

PROPOSED RULEMAKING

BOARD OF PARDONS

[37 PA. CODE CH. 81] General Provisions

The Board of Pardons (Board), proposes a total revision of its rules contained in Chapter 81 (relating to Board of Pardons) under the authority of section 909(c) of The Administrative Code of 1929 (71 P. S. § 299(c)) and PA. CONST. Art. IV.

Background

The purpose of these proposed amendments is to update and replace the rules governing the operation of the Board to reflect recently enacted statutory requirements as found in section 909 of The Administrative Code of 1929 and section 34.1(a) of the act of August 6, 1941 (P. L. 861, No. 323) (61 P. S. § 331.34a(a)) and to incorporate current practices of the Board into regulations. The regulations of the Board have not been updated since 1986 and have become outdated for various reasons.

Summary

General Provisions

Limitations on Filing (§ 81.223) This section changes the criteria for calculating the time in which a person can refile an application for clemency if the previous application was not granted. The existing regulation uses the filing date of the previous application as the event from which time is calculated to determine eligibility for refiling and the proposed regulation uses the date of the final adverse decision.

Use of Application (§ 81.226) This section expands the existing policy of the Board to notify victims or next of kin as set forth in section 909(d) of The Administrative Code of 1929 who are registered with the Office of Victim Advocate, Department of Corrections or the Board of Probation and Parole.

Listing for Hearing (§ 81.231(a)) Under section 909(b) of The Administrative Code of 1929, this section requires a majority vote of the Board to grant a public hearing on applications filed by prisoners serving life sentences or sentences for crimes of violence.

Listing for Hearing (§ 81.231(b)) Under section 909(c) of The Administrative Code of 1929, this section imposes a 10-day deadline for filing an application for commutation of a death sentence to life in prison. The 10-day period begins when the Governor issues an execution warrant.

Interview of the Applicant (§ 81.232) Under section 909(e) of The Administrative Code of 1929, this section establishes the procedures by which the members of the Board will interview an applicant for commutation prior to a public hearing if the applicant is serving a sentence of death, life or for a crime of violence.

Request for Reconsideration (§ 81.271) This section expands the scope of matters for which an applicant can request reconsideration. The existing regulation allows the applicant to request a rehearing. The proposed amendment would allow an applicant to request that the Board reconsider its decision to deny a public hearing. This section also requires a showing of a change in circumstances as a prerequisite for the request and

establishes that requests for reconsideration will be granted by a majority vote of the Board.

Recommendation (§ 81.301) Under section 909(f) of The Administrative Code of 1929, this section requires that any recommendation of the Board presented to the Governor for commutation of a death sentence, life sentence or sentence for a crime of violence must include a requirement that the applicant serve at least 1 year in a prerelease center prior to release on parole. This section also requires that recommendations for commutation made to the Governor be conditional and suggests standard language for this purpose.

Record Maintenance (§ 81.305) This section enumerates the records of the Board to which the public has access.

Affected Organizations and Individuals

The proposed amendments will affect persons seeking Executive clemency by providing rules outlining the process from application to final disposition. Persons affected by a crime, like victims or next of kin, will also be affected by reason of their interest and involvement in the clemency process. A clear, concise and accurate group of regulations will benefit all those involved with the process.

Cost and Paperwork Requirements

There is no fiscal impact associated with the proposed amendments for the Commonwealth, local government, the private sector or the general public.

Effective Date

The proposed amendments will become effective on the day after they are published in the *Pennsylvania Bulletin* in final form.

Sunset Date

There is no sunset date for these regulations.

Public Comment Period

Interested persons are invited to submit suggestions or objections regarding the proposed regulations to the Board of Pardons, Nelson R. Zullinger, Secretary, 333 Market Street, 15th Floor, Harrisburg, PA 17126, (717) 787-2596 within 30 days of the date of publication of this notice in the *Pennsylvania Bulletin*. All comments received within 30-calendar days will be reviewed and considered in the preparation of the final regulations. Comments received after the 30-day comment period will be considered for any subsequent revisions of these regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on October 8, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and the Senate Judiciary Committee. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification

shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Board, the General Assembly and the Governor of objections raised.

NELSON R. ZULLINGER,
Secretary

Fiscal Note: 56-1. No fiscal impact; (8) recommends adoption.

(Editor's Note: Chapter 81, which appears at 37 Pa. Code pages 81-1—81-13, serial pages (209800)—(209809), is proposed to be replaced in its entirety by the following text.)

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart A. BOARD OF PARDONS

CHAPTER 81. BOARD OF PARDONS

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GENERAL PROVISIONS

§ 81.201. Scope.

This chapter is applicable to applications for clemency to the Board, including applications for commutation of capital sentences. This chapter will be liberally construed to secure the fair and just determination of every application for clemency.

§ 81.202. Definitions.

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

Application—The official form which shall be used to request a clemency hearing before the Board.

Board—The Board of Pardons of the Commonwealth.

Calendar—A published schedule of applications listed for hearings during a particular session.

Capital case—A case in which the applicant has requested a commutation of death sentence to life imprisonment.

Clemency—The power of the Governor to pardon or commute a criminal sentence based upon recommendations by the Board.

Commutation—The reduction of a legal penalty or punishment.

Crime of violence—

(i) Murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(I), (ii) or (iii) (relating to robbery) or kidnapping.

(ii) An attempt to commit murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1), robbery as defined in 18 Pa.C.S. § 3701(a)(I)(ii) or (iii) or kidnapping.

(iii) An offense committed while in visible possession of a firearm for which sentencing was imposed under 42 Pa.C.S. § 9712 (relating to sentences for offenses committed with firearms).

Filing—The receipt of the application by the Board's office.

Final adverse decision—

(i) The Board's denial of a public hearing.

(ii) The Board's refusal to recommend an application to the Governor.

(iii) The Governor's denial of an application.

Form in forma pauperis—An official form which when submitted permits an applicant to show a verified statement of the inability to pay a required fee. The form shall be used to request the waiver of the application purchase fee or filing fee.

Merit review—The process of reviewing an application by the Board to determine if the application has sufficient merit to hold a public hearing on the matter.

Merit review vote—A public vote by the Board to determine if a public hearing will be held on an application.

Pardon—Forgiveness; an act of grace from governing power which mitigates the punishment the law demands

for the offense and restores the rights and privileges forfeited on account of the offense. The term does not mean expungement of the record.

Secretary—The administrator of the Board.

Vote—Action on approval or disapproval taken by a quorum of the Board during its regularly scheduled meeting.

POWERS

§ 81.211. Clemency.

The Board hears and acts upon applications for:

- (1) Pardon.
- (2) Commutation of sentences including:
 - (i) Death sentence to life imprisonment.
 - (ii) Life imprisonment to life on parole.
 - (iii) Minimum sentence.
 - (iv) Maximum sentence.

§ 81.212. Prerelease arbitration.

In cases when eligibility for prerelease from incarceration is in dispute, the Commissioner or Deputy Commissioner of Corrections shall refer the cases to the Board for hearing and resolution as provided under section 1052(c) of the act of July 16, 1968 (P. L. 351, No. 173) (61 P. S. § 1052(c)).

APPLICATIONS

§ 81.221. Forms.

Applications shall be made on forms prescribed by the Board. The forms shall be obtained from the Secretary for a fee as established by Board resolution, except that the fee will be waived by the Board upon evidence satisfactory to the Board that the applicant is unable by reason of indigency to pay the fee. The official form to proceed in forma pauperis shall be obtained from the Secretary and filed in place of the fee.

§ 81.222. Filing.

(a) The original application and ten copies shall be filed with the Secretary of the Board, 333 Market Street, 15th Floor, Harrisburg, Pennsylvania 17126-0333.

