

RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 31]

Higher Education General Provisions

The State Board of Education (Board) amends Chapter 31 (relating to general provisions) to read as set forth in Annex A. Notice of proposed rulemaking was published at 35 Pa.B. 6242 (November 12, 2005) with an invitation to submit written comments.

Chapter 31 sets forth requirements that all degree-granting higher education institutions must follow to operate in this Commonwealth. The overarching purposes of this final-form rulemaking are to align the regulations with State statutory provisions, reflect increased use of technology and distance-learning and update the regulations.

Statutory Authority

The Board takes this action under section 2603-B of the Public School Code of 1949 (code) (24 P. S. § 26-2603-B).

Background

The purpose of amending Chapter 31 is to update and clarify the regulations that establish requirements for the approval and operation of postsecondary degree-granting institutions in this Commonwealth.

The final-form rulemaking addresses requirements for the governance, academic program, admissions and student services, facilities, maintenance of quality, honorary degrees and major corporate change of postsecondary institutions.

Summary of Public Comments and Responses to Proposed Rulemaking

The Board received comments from the Independent Regulatory Review Commission (IRRC). Letters were also received from the Pennsylvania Association of Independent Colleges and Universities and the Pennsylvania Association of Private School Administrators after the conclusion of the 30-day public comment period.

Following is a summary of the comments and the Board's responses to these comments.

§ 31.1. Purpose and scope.

Comment: IRRC recommended revisions to the numbering in this section. It also suggested that the Board reference the specific operational requirements that higher education institutions must meet under this provision.

Response: The Board renumbered this section and has also clarified the requirements that postsecondary institutions must meet to be permitted to conduct more than 50% of their degree granting programs through distance education.

§ 31.2. Definitions.

Comment: IRRC shared concerns that the definition of "CEC—Community Education Council" contains substantive provisions and that substantive provisions in a definition are not enforceable. In addition, IRRC shared concerns that the definition is not consistent with that outlined in statute.

Response: The Board deleted the substantive provisions of the definition. It also revised the definition to have the same meaning as defined in the statute.

Comment: Since the Board added the term "corrective action status" to the final-form rulemaking, a definition in this section has been included. The Board also revised the definition of "foreign corporation" to align it with its current use and meaning in this chapter.

§ 31.12. President and board or council of trustees.

Comment: The Association of Independent Colleges and Universities of Pennsylvania commented that oversight of institution-wide assessment should be determined by the institution, not directed by this regulation was proposed in subsection (a)(4).

Response: The Board concurs and has deleted the proposed language.

§ 31.21. Curricula.

Comment: IRRC echoed concerns raised by the Pennsylvania Association of Private School Administrators that questioned the meaning of the term "general education" in subsection (b) as it applies to "specialized degrees." IRRC also suggested that the section be renumbered and the regulations and policies referred to in subsection (d) be listed.

Response: The Board has revised its language regarding general education, which now meets with approval by the Pennsylvania Association of Private School Administrators. The section has been renumbered and the listing of applicable regulations added.

§ 31.24. Faculty.

Comment: The Association of Independent Colleges and Universities suggested that subsection (d) be clarified as to the requirements for professional development, particularly as they apply to part-time and adjunct faculty.

Response: The Board revised the regulation to require that an institution address its own policy for providing professional development to members of its faculty in its plan. This places the responsibility on the institution to determine whether and how it will address professional development for its faculty.

§ 31.33. Student records and services.

Comment: IRRC suggested that the specific references to the laws or local policies that could require updates in the student record plans of institutions be listed in subsection (a).

Response: The language in this section has been revised to have the Department of Education (Department) provide guidance as to the applicable Federal, State and local laws, regulations and directives regarding student records. There are numerous laws that apply and they are frequently amended.

Comment: IRRC suggested that in subsection (b)(7) the specific laws and regulation that are pertinent to students with special needs at the covered institutions be identified.

Response: The Board revised the subsection to specify that institutions shall comply with the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12210) and 34 Pa. Code Chapter 47, Subchapter D (relating to facilities for handicapped).

Affected Parties

The final-form rulemaking affects the students and professional employees of the degree-granting postsecondary institutions in this Commonwealth. This includes institutions of postsecondary education, domestic or foreign (including both out-of-State and out-of-country), that are legally authorized to award college credits or grant degrees in this Commonwealth.

Fiscal Impact and Paperwork Requirements

Since the final-form rulemaking is designed to be aligned with current statutory requirements and merely clarify current requirements, it does not impose any new costs or savings for the Department or to postsecondary institutions.

Effective Date

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

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by the Board, the Board will review the effectiveness of Chapter 31 every 4 years. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 27, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 6242, to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 31, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 1, 2006, and approved the final-form rulemaking.

Contact Person

The official responsible for information on these final-form regulations is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, telephone (717) 787-3787 or TDD (717) 787-7367.

Findings

The Board finds that:

- (1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The final-form rulemaking is necessary and appropriate for the administration of the code.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 31, are amended by amending §§ 31.13, 31.14, 31.23, 31.32, 31.41, 31.43, 31.52 and 31.72 and by adding § 31.34 to read as set forth at 35 Pa.B. 6242; and by amending §§ 31.1, 31.2, 31.12, 31.21, 31.24, 31.33 and 31.62 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 35 Pa.B. 6242 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 Executive Director shall certify this order, 35 Pa.B. 6242 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon publication in the *Pennsylvania Bulletin*.

JIM BUCKHEIT,
Executive Director

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 3051 (June 17, 2006).)

Fiscal Note: Fiscal Note 6-297 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart C. HIGHER EDUCATION

CHAPTER 31. GENERAL PROVISIONS

PRELIMINARY PROVISIONS

§ 31.1. Purpose and scope.

(a) This chapter provides protection for students and citizens of this Commonwealth, guides the orderly development of postsecondary education in this Commonwealth and offers direction to those intending to establish new institutions of postsecondary education in this Commonwealth.

(b) This chapter does not apply to Chapter 35 (relating to community colleges), except for the following:

- (1) Section 31.6 (relating to information).
- (2) Section 31.23 (relating to program data base).
- (3) Section 31.24(e) (relating to faculty).
- (4) Section 31.52 (relating to accreditation).
- (5) Sections 31.61—31.63 (relating to honorary degrees).
- (6) Section 31.71 (relating to notification).
- (7) Section 31.72 (relating to obligations).
- (8) The definition of "major corporate change" under § 31.2 (relating to definitions).
- (9) Section 31.21(a) and (b) (relating to curricula).

(c) Exclusive of community colleges, this chapter applies to an institution of postsecondary education, domestic or foreign, including both out-of-State and out-of-country, legally authorized to award college credits or grant degrees in this Commonwealth, and to an institution or chartering group applying for authorization. An entity is required to be approved as a postsecondary institution under this chapter to award college credits or grant degrees in this Commonwealth. An institution is prohibited by law to operate in this Commonwealth and award college credits or grant degrees unless legally authorized to do so. Provisions of Board regulations in

this part that are in conflict with this chapter do not affect the applicability of this chapter unless specified by another provision of Board regulations in this part.

(d) This subpart establishes the minimum standards for achieving and maintaining approval of institutions and programs.

(e) Only a postsecondary degree-granting institution having more than 50% of its degree programs consisting of resident-based instruction may be established or operate in this Commonwealth. For combination programs, the residential portion of the program shall be offered on a regularly scheduled basis. An approved postsecondary degree-granting institution that has operated for 10 years within this Commonwealth, or a private licensed school offering AST or ASB degrees that has operated for 10 years within this Commonwealth, may petition the Department to be established to operate as a college or university with more than 50% of its degree programs offered through distance education, if it has demonstrated the following:

(1) Accreditation by a regional accreditation agency approved by the United States Department of Education.

(2) Graduated a minimum of 25 students each from 10 degree programs in place at the time of petitioning for approval.

(3) Is not in corrective action status.

(4) The Department has not initiated the process to revoke its approval of the institution.

(f) Except as specifically provided in this chapter, this chapter does not apply to private licensed schools or other proprietary institutions of postsecondary education that do not offer degrees. These institutions are governed by the Private Licensed Schools Act (24 P. S. §§ 6501—6518) and Chapters 42 and 73 (relating to program approval; and private licensed schools—general provisions).

§ 31.2. Definitions.

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

ASB—Associate in Specialized Business.

AST—Associate in Specialized Technology.

CEC—*Community Education Council*—A nonprofit educational organization as defined in Article XIX-D of the School Code (24 P. S. §§ 19-1901-D—1905-D).

Chartered status—Classification of a 2-year college, college, seminary or university established under one of the following:

(i) 15 Pa.C.S. Part II, Subpart B (relating to Business Corporation Law of 1988).

(ii) 15 Pa.C.S. Part II, Subpart C (relating to Nonprofit Corporation Law of 1988).

(iii) Section 2601-H of the School Code (24 P. S. § 26-2601-H).

(iv) 24 Pa.C.S. Chapter 65 (relating to private colleges, universities and seminaries).

College—An institution which, in accordance with its charter or articles of incorporation, offers 2-year, 4-year or 5-year postsecondary educational programs or their equivalent and which grants associate, baccalaureate or first professional degrees. In some instances, a 4-year college may offer graduate programs culminating with

graduate degrees when it has the appropriate approval under Chapter 42 (relating to program approval).

