day notice requirement in § 27.16(a)(2)(ii) to require pharmacies to submit plans for alterations only 30 days in advance of the beginning of renovation construction.

The second standard concerns the suggested ratio of prescription area to store size in the building standards of § 27.16(b)(2). The ratio was developed in 1973, and was established solely as a guideline and not a regulatory requirement. In the proposed rulemaking published at 26 Pa.B. 1032 (March 9, 1996), the Board in a notice of proposed rulemaking containing general revisions proposed deleting the ratio in its entirety. No comments were received pertaining to the deletion.

The Board has not concluded its preparation of the general revisions rulemaking, but has determined to proceed expeditiously with the deletion of the size guidelines. By this amendment, the Board is deleting the current version of § 27.16(b)(2). The Board will then omit that section from the general revisions rulemaking. As stated in the voluntary guidelines, this subsection was intended to reflect the Board's experience at that time that a direct relationship existed between the overall retail floor space of a pharmacy and the amount of prescriptions compounded and dispensed from the pharmacy itself. The Board no longer believes that there is a significant relationship between the size of a retail store and the level of activity in a pharmacy. Pharmacists and pharmacy owners are competent to make decisions determining the appropriate size of a prescription area on the basis of their professional and business experience. Moreover, the Board finds placing voluntary guidelines in a regulatory format unnecessarily confusing to pharmacy owners.

Public notice of intention to amend the Board's regulations under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL) has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary and impracticable. The guidelines in § 27.16(b)(2) were not enforced and provided pharmacies with no meaningful regulatory standards. The 90-day deadline in § 27.16(a)(2)(ii) was more responsive to management and administrative needs of the Board and its agents than to the needs of the regulated community. The Board has therefore determined that its continued enforcement is contrary to the public interest.

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered the purpose and likely impact upon the public and the

regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

This amendment is authorized under sections 4(j) and 6(k)(9) of the Pharmacy Act (63 P. S. §§ 390-4(j) and 390-6(k)(9)).

Fiscal Impact and Paperwork Requirements

The amendment will have no fiscal impact on the Commonwealth or its political subdivisions. Although it cannot be quantified, individual pharmacies and the regulated community should experience greater flexibility in planning which the Board anticipates will result in savings.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on October 8, 1997, a copy of the amendment was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, the amendment was submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732.506).

Under section 5.1(d) and (e) of the Regulatory Review Act, the amendment was deemed approved by the House and Senate Committees on October 28, 1997, and by IRRC on November 6, 1997.

Additional Information

Individuals who desire information are invited to submit inquiries to W. Richard Marshman, Executive Secretary, State Board of Pharmacy, Post Office Box 2649, Harrisburg, PA 17105-2649, (717) 783-7157.

Findings

The Board finds that:

(1) Public notice of intention to amend its regulations as adopted by this order, under the procedures specified in sections 201 and 202 of the CDL, has been omitted under the authority contained in section 204(3) of the CDL (45 P. S. § 1204(3)). The Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, unnecessary, impracticable and contrary to the public interest.

(2) The amendment of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 27, are amended by amending § 21.16 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(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 approval as to legality as required by law.

(c) The Chairperson of 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 become effective immediately upon publication in the *Pennsylvania Bulletin*.

PAULA L. CASTOR, R.Ph.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: 16A-546. 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 27. STATE BOARD OF PHARMACY STANDARDS

§ 27.16. Construction requirements.

(a) *Approval of plans.* The following requirements shall be applicable to approval of plans:

* * * * *

(2) *Alterations.* The practice of pharmacy shall cease while substantial alterations in the layout of fixtures of an approved pharmacy are being made unless:

(i) The pharmacy makes the alterations and takes adequate precautions in such a manner that the health and safety of professionals, employes and the public shall be protected during the continuing operation of the pharmacy.