(b) It is the responsibility of an applicant who is not confined to furnish five passport type photographs with the application.

§ 81.223. Limitations on filing.

(a) Except as provided in § 81.224 (relating to request for early filing), an application may not be filed before the expiration of 12 months from a final adverse decision on any prior application.

(b) If an applicant filed in 2 consecutive years and receives adverse decisions from the Board on both applications, an application may not be filed before the expiration of 24 months from the last adverse decision.

§ 81.224. Request for early filing.

(a) A request for permission to file a subsequent application before the time provided in § 81.223 (relating to limitations on filing) may be granted upon prior approval of at least 3 members of the Board.

(b) The Board will respond to the applicant's early filing request within 90 days.

§ 81.225. Filing fee.

(a) Except in capital cases, a filing fee to be determined by the Board shall accompany the application.

(b) The Board may waive the filing fee upon proof of indigency. The official form to proceed without payment of the fee shall be obtained from the Secretary and filed in place of the fee.

§ 81.226. Use of application.

(a) A copy of each application will be sent by the Board to the court, to the district attorney of the county from which the applicant was sentenced and to the correctional institution in which the applicant is confined to obtain expressions of opinions as to the merits of the application, and to the Board of Probation and Parole for its investigation.

(b) If a hearing is granted, the Board will make every reasonable effort to notify victims or next of kin, including providing notification to victims who are registered with the Office of Victim Advocate, the Department of Corrections, the Board of Probation and Parole and those whose whereabouts are otherwise known.

(c) Victims will be notified of their opportunity to offer prior comment regarding an application that has been granted a public hearing. Comment may be accepted in writing or presented orally in person. The Board will provide notice to the victims or next of kin of the date, time and place of any hearing pertaining to their case. Written communications with the Board will be confidential.

§ 81.227. Application to be public.

The application will be available for public inspection.

§ 81.228. Subsequent use by applicant.

An applicant's representative or any of the persons named in § 81.226 (relating to use of application) may obtain a copy of the last application filed by the applicant, upon payment of the costs of reproduction.

LISTINGS

§ 81.231. Listing for hearing.

(a) *Noncapital cases.* Applications are subject to merit review by the Board to determine if a public hearing will be granted. For prisoners serving life sentences or sentences for crimes of violence, a vote by a majority of the Board is required to grant a public hearing. In all other cases, except capital cases, two votes are required for a hearing to be granted.

(b) *Capital cases.* Applicants seeking commutation of a death sentence will automatically receive a public hearing. Applications for commutation of death sentences shall be filed with the Board within 10 days of the Governor's issuance of an execution warrant.

§ 81.232. Interview of the applicant.

(a) If a public hearing is granted to an applicant who is serving a sentence of death, life or a sentence for murder, voluntary manslaughter, attempt to commit murder or attempt to commit voluntary manslaughter, each member of the Board will interview the applicant prior to the public hearing.

(b) If a member does not interview the applicant, that member may not vote at the public hearing.

(c) The interview will be conducted at a time, place and in a manner that is convenient to the Board. The interview may be conducted by the Board as a group or by an individual member. The interview will be held in private. The applicant's attorney or representative may be permitted to attend unless, in the opinion of the Board, the attorney's or representative's attendance would create

an undue security risk. The interview will be recorded by the Board. Subsequent use of the recording will be at the Board's sole discretion.

§ 81.233. Publication.

(a) For every application to be heard, the Board will publish a notice stating:

- (1) The applicant's true name and other names by which the applicant is or has been known.
- (2) The crimes for which the applicant has applied for clemency.
- (3) The institution, if any, in which the applicant is confined.
- (4) The time and place of the hearing at which the application will be heard.

(b) Except in capital cases, the publication described in subsection (a) will be made at least 1 week prior to the public hearing on the application. It will appear in a newspaper of general circulation in the county where the crimes were committed.

CONTINUANCES AND REINSTATEMENTS

§ 81.241. Granting continuances.

A continuance may be granted by the Board on its own motion or by the Secretary upon the written request of the applicant or the applicant's representative. Only one continuance will be granted at the applicant's request.

§ 81.242. Reinstatement.

An application may be reinstated by the Secretary only upon written request by the applicant or the applicant's representative.

CALENDAR

§ 81.251. Preparation.

The Secretary will prepare a calendar of the cases to be heard by the Board at each hearing.

§ 81.252. Distribution.

Calendars will be sent to each applicant or applicant's representative, the district attorney of the county from which the applicant was sentenced, the Commissioner of Corrections, the Board of Probation and Parole, victims of the offense for which the applicant has sought a pardon or commutation of sentence, and, at the discretion of the Secretary, to other interested parties.

HEARINGS

§ 81.261. Time.

The Board will meet in regular session each month excluding the months of January, July and August except as may be otherwise provided. Sessions may be canceled at the discretion of the Board. Public notice of hearings will be issued in advance of the hearing dates.

§ 81.262. Place.

Hearings will be held in Harrisburg or at other locations in this Commonwealth the Board may designate.

§ 81.263. Nature of hearings.

Hearings will be public. The hearings are audio-recorded by the Board to preserve a record of the proceedings for use by the Board. Other recordings, including photographs, motion pictures, video recordings and audio recordings are prohibited, unless 24 hours prior notice is given to the Board's Secretary.

RECONSIDERATION

§ 81.271. Request.

A request for reconsideration of a decision may be made to the Board. The applicant shall show a change in circumstances since the application was filed, or other compelling reasons, sufficient to justify reconsideration. Dissatisfaction with the Board's decision is not grounds to request reconsideration. Meritorious requests may be addressed by the Board upon a public motion by any member. A request for reconsideration will be granted only upon a majority vote of the Board. If the matter to be reconsidered is the denial of a public hearing, another merit review vote will be taken immediately in accordance with § 81.231 (relating to listing for hearing).

§ 81.272. Notice.

If reconsideration is granted, notice will be made to interested parties by regular mail as set forth in § 81.226 (relating to use of application).

REPRESENTATION

§ 81.281. Appearance of applicant.

An applicant, if confined, may not appear before the Board, but may designate another person to appear for the applicant. An applicant, if not confined, shall appear personally at the public hearing unless excused by the Board for cause.

§ 81.282. Representation of applicant.

The applicant may be represented by privately retained legal counsel or another person designated by the applicant. If confined, the applicant may request representation from the Department of Corrections.

§ 81.283. Fees for representation.

Only attorneys may charge fees for the legal representation of an applicant. A nonattorney representative who has charged a fee for representation of an applicant may not thereafter make any presentation on behalf of applicants before the Board.

§ 81.284. Commonwealth attorney.

The attorney for the Commonwealth or a designee has the right, and is encouraged, to appear at the hearings to give the Commonwealth's opinion.

CONDUCT OF HEARINGS AND COMMUNICATIONS

§ 81.291. Call of calendar.

Applications will be called in the order of their listing on the calendar unless the Board directs otherwise. If there is no answer when a case is called, it will be passed temporarily and then called at the end of the list. If there is no answer when it is called subsequently, it will not be heard at that session. The application may be relisted for the next possible session if the applicant or the applicant's representative contacts the Secretary and requests a relisting.

§ 81.292. Advocacy.

(a) *Noncapital cases.* Fifteen minutes will be allowed for the entire presentation in support of an application, and 15 minutes will be allowed for the entire presentation in opposition to an application.

(b) *Capital cases.* In capital cases, a maximum of 30 minutes will be allowed for the entire presentation in support of an application, and a maximum of 30 minutes will be allowed for the entire presentation in opposition to an application.

§ 81.293. Witnesses.

The Board may request a person to appear at the hearing as a witness.

§ 81.294. Communications with the Board.