Combination program—An academic degree program that uses both distance learning and classroom instruction to deliver instructional content.

Community college—A college or technical institute which offers 2-year, secondary and postsecondary, transfer, college parallel, terminal-general, terminal-technical, out-of-school youth or adult education programs or a combination of these; grants certificates and associate degrees; and is established and operated in accordance with Article XIX-A of the School Code (24 P. S. §§ 19-1901-A—19-1918-A). A community college also may offer upper-division programs not culminating in a baccalaureate degree when it has the appropriate approval under Chapter 42.

Corrective action status—A period during which an institution is required by the Department to correct deficiencies identified during the Department's institutional review. Corrective action status begins upon receipt of written notification from the Department. Corrective action status ends upon receipt of written notification from the Department that the institution has resolved all deficiencies.

Distance education—An alternate format to resident-based instruction for offering education courses or series of courses by an approved postsecondary educational institution, consortium of institutions or educational enterprise, for which credit is offered or awarded toward a certificate, diploma or degree, which has as its primary mode of delivery one or more of the following:

(i) Correspondence.

(ii) Television.

(iii) Videocassette or disk.

(iv) Film.

(v) Radio.

(vi) Computer.

(vii) Devices built upon an audio-video format.

(viii) Other supportive devices using current or future technology.

Education enterprise—An educational activity in this Commonwealth that is sponsored by a foreign corporation and for which college credits or continuing education units are awarded, continuing professional education is offered (culminating in awards such as Continuing Education Unit (CEU), Continuing Medical Education (CME) or Continuing Professional Education (CPE)), or tuition or fees are charged or collected.

Employment area—A geographic area wherein persons who complete vocational education programs are most likely to be employed.

Foreign corporation—A corporation, entity or institution that is incorporated or authorized by other means in a state other than this Commonwealth and is approved and authorized to operate an education enterprise in this Commonwealth under 15 Pa.C.S. Part II, Subparts B or C, and 24 Pa.C.S. Chapter 65.

Graduate program—A program which is beyond the baccalaureate level from the master's to the postdoctoral levels and which provides advanced study and exploration in a particular discipline or the application of knowledge to professional ends.

Independent status—Classification of an institution which is legally authorized to grant degrees but which is not statutorily established as an instrumentality of the Commonwealth.

Licensed status—Classification of a school or classes providing resident instruction in the skilled trades, industry or business, or systematic instruction by correspondence or telecommunication, which school, classes or systematic instruction are established and licensed or registered under the Private Licensed Schools Act (24 P. S. §§ 6501—6518).

Long-range vocational education plan—A plan for directing resources toward the improvement of vocational education programs and services to meet labor market needs, which plan is based upon data compiled on the supply of and demand for trained workers in business and industry.

Major corporate change—A restructuring of the postsecondary institution's corporation, including, but not limited to, the following:

- (i) Merger.
- (ii) Federation.
- (iii) Consolidation.
- (iv) Sale of assets.
- (v) Change of sponsorship.
- (vi) Division.
- (vii) Dissolution or closure.
- (viii) Bankruptcy.

Physical presence—The operation of an entity that offers courses, programs, or degrees or maintains a campus, or an administrative, corporate or other address, including a post office box, telephone number, recruiters, instructors, advertising in local media and publications at a location in this Commonwealth.

Professional program—A program which culminates with a baccalaureate, first professional or graduate degree; provides preparation for practice in professions, including medicine, allied health, dentistry, law, engineering, architecture, ministry and teaching; and educates persons in the field of study.

Professional school—An organized administrative unit of a school, college, university or seminary offering one or more professional programs.

Resident-based instruction—A course or series of courses or programs offered by a postsecondary educational institution and taught by faculty at a specific physical location where students physically attend the courses or programs.

School Code—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

Seminary—An institution which offers one or more professional programs to candidates for the priesthood, ministry or rabbinate.

Specialized associate degree program—A program culminating in an occupational degree, either an ASB degree or AST degree, that is designed to prepare a student for employment in an area requiring specialized instruction beyond secondary education.

State-aided status—Classification of a nonprofit institution which is legally authorized to grant degrees; offers needed, specified higher education services in the public

interest of the Commonwealth; and receives a direct Commonwealth appropriation.

State-related status—Classification of a nonprofit institution which is legally authorized to grant degrees; offers needed, specified higher education services in the public interest of the Commonwealth; is statutorily established as an instrumentality of the Commonwealth; and receives a direct annual Commonwealth appropriation.

State System—Classification of universities established under Article XX-A of the School Code (24 P. S. §§ 20-2001-A—20-2019-A).

State System status—Classification of a nonprofit institution which is legally authorized to grant degrees; offers needed, specified higher education services in the public interest of the Commonwealth; and receives a direct annual Commonwealth appropriation.

Two-year college—An institution that offers full 2-year postsecondary educational programs culminating with associate degrees. A 2-year college also may offer upper-division programs not culminating in a baccalaureate degree when it has the appropriate approval under Chapter 42.

University—A multiunit institution with a complex structure and diverse educational functions, including instruction, promotion of scholarship, preservation and discovery of knowledge, research and service. A university meets the following criteria:

- (i) Consists of a minimum of three units.

(A) The first unit provides for study of the arts and sciences at the undergraduate level.

(B) The second unit provides advanced degree programs through the doctorate in the arts and sciences, with an adequate number of majors in the various disciplines.

(C) The third unit provides a minimum of five professional programs at the graduate level.

(ii) Has a broad foundation in the arts and sciences, which is instilled in the philosophy and implementation of the undergraduate and graduate education curriculum.

(iii) Provides access to cultural facilities and opportunities to the community and utilizes similar assets of the community.

Vocational education—Programs which provide an organized process of learning experience designed to develop skills, knowledge, attitudes, work habits and leadership skills for entry into and advancement within various levels of employment in current or emerging occupational areas.

GOVERNANCE

§ 31.12. President and board or council of trustees.

(a) For an institution, the minimum and maximum number of trustees shall be stated in the articles of incorporation of the institution. The composition, selection, term of office, and the like, of the board or council of trustees shall be stated in the bylaws of the corporation. The composition of the board or council must include members of the professions, business, industry and other organizations or lay persons. The board of trustees shall have as its main function the legal operation of the institution. The primary areas of responsibility of the board are:

- (1) Formulation of basic institutional policy.
- (2) Selection of the president and maintenance of constructive relationships with the president and the administrative staff.
- (3) Conservation, use and development of the resources of the institution.
- (b) For a State System university subject to the authority of the Board of Governors, the chancellor, the president, together with the council of trustees, shall give overall policy direction to the institution. The president shall administer and manage the institution under Article XX-A of the School Code (24 P. S. §§ 20-2001-A—20-2019-A).

ACADEMIC PROGRAM

§ 31.21. Curricula.

(a) The curricula must provide the opportunity for the achievement of the stated objectives of the institution, as related to its statement of philosophy and mission, and must be structured in a group of coherent, integrated degree programs.

(b) Degree requirements stated in this section may be stated in terms of semester credit hours or quarter credit hours, as determined by the institution and conforming to generally accepted academic practices. General education, as defined in this section, refers to the curricular inclusion of humanities, arts, communications, social sciences, mathematics, technology and science courses in support of the mission of the institution. A semester credit hour represents a unit of curricular material that normally can be taught in a minimum of 14 hours of classroom instruction, plus appropriate outside preparation or the equivalent as determined by the faculty. A quarter credit hour represents a unit of curricular material that normally can be taught in a minimum of 10 hours of classroom instruction, plus appropriate outside preparation or the equivalent as determined by the faculty.

(1) An associate degree exclusive of a specialized associate degree must require the satisfactory completion of a minimum of 60 semester credit hours, which includes a minimum of 20 semester credit hours of general education, or a minimum of 90 quarter credit hours, which must include a minimum of 30 quarter credit hours of general education.

(2) A specialized associate degree must require the satisfactory completion of at least 60 semester credit hours with a minimum of 1,500 clock hours or a minimum of 90 quarter credit hours. At least 70%, but no more than 80%, of the program must consist of specialized instruction that bears directly upon the employment objectives of the program; and at least 20% of the program must consist of general education.

(3) A baccalaureate degree must require the satisfactory completion of a minimum of 120 semester credit hours or a minimum of 180 quarter credits. Of the total baccalaureate degree program course requirements, at least 40 semester credit hours or 60 quarter credit hours must be in general education and represent a broad spectrum of disciplines in general education.

(4) A first professional degree, except those for the preparation of professional educators, must require the satisfactory completion of a minimum of 60 semester credit hours or 90 quarter credit hours for admission to

the degree program and the satisfactory completion of a total minimum of 150 semester credit hours or 225 quarter credit hours for the program. Professional educator preparation programs must comply with Chapter 354 (relating to preparation of professional educators).

(5) A master's degree must require the satisfactory completion of a minimum of 30 semester credit hours or 45 quarter credit hours beyond the baccalaureate level.

(6) The number of semester or quarter credit hours for a degree beyond a first professional or master's degree shall be determined by the faculty and reflect the recommendations of professional associations or National learned societies.

(c) An institution may enter into agreements with other institutions, individuals or other providers of educational services to provide all or part of certain programs on behalf of the institution. A course offered for institutional credit shall be operated directly by or under the control of the institution granting the credit.