(ii) The plans for the alterations and a description of the precautions are submitted to the Board at least 30 days before the beginning of alteration work. If the Board raises no objection during that time, the pharmacy is authorized to proceed with the alterations as planned.

(b) *Building standards.* The following apply to building standards:

(1) *Minimum size.* The minimum size of the prescription area shall be not less than 250 square feet, but shall be large enough, considering the level of activity, to carry on the practice of pharmacy in a manner that protects the health and safety of professionals, employes and the public. Within the prescription area, there shall be a prescription working counter of not less than 10 linear feet in length and 2 linear feet in width. If more than two pharmacists are on duty simultaneously, the minimum counter length shall be increased by 5 linear feet for an additional pharmacist. Institutions with special considerations may apply to the Board for a waiver.

(2) *Adjoining store.* A permit may be issued for a self-contained pharmacy having an entrance into an adjoining store which owns the pharmacy or is otherwise affiliated with it. The pharmacy shall have an area of at least 350 square feet. Its separating walls and doors shall afford a degree of security against illegal entry equal to that normally afforded by walls and doors fronting on a public way, and the doors shall be securely locked whenever a licensed pharmacist is not present and on duty.

The terms "pharmacy," "drugs" or words of comparable meaning may only be used in reference to the self-contained pharmacy.

(3) *Locked compartment.* Space shall be provided in the prescription area for a substantially constructed cabinet or safe to contain controlled substances required to be kept locked in accordance with Federal BNDD regulations.

(4) *Telephone.* At least one telephone—or more, if necessary—shall be immediately accessible in the prescription area, and the telephone number shall coincide with the mandatory telephone number required to be printed on the label of a prescription.

(5) *Sanitary facilities.* Pharmacies shall be equipped with a sink within the prescription area to be used solely for pharmaceutical purposes. The sink shall measure at least 200 square inches exclusive of drainboard area. The sink shall be connected properly to supply hot and cold water. The sink shall be wholly located within the area designated as the prescription area. Adequate restroom facilities for employes of the pharmacy shall be provided reasonably close to, but outside of the prescription area, or with an entrance for the public located outside of the prescription area.

(6) *Lighting and ventilation.* The pharmacy shall be well lighted and ventilated.

(7) *No television set.* No television set may be placed within the prescription area or so situated in the pharmacy that its viewing screen may be seen when looking at it from within the prescription area.

(8) *Physical arrangement.* The prescription area shall be arranged in such a manner that prescription drugs and devices are inaccessible to an unlicensed or unauthorized person. The prescription area may not be used for storage of merchandise or other items other than those used in the preparation, dispensing or delivery of drugs. No animals may be allowed in a prescription area except for security reasons.

(9) *Existing pharmacies.* Existing pharmacies licensed by the Board prior to the effective date of this chapter may continue if they reasonably conform, or are made to reasonably conform, to the intent of this chapter. The Board will determine what constitutes reasonable conformity consonant with the public interest, health, safety and welfare.

[Pa.B. Doc. No. 97-1904. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE BOARD OF DENTISTRY
[49 PA. CODE CH. 33]
Volunteer License

The State Board of Dentistry (Board) adopts § 33.110 (relating to volunteer license) to read as set forth in Annex A.

A. Effective Date

The regulation is effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

Section 5 of the Volunteer Health Services Act (VHSA) (35 P. S. § 449.45) mandates regulations governing: (1) qualifications for placing an active license on volunteer

status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is authorized to adopt regulations necessary to the administration of its enabling statute under section 3(o) of The Dental Law (63 P. S. § 122(o)).

C. Background and Purpose

The purpose of the VHSA is to increase the availability of primary health services by establishing a procedure for retired dentists and dental hygienists and other health care practitioners to provide professional services as volunteers in approved clinics. Primary health services are defined in the VHSA as including services such as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing, and health education.