A person having information which might assist the Board in its consideration of a particular application may communicate with the Board in writing to the Secretary. Direct or indirect communications with the Board or a member thereof concerning the merits of a case, during the pendency of the application, shall be referred to the Secretary.

DISPOSITION**§ 81.301. Recommendation.**

(a) An application for pardon or commutation of sentence may not be delivered to the Governor for a decision except on written recommendation of at least three members of the Board after public hearing. The recommendation will include a statement of the reasons therefor.

(b) In cases when the applicant is serving a sentence described in § 81.232 (relating to interview of the applicant), a recommendation and Warrant of Commutation that is presented to the Governor shall include a requirement that the applicant serve at least 1 year in a prerelease center prior to release on parole unless transfer of the applicant to a prerelease center is not appropriate due to a certified terminal illness.

(c) Recommendations made to the Governor for commutation of sentence will be conditioned as set forth in subsection (e). At the Board's discretion, other conditions may be included.

(d) Generally, recommendations for a pardon will not be conditional. Recommendations for a pardon may be made conditional by a majority vote by the Board. That vote will be taken after the vote that results in a favorable recommendation to the Governor.

(e) If it is the Board's desire that the commutation or pardon be conditional, any recommended Warrant of Commutation or Charter of Pardon presented to the Governor shall include the following language:

"Subsequent to this date, if it is determined, upon hearing by the Board of Pardons, that (name) has committed a probation or parole violation or has been convicted of a new criminal offense, this grant of clemency may be rendered null and void by myself or by my successors in office."

(f) When notified of a subsequent conviction or probation or parole violation, the Secretary will inform the Board. The Board will then decide, on a case-by-case basis, whether to hold a hearing regarding the suspected violation of the conditional pardon or commutation. If a hearing is held, a majority of the Board may recommend to the Governor that clemency be revoked.

§ 81.302. Notification of Board action.

Within 14 days following the public hearing, the applicant and the interested parties will be notified of the action by the Board.

§ 81.303. Announcement of action by Governor.

Public access to the decision of the Governor will be available 14 days after receipt by the Secretary of notice of the Governor's final disposition.

§ 81.304. Charter and warrant.

If the recommendation of the Board is approved by the Governor, the Secretary will prepare the proper Charter of Pardon or Warrant of Commutation for the signature of the Governor and for the attachment of the Seal of the Commonwealth and the attestation of the Secretary of the Commonwealth.

§ 81.305. Record maintenance.

(a) *General rule.* The records, documents and files maintained by the Board are confidential.

(b) *Exceptions.* The following records are public: monthly calendars, minutes of meetings, vote sheets of monthly sessions, completed applications and lists of actions taken by the Governor. The Board's written recommendation to the Governor will be made public only after the Governor has acted on an application.

[Pa.B. Doc. No. 96-1739. Filed for public inspection October 18, 1996, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 401]

Asbestos Occupation Accreditation and Certification

The Department of Labor and Industry (Department), under the authority contained in the Asbestos Occupation Accreditation and Certification Act (act) (63 P. S. §§ 2101—2112), proposes regulations concerning the accreditation of training providers and the certification of asbestos occupations.

Purpose of Proposed Rulemaking

The proposed regulations, in Annex A, sets forth accreditation requirements and procedures for training providers and certification requirements and procedures for asbestos occupations. The Department appointed an Asbestos Advisory Committee (Advisory Committee), as required by section 10 of the act (63 P. S. § 2110). The Advisory Committee held monthly public hearings to determine the content of the regulations they would recommend to the Secretary of the Department (Secretary). These meetings were attended by training providers and various representatives of the asbestos-abatement industry.

The Secretary has reviewed the Advisory Committee's recommendations in conjunction with the Federal requirements for training provider accreditation and asbestos occupation certification. The proposed regulations meet the Environmental Protection Agency's (EPA) Model Plan requirements.

Statutory Authority

The Department is proposing these regulations under the authority contained in the act.

Summary of Proposed Rulemaking

Chapter 401.

Section 401.1 (relating to definitions)

Section 401.1 provides definitions for the terms in the regulations. Some of the definitions—such as "major fiber release episode"; "minor fiber release episode"; "inspec-

tion"; and "small-scale, short-duration activities"—are mandated by the EPA for certification under its model plan.

Sections 401.11—401.21 (relating to training course accreditation procedures and requirements)

These proposed sections provide for the accreditation of initial and refresher training courses. An application for accreditation must be received 30 days before a training provider's first-course session. The Department will grant conditional accreditation if the materials submitted are complete and comply with the Department's requirements. The Department will issue final-course approval after it determines, from a complete review of the materials and observation of the course, that the course meets the requirements of the act and these regulations.

These proposed sections set out the specific requirements for courses in each of the occupations. For EPA occupation classifications, these sections adopt the EPA's course requirements by reference. These sections also adopt a shorter (6—8 hour) training course for the subworker classifications (roofer/sider, resilient floor covering remover, restricted handler, and asbestos operations and maintenance individual). These sections also create a new classification, asbestos air-sampling technician.

These sections set out the final examination requirements, which mirror the EPA requirements and provide requirements for course changes, course instructor requirements, issuance of training certificates and course provider recordkeeping requirements.

Sections 401.41—401.47 (relating to certification procedures and requirements)

These proposed sections provide the requirements for initial and renewal occupation certification. Asbestos occupation certifications are valid for 1 year—except for asbestos worker (roofer/sider), asbestos worker (resilient floor covering remover), restricted asbestos handler and asbestos operations and maintenance individual, which are valid for 3 years.

These sections provide the certification requirements and scope of duties permitted for each occupation under the regulations and the act for asbestos management planner, asbestos project designer, asbestos project monitor, asbestos inspector, asbestos contractor, asbestos supervisor, asbestos worker (general, roofer/sider, resilient floor covering, restricted handler, and asbestos operations and maintenance individual), and asbestos air-sampling technician. The sections allow an on-the-job training option for some of the occupational classes and require proof of occupation certification on the work site.

Sections 401.61—401.63 (relating to denial, suspension or revocation of certification or accreditation)

These proposed sections provide the grounds and the process for denial, suspension or revocation of accreditation or certification. The reasons for such actions are set out in § 401.61 (relating to grounds). These grounds are based on those found in the act and the EPA's model plan. Proposed § 401.62 (relating to notice and hearing) provides for notice and hearing, in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

Sections 401.81—401.87 (relating to fees)

These proposed sections provide the fee schedules for initial and renewal certification fees, training course accreditation fees and refresher training course accreditation fees. There is a fee cap of \$5,000 per year on training course provider fees for an individual provider.

Sections 401.101—401.103 (relating to enforcement procedures and penalties)

These proposed sections allow inspectors to enter work sites to determine compliance with the act and these regulations. They also provide for civil penalties for violations of the act and the regulations. These sections set out certification, accreditation and notification violations. They provide the standards to be used by the Department in determining a civil penalty.

Sections 401.121 and 401.122 (relating to notification requirements)

These proposed sections provide for a single point of notification for all asbestos-abatement projects in the Department of Environmental Protection (DEP). These sections require contractors to submit written notification to DEP at least 10 business days before the start of an abatement project and at least 1-business day before the start of an emergency business abatement project. These sections also provide for changes to the original notification of an abatement project.

Sections 401.141—401.146 (relating to administrative matters)

These proposed sections provide the purpose and scope of the regulations, specifically stating to whom the chapter applies. They also set out additional recordkeeping requirements and provide that the Department may adopt any changes to the EPA's model plan by publication of a notice in the *Pennsylvania Bulletin*.

Sections 401.161 and 401.162 (relating to reciprocity)

These proposed sections provide for the recognition of accreditation and certification granted by other states. The Department may enter into reciprocal agreements with other states and jurisdictions, so persons in occupations will not be required to take additional training classes and providers will not be required to meet additional standards. The fees set out in §§ 401.81—401.87 will still apply.