(d) To assure academic integrity, an institution shall provide students in a distance education program access to academic and student services, including textbooks, study guides, library and other learning resources, personal interaction with faculty, tutors or other educational personnel by computer, telephone, mail or face-to-face meetings. The institution shall assure integrity of student work and provide opportunity for student assessment. These programs must comply with the regulations that apply to resident-based programs as prescribed in this chapter and Chapters 35, 36, 40 and 42 and conform to generally accepted academic practices for delivery of instruction through distance education.

§ 31.24. Faculty.

(a) To provide for the achievement of stated institutional objectives, the faculty shall be sufficient in number to meet instructional needs and provide student advisement appropriate to the level of instruction.

(b) Both full-time and part-time faculty members shall be employed and qualified to teach in their fields of specialization. At a college or university, a majority of the faculty members shall hold a master's degree or a doctorate or an equivalent, in the field in which they are teaching. Faculty members offering graduate and professional instruction shall, in most instances, have experience or professional accomplishment supplementing the attainment of the highest degree.

(c) Full-time faculty members shall constitute a majority of the total number of full-time-equivalent faculty employed by the institution. Care shall be taken to ensure that total commitments of part-time faculty do not impair the quality of the program.

(d) Faculty development must be in accordance with the institution's faculty development plan. The institution's faculty development plan must include policies for providing levels of support for all faculty ranks and status levels. The institution should encourage publication, travel, attendance at professional seminars and conferences, research and similar developmental activities when feasible by the granting of reduced teaching loads, the purchase of needed equipment, and the granting of or assistance in obtaining needed funds.

(e) Each institution of higher education operating in this Commonwealth shall comply with the English Fluency in Higher Education Act (24 P. S. §§ 6801—6806), by filing the certification required by the act by September 1 of each year in the form requested by the Department. Failure to comply with the act and with this subsection shall subject the institution to the penalties under the act.

ADMISSIONS AND STUDENT SERVICES

§ 31.33. Student records and services.

(a) An academic record, including credits or courses completed under § 31.21 (relating to curricula) and grades earned, shall be maintained on a current transcript for each student. Institutions shall adopt a plan for the collection, maintenance and dissemination of student academic, counseling, health and other records. Copies of the plan shall be maintained by the institution and updated periodically to ensure compliance with all Federal, State and local laws. The plan for student records must conform to applicable Federal, State and local laws, regulations and directives identified in guidelines issued by the Department. Student records shall be maintained in a readily accessible format. Appropriate standards of confidentiality for the records shall be defined in the college policies and official publications and administered accordingly. Students shall be granted the right of access, under the requirements of law, to their official records.

(b) There shall be a program of student services to provide for the following:

- (1) Health protection and emergency health care.
- (2) Personal, social and academic counseling.
- (3) Remedial or developmental programs, when required, for adjustment to collegiate demands.
- (4) Career counseling, follow-up services for graduates and professional placement.
- (5) Financial aid and orientation programs.
- (6) Student activities, extracurricular programs and recreational programs.
- (7) Reasonable accommodation for students with special needs in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213) and with 34 Pa. Code Chapter 47, Subchapter D (relating to facilities for handicapped).

HONORARY DEGREES

§ 31.62. Approval procedure.

(a) An institution that desires to award honorary degrees and does not have legal authorization allowing this privilege may petition the Secretary for approval to award the degrees. In the petition, the institution shall set forth the degrees to be awarded and the procedures for the selection of candidates and be prepared to support awards of honorary degrees on the basis of meritorious service to mankind.

(b) An institution approved to award honorary degrees under subsection (a) is not required to submit complete petitions to award additional honorary degrees, but shall apply to the Secretary to be permitted to award types of honorary degrees not previously approved.

[Pa.B. Doc. No. 06-1319. Filed for public inspection July 14, 2006, 9:00 a.m.]

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 49]

Certification of Professional Personnel

The State Board of Education (Board) amends Chapter 49 (relating to certification of professional personnel). Notice of proposed rulemaking was published at 35 Pa.B. 5988 (October 29, 2005) with an invitation to submit written comments.

Chapter 49 sets forth requirements for certification of professional personnel in public schools. The overarching purpose of the final-form rulemaking is to align the regulations with State and Federal statutory requirements and Department of Education (Department) policies and practices. The final-form rulemaking also adds policies and clarifies others.

Statutory Authority

The Board takes this action under section 2603-B of the Public School Code of 1949 (code) (24 P. S. § 26-2603-B) and other sections of the code.

Background

Chapter 49 sets forth requirements for the certification of professional personnel necessary to be employed in the public schools of this Commonwealth. Chapter 49 sets forth requirements for substitute permits, changes in certification, out-of-State credentials, instructional certificates, temporary teaching permits, educational specialist certificates and vocational education certificates. The final-form rulemaking updates the regulations to reflect statutory changes that have been made since Chapter 49 was last amended in 1999, to align or clarify certification policies necessary to comply with the highly qualified teacher provisions of the No Child Left Behind Act of 2001 (Pub. L. No. 107-110, 115 Stat. 1425) and to conform the regulations to Department policies and practices. In addition, the Board is amending some provisions to afford public schools and teachers additional flexibility.

Summary of Public Comments and Responses to Proposed Rulemaking

The proposed rulemaking was published at 35 Pa.B. 5988. The proposed rulemaking was also available on the Department's website at www.pde.state.pa.us. The Board accepted formal written comments during a 30-day public comment period that began after publication of the proposed rulemaking.

The Board received comments from the Independent Regulatory Review Commission (IRRC), the Education Law Center and seven individuals during the public comment period. The individual commentators were: Dr. Clythera S. Hornung; Richard M. Kardon; Binny Silverman; David F. Piperato; Christopher Hey; Joseph J. Roy; and Renee Kerr. The Board also met with representatives from the Department who suggested additional modifications to the regulations. Comments were also received from additional private citizens after the official comment period, but before the Board adopted the final-form rulemaking.

Following is a summary of the comments and the Board's response to the comments.

§ 49.1. Definitions.

Comment: IRRC raised four issues concerning this section. First, IRRC recommended that substantive provision in the definitions of "continuing professional education," "intern certificate" and "prekindergarten" be

removed from this section and located elsewhere in the regulations. IRRC also recommended that the definition of "continuing professional education" reflects the statutory provision that equates one college credit with 30 hours of professional education. IRRC also commented that the definitions of "day-to-day substitute permit," "emergency permit" and "long-term substitute permit" were not clearly written.

IRRC and the Education Law Center both suggested that the Board add a definition of "diverse learners." IRRC also suggested that language be added to several sections of the regulations to address the needs of diverse learners. The Education Law Center also commented that the proposed definition of "prekindergarten" excluded students with disabilities and suggested that the definition violates State and Federal laws.

Department staff suggested that the definition of "educational specialist" be revised to provide examples of educational specialist rather than to have the definition enumerate each specialty to allow for the addition or deletion of categories of certificates in the future.

Response: The Board has deleted the substantive provisions from definitions in § 49.1 and revised the definitions of "day-to-day substitute permit," "emergency permit" and "long-term substitute permit" as suggested by IRRC. The Board added definitions of "articulation agreement," "diverse learners" and "exceptional case permit." The Board determined that rather than include a lengthy description of credits and professional education hours required in the definition of "continuing professional education," the description would best serve its purposes in § 49.11(a) (relating to general).

The Board disagrees with the comment from the Education Law Center that the definition of "prekindergarten" excludes students with disabilities. The definition, as it applies to this chapter, relates to the ages of all children enrolled in the program and the qualifications required for professional educators to teach students enrolled in a prekindergarten program. The Board revised the definition of "educational specialist" as suggested by the Department.

Regarding the suggestion from IRRC that the Board explain how the regulations sufficiently accommodate diverse learners, the Board responds that it is currently engaged in a separate review and analysis of teacher preparation and certification requirements for early childhood, elementary, middle school and special education teachers with emphasis on meeting the needs of diverse learners. In addition, significant research and policy analysis are underway on the use of induction, Level I to Level II conversions, professional education plans and ongoing professional education requirements for currently certified professional educators.

The Education Law Center's comments submitted in response to these regulations, on which IRRC's recommendation is based, come from draft documents and discussions held by the Board in public stakeholder meetings, Board committee meetings and from other Board documents circulated at public meetings and posted on the Board's website. These are complex, significant issues that will be addressed in proposed regulations that will be submitted by the Board for regulatory review and approval in the future. In addition, final Federal regulations for the Individuals With Disabilities Education Improvement Act of 2004 (Pub. L. No. 108-446) are not expected to be issued by the United States Department of Education until later this year.

Rather than further delay the important amendments in this final-form rulemaking, the Board has chosen to adopt this final-form rulemaking while simultaneously conducting the necessary research and discussions with stakeholders to develop policies designed to better prepare current and future professional educators to address the diverse learning needs of students while considering potential significant costs to teacher candidates, current teachers, teacher training institutions and public schools.

§ 49.11. General.

Comment: IRRC recommended that deleted language regarding the term of validity of professional certificates in this section be retained.

Response: The Board restored the original language but updated it to reflect the statutory requirement that professional educators participate in specified amounts of professional education activities for their certificate to remain active.

§ 49.13. Policies.