The VHSA permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for volunteer status. A volunteer license will be issued to a retired individual who documents to the satisfaction of the Board that the individual will practice without remuneration in approved clinics.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 27 Pa.B. 3525 (July 19, 1997). The Board received comments from Representative Patricia H. Vance, the prime sponsor of the VHSA, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC).

Both Representative Vance and IRRC noticed that proposed § 33.110(b) (relating to volunteer license), as published, was incongruent with the VHSA which makes retired persons, or persons intending to retire, eligible for a volunteer license. Editorial changes to the proposed rulemaking filed with the Legislative Reference Bureau erroneously created, on publication, three, rather than two, pathways by which a Board-regulated practitioner could qualify for a volunteer license. Representative Vance correctly noted that proposed § 33.110(b)(3) would be applicable to both paragraphs (1) and (2), and suggested paragraph (3) be incorporated into the text of subsection (b). The House Committee supported Representative Vance's suggestion. IRRC recommended that paragraph (3) be deleted in its entirety and suggested that parts of it be incorporated into a new definitional section. In final rulemaking, the Board has accepted both suggestions, adding a definitional subsection in § 33.110(a) and restructuring § 33.110(b). The Board also accepted the suggestion of IRRC to move subsection (c)(1)(ii) to subsection (a)(2).

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals and to nonprofit organizations who represent qualified providers of volunteer services.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulation creates a new license for which no fee will be charged. The expenses of the program will be borne as a part of the Board's overall

operating expenses which are financed through biennial renewals of active licensees. Therefore, the administration and enforcement of a new license category may have a fiscal impact on overall Board costs. The net effect, however, is estimated to be minimal, owing to the relatively small number of the licensee population who will seek a volunteer license compared with the number of active licensees. Additional paperwork will be incurred by the Board and the private sector to generate and file application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—The regulation will have a positive fiscal impact on individual licensees who restrict their professional activities to volunteer work since these individuals are exempt from maintaining professional liability insurance required under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and the biennial renewal fee for licensure. The regulation should impose no additional fiscal or paperwork requirements.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. §§ 745.5a(a)), on July 8, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 3525, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing this final-form regulation the Board has considered the comments received from IRRC, the Committees and the public.

This final-form regulation was approved by the House Committee on October 22, 1997, and by the Senate Committee on October 28, 1997. IRRC met on November 6, 1997, and approved the regulation in accordance with section 5(e) of the Regulatory Review Act.

I. Public Information

Interested persons may obtain information regarding the regulation by writing to June Barner, Board Administrator, State Board of Dentistry, P. O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

J. 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 at 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) This amendment does not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 3525.

(4) This amendment is necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 33, are amended by adding § 33.110 to read as set forth in Annex A.

(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 upon publication in the *Pennsylvania Bulletin*.

EDWIN F. WEAVER, III, D.D.S.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-468 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 33. STATE BOARD OF DENTISTRY

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

§ 33.110. Volunteer license.

(a) *Purpose and definitions.*

(1) The following subsections implement the Volunteer Health Services Act (35 P. S. §§ 449.41—449.50) and provide for the issuance of a volunteer license to a qualified individual who retires from active practice and seeks to provide professional services as a volunteer. A volunteer license authorizes the holder to practice only in an organized community-based clinic without remuneration.

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

Approved clinic—An organized community-based clinic offering primary health care services to individuals and families who cannot pay for their care, to Medical Assistance clients or to residents of medically underserved areas or health professionals shortage areas. The term includes a State health center, nonprofit community-based clinic and Federally qualified health center, as designated by Federal rulemaking or as approved by the Department of Health or the Department of Public Welfare.

Unrestricted license—A license which is not restricted or limited by order of the Board under its disciplinary power.

(b) *License.* A volunteer license may be issued to a licensee or certificateholder of the Board who documents to the satisfaction of the Board that the licensee will

practice without personal remuneration in approved clinics and meets one of the following conditions:

(1) Holds a currently renewed, active, unrestricted license, registration or certificate in this Commonwealth and retires from active practice at the time the licensee applies for a volunteer license.