Affected Persons

These proposed regulations will affect persons in asbestos-abatement occupations, asbestos-abatement contractors, training providers and building owners.

Fiscal Impact and Paperwork

The Department will not incur additional administrative costs and paperwork as a result of the proposed regulations. The Department is currently operating an EPA-approved accreditation and certification program with statutorily authorized fees. Asbestos contractors, persons in asbestos abatement occupations, and training course providers will not incur additional expense as a result of this proposed regulations. Training providers will be required to keep some additional records on their students.

Sunset Date

A sunset date is not appropriate because the Commonwealth's program must be certified and in compliance with EPA standards.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed

regulations to Sharon K. Lawson, Administrator, Asbestos Division, Bureau of Occupational and Industry Safety, Department of Labor and Industry, Room 1402, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120, within 30 days of publication in the *Pennsylvania Bulletin*.

Prior to the adoption of final regulations, the Department will carefully review and consider comments received concerning this proposal. Written comments will be officially reviewed and considered by the Department within 30 days of the publication of these regulations. The Department will hold three public hearings in Philadelphia, Pittsburgh and Harrisburg during the comment period. One hearing will be held in each location.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed regulations on October 8, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Labor Relations Committee and the Senate Labor and Industry Committee (Committees). In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department, in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it must notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department the General Assembly and the Governor of objections raised.

- (1) *Pittsburgh*
Tuesday, October 29, 1996 10 a.m.-noon
Radisson Hotel
Room Monroe 2
101 Mall Blvd.
Monroeville, PA 15146
(412) 373-7300
- (2) *Harrisburg*
Wednesday, October 30, 1996 10 a.m.-noon
Holiday Inn Harrisburg/Hershey
Room Royale 3
Exit 28, Interstate 81
Grantville, PA 17028
(717) 469-0661
- (3) *Philadelphia*
Friday, November 1, 1996 10 a.m.-noon
Valley Forge Hilton
Jefferson Room
251 W. Dekalb Pike
King of Prussia, PA 19406
(610) 337-1200

JOHNNY J. BUTLER,
Secretary

Fiscal Note: 12-38. No fiscal impact; (8) recommends adoption. Fees generated should offset program costs.

Annex A

TITLE 34. LABOR AND INDUSTRY PART XIV. ASBESTOS OCCUPATIONS ACCREDITATION AND CERTIFICATION CHAPTER 401. ASBESTOS OCCUPATIONS ACCREDITATION AND CERTIFICATION

GENERAL

- Sec.
401.1. Definitions.

TRAINING COURSE ACCREDITATION PROCEDURES AND REQUIREMENTS

- 401.11. Accreditation of initial and refresher courses.
401.12. General requirements for accreditation of initial refresher training courses.
401.13. Specific requirements for accreditation of initial training courses.
401.14. Specific requirements for accreditation of refresher training courses.
401.15. Final examination requirements.
401.16. Changes to accredited training courses.
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GENERAL

§ 401.1. Definitions.

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

ACBM—Friable asbestos-containing building material—A friable ACM that is in or on interior structural members or other parts of a school or public and commercial buildings.

ACM—Asbestos-containing material—A material that contains more than 1% asbestos by weight.

AHERA—The Asbestos Hazard Emergency Response Act of 1986 (15 U.S.C.A. §§ 2641—2654).

ASHARA—The Asbestos School Hazard Abatement Reauthorization Act of 1984 (20 U.S.C.A. §§ 4011—4022).

Accreditation—A certificate issued by the Department permitting a person to conduct asbestos occupation training courses.

Act—The Asbestos Occupations Accreditation and Certification Act (63 P. S. §§ 2101—2111).

Asbestos—The asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite) anthophyllite, actinolite and tremolite.

Asbestos abatement—A demolition, renovation, repair, construction or maintenance activity of a public, commercial or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of materials with the potential of releasing asbestos fibers from asbestos-containing materials.

Asbestos abatement project—Activities, including site preparation and cleanup, associated with asbestos abatement performed within or on a building involving more than 3 linear feet or 3 square feet of asbestos-containing material. Activities from the start of the project through obtaining an acceptable final clearance air sample in the project areas or removal of all abated asbestos-containing material from the project site, whichever is later, are included.

Asbestos air sampling technician—An individual who collects air samples before, during and after an asbestos abatement project.

Asbestos-containing material—A material that contains more than 1% asbestos by weight.

Asbestos occupation—An asbestos air sampling technician, asbestos contractor, asbestos inspector, asbestos management planner, asbestos worker (asbestos operations and maintenance individual), asbestos project designer, asbestos project monitor, asbestos worker (restricted asbestos handler), asbestos supervisor, asbestos worker, asbestos worker (resilient floor covering remover) or asbestos worker (roofing/siding).

Asbestos operations and maintenance activity—Any asbestos abatement performed, including site preparation and clean-up, within or on a building involving not more than 3 linear feet or 3 square feet of asbestos-containing material.

(i) *Asbestos worker—asbestos operations and maintenance individual*—An individual who works in a building which contains asbestos-containing material and who conducts activities that will result in the disturbance of asbestos-containing material or who performs spot asbestos abatement of asbestos-containing material within or on the buildings.

(ii) *Resilient floor covering remover*—An individual who performs limited or specialized asbestos abatement involving any flooring comprised of or containing nonfriable asbestos-containing material.

(iii) *Restricted asbestos handler*—An individual who enters an asbestos abatement work area as a result of his specific job duties for a limited period of time to perform specialized tasks that may release asbestos fibers.

(iv) *Roofing/siding*—An individual who performs limited or specialized asbestos abatement of any roofing or siding comprised of or containing nonfriable asbestos-containing material.

Building—All or part of a public, commercial or private building or structure.

Certification—A certificate issued by the Department permitting a person to work in an asbestos occupation and which contains a recent photograph of that person.

Day of training—For purposes of §§ 401.41—401.47 (relating to certification procedures and requirements), 1 day of training equals to 8 hours, including breaks and lunch.

Department—The Department of Labor and Industry of the Commonwealth.

EPA—The Environmental Protection Agency.

Emergency project—A project that was not planned but results from a sudden unexpected event that, if not immediately attended to, presents a safety or health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. The term includes operations necessitated by nonroutine failures of equipment. The Department reserves the right to determine that which constitutes an emergency project.

Facility—A building or group of buildings at a single site that are under the control of the same owner or operator (or owner or operator under common control).

Friable asbestos material—An asbestos-containing material that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure, including an asbestos-containing material that will or can reasonably be expected to become friable as a result of the asbestos abatement activity.

Inspection—

(i) Activities undertaken to specifically determine the presence or location, or to assess the condition of, friable or nonfriable ACBM or suspected ACBM, whether by visual or physical examination, or to assess its physical condition or by collecting samples of such material. The term also includes reinspections of friable and nonfriable known or assumed ACBM which has been previously identified.

(ii) The term also includes three specific exceptions, dealing with related activities which do not require accreditation. The three exceptions include:

(A) *Periodic surveillance*. A periodic surveillance, as described in 40 CFR 763.92(a) (relating to training and periodic surveillance), is commonly performed by custodial or maintenance workers. The term is distinct from reinspection and is limited only to visual observations and refers to a visual examination of an area in a building that previously has been identified as containing ACBM, or that previously has been assumed to contain ACBM, and that is undertaken to identify changes in the physical condition of that ACBM. A person does not need accreditation to visually survey a ceiling that has already been identified in an earlier inspection or reinspection as suspected ACBM to determine whether the ceiling had been damaged by a water leak. If the person assessed the condition of the ceiling by collecting a sample, or touched

it to determine whether it had become friable, however, that person must be accredited as an inspector.