Comment: Dr. Hornung commented that school districts are requiring applicants for teaching positions to submit PRAXIS test scores as part of the application requirements and asked what can be done about this. The Department suggested that subsection (b)(4) be amended to permit program approval reviews to be performed by professional educators from basic and higher education, rather than teams. The Department also suggested changing the major program review cycle from 5 to 7 years to be performed by professional educators. This amendment will align the Department's review cycle with that of the National Council for Accreditation of Teacher Education, which is the major accreditation agency for teacher education programs.

Response: Under the code, employment policies and practices fall within the purview of the governing boards of local school entities. Disclosures of PRAXIS test scores are at the discretion of each teacher candidate and applicant for teaching position. School entities may consider test scores when determining which candidates for a position are most highly qualified. The Board concurred with the Department's recommendations to remove the requirement that a team perform the program approval review and also that the reviews should be performed every 7 years.

§ 49.14. Approval of institutions.

Comment: IRRC recommended that the term "articulation agreement" be defined. The Education Law Center suggested adding the ability to teach diverse learners to the requirements for program approval of professional educator preparation programs. The Education Law Center also suggested requiring that at least 24 credit hours address the capacity to teach diverse learners in an inclusive setting with 12 of these in special education and 3 in teaching English language learners. Dr. Hornung questioned the meaning in paragraph (4)(x) of what an acceptable percentage of candidates applying for certification as determined by the Secretary and Board achieve at a satisfactory level. She asked what was an acceptable percentage and whether it could change from program to program and from year to year or by area of certification.

In paragraph (4)(iii), the Board deleted reference to the academic standards for environment and ecology since all academic standards are viewed equally important. Department representatives suggested replacing "early and frequent" with "sequential" in paragraph (4)(iv), believing it more clearly describes the intent of the regulation.

Department representatives also recommended that “certification assessment assistance” be added to the list of areas for which institutions should provide ongoing assessment of educator candidates’ knowledge, skills and dispositions to assure that the programs are assisting students to be prepared to be successful in taking the battery of teacher licensing tests.

Response: The comments from the Education Law Center relate to the ongoing work of the Board on a separate set of amendments to Chapter 49 that will be submitted for regulatory review in the future. The Board believes the Education Law Center’s suggested revisions reflect significant and substantial changes that must be thoroughly analyzed and considered through both the Board’s and regulatory review public comment process.

In response to Dr. Hornung, the Department already establishes cut scores for each of the required tests. These do vary by certificate and level based on a variety of factors and are periodically reviewed and adjusted as appropriate. The Board concurs with the recommendations made by the Department.

§ 49.16. Approval of induction plans.

Comment: The Education Law Center recommended that at least 1/3 of induction activities address the teaching of diverse learners in an inclusive setting. The Education Law Center also recommended that parents be included as participants in the development of the induction plan and that specific new requirements for mentors and supervision of first year teachers be addressed in the induction plan. Dr. Hornung suggested that induction plans currently stress the logistical needs and demands of school districts and suggested more can be done to strengthen the induction process.

Response: In response to comments from the Education Law Center regarding requiring 1/3 of induction activities to address the needs of diverse learners, see the Board’s response in this preamble to § 49.1 (relating to definitions). In response to the Education Law Center’s suggestion that parents be included in the development of the induction plan, the Board believes that since induction plans are training plans for new employees, this is not an appropriate role for parents. In response to Dr. Hornung’s comments, the Board recently sponsored research on the effectiveness of induction programs and the Governor’s Commission on Preparing America’s Teachers is exploring options to strengthen induction programs. The Board anticipates that it will address this issue once the research is completed and the Governor’s Commission on Preparing America’s Teachers completes its work.

§ 49.17. Continuing professional education.

Comment: IRRC recommended that the list of persons who develop the continuing professional education plan be made consistent with that in section 1205.1(b) of the code (24 P. S. § 12-1205.1(b)). The Education Law Center suggested adding language providing that the Secretary of Education promulgate and enforce guidelines requiring at least 1/3 of professional education focus on the teaching of diverse learners in an inclusive setting. The Education Law Center also recommended that parents of children enrolled in the school entity participate in the development of the continuing professional education plan. The Department recommended that subsection (e) include a requirement that certified personnel notify the Department of any changes to their home mailing address as provided by section 1205.2(h.1) of the code (24 P. S. § 12-1205.2(h.1)).

Response: The Board agrees with the comments from IRRC and revised the language consistent with the code. In this preamble, see the response to § 49.1 in response to comments by the Education Law Center that 1/3 of professional education focus on teaching diverse learners. Since section 1205.1 of the code already requires that parents of children attending school in the district be represented on the plan development committee, it is not necessary to add this requirement to the final-form rulemaking as suggested by the Education Law Center. The Board added language as suggested by the Department that professional educators are responsible for notifying the Department of changes to their mailing address.

§ 49.18. Assessment.

Comment: The Education Law Center recommended that language be added to subsections (a) and (b) that candidates for certification be assessed in their ability to teach diverse learners in an inclusive setting. As a result of discussions with the Department, the Board has removed from subsection (e) early childhood and elementary education certificates from the list of certificates precluded from being added to the certificates of currently certified staff by their passing the appropriate subject area test.

Response: See the response in the preamble to comments made to § 49.1 in response to the comments made by the Education Law Center. The Board removed early childhood and elementary certificates from the list of certificates that would be prohibited, by regulation, from being added to an existing professional educator’s teaching certificate through the testing program. The removal of these certificates from the list does not imply that the Board wants to make these certificate areas available through testing at this time. The intent of the Board is to provide the Secretary of Education with additional flexibility to add these areas should circumstances dictate a need in the future.

§ 49.31. Criteria for eligibility.

Comment: The Education Law Center recommended that time limit restrictions be included for emergency, long-term and day-to-day substitute permits when the teaching assignment involves self-contained classroom with students with disabilities, English language learners or disciplinary alternative education students. The Department suggested that the Board require that school entities make a genuine effort to identify qualified personnel before requesting a long-term substitute permit be issued.

Response: See the response in this preamble to § 49.1 in reaction to comments from the Education Law Center. In response to the Department’s suggestion, the Board has added a requirement that applications for emergency, long-term and day-to-day substitute permits not be granted until a vacancy has been posted on a school entity’s website for at least 10 days and no qualified candidate has been identified.

§ 49.32. Exceptional Case Permits.

Comment: IRRC recommended the term “exceptional case permit” be defined in § 49.1.

Response: The definition was added to § 49.1.

§ 49.34. Locally issued Day-to-Day Substitute Permits.

Comment: The Department suggested adding subsection (e) to reflect that emergency permits are available for

a total of 3 consecutive years as provided by section 1204 of the code (24 P. S. § 12-1204).

Response: The Board added subsection (e) as suggested by the Department.

§ 49.53. Elimination or change of types/categories of certificates.

Comment: IRRC outlined two concerns with this proposed section. It suggested clarifying what is meant by "cogent request." It also suggested clarifying what triggers the start of the 150-day period in subsection (d).

Response: The Board concurs with IRRC's comments and has revised the final-form rulemaking by replacing "cogent" with "written" and clarified what triggers the 150 day timeline for action by the Board.

§ 49.62a. Program Specialist Certificate.

Comment: The Department suggested deleting the clause in subsection (a) that states "at the request of the employing school entity" to permit the Department to issue a program specialist certificate without the request of the employing school entity.

Response: The Board revised this section as suggested by the Department.

§ 49.62b. Program Endorsement Certificate.

Comment: The Department suggested clarifying that the program endorsement certificate is not required to perform service in the areas for which the certificate is issued.

Response: The Board deleted the "intended to be" to be clear that the program endorsement certificate is not required to perform service in a particular work assignment.

§ 49.83. Instructional II.

Comment: The Education Law Center recommended that at least 12 of the 24 credits needed to convert an Instructional I to an Instructional II Certificate focus on the teaching of diverse learners in an inclusive setting including at least 3 credits in special education and 3 credits in teaching English language learners.

Response: See the response in this preamble to § 49.1 in response to comments made by the Education Law Center.

§ 49.84. Collegiate credit acceptable for conversion of the Instructional I Certificate.

Comment: IRRC recommended that the regulation be corrected to reflect the policy that Instructional I Certificates may not be renewed. Several comments were submitted encouraging the Board to permit teachers to earn a portion or all 24 academic credits necessary to move from an Instructional I to Instructional II certificate from a graduate degree granting institution.

Response: The Board concurs with IRRC's recommendation and revised the final-form rulemaking accordingly. The Board also concurs with the recommendation submitted by several individuals that credits earned at graduate education institutions be credited towards meeting the 24 credit requirement.

§ 49.91. Criteria for eligibility.

Comment: IRRC recommended that the Board clarify what is meant by "intensive supervision." The Education Law Center recommended that time limit restrictions be included for emergency, long-term and day-to-day substitute permits when the teaching assignment involves

self-contained classroom with students with disabilities, English language learners or disciplinary alternative education students. Dr. Hornung recommended that subsection (c) be clarified by defining "intensive supervision" and "accelerated pedagogical training." The Department suggested clarifying subsection (d) by inserting "calendar" before "years" in the first sentence, an "accredited" before "4-year college or university" and a statement that requires those holding an Intern Certificate to maintain continued enrollment in a State-approved teacher intern program.