(2) Retires from the active practice of dentistry, or as a dental hygienist or as an expanded function dental assistant in this Commonwealth in possession of an unrestricted license, registration or certificate which was allowed to lapse by not renewing it. A retired licensee, registrant or certificateholder shall meet any requirements of the act or the regulations pertaining to continued education or continued competency to be eligible for renewal.

(c) *Applications.* An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice exclusively:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(d) *Validity of license.* A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the volunteer license holder shall notify the Board of any change in clinic or volunteer status within 30 days of the date of the change, or at the time of renewal, whichever occurs first.

(e) *Biennial renewal.* A volunteer license shall be renewed biennially on forms provided by the Board.

(1) As a condition of biennial renewal, the applicant shall satisfy the same continuing education requirements as the holder of an active, unrestricted license.

(2) The applicant shall be exempt from payment of the biennial renewal fee in § 33.3 (relating to fees).

(f) *Return to active practice.* A volunteer license holder who desires to return to active practice shall notify the Board and apply for biennial registration on forms provided by the Board.

(g) *Disciplinary provisions.* A volunteer license holder shall be subject to the disciplinary provisions of the act and this chapter. Failure of the licensee to comply with the Volunteer Health Services Act or this section may also constitute grounds for disciplinary action.

(h) *Permits to administer general anesthesia, conscious sedation or nitrous oxide/oxygen analgesia.*

(1) A dentist who applies for a volunteer license under subsection (b) who holds a current permit to administer anesthetic modalities may also apply for reissuance of an unrestricted or restricted permit of the type issued to the dentist as an active licensee under § 33.333 (relating to types of permits).

(2) A retired dentist who applies under subsection (b)(1) and (2) for a volunteer license who, within 2 years

of the date of application, held an unrestricted permit or a restricted permit I, may apply for reissuance of the permit, but shall be required to complete a refresher course in advanced training in anesthesiology and related subjects, or in conscious sedation (whichever is applicable) as approved by the Board, that conforms to the American Dental Association guidelines of either § 33.335(a)(1) (relating to requirements for unrestricted permit) or § 33.336(a)(1) (relating to requirements for restricted permit I).

(3) A retired dentist who applies under subsection (b)(1) and (2) for a volunteer license who, within 5 years of the date of application, held a restricted permit II may also apply for reissuance of the permit, but shall be required to complete a refresher course in nitrous oxide/oxygen analgesia approved by the Board that conforms to § 33.337(a)(1) (relating to requirements for restricted permit II).

(4) A dentist who applies for a volunteer license who does not qualify for a permit under paragraphs (1)—(3) and who wishes to administer general anesthesia, conscious sedation or nitrous oxide/oxygen analgesia under § 33.332(a) (relating to requirement of permit to administer general anesthesia, conscious sedation or nitrous oxide/oxygen analgesia) shall satisfy the education requirements of § 33.335(a)(1), § 33.336(a)(1) or § 33.337(a)(1).

(5) Volunteer license holders will not be subject to any fee for the issuance, reissuance or renewal of a permit under this subsection.

(i) *Supervision.* Volunteer dental hygienists shall meet the supervision requirements of § 33.205(c)(1) (relating to practice as a dental hygienist). Volunteer expanded function dental assistants shall meet the supervision requirements of section 2 of the act (63 P. S. § 121).

[Pa.B. Doc. No. 97-1905. Filed for public inspection November 28, 1997, 9:00 a.m.]

**STATE REGISTRATION BOARD FOR
PROFESSIONAL ENGINEERS, LAND
SURVEYORS AND GEOLOGISTS**

[49 PA. CODE CH. 37]

Corrective Amendment to 49 Pa. Code § 37.61

The State Registration Board for Professional Engineers, Land Surveyors and Geologists has discovered a discrepancy between the agency text of 49 Pa. Code § 37.61 (relating to temporary practice), as deposited with the Legislative Reference Bureau and as published at 25 Pa.B. 1775 (May 6, 1995) and the official text as codified in the September 1995 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 250), and as currently appearing in the *Pennsylvania Code*. The amendment adopted at 25 Pa.B. 1775 was never codified.