(B) *Compliance inspection.* Compliance inspections performed by Federal, State or local regulatory agencies are excluded from accreditation because their primary purpose is to determine adherence to applicable statutes or regulations, and not to locate, assess or remedy the condition of ACBM. Based upon the purpose of ASHARA, the EPA has concluded that government personnel who inspect to determine compliance with laws regulating asbestos are not required to obtain accreditation.

(C) *Visual inspections.*

(I) Visual inspections referenced in 40 CFR 763.90(i) (relating to response actions) are excluded from the accreditation requirement because their purpose is to determine whether a response action is complete, not to actually inspect for asbestos.

(II) The EPA has concluded that a person who conducts an inspection in a public or commercial building to determine whether a response action is complete does not have to be accredited as an inspector. Persons performing these activities will otherwise need accreditation as asbestos abatement workers or contractor/supervisors.

Major fiber release episode—An uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of more than 3 square or linear feet of friable ACBM.

Minor fiber release episode—An uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of 3 square or linear feet or less of friable ACBM.

NESHAP—National Emission Standards for Hazardous Air Pollutants, 40 CFR 61 Subpart M (relating to national emission standards for asbestos).

OSHA—The Occupational Safety and Health Administrations of the United States Department of Labor.

Person—An individual, public or private corporation, nonprofit corporation, association, firm, partnership, joint venture, business trust, joint stock company, municipal corporation, the Commonwealth and any of its agencies or political subdivisions, the Federal Government or any of its agencies or any other entity, public or private, however organized.

Response action—A method, including removal, encapsulation, enclosure, repair and operation and maintenance, that protects human health and environment from friable ACBM.

SSSD—Small scale, short-duration activities—Includes the following:

- (i) Removal of asbestos containing insulation on pipes.
- (ii) Removal of small quantities of asbestos-containing insulation on beams or above ceilings.
- (iii) Replacement of an asbestos-containing gasket on a valve.
- (iv) Installation or removal of a small section of drywall.
- (v) Installation of electrical conduits through or proximate to asbestos-containing materials.
- (vi) Removal of small quantities of ACM only if required in the performance of another maintenance activity not intended as asbestos abatement.

(vii) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag.

(viii) Minor repairs to damaged thermal system insulation which do not require removal.

(ix) Repairs to a piece of asbestos-containing wallboard.

(x) Repairs, involving encapsulation, enclosure or removal, to small amounts of friable ACM only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. The work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. The enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

Secretary—The Secretary of Labor and Industry of the Commonwealth.

TRAINING COURSE ACCREDITATION PROCEDURES AND REQUIREMENTS

§ 401.11. Accreditation of initial and refresher courses.

(a) EPA-approved courses under AHERA are deemed accredited by the Department. Nothing in this section prohibits the Department from requiring a training provider to comply with its renewal requirements to have its accreditation renewed.

(b) A provider requesting accreditation of an initial or refresher asbestos occupations training course shall submit an application on a form provided by the Department along with the appropriate fee designated in §§ 401.81—401.87 (relating to fees). The application must be received by the Department at least 30 days before the first course session. The Department will not process an application that is submitted without the fee or that is incomplete. Information required on the Department's application form will include at least the following:

- (1) The provider's name, address and telephone number.
- (2) The address, the telephone number and a detailed description of each site where training, including demonstrations and hands-on practice exercises, will be conducted.
- (3) The dates and length of each course session.
- (4) Evidence that the provider has employed or contracted with at least two training course instructors who meet the requirements of § 401.18 (relating to training course instructor requirements). Information shall include the name and qualifications (education and experience) of each instructor, the subject the instructor will teach, and a list of other asbestos occupation training courses the instructor has conducted.
- (5) A statement of the maximum instructor-to-student ratio.
- (6) The course curriculum, along with a precise description of how the course meets the requirements of § 401.12 (relating to general requirements for accreditation of initial and refresher training courses), in the following areas:
 - (i) The length of training in days.
 - (ii) The amount and type of hands-on training.
 - (iii) The examinations (length, format and passing score).

(iv) The topics covered in the course.

(7) A description of the teaching method to be used to present each topic (lecture, demonstration, and the like), including the title, the name of the producer and the date of production of audiovisual materials.

(8) Copies of the course materials (student manuals, instructor notebooks, handouts, and the like).

(9) A list of the types and quantities of respirators to be used to demonstrate fit testing and positive/negative pressure checks.

(10) A detailed statement explaining the development of each examination given in the course. The Department may request copies of examinations.

(11) A copy of the student course evaluation form.

(12) A copy of the uniquely numbered training certificate to be issued to students who successfully complete the course.

(13) A list of other states that currently approve the training course.

(c) A provider requesting accreditation of a training course given outside of this Commonwealth shall, in addition to complying with subsection (b), submit copies of applicable state or Federal approvals, along with the name, address and telephone number of the person, department or agency giving the approval.

(d) The Department will grant conditional accreditation of a training course if it determines that these materials are complete and demonstrate that the course substantially meets the Department's requirements.

(e) The Department will grant final accreditation of a conditionally accredited training course and issue a certificate of accreditation when it has determined from a complete review of application materials that the course meets the Department's requirements, and when a Department representative has observed and satisfactorily evaluated the course in progress.

(f) The Department will inform the provider in writing of its reasons for denying conditional and final accreditation. The Department may schedule a reevaluation.

(g) Course accreditation shall be renewed annually. A provider requesting renewal of accreditation shall submit a renewal application on a form provided by the Department, along with the appropriate renewal fee designated in §§ 401.14 and 401.15 (relating to specific requirements for accreditation of refresher training courses; and final examination requirements). The application must be received by the Department at least 30 days before the first course session.

§ 401.12. General requirements for accreditation of initial and refresher training courses.

To qualify for accreditation, an initial or refresher asbestos occupations training course shall meet the following requirements:

(1) Each initial and refresher training course offered for accreditation shall be specific to a single asbestos occupation, and not combined with training for another asbestos occupation.

(2) The initial course shall be conducted by at least two instructors who meet the requirements of this § 401.18 (relating to training course instructor requirements).

(3) Courses shall be taught by instructors fluent in the language of the majority of trainees. Instruction course materials and the course examination shall be provided in the same language.

(4) Class size shall be limited to no more than 30 students in an initial training course and no more than 75 students in a refresher course unless the Department grants a waiver for good cause.

(5) The instructor-to-student ratio may not exceed 1 to 15 for hands-on practice exercises and demonstrations and 1 to 5 for respirator fit testing.

(6) Materials to be used for demonstrations and hands-on practice exercises shall include at least the following:

(i) High Efficiency Particulate Air (HEPA) vacuum filtration equipment.

(ii) Hand tools.

(iii) Elevated working surfaces.

(iv) Plastic sheeting.

(v) Barrier constructions.

(vi) Supplies.

(vii) Engineering control methods.

(viii) Water spray devices.

(ix) Decontamination facilities.

(x) Personal protective equipment.

(xi) Air sampling equipment.

(7) Course materials shall comply with relevant Federal, State and local requirements. The most current EPA-approved asbestos occupation training course publication in effect, and any subsequent amendments to that publication, shall be used.

(8) Procedures and materials for fit testing shall meet the requirements under the following OSHA and EPA asbestos regulations and any successor regulations:

(i) OSHA, Construction Standard, 29 CFR 1926.1101, Appendix C.

(ii) OSHA, General Industry Standard, 29 CFR 1910.1001, Appendix C.

(iii) EPA, Worker Protection Rule for Asbestos, 40 CFR 763, Subpart G (40 CFR 763.121, Appendix C).

(9) The course shall include the following topics:

(i) The characteristics and uses of asbestos and the potential health effects of exposure to asbestos.