Response: The Board clarified its intent by replacing "intensive supervision" with "a minimum of one classroom observation each month." See the response in this preamble to § 49.1 in response to comments from the Education Law Center. The Board believes its intent in using the term "accelerated pedagogical training" provides sufficient guidance to the Department in crafting its guidelines for the approval of Intern Certificate programs. The Board added language to clarify the requirements as suggested by the Department.

§ 49.103. Educational Specialist II.

Comment: Dr. Hornung suggested that permitting teachers to earn credits from a Pennsylvania intermediate unit towards the 24 credits necessary to convert a Level I to a Level II certificate is lowering the rigor of the requirement implying that intermediate unit programs are not as demanding as those offered by other institutions.

Response: The Board believes that intermediate units play a critical role in the support and delivery of professional education to educators. The Department has provided intermediate units with significant new funding and technical resources to establish a new Statewide network for the delivery of professional education services to educators using standards of quality and programs of demonstrated effectiveness.

§ 49.104. College credit acceptable for conversion of Educational Specialist I Certificate.

Comment: Several comments were submitted encouraging the Board to permit teachers to earn all or a portion of the 24 academic credits necessary to convert a Educational Specialist I to Educational Specialist II certificate from a graduate degree granting institution. Although IRRC did not specifically comment on this section, its comments regarding § 49.84 (relating to collegiate credit acceptable for conversion of the Instructional I Certificate) concerning renewal of Instructional I certificates also apply to Educational Specialist Certificates.

Response: The Board concurs with the recommendation submitted by several individuals that credits earned at graduate education institutions be credited towards meeting the 24 credit requirement. In addition, the Board revised the final-form rulemaking to reflect that Educational Specialist I certificates may not be renewed.

§ 49.111. Supervisory Certificate.

Comment: The Education Law Center recommended that language be added to provide that candidates for Supervisory Certificates understand how children learn and develop and that configures resources to support the intellectual, social and personal growth of all students, including diverse learners in inclusive settings.

Response: See the response in this preamble to § 49.1 in response to comments made by the Education Law Center.

§ 49.121. *Administrative Certificate.*

Comment: The Education Law Center suggested that candidates for an Administrative Certificate demonstrate instructional leadership that provides purpose and direction for the achievement of students, including teaching diverse learners in an inclusive setting and reducing achievement gaps between students.

Response: See the response in this preamble to § 49.1 in response to comments made by the Education Law Center.

§ 49.141. *General.*

Comment: The Education Law Center recommended adding language that requires that candidates for the Vocational Teaching Certificate be able to teach diverse learners in an inclusive setting.

Response: See the response in this preamble to § 49.1 in response to comments made by the Education Law Center.

§ 49.142. *Vocational Instructional I.*

Comment: The Education Law Center suggested that at least 6 credits of the 18 required credits for a Vocational Instructional I Certificate address the teaching of diverse learners in an inclusive setting.

Response: See the response in this preamble to § 49.1 in response to comments made by the Education Law Center.

§ 49.143. *Vocational Instructional II.*

Comment: The Education Law Center suggested that at least 20 credits of the 60 required for a Vocational Instructional II Certificate address the teaching of diverse learners in an inclusive setting.

Response: See the response in this preamble to § 49.1 in response to comments made by the Education Law Center.

Additional Comments.

Comment: The Education Law Center recommended adding § 49.19, regarding initial teaching responsibilities, to direct the Secretary of Education to promulgate and enforce guidelines ensuring that teachers with Instructional I or Intern Certificates and Emergency or Long-Term Substitute Permits are provided assignments balanced with their responsibilities for professional development and support.

Response: The Board believes this recommendation has potential major cost implications and would establish policies in areas not previously addressed by either statute or regulation. Employment and work assignments have been the purview of local school boards. Given the far-reaching implications of this suggestion, the Board believes consideration of a policy shift should proceed only after due consideration and thorough outreach to and comments from stakeholders. The Board does not believe that this change should be made through this final-form rulemaking.

Fiscal Impact and Paperwork Requirements

Because this final-form rulemaking largely reflects changes in Federal and State statutes, Federal regulations and current Department policies and practices, costs associated with compliance with the final-form rulemaking should be negligible. The final-form rulemaking is aligned with current statutory provisions and Department practice.

To comport with the new requirements of this final-form rulemaking, professional educator preparation institutions will need to review their programs to ensure that they provide sequential clinical experiences, offer certification assessment assistance and sufficiently include in their curriculum instruction that provides candidates for certification with the skills necessary to address the needs of diverse learners. The Department must review Chapter 354 (relating to preparation of professional educators) standards and related policies to determine if they need to be revised. Review of standards and policies is an ongoing activity of the Department and, therefore, any costs associated with the implementation of changes to this chapter will be limited.

Effective Date

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

Sunset Date

In accordance with its policy and practice, the Board will review the effectiveness of Chapter 49 after 4 years. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 17, 2005, the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 5988, to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 31, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 1, 2006, and approved the final-form rulemaking.

Contact Person

The official responsible for information on this final-form rulemaking is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787 or TDD (717) 787-7367.

Findings

The Board finds that:

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

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the code.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 49, are amended by amending §§ 49.2, 49.12, 49.16,

49.32, 49.33, 49.42, 49.52, 49.61, 49.62, 49.63, 49.64a, 49.65, 49.69, 49.72, 49.82, 49.83, 49.85, 49.92, 49.101, 49.102, 49.103, 49.121, 49.132, 49.141, 49.153, 49.161, 49.171, 49.172, 49.182 and 49.191 and by adding § 49.90 to read as set forth at 35 Pa.B. 5988; and by amending §§ 49.1, 49.11, 49.13, 49.14, 49.17, 49.18, 49.31, 49.34, 49.62a, 49.64e, 49.84, 49.91, 49.104 and 49.111 and by adding §§ 49.53 and 49.62b to read as set forth in Annex A.

(b) The Executive Director will submit this order, 35 Pa.B. 5988 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 Executive Director of the Board shall certify this order, 35 Pa.B. 5988 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon final publication in the *Pennsylvania Bulletin*.

JIM BUCKHEIT,
Executive Director

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 3051 (June 17, 2006).)

Fiscal Note: Fiscal Note 6-293 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subchapter C. HIGHER EDUCATION

CHAPTER 49. CERTIFICATION OF PROFESSIONAL PERSONNEL

Subchapter A. GENERAL PROVISIONS

THE PROGRAM

§ 49.1. Definitions.

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

Act—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

Approved teacher certification program—A sequence of courses and experiences offered by a preparing institution which is reviewed and approved by the Department.

Articulation agreement—A formal agreement between two higher educational institutions, stating specific policies relating to transfer and recognition of academic achievement to facilitate the successful transfer of students without duplication of course work.

Assessment of basic skills—A measurement of a candidate's ability to communicate orally and in writing and to demonstrate proficiency in fundamental computational skills.

Assessment of general knowledge—A measurement of a candidate's knowledge in the fields of literature, mathematics, the sciences and social studies.

Assessment of professional knowledge and practice—A measurement of a candidate's knowledge of educational theory, principles of human growth and development, educational psychology and other subjects directly related to educational practice and their application/demonstration in school settings.

Assessment of subject matter—A measurement of a candidate's knowledge of an academic field or discipline to be taught in the public schools of this Commonwealth.

Candidate—A person seeking certification in any of the areas outlined in this chapter.

Certificate—A document prepared and issued by the Department indicating that the holder has completed an approved professional preparation program and is qualified to perform specific professional duties.

Chief school administrator—The superintendent, intermediate unit executive director, or equivalent private school administrator.

Collegiate studies—Studies pursued at institutions which are entitled to apply to themselves the designation of college or university as defined by 24 Pa.C.S. Chapter 65 (relating to private colleges, universities and seminars).

Commissioned officer—District superintendents and assistant district superintendents under section 1078 of the act (24 P. S. § 10-1078) regarding commissions and objections to election.

Continuing professional education—The formal acquisition of collegiate or in-service credits designed to improve and expand the expertise of professional personnel.

Day-to-day substitute permit—A permit issued for no longer than 20 consecutive days to fill a position due to the absence of professional certified personnel.

Degree-granting institution—A public college or technical institute which provides a 2 year, postsecondary college-parallel, terminal-general, terminal-technical, out-of-school youth or adult education program or a combination of these and which is established and operated under the act.

Diverse learners—Those students who because of limited English language proficiency or disabilities may have academic needs that require varied instructional strategies to help them learn.

Educational specialist—Professional certified personnel whose primary responsibility is to render professional service other than classroom teaching, such as elementary counselor, secondary counselor, school nurse and school psychologist.

Emergency permit—A permit issued to fill a vacancy resulting from resignation, termination, retirement, death or the creation of a new position.

Exceptional case permit—A permit issued to fill a vacancy due to exceptional conditions.

Induction—A process by which a variety of professional support services are provided to newly employed teachers and educational specialists under the guidance of professional personnel to facilitate entry into the education profession.

Induction plan—A description of the induction process developed and submitted by the school entity to the Department for approval which describes how a teacher or educational specialist will be introduced to the teaching profession under this chapter.

Intern certificate—A professional certificate that entitles the holder to fill a full-time professional teaching position.

Invalid certificate—A certificate which no longer enables its holder to perform specific professional duties.