Therefore, under 45 Pa.C.S. § 901: The State Registration Board for Professional Engineers, Land Surveyors and Geologists has deposited with the Legislative Reference Bureau a corrective amendment to 49 Pa. Code § 37.61. The corrective amendment to 49 Pa. Code

§ 37.61 is effective as of September 2, 1995, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 49 Pa. Code § 37.61 appears in Annex A.

JOHN M. BRINJAC, PE, PLS,
President

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

TEMPORARY PERMIT TO PRACTICE ENGINEERING OR SURVEYING

§ 37.61. Temporary practice.

(a) A professional engineer, professional land surveyor or professional geologist who holds a valid license to practice engineering, land surveying or geology from a licensing board of the state or territory of the person's residence may practice engineering, land surveying or geology in this Commonwealth for a period not to exceed 30 days in the aggregate in a calendar year if the person neither resides nor has a place of business in this Commonwealth and the standards for licensing engineers, land surveyors and geologists in the other state or territory are at least equal to the standards of the Commonwealth.

(b) Applications for temporary permits shall be made on forms provided by the Board.

(c) Applications shall be accompanied by a nonrefundable fee in the amount prescribed by § 37.17(b) (relating to schedule of fees). Incomplete applications and applications not accompanied by the proper fee will be returned to applicants with a statement of the reason for return.

(d) When the Board, after consideration of an application, is satisfied that the applicant is eligible for a temporary permit to practice engineering, land surveying or geology, the Board will issue to the applicant a temporary permit to practice in this Commonwealth. If an application is rejected, the Board will advise the applicant of the reason for rejection.

[Pa.B. Doc. No. 97-1906. Filed for public inspection November 28, 1997, 9:00 a.m.]

STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

[49 PA. CODE CH. 37]

Examination Fees

The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) amends § 37.17 (relating to schedule of fees) to read as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a), examinations for licensure must be

prepared and administered by a professional testing organization under contract to the appropriate board. The Board contracts with the National Council of Examiners for Engineering and Surveying to provide the professional engineer and land surveyor examination to Pennsylvania applicants. Contract costs for examination services will increase beginning with the October 1998 examinations. This amendment will change fees for examinations to candidates for licensure as professional engineers or land surveyors in accordance with the new contract costs.

The following chart summarizes the change in fees for the engineer and land surveyor categories.

Engineer—Land Surveyor Examination Fee Increases

	<i>Current</i>	<i>New</i>
Professional Engineer Examination -As of October 1998	\$105.00	\$120.00
Professional Land Surveyor Complete Examination As of October 1998	\$187.00	\$227.00
As of October 1999		\$252.00
NCEES Fundamentals	\$ 40.00	\$ 65.00
NCEES Principles of Practice As of October 1998	\$ 60.00	\$ 75.00
As of October 1999		\$100.00

Public notice of intention to amend the regulations under procedures in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL), has been omitted under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by this amendment, however, have been given actual notice of the Board's intention to adopt this amendment in advance of final rulemaking under section 204(2) of the CDL.

Compliance with Executive Order 1996-1

The Board reviewed this amendment and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1 (relating to regulatory review and promulgation). This amendment addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

This amendment is adopted under section 812.1 of The Administrative Code and section 9(a) of the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. § 156(a)).

Fiscal Impact and Paperwork Requirements

This amendment will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for the licensure examinations will be required to pay an increased fee to cover contract costs for the examinations.