(ii) Federal, State and local standards relating to asbestos abatement work practices and the interrelationships among these standards.

(iii) Methods to protect personal and public health from asbestos hazards.

(iv) Air monitoring.

(v) Safe and proper asbestos abatement techniques, including at least one exercise to test skill in these techniques.

(vi) Proper disposal of waste containing asbestos.

(10) Fulfillment of hands-on training requirements shall be based only on the actual time spent by a student in hands-on exercises.

§ 401.13. Specific requirements for accreditation of initial training courses.

(a) *Asbestos management planner training course.*

(1) The course shall conform with the EPA's Model Accreditation Plan in 40 CFR Part 763, Subpart E, Appendix C(I)(B)(4), Management Planners (1994), and

with training requirements described by OSHA (29 CFR 1910.1001 and 1926.1101 (relating to asbestos)), or successor regulations, which are incorporated by reference.

(2) Instruction methods shall include at least lectures and demonstrations.

(b) *Asbestos project designer training course.*

(1) The course shall conform with the EPA's Model Accreditation Plan in 40 CFR Part 763, Subpart E, Appendix C(I)(B)(5), Abatement Project Designers (1994), and training requirements described by OSHA (29 CFR 1910.1001 and 29 CFR 1926.1101), or successor regulations which are incorporated by reference.

(2) Instruction methods shall include at least lectures, demonstrations and a demonstration test, and a field trip to an asbestos abatement project.

(c) *Asbestos project monitor training course.*

(1) The course shall conform with the EPA's Model Accreditation Plan in 40 CFR Part 763, Subpart E, Appendix C(I)(B)(6), Project Monitors (1994), and training requirements described by OSHA (29 CFR 1910.1001 and 1926.1101), or successor regulations, which are incorporated by reference.

(2) Instruction methods shall include at least lectures, demonstrations and 6 hours of hands-on training in asbestos abatement techniques and safety procedures.

(d) *Asbestos inspector training course.*

(1) The course shall conform with the EPA's Model Accreditation Plan in 40 CFR Part 763, Subpart E, Appendix C(I)(B)(3), Inspectors (1994), and training requirements described by OSHA (29 CFR 1910.1001 and 1926.1101), or successor regulations, which are incorporated by reference.

(2) Instruction methods shall include at least lectures, demonstrations, 4 hours hands-on training in asbestos abatement and safety techniques, and practical individual respirator fit test instruction.

(e) *Asbestos contractor and asbestos supervisor training course.*

(1) The course shall conform with the EPA's Model Accreditation Plan in 40 CFR Part 763, Subpart E, Appendix C(I)(B)(2), Asbestos Abatement Contractors and Supervisors (1994), and training requirements described by OSHA (29 CFR 1910.1001 and 1926.1101), or successor regulations which are incorporated by reference.

(2) Instruction methods shall include lectures, demonstrations, at least 14 hours hands-on training in asbestos abatement and safety techniques, and practical individual respirator fit test instruction.

(3) The asbestos contractor may designate an asbestos supervisor to serve as contractor's agent for the purposes of the certification requirement and pay the contractor certification fee listed in §§ 401.81—401.87 (relating to fees).

(f) *Asbestos worker training course.*

(1) The course shall conform with the EPA's Model Accreditation Plan in 40 CFR Part 763, Subpart E, Appendix C(I)(B)(1), Asbestos Abatement Workers (1994), and training requirements described by OSHA (29 CFR 1910.1001 and 1926.1101), or successor regulations, which are incorporated by reference.

(2) Instruction methods shall include lectures, demonstrations, at least 14 hours hands-on training in asbestos

abatement safety techniques, and practical individual respirator fit test instruction.

(g) *Asbestos worker (roofing/siding) training course.*

(1) The asbestos worker (roofing/siding) course shall be a minimum of 8 hours, including a minimum of 4 hours in either a roofing or siding specialty module.

(2) The asbestos worker (roofing/siding) training course shall address the following topics:

(i) *Basic training module for an asbestos worker (roofing/siding).*

(A) *Physical characteristics.*

(I) Identification of asbestos.

(II) Aerodynamic characteristics.

(III) Typical uses and physical appearance.

(IV) Summary of asbestos roofing or siding removing hazard-control options.

(V) Recognition of damaged, deteriorating and delaminated ACM.

(B) *Health effects related to asbestos exposure.*

(I) Nature of asbestos-related disease.

(II) Routes of exposure, dose-response relationships and the lack of a safe exposure level.

(III) Cigarette smoking and asbestos exposure.

(IV) Latency period for disease.

(V) Need and importance of following safety instructions.

(C) *Laws and regulations.*

(I) Licensing and certification requirements.

(II) Relevant Federal, State and local regulatory requirements, procedures and standards.

(III) Smoking cessation information (29 CFR 1910.1001 and 1926.1101) and successor regulations.

(D) *Personal protective equipment.*

(I) Classes and characteristics of respirator types, limitations, proper selection, inspection, donning, use, maintenance and storage procedures.

(II) Fit-testing procedures.

(III) Components of a proper respiratory-protection program.

(IV) Selection and use of personal protective clothing; use, storage and handling of nondisposable clothing, hard hats, safety glasses, nonslip shoes.

(E) *Air monitoring.*

(I) Procedures to determine airborne concentrations of asbestos fibers in an outdoor environment.

(II) Discussion of how personal air sampling is performed and the reasons for it.

(F) *Personal hygiene.*

(I) Entry and exit procedures for the work area.

(II) Avoidance of eating, drinking, smoking and chewing (gum or tobacco) in the work area.

(III) Potential exposures, such as family exposure.

(G) *Medical monitoring.* OSHA requirements for a pulmonary function test, chest X-rays and a medical history for each employe.

(H) *Additional safety hazards.*

(I) Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat and cold stresses, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips and falls, hazardous chemical/right-to-know/hazard communication and material safety data sheets and confined spaces.

(II) Hazards associated with other roof products such as fiberglass.

(ii) *Roofing module.*

(A) Identification of roofing materials which may contain asbestos including typical uses and physical appearance of asbestos-roofing materials.

(B) Recommended work practices.

(I) Preparation of the work area; assessment of ACM and substrates; hazard identification and assessment; and other site requirements.

(II) Proper work techniques for minimizing fiber releases, wet methods, use of HEPA vacuums, procedures; proper procedures for removal of asbestos-cement products versus built-up-roof products; discussion of prohibited work practices; and proper methods of handling ACM.

(III) Work practices for removal—wetting, wet removal, hand tools, HEPA-vacuumed tools, use of sealants, and run off and spill protection techniques.

(IV) Ventilation system lockout, sealing of intake and exhaust vents, windows, doors, chimneys and all openings.

(V) Proper cleanup and disposal techniques, exterior enclosures and scaffolding, construction of leak-tight chutes, sealing or wetting of friable ACM edges, waste containment methods, site waste handling methods, and handling nonroofing/siding ACM encountered onsite.

(VI) Waste transport, disposal and storage as cited in the United States Department of Transportation's HM-181 and HM-126F HazMat training requirements or as subsequently amended, and disposal destinations for nonfriable ACM.

(VII) Positioning of warning signs, critical barriers and designation of regulated areas.

(VIII) Emergency procedures.

(IX) Recommended safe work practices for installation of asbestos-containing roofing materials.

(iii) *Siding-specialty module.*

(A) Identification and discussion of siding materials which may contain asbestos. Typical uses and physical appearance of asbestos roofing materials.

(B) Recommended work practices.

(I) Preparation of the work area; assessment of ACM and substrates; hazard identification and assessment; and other site requirements.

(II) Proper work techniques for minimizing fiber releases; wetting; procedures for removal of asbestos cement products.

(III) Work practices for removal, wetting, hand tools, HEPA-vacuumed tools and use of sealants.