Long-term substitute permit—A permit issued for an indeterminate period to fill a position due to the absence of professional certified personnel.

Occupational competency credential—A document issued by the Occupational Competency Testing Examiners which signifies that the holder possesses knowledge and skill in a technical field at a journeyman level. When the document is presented to a preparing institution or to the Department, it may be registered by the Department on the holder's vocational intern, vocational instructional or instructional certificate, and it enables the holder to teach that occupational specialty.

PSPC—Professional Standards and Practices Commission—A body composed of educators from the fields of basic and higher education, members of the general public and an ex officio member of the Board established by the Professional Educator Discipline Act.

Permit—A document prepared and issued by the Department indicating that the holder is allowed to serve in lieu of a certified professional for a specified period of time.

Prekindergarten—A program operated by a school district or under contract from a school district that is open to children who are 3 or 4 years of age and who have completed the program prior to the school district's entry age for kindergarten. A school district may make individual exceptions based upon local policy that would permit enrollment of children under 3 years of age or over 5 years of age.

Preparing institution—A college or university that offers a program approved by the Department to prepare professional personnel for employment in the public schools.

Professional certified personnel—Professional employees, excluding school secretaries, as defined in section 1101 of the act (24 P. S. § 11-1101).

Professional duties—A duty the performance of which is restricted to professional personnel by the scope of their certificate.

Professional Educator Discipline Act—24 P. S. §§ 2070.1a—2070.18a.

Satisfactory achievement—An acceptable level of performance as determined by the Secretary in consultation with the Board on the Department-prescribed assessments required in this chapter.

School entity—Public schools, school districts, intermediate units, area vocational-technical schools, charter schools, cyber schools and independent schools.

Term of validity—A period of time as specified in §§ 49.33, 49.34, 49.82, 49.92, 49.102, 49.142 and 49.152 in which the holder of a certificate is entitled to perform the professional duties for which the certificate was issued.

§ 49.11. General.

(a) Certificates and letters of eligibility in force in this Commonwealth on September 25, 1999, shall continue in force, subject to all the terms and conditions under which they were issued and the act until they expire by virtue of their own limitations. For certificates or a letter of eligibility to remain active, every 5 years a professional educator shall satisfactorily complete the following:

- (1) Six credits of collegiate study.
- (2) Six credits of continuing professional education courses.

(3) One hundred eighty hours of continuing professional education courses, activities or learning experiences or any combination of collegiate studies, continuing professional education courses or other programs equivalent to 180 hours.

(b) State certificates and permits will be issued as provided in this chapter, and teachers and other professional personnel may not perform professional duties or services in the schools of this Commonwealth in any area for which they have not been properly certified or permitted.

(c) This chapter establishes the specific requirements for the certification and permitting of persons serving in the public school entities of this Commonwealth as professional employees, temporary professional employees, substitutes, and commissioned school administrators of the Commonwealth.

§ 49.13. Policies.

(a) The Board, through the Secretary, will provide standards for the guidance of the preparing institutions in educating professional personnel for the schools of this Commonwealth, all of which are to include accommodations and adaptations for diverse learners.

(b) The Department will have the following responsibilities with respect to certification and permitting of professional personnel in the schools of this Commonwealth:

- (1) Provision of advisory services to college and school personnel in matters pertaining to teacher education and certification.
- (2) Designation of professional titles for personnel.
- (3) Prescription of procedures for issuance of certificates and permits.
- (4) Evaluation and approval of teacher education programs leading to the certification and permitting of professional personnel. Program approval reviews shall be conducted by professional educators from basic and higher education.
- (5) Registration of certified and permitted persons.
- (6) Maintenance of records of all certificates and permits.
- (7) Assurance that each professional person is properly certified or permitted for the specific position in which the professional person is employed.
- (8) Review and investigation of alleged violations of this chapter.

(9) Prescription of procedures approved by the Board for the appraisal and evaluation of education and experience of applicants for any type of professional certification issued by the Department when the applicant has been denied certification and is prepared by institutions outside this Commonwealth or has appealed in accordance with guidelines approved by the Board in § 49.66 (relating to appeal procedure), a decision pertaining to eligibility for certification rendered by a Commonwealth institution having an approved program. The appellant initially shall have appealed to the institution.

(10) The issuance of administrative agency interpretative policies and directives relating to professional certification and staffing in the schools of this Commonwealth as may be necessary to carry out the intent of this chapter.

(11) Identification and approval of assessment tools, instruments and procedures to measure basic skills and general knowledge; professional knowledge and practice; and subject matter knowledge.

(12) Assurance that individual scores or measurements achieved on assessments instituted under § 49.18 (relating to assessment) are not released without the permission of the candidate or pursuant to subpoena or court order. The Department will inform the candidate by means of the candidate's last known address when it has received a subpoena or court order.

(c) Except for applicants whose certification status is subject to subsection (b)(9) and § 49.171 (relating to general requirements), the Department will require that an applicant for a certificate shall have completed an approved teacher preparation program and shall be recommended by the preparing institution.

(d) The Department will have the right to review approved programs at any time. Major evaluations shall be conducted at 7-year intervals, by professional educators appointed by the Department in accordance with subsection (b)(4), to review process and content.

(e) The Department will accept the request of an institution to withdraw from an approved program. The Department will have the right to withdraw the approval of a program from an institution. New students may not be accepted in a program which has lost its approved status after the date of the action.

§ 49.14. Approval of institutions.

To be authorized to conduct programs that lead to certificates for professional positions, institutions and any of their off-campus centers engaged in the preparation of teachers shall meet the following requirements:

(1) Be approved as a baccalaureate or graduate degree granting institution by the Department.

(2) Be evaluated and approved as a teacher-preparing institution to offer specific programs leading to certification in accordance with procedures established by the Department.

(3) Report to the Department, for approval, all planned changes in previously approved programs. This report shall be made 90 days prior to the implementation of the planned changes.

(4) Follow Department prescribed standards developed from the following principles:

(i) Institutions develop clear goals and purposes for each program, including attention to professional ethics and responsibilities.

(ii) Institutions are able to demonstrate how instructional and clinical activities provide educator candidates with the capacity to enable the achievement of all students.

(iii) Institutions are able to demonstrate that educator candidates have participated in instructional activities that enable the candidates to provide instruction to students to meet the provisions of Chapter 4 (relating to academic standards and assessment).

(iv) Institutions are able to demonstrate that educator candidates successfully participate in sequential clinical experiences fully integrated within the instructional program.

(v) Institutions have clearly expressed standards for admission to, retention in and graduation from approved

programs and actively encourage the participation of students from historically underrepresented groups.

(vi) Institutions provide ongoing assessment of educator candidates' knowledge, skills, dispositions and performance with which to identify needs for further study, certification assessment assistance or clinical experience or dismissal from the program.

(vii) Institutions can demonstrate how information from systematic evaluations of their programs, including students and educator evaluators, and achievement levels of candidates for certification in the Department-designed assessment program are used for continual program improvement.

(viii) Institutions, in partnership with local education agencies, provide a school-based experience integrating the teacher candidates' knowledge, skills and dispositions in professional practice. This experience shall be fully supported by institutional faculty, including frequent observation, consultation with supervising teachers and opportunities for formative and summative evaluation.

(ix) Institutions provide ongoing support for novice educators in partnership with local education agencies during their induction period, including observation, consultation and assessment.

(x) Institutions provide evidence that an acceptable percentage of candidates applying for certification as determined by the Secretary and Board achieve at a satisfactory level on all assessments appropriate to initial certification in each program for which they are approved.

(5) Institutions may enter into articulation agreements with community colleges that permit students to earn credits toward meeting the requirements of this chapter.

§ 49.17. Continuing professional education.

(a) A school entity shall submit to the Secretary for approval a 3-year professional education plan as part of its strategic plan in accordance with section 1205.1 of the act (24 P. S. § 12-1205.1).

(1) A school entity shall develop a continuing professional education plan, which includes options for professional development including, but not limited to, activities such as the following:

(i) Graduate level coursework.

(ii) Obtaining a professionally related master's degree.

(iii) Department-approved in-service courses.

(iv) Curriculum development work.

(v) Attendance at professional conferences.

(2) The continuing professional education plan shall define terms used including, but not limited to, the following:

(i) Professionally related graduate level coursework.

(ii) Professionally related master's degree.

(iii) Curriculum development work.

(iv) Professional conferences.

(3) The continuing professional education plan shall be developed as specified in section 1205.1 of the act. The plan must describe the persons who developed the plan and how the persons were selected.

(4) The continuing professional education plan submitted to the Secretary shall be approved by both the professional education committee and the board of the school entity.

(5) The Secretary will promulgate guidelines which include a process for amending approved continuing professional education plans in accordance with the requirements for initial preparation of the plans. The guidelines will also outline allowable activities for credit earned under sections 1205.1 and 1205.2 of the act (24 P. S. §§ 12-1205.1 and 1205.2) after July 1, 2006.

(6) The continuing professional education plan must include a section which describes how the professional education needs of the school entity, including those of diverse learners, and its professional employees are to be met through implementation of the plan. The plan must describe how professional development activities will improve language and literacy acquisition for all students and contribute to closing achievement gaps among students.

(b) A commissioned officer who obtains a Letter of Eligibility for Superintendent shall present to the Secretary evidence of satisfactory completion of 6 credit hours of continuing professional education courses every 5 years. This subsection will be satisfied by taking collegiate studies or Department-approved in-service courses or a combination thereof.