This amendment will not create new paperwork requirements for the Commonwealth, its political subdivisions or the private sector.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on October 8, 1997, a copy of this amendment was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. At the same time, a copy of this amendment was submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(d) and (e) of the Regulatory Review Act, this amendment was approved by the House Professional Licensure Committee on October 22, 1997, approved by the Senate Consumer Protection and Professional Committee on October 28, 1997, and approved by IRRC on November 6, 1997.

Additional Information

Individuals who desire information may submit inquiries to Shirley Klinger, Board Administrator, State Registration Board for Professional Engineers, Land Surveyors and Geologists, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7049.

Findings

The Board finds that:

(1) Public notice of intention to amend the regulations as adopted by this order under the procedures in sections 201 and 202 of the CDL has been omitted under section 204(3) of the CDL because the Board has, for good cause, found that the procedures in sections 201 and 202 of the CDL are, in this circumstance, unnecessary, inasmuch as section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination.

(2) Persons affected by the amendment have been given actual notice of the Board's intention to amend the regulations in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 37, are amended by amending § 37.17 to read as set forth in Annex A.

(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 approval as to legality as required by law.

(c) The Chairperson of 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 become effective upon publication in the *Pennsylvania Bulletin*.

JOHN M. BRINJAC, P.E., P.L.S.,
President

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: 16A-475. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

QUALIFICATIONS FOR LICENSURE

§ 37.17. Schedule of fees.

(a) *Professional engineers and professional land surveyors.* The Board will charge the following fees:

Examination for licensure as a professional engineer	\$105
October 1998 examination and thereafter.....	\$120
Professional Engineer Exam Review (Optional)	\$75
Examination for licensure as a professional land surveyor.....	\$187
October 1998-April 1999 examination	\$227
October 1999 examination and thereafter.....	\$252
Pennsylvania Fundamentals of Land Surveying Portion.....	\$42
N.C.E.E.S. Fundamentals of Land Surveying Portion.....	\$40
October 1998 examination and thereafter.....	\$65
N.C.E.E.S. Principles and Practice of Land Surveying	\$60
October 1998-April 1999 examination	\$75
October 1999 examination and thereafter.....	\$100
Administration (to be added to total parts taken at one sitting)	\$45
Examination for certification as engineer -in-training.....	\$75

(b) *Professional geologists.* The Board will charge the following fees:

Application for registration.....	\$50
Biennial renewal fee	\$25
Temporary permit fee	\$25
Fundamentals of Geology Examination.....	\$150
Principles/Practice of Geology Examination	\$150
Examination access fee (to be added to each examination taken)	\$25

Administration (to be added total parts taken at one sitting).....	\$45
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[Pa.B. Doc. No. 97-1907. Filed for public inspection November 28, 1997, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing

The Fish and Boat Commission (Commission) by this order amends § 61.7 (relating to Susquehanna River and tributaries). The Commission is publishing this amendment under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendment relates to fishing.

A. Effective Date

This amendment will go into effect upon publication of this order.

B. Contact Person

For further information on the amendment, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

The amendments are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The amendment is designed to update, modify and improve Commission regulations relating to fishing. The specific purpose of the amendment is described in more detail under the summary of changes.

E. Summary of Changes

The Commission recently designated the Susquehanna River from Holtwood Dam upstream to the Fibradam in Sunbury and the Juniata River from its Mouth upstream to Route 11/15 Bridge near Amity Hall as Big Bass Waters subject to § 65.9 (relating to big bass special regulations). This designation supersedes the general fishing regulations applicable to these waters found in § 61.7. The Commission therefore has amended § 61.7 to make it clear that the Big Bass regulations apply to the waters described in this section of the Preamble. This amendment has no substantive impact; it merely ensures that the wording of the general regulation (§ 61.7) is consistent with the special regulations already applicable to these waters. On final rulemaking, the Commission has slightly changed the wording of the amendment in the interest of clarity. The intent of the amendment remains the same.

F. Fiscal Impact

The amendment hereby adopted will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment imposes no new costs on the private sector or the general public.