(IV) Ventilation system lockout, sealing of intake and exhaust vents, windows, doors, chimneys and all openings.

(V) Positioning of warning signs and designation of regulated areas.

(VI) Waste transport, disposal and storage as cited in HM-181 and HM-126F HazMat training requirements or as subsequently amended, and disposal destinations for nonfriable ACM.

(VII) Recommended safe work practices for installation of asbestos-containing siding materials.

(3) Instruction methods shall include at least lectures, demonstrations, hands-on training in asbestos abatement and safety techniques, and practical individual respirator fit test instruction.

(h) *Asbestos worker (resilient floor covering remover) training course.*

(1) The asbestos worker (resilient floor covering remover) course shall be a minimum of 8 hours, including a minimum of 4 hours in a resilient floor covering removal module.

(2) The asbestos worker (resilient floor covering remover) training course shall address the following topics:

(i) *Basic training module.* Basic training module for an asbestos worker (resilient floor covering remover).

(A) *Physical characteristics.*

(I) Identification of asbestos.

(II) Aerodynamic characteristics.

(III) Typical uses and physical appearance.

(IV) Summary of asbestos-containing floor covering materials hazard-control options.

(B) *Health effects related to asbestos exposure.*

(I) Nature of asbestos-related disease.

(II) Routes of exposure, dose-response relationships and the lack of a safe exposure level.

(III) Cigarette smoking and asbestos exposure.

(IV) Latency period for disease.

(V) Need and importance of following all safety instructions, including such hazards as dermal injury.

(VI) Understanding permissible exposure limits.

(C) *Laws and regulations.*

(I) Licensing and certification requirements.

(II) Relevant Federal, State and local regulatory requirements, procedures and standards.

(D) *Personal protection.*

(I) Personal protective equipment and applicable use in removing asbestos-containing floor covering materials.

(II) Discussion of how personal air sampling is performed and the reasons for it.

(III) Personal hygiene practices during the removal of asbestos-containing floor covering materials.

(IV) Discussion of safety practices including discussions of hazards posed by wet working conditions, electrical hazards, slips, trips and falls.

(V) Emergency procedures.

(ii) *Floor-covering specialty module.*

(A) Floor-covering materials and adhesives which may contain asbestos.

(I) Floor-covering materials.

(II) Adhesives-asbestos-containing and nonasbestos-containing.

(III) Dates of production of asbestos-containing resilient floor coverings.

(IV) Alternatives to removal of existing floor and proper methods.

(V) Friable versus nonfriable asbestos-containing flooring materials.

(B) Recommended work practices.

(I) Use of recommended work practices.

(-a-) Procedures which should not be used in removing asbestos-containing floor covering.

(-b-) Importance of strict adherence to recommended work practices in order to comply with Federal and State regulations.

(II) Detailed instruction in:

(-a-) Removal of resilient floor tile.

(-b-) Removal of resilient sheet vinyl.

(-c-) Removal of residual adhesives.

(-d-) Removal of complete underlayment with resilient floor covering.

(-e-) Methods of controlling, containing and preventing the release of asbestos fibers.

(III) Proper cleanup, storage and disposal techniques.

(IV) Notification requirements.

(V) Demarcation requirements and communication with property owner and residence.

(3) Instruction methods shall include at least lectures, demonstrations and hands-on training in asbestos abatement and safety techniques.

(i) *Asbestos worker (restricted asbestos handler) training course.*

(1) A restricted asbestos handler shall have a minimum of 6 hours of training which shall include at least the following topics:

(i) Physical characteristics of asbestos.

(ii) Health hazards and effects of asbestos.

(iii) Respiratory protection.

(iv) Personal protective equipment.

(v) Decontamination system.

(vi) Scope of current and proposed Federal, State and local regulations.

(vii) Special safety hazards.

(viii) Personal hygiene.

(ix) State-of-the-art work practices for asbestos abatement.

(x) Medical surveillance.

(xi) Understanding the importance of air monitoring.

(xii) Entry and personal decontamination during abatement activities.

(xiii) Recognition of damaged, deteriorating and delaminated ACM.

(xiv) Proper methods of handling ACM.

(xv) Proper cleanup techniques.

(xvi) Disposal practices, including proper storage and transport of small quantities of ACM.

(xvii) Maintenance programs.

(xviii) Smoking cessation information (29 CFR 1910.1001 and 1926.1101) and any successor regulations.

(2) Instruction methods shall include at least lectures, demonstrations, hands-on training in asbestos abatement and safety techniques, and practical individual respirator fit test instruction.

(3) An industry-specific course exceeding the minimal Departmental requirements shall be considered as meeting the training requirements for a restricted asbestos handler as specified in this chapter, if approved by the Department.

(j) *Asbestos air sampling technician training course.*

(i) An asbestos air sampling technician shall have completed a minimum of 6 hours training which shall include at least the following topics:

(A) Physical characteristics of asbestos.

(B) Health hazards and effects of asbestos.

(C) Calibration of air sampling equipment.

(D) Regulations currently in effect under existing Federal, State and local jurisdictions.

(E) Recordkeeping and documentation.

(F) Air sampling, which shall include at least:

(I) Purposes of air sampling.

(II) Equipment/media utilized.

(III) Sampling techniques, calculations and methods.

(IV) Sample packing/handling relating to proper shipping to maintain chain-of-custody.

(V) Personal protective equipment.

(VI) Containment entry and decontamination procedures.

(VII) Medical surveillance.

(VIII) Personal hygiene.

(IX) Additional safety practices other than asbestos.

(X) State-of-the-art work practices for asbestos abatement.

(XI) Smoking cessation information (29 CFR 1910.1001 and 29 CFR 1926.1101) and any successor regulations.

(XII) Other topics as may be required by the Department.

(ii) Instruction methods shall include at least lectures, demonstrations, hands-on training in air sampling and safety techniques, and practical individual respirator fit test instruction.

(k) *Asbestos worker (asbestos operations and maintenance individual) training course.*

(1) The course shall include the EPA's Asbestos Containing Materials in Schools, in 40 CFR 763.92(a)(2) Training and Periodic Surveillance (1987), and training requirements described by OSHA (29 CFR 1910.1001 and 1926.1101), or successor regulations, which are incorporated by reference.

(2) The asbestos worker (operations and maintenance individual) training topics shall include at least:

(i) Physical characteristics of asbestos.

- (ii) Health hazards and effects of asbestos.
- (iii) Respiratory protection.
- (iv) Personal protective equipment.
- (v) Decontamination system.
- (vi) Scope of all current and proposed Federal, State and local regulations.
- (vii) Special safety hazards.
- (viii) Personal hygiene.
- (ix) State-of-the-art work practices for asbestos abatement.
- (x) Medical surveillance.
- (xi) Entry and personal decontamination during abatement activities.
- (xii) Additional safety practices other than asbestos.
- (xiii) Understanding the importance of air monitoring.
- (xiv) Recognition of damaged, deteriorating and delaminated ACM.
- (xv) Preparation of a work area.
- (xvi) Proper methods of handling ACM.
- (xvii) Enclosures to prevent fiber releases.
- (xviii) Proper use of encapsulants.
- (xix) Proper cleanup techniques.
- (xx) Disposal practices, including proper storage and transport of small quantities of ACM.
- (xxi) Maintenance programs.

(3) Instruction methods shall include at least lectures, demonstrations, hands-on training in asbestos abatement and safety techniques, and a demonstration test.

(4) An industry-specific course exceeding the minimal Departmental requirements shall be considered as meeting the training requirements for an asbestos operations and maintenance individual as specified in this chapter, if approved by the Department.

§ 401.14. Specific requirements for accreditation of refresher training courses.

(a) The course shall conform to the minimum time requirements in paragraphs (1) and (2).