(c) Professional personnel who fail to comply with the continuing professional education plan under subsection (a) or fail to complete the requirements of sections 1205.1 and 1205.2 of the act will have their certificates or commissions rendered inactive by the Department until the requirement is met. Professional personnel whose certificate or commission is rendered inactive shall have a right to appeal the action to the Secretary.

(d) School districts that employ professional personnel or commissioned officers with inactive certificates or commissions are subject to penalties provided for under section 2518 of the act (24 P. S. § 25-2518).

(e) Certified personnel are responsible for monitoring their own progress toward completing the requirements prescribed by sections 1205.1 and 1205.2 of the act and for notifying the Department of any changes to their home mailing address.

§ 49.18. Assessment.

(a) The Secretary will institute an assessment program for candidates for certification designed to assess their basic skills; professional knowledge and practice; and subject matter knowledge. Candidates for elementary, K-12 instructional and early childhood certificates shall also be assessed in the area of general knowledge. The following principles will guide the Secretary in the development of an assessment program:

(1) The assessment program will be based in the standards developed for each certificate.

(2) The assessment program will measure the candidate's abilities across the domains of basic skills knowledge, professional knowledge and practice, and subject matter knowledge employing a variety of measures at a minimum of three points:

- (i) During the candidate's preparation program.
- (ii) Upon application for initial certification.
- (iii) Upon application for Level II, supervisory or administrative certification.

(3) The assessment program will be developed in consultation with teachers, administrators, teacher educators and educational specialists with relevant certification.

(4) The assessment program will employ, when appropriate, available assessment tools, instruments and procedures.

(b) The Secretary, in consultation with the Board, will establish a satisfactory achievement level for the assessments in subsection (a).

(c) The assessments in basic skills and general knowledge; professional knowledge and practice; and subject matter knowledge will be given, and satisfactory achievement levels shall be reached, prior to the issuance of a certificate.

(d) A periodic review of the assessment program will be made by the Board every 3 years.

(e) The Department may issue additional subject areas to holders of Instructional (see §§ 49.82 and 49.83 relating to Instructional I; and Instructional II) or Intern (see § 49.91 (relating to criteria for eligibility)) certification who pass the appropriate subject matter testing components in areas other than Health and Physical Education, Cooperative Education and all Special Education areas. The Department may identify other certification areas to be excluded from eligibility based on criteria established by the Secretary and approved by the Board.

EMERGENCY, LONG-TERM AND DAY-TO-DAY SUBSTITUTE PERMITS

§ 49.31. Criteria for eligibility.

The Department may issue an emergency, Long-Term or Day-to-Day Substitute Permit for service in the public schools, at the request of the employing public school entity, to an applicant who is a graduate of a 4-year college or university to fill a vacant position or to serve as a long-term or day-to-day substitute teacher, when a fully qualified and properly certificated applicant is not available. The permit is issued on the basis of terms and conditions agreed upon between the requesting public school entity and the Department. Each July, the Department will report to the Board the number and nature of emergency, Long-Term and Day-to-Day Substitute Permits issued during that year. A long-term substitute permit may be issued only after the position has been posted a minimum of 10 days on the school entity's website and no qualified candidate has been identified.

§ 49.34. Locally issued Day-to-Day Substitute Permits.

(a) The chief school administrator of a public school entity is authorized to issue a Day-to-Day Substitute Permit for service as a substitute when the following conditions are met:

(1) The person for whom the permit is sought holds a valid Pennsylvania certificate or its equivalent from another state.

(2) An appropriately certified individual is not available to fill the substitute position.

(3) The person for whom the permit is sought consents to an assignment outside the area of the person's certification.

(b) This permit shall be valid for 20 cumulative school days of service as a day-to-day substitute in each certificate area. If renewal is necessary, the chief school administrator may request, within 30 days of the person's last day of service, issuance of a permit by the Department under §§ 49.31 and 49.32 (relating to criteria for eligibility; and exceptional case permits).

(c) This permit will not qualify the holder to serve in a vacant position which must be filled by a temporary professional employee or professional employee or to serve as a substitute for a regularly appointed professional employee or temporary professional employee on an approved leave of absence. Issuance by the Department is used to qualify persons for this service.

(d) A permit may not be issued or used during a work stoppage.

(e) Emergency permits are available for a total of 3 consecutive years.

CHANGES IN CERTIFICATION

§ 49.53. Elimination or change of types/categories of certificates.

(a) The Secretary, the Board and the PSPC will receive requests to eliminate/change a type/category of certificate. When any of these parties receives such a request, it will inform the other two parties.

(b) The Department will conduct an investigation into a written request to eliminate/change a type/category of certificate. The PSPC on its own initiative may conduct an investigation.

(c) The Department and the PSPC will review the findings of the investigation regarding the need to eliminate/change a type/category of certificate and present their individual recommendations to the Board.

(d) If the Board does not disapprove or take any other action on the elimination or change of the type/category of certificate within 150 days of submission to the Board of a formal recommendation from either the Department or PSPC, the type/category of certificate will be considered eliminated/changed.

(e) In the case of the elimination of a type/category of certificate, once the elimination is approved by the Board, the Secretary will notify all institutions of higher education offering the programs that effective as of the date of notification no further students are to be accepted into the program. Students currently enrolled in the certification phase of the program will be given an opportunity to complete the program and degree or be provided an opportunity to switch to a different course of study.

MISCELLANEOUS PROVISIONS

§ 49.62a. Program Specialist Certificate.

(a) The Department may issue a Program Specialist Certificate upon verification that the applicant meets the requirements established for that certificate.

(b) Program Specialist Certificates may be issued for a selected area of service when a certificate does not exist for that area. The certificates may be issued only to a person who holds a valid Pennsylvania certificate or its equivalent from another state. Annually, the Department will report to the Board the number and nature of these certificates issued during the year.

(c) Program Specialist Certificates are valid only for the position described in the approved position description and will be annotated on the teaching certificate of the individual. They will be valid throughout this Commonwealth.

§ 49.62b. Program Endorsement Certificate.

Following approval by the Department, baccalaureate or graduate degree granting institutions, alone or in cooperation with other institutions, community colleges or school entities, may offer short programs (12 credits

maximum) that lead to the Program Endorsement Certificate in new and emerging areas where formal certification does not exist but would improve the teachers' skills in dealing with complex classroom settings. Areas include, but are not limited to, classroom management, classroom technology and disruptive youth. These endorsements would be added to existing Level I or Level II Certificates but are not required to perform service in these areas.

§ 49.64e. Mandatory reports from schools.

The chief school administrator or the administrator's designee shall report to the Department dismissals, resignations to avoid dismissal for cause and criminal charges and convictions of educators on forms provided by the Department as follows:

(1) Within 30 days of employment termination, the name of any person who has been terminated and the cause for the employment termination.

(2) Within 30 days of learning that an educator has been charged or convicted of a crime involving moral turpitude or a crime set forth in section 111(e)(1) of the act (24 P. S. § 1-111(e)(1)), the name of the educator and information related to the conduct leading to the criminal matter.

(3) Within 60 days of receiving information constituting reasonable cause to believe that an educator caused physical injury to a student or child due to negligence, malice, or sexual abuse or exploitation, the name of the educator, and all available relevant information.

Subchapter B. CERTIFICATION OF GRADUATES FROM COMMONWEALTH INSTITUTIONS

INSTRUCTIONAL CERTIFICATES

§ 49.84. Collegiate credit acceptable for conversion of the Instructional I Certificate.

(a) College credit acceptable for conversion to the Instructional II Certificate shall be earned at a State-approved baccalaureate or graduate degree granting institution.

(b) Credits earned in programs designed to prepare for professional fields such as law, medicine or theology, when relevant to the area of certification, will be considered acceptable for purposes of renewing or converting the Instructional I Certificate.

(c) Credits shall be earned subsequent to the conferring of the baccalaureate degree.

INTERN CERTIFICATES

§ 49.91. Criteria for eligibility.

(a) The Department may make a one-time issuance of an Intern Certificate for service in a specific area of instruction for use in elementary, middle and secondary schools to applicants who, in addition to meeting the requirements of § 49.12 (relating to eligibility), present evidence of satisfactory achievement on Department-prescribed assessments of basic skills and subject matter tests; are enrolled in and have completed appropriate professional education courses in an approved intern program, which may include an induction; and are recommended for certificates by the institution holding approval. Candidates for Elementary, K-12 Instructional and Early Childhood Certificates shall also be assessed in the area of general knowledge.

(b) The applicant will be issued an Instructional I Certificate upon completion of the approved intern program and satisfactory achievement on the assessment of professional knowledge and practice.

(c) Intern certificate programs must provide flexible and accelerated pedagogical training to teachers who have demonstrated competency in a subject area, provided that the first year of teaching includes a minimum of one classroom observation each month by an approved college/university in this Commonwealth.

(d) An Intern Certificate is valid for 3 calendar years. This professional certificate may be issued only to an applicant who is a graduate of an accredited 4-year college or university. During the first year, the applicant shall complete all tests, enroll in an authorized program and complete a minimum of nine credits per year. The certificate requires continuing enrollment in a State-approved teacher intern program. This certificate cannot be renewed.