G. Paperwork

The amendment hereby adopted will not increase paperwork and will create no new paperwork requirements.

H. Public Involvement

A notice of proposed rulemaking containing the proposed changes was published at 27 Pa.B. 1653 (April 5, 1997). The Commission did not receive comments on the changes.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been 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 and that the comments received were considered.

(3) The adoption of the regulations of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 61, are amended by amending § 61.7 to read as set forth at Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director 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 immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

(Editor's Note: A proposal to amend § 61.7, amended in this document, remains outstanding at 27 Pa.B. 4450 (August 30, 1997). Amendments to § 61.7 were adopted at 27 Pa.B. 5605 (November 1, 1997) and will appear in the January 1998 (MTS 278) Pennsylvania Code Reporter.)

Fiscal Note: Fiscal Note 48A-67 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.7. Susquehanna River and tributaries.

(a) It is unlawful to take, catch, kill or possess fish except during the seasons specified in this section. However, it is not a violation of this section if a fish caught out of season from water where fishing for other species is lawful is immediately returned unharmed to the waters from which it was taken.

(b) It is unlawful to take, catch, kill or possess a fish of less than the minimum size specified in this section. However, it is not a violation of this section if an undersized fish taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1 calendar day. It is unlawful to

possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

(1) A person may possess any number of lawfully caught fish at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may, while transporting fish from the place where caught to his residence, possess a number of fish equal to no more than two times the daily creel limit for that species of fish. In prosecution for violation of this section, it shall be a rebuttable presumption that a person transporting fish from a fishing site caught all of the fish during 1 calendar day.

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in

§ 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournaments and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

(5) Fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither the donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

(d) The following seasons, sizes and creel limits apply to the Susquehanna River and its tributaries, including the Juniata River, the West Branch, "North Branch" and other tributaries with the Susquehanna River Basin except the Conowingo Reservoir—see § 61.4 (relating to Conowingo Reservoir) and except for waters subject to special regulations (see Chapter 65 (relating to special fishing regulations)):

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
AMERICAN and HICKORY SHAD and ALEWIFE and BLUEBACK HERRING (collectively known as river herring)*	Closed year-round	Closed	0
BASS Largemouth Smallmouth Spotted	January 1 to first Saturday after April 11 and first Saturday after June 11 to December 31.	Susquehanna River—Holtwood Dam to Fibradam in Sunbury 15 INCHES**	4 (Combined species)**
BASS Largemouth Smallmouth Spotted	January 1 to first Saturday after April 11 and first Saturday after June 11 to December 31.	Susquehanna River—Upstream of Fibradam in Sunbury 12 inches	6 (Combined species)
BASS Largemouth Smallmouth Spotted	January 1 to first Saturday after April 11 and first Saturday after June 11 to December 31.	Juniata River—Mouth upstream to Route 11/15 bridge near Amity Hall; and 18.5 mile section from the S.R. 0075 bridge at Port Royal downstream to Newport S.R. 0034 Bridge 15 inches**	4 (Combined species)**
BASS Largemouth Smallmouth Spotted	January 1 to first Saturday after April 11 and first Saturday after June 11 to December 31.	Juniata River—All areas except as described in this subsection: 12 inches	6 (Combined species)
OTHER SPECIES	Inland seasons, sizes and creel limits apply except for waters under special regulations (See Chapter 65). See § 61.1 (relating to Commonwealth inland waters). For Conowingo Reservoir see § 61.4 (relating to Conowingo Reservoir).		

*Note: Landlocked alewife taken from inland ponds, lakes or reservoirs that are collected by legal means and measure less than 8 inches in length may be harvested for use as baitfish.

**Note: Big Bass regulations—minimum size and creel limits—apply (see § 65.9)

[Pa.B. Doc. No. 97-1908. Filed for public inspection November 28, 1997, 9:00 a.m.]