(1) Eight hours for refresher training in the following occupations:

- (i) Asbestos management planner (4 hours each in asbestos inspector training and asbestos management planner training).
- (ii) Asbestos project designer.
- (iii) Asbestos project monitor.
- (iv) Asbestos contractor.
- (v) Asbestos supervisor.
- (vi) Asbestos worker.

(2) Four hours for refresher training in asbestos inspector, asbestos air sampling technician, asbestos worker (roofing/siding), asbestos worker (resilient floor covering remover), asbestos worker (restricted asbestos handler), and asbestos worker (operations and maintenance individual) occupations.

(b) The course shall include review and discussion of changes in Federal, State and local regulations, and developments in state-of-the-art procedures in asbestos abatement and safety techniques.

(c) In addition to meeting the requirements in subsection (b), the course shall be specific to the applicable occupation and shall include at least the following elements:

- (1) *Asbestos management planner refresher course.*
 - (i) Evaluation/interpretation of survey results.
 - (ii) Hazard assessment.
 - (iii) Evaluation and selection of control options.
 - (iv) Developing an operations and maintenance plan.
- (2) *Asbestos project designer.*
 - (i) Potential health effects related to asbestos exposure.
 - (ii) Medical surveillance.
 - (iii) Personal protective equipment.
 - (iv) Safety system design specifications.
 - (v) Writing abatement specifications.
 - (vi) Budgeting/cost estimation.
- (3) *Asbestos project monitor.*
 - (i) Potential health effects related to asbestos exposure.
 - (ii) Medical surveillance.
 - (iii) Personal protective equipment.
 - (iv) Recommended safe work practices.
 - (v) Air monitoring procedures.
 - (vi) Clearance procedures.
 - (vii) Safety hazards.
 - (viii) Case examples of problems and solutions.
- (4) *Asbestos inspector.*
 - (i) Inspecting for friable and nonfriable ACM and assessing the condition of friable ACM (including AHERA damage classification).
 - (ii) Bulk sampling/documentation of asbestos in schools.
 - (iii) Reinspection/reassessment techniques.
- (5) *Asbestos contractor/supervisor.*
 - (i) Potential health effects related to asbestos exposure.
 - (ii) Recommended safe work practices.
 - (iii) Respiratory protection programs and medical surveillance and monitoring programs.
- (6) *Asbestos worker.*
 - (i) Potential health effects of asbestos exposure.
 - (ii) Medical surveillance.
 - (iii) Personal protective equipment.
 - (iv) Personal hygiene.
 - (v) Recommended safe work practices.
- (7) *Asbestos worker (roofing/siding).*
 - (i) Potential health effects related to asbestos exposure.
 - (ii) Medical surveillance.
 - (iii) Personal protective equipment.
 - (iv) Personal hygiene.
 - (v) Recommended safe work practices.
- (8) *Asbestos worker (resilient floor covering remover).*
 - (i) Potential health effects related to asbestos exposure.

- (ii) Medical surveillance.
- (iii) Personal protective equipment.
- (iv) Personal hygiene.
- (v) Recommended safe work practices.
- (9) *Asbestos worker (restricted asbestos handler)*.
- (i) Potential health effects related to asbestos exposure.
- (ii) Medical surveillance.
- (iii) Personal protective equipment.
- (iv) Personal hygiene.
- (v) Recommended safe work practices.
- (vi) Review of recognition of damaged ACM and proper methods of handling ACM.
- (10) *Air sampling technician*.
- (i) Potential health effects related to asbestos exposure.
- (ii) Medical surveillance.
- (iii) Personal protective equipment.
- (iv) Personal hygiene.
- (v) Air sampling
- (vi) Recordkeeping.
- (vii) Recommended safe work practices.
- (11) *Asbestos worker (asbestos operations and maintenance individual)*.
- (i) Potential health effects related to asbestos exposure.
- (ii) Medical surveillance.
- (iii) Personal protective equipment.
- (iv) Personal hygiene.
- (v) Recommended safe work practices.
- (vi) Review of recognition of damaged ACM and proper methods of handling ACM.

§ 401.15. Final examination requirements.

- (a) Closed book examinations will be required for both initial and refresher training courses.
- (b) A monitored final written examination is required for all courses unless provided for in this chapter. For students who are unable to take a written examination, the Department may accept an equivalent oral examination.
- (c) Training course instructors, who provide oral examinations for students who are unable to take a written examination, shall issue an answer sheet to be marked by the attendee. The student shall sign the answer sheet and it shall become a part of the training course provider's recordkeeping as described within this chapter.
- (d) Examinations will be administered by either the Department or the Department's designee.
- (e) Final examination and appropriate practice exercises shall be specific to the occupation.
- (f) The examination format shall be appropriate for the course and shall include topics from all aspects of training.
- (g) The minimum number of multiple choice questions for all initial asbestos occupation course examinations shall be as follows:

- (1) 50—Asbestos management planner.
- (2) 100—Asbestos project designer.

- (3) 100—Asbestos project monitor.
- (4) 50—Asbestos inspector.
- (5) 100—Asbestos contractor.
- (6) 100—Asbestos supervisor.
- (7) 50—Asbestos worker.
- (8) 50—Asbestos worker (roofing/siding).
- (9) 50—Asbestos worker (resilient floor covering remover).
- (10) 25—Asbestos worker (restricted asbestos handler).
- (11) 50—Asbestos air sampling technician.
- (12) 25—Asbestos worker (asbestos operations and maintenance individual).

(h) The minimum number of multiple choice questions for refresher asbestos occupation course examinations is 25 questions.

(i) Students shall achieve a minimum examination grade of 70% correct to pass.

(j) Students who fail the exam are allowed to retake the exam twice. After a total of three successive failures, the student shall retake the full course before being allowed to retest.

(k) Each student's examination shall be retained for 3 years.

(l) Students who complete the course and pass the examination will receive a training certificate indicating successful completion of the course.

(m) The Department retains the right to develop a Statewide examination program.

§ 401.16. Changes to accredited training courses.

(a) A provider may change an accredited training course only with the approval of the Department. The provider shall submit to the Department written notice of the contemplated change at least 10 days before its proposed implementation date. The Department may waive the 10-day requirement for good cause shown.

(b) Changes may include the following:

- (1) The topics covered.
- (2) The course materials.
- (3) The training course providers.
- (4) The teaching methods.
- (5) The dates and location of scheduled courses.
- (6) The language in which the course is given.

(c) The Department may grant conditional approval of a change pending its detailed evaluation of the change.

§ 401.17. Training course provider requirements.

(a) The provider shall notify the Department in writing of the scheduled commencement of a course 10 days before the first session.

(b) The provider shall cooperate with the Department in matters relating to the conduct of the course and shall permit representatives of the Department to attend course sessions. The provider shall make available to the Department, upon request and at no cost, course materials, examinations and records.

(c) The provider is responsible for compliance with the course and instructor requirements in this section.

§ 401.18. Training course instructor requirements.

(a) Training instructors approved by the Department or the EPA prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal) shall be deemed to be approved under this chapter.

(b) For other instructors, the training course provider shall submit a resume to the Department for contingent approval. Final approval of the training course and instructors shall be at the discretion of the Department after the course and the instructor have been audited by the Department.

§ 401.19. Issuance of training certificate.

(a) The provider shall issue a training certificate to each student who successfully completes the training course. Successful completion requires that the student attend every course session and pass the final examination.

(b) The training certificate shall include at least:

(1) The name of the accredited person.

(2) A unique certificate number.

(3) The name of the course completed.

(4) The dates of the course.

(5) The examination date.

(6) The training course provider's name, address and phone number.

(7) The signature of the training course director or a designee.

(8) The expiration date of certificate.

(9) A statement that