EDUCATIONAL SPECIALIST CERTIFICATES

§ 49.104. College credit acceptable for conversion of Educational Specialist I Certificate.

(a) College credit acceptable for conversion to the Educational Specialist II shall be earned at a State-approved baccalaureate or graduate degree granting institution.

(b) Credits earned in programs designed to prepare for professional fields such as law, medicine or theology, when relevant to the area of certification, will be considered acceptable for purposes of converting the Educational Specialist I Certificate.

(c) Credits shall be earned subsequent to the conferring of the baccalaureate degree.

SUPERVISORY CERTIFICATES

§ 49.111. Supervisory Certificate.

(a) The Department will issue Supervisory Certificates for positions in the schools of this Commonwealth to persons who:

(1) Have completed 5 years of satisfactory professional experience in the area in which the supervisory certificate is sought.

(2) Have completed an approved graduate program preparing the applicant for the responsibilities of supervising in the program area and of directing the activities of certified professional employees.

(3) Present evidence of satisfactory achievement in assessments prescribed by the Department under § 49.18(a) (relating to assessment).

(4) Are able to help students achieve under Chapter 4 (relating to academic standards and assessment).

(5) Meet the following standards:

(i) The supervisor understands the central concepts of organizational leadership, tools of research and inquiry and principles of teaching and learning that make supervision effective and efficient.

(ii) The supervisor understands how all children learn and develop and configures resources to support the intellectual, social and personal growth of all students.

(iii) The supervisor knows and understands effective instructional strategies and encourages and facilitates employment of them by teachers.

(iv) The supervisor uses an understanding of individual and group motivation to create a professional development environment that engages teachers to develop and apply effective instructional techniques for all students.

(v) The supervisor is an effective communicator with various school communities.

(vi) The supervisor organizes resources and manages programs effectively.

(vii) The supervisor understands and uses formative and summative assessment strategies to gauge effectiveness of people and programs on student learning.

(viii) The supervisor understands the process of curriculum development, implementation and evaluation and uses this understanding to develop high quality curricula for student learning in collaboration with teachers, administrators, parents and community members.

(ix) The supervisor possesses knowledge and skills in observation of instruction and conducting conferences with professional staff that are intended to improve their performance and enhance the quality of learning experiences for all students.

(x) The supervisor thinks systematically about practice, learns from experience, seeks the advice of others, draws upon educational research and scholarship and actively seeks out opportunities to grow professionally.

(xi) The supervisor contributes to school effectiveness by collaborating with other professionals and parents, by using community resources, and by working as an advocate to improve opportunities for student learning.

(b) A Supervisory Certificate for either Curriculum and Instruction or Pupil Personnel Services will be issued to persons who:

(1) Have 5 years of satisfactory professional certified service in the school program area for which the comprehensive certificate is sought.

(2) Have completed an approved graduate program preparing the applicant for the broad area, districtwide supervisory functions specified by the endorsement area of the certificate.

(3) Present evidence of satisfactory achievement in assessments prescribed by the Department under § 49.18(a).

[Pa.B. Doc. No. 06-1320. Filed for public inspection July 14, 2006, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 73]

Credit Life Insurance and Credit Accident and Health Insurance

The Insurance Department (Department) amends Chapter 73 (relating to credit life insurance and credit accident and health insurance).

Statutory Authority

The final-form rulemaking is adopted under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and sections 301.1 and 311.1 of The Insurance Department Act (act) (40 P. S. §§ 71.1 and 93).

Comments and Response

Notice of proposed rulemaking was published at 36 Pa.B. 391 (January 28, 2006) with a 30-day comment period. During the 30-day comment period, comment was received from the Insurance Federation of Pennsylvania, Inc. indicating no opposition to the proposed amendments. During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department.

Affected Parties

The final-form rulemaking applies to life insurance companies, property and casualty insurance companies and fraternal benefit societies marketing and soliciting the sale of credit life insurance and credit accident and health insurance in this Commonwealth.

*Fiscal Impact**State Government*

There will be no increase in cost to the Department as a result of this final-form rulemaking. As part of its solvency monitoring responsibilities, the Department currently reviews the methodology used by an insurer to calculate credit life insurance reserves to ensure that the reserves are adequate and comply with the minimum standard requirements. Therefore, this final-form rulemaking will not require additional staff time or resources to perform the analysis.

General Public

Since the final-form rulemaking concerns the solvency requirements applied to insurers, the public will benefit from a financially sound insurance industry in the ability of insurers to fulfill their contractual obligations under credit life insurance and credit accident and health insurance policies.

Political Subdivisions

The final-form rulemaking will not impose additional costs on political subdivisions. However, because the final-form rulemaking promotes stability in this Commonwealth's insurance industry, political subdivisions' tax revenues will benefit as a result of fewer insurer insolvencies. Fewer insolvencies would result in less unemployment and would also increase incentives for insurers to market new insurance products in this Commonwealth.

Private Sector

The final-form rulemaking does not apply to policies issued prior to the adoption of the final-form rulemaking. There may be some expense incurred by an insurer in modifying the reserve calculation system to comply with amended minimum reserve standards.

Paperwork

The adoption of this final-form rulemaking does not impose additional paperwork on the Department or the insurance industry. The amendment to the minimum standards applies to the reserve calculation, but will not result in additional paperwork.

Effectiveness/Sunset Date

The final-form rulemaking takes effect on January 1, 2007. The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, no sunset date has been assigned.

Contact Person

Questions regarding this final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 772-1969, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 13, 2006, the Department submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 391, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 14, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. In accordance with section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective June 14, 2006.

Findings

The Insurance Commissioner (Commissioner) finds that:

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

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 73, are amended by amending §§ 73.103 and 73.138 to read as set forth at 36 Pa.B. 391.

(b) The Commissioner shall submit this order and 36 Pa.B. 391 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and 36 Pa.B. 391 and deposit them with the Legislative Reference Bureau as required by law.

(d) The regulation adopted by this order shall take effect January 1, 2007.

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 3391 (July 1, 2006).)

Fiscal Note: Fiscal Note 11-227 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-1321. Filed for public inspection July 14, 2006, 9:00 a.m.]

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INSURANCE DEPARTMENT
[31 PA. CODE CH. 84a]

Minimum Reserve Standards for Individual and Group Health and Accident Insurance Contracts

The Insurance Department (Department) amends Chapter 84a (relating to minimum reserve standards for individual and group health and accident insurance contracts).

Statutory Authority

The final form rulemaking is adopted under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and sections 301.1 and 311.1 of The Insurance Department Act (act) (40 P. S. §§ 71.1 and 93).

Comments and Response

Notice of proposed rulemaking was published at 36 Pa.B. 392 (January 28, 2006) with a 30-day comment period. During the 30-day comment period, comment was received from the Insurance Federation of Pennsylvania, Inc. indicating no opposition to the proposed amendments. During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department.

Affected Parties

The final-form rulemaking applies to life insurance companies, property and casualty insurance companies and fraternal benefit societies marketing and soliciting health and accident insurance contracts.

Fiscal Impact

State Government

There will be no increase in cost to the Department as a result of this final-form rulemaking. As part of its solvency monitoring responsibilities, the Department currently reviews the methodology used by an insurer to calculate health and accident reserves to ensure that the reserves are adequate and comply with the minimum standard requirements. Therefore, this final-form rulemaking will not require additional staff time or resources to perform the analysis.

General Public

Since the final-form rulemaking concerns the solvency requirements applied to insurance companies, the public will benefit from a financially sound insurance industry and the ability of insurers to fulfill their contractual obligations under individual and group accident and health contracts.

Political Subdivisions

The final-form rulemaking will not impose additional costs on political subdivisions. However, because the final-form rulemaking promotes stability in this Commonwealth's insurance industry, political subdivisions' tax

revenues should benefit as a result of fewer insurer insolvencies. Fewer insolvencies would result in less unemployment and would increase incentives for insurers to market new insurance products in this Commonwealth.

Private Sector

The final-form rulemaking does not apply to claims incurred prior to the adoption of the final-form rulemaking unless elected on an optional basis by the insurance company. There may be some expense incurred by an insurance company in modifying the claim reserve calculation system to comply with amended minimum claim reserve standards.

Paperwork

The adoption of this final-form rulemaking does not impose additional paperwork on the Department or the insurance industry. The amendment to the reserve minimum standards applies to the claim reserve calculation, but will not result in additional paperwork.

Effectiveness/Sunset Date

The final-form rulemaking takes effect on January 1, 2007. The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, no sunset date has been assigned.

Contact Person

Questions regarding this final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 772-1969, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 13, 2006, the Department submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 391, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 14, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. In accordance with section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective June 15, 2006.

Findings

The Insurance Commissioner (Commissioner) finds that:

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

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 84a, are amended by amending §§ 84a.2—84a.6 and Appendix A to read as set forth at 36 Pa.B. 392.

(b) The Commissioner shall submit this order and 36 Pa.B. 392 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and 36 Pa.B. 392 and deposit them with the Legislative Reference Bureau as required by law.

(d) The amendment adopted by this order shall take effect January 1, 2007.

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 3391 (July 1, 2006).)

Fiscal Note: Fiscal Note 11-228 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-1322. Filed for public inspection July 14, 2006, 9:00 a.m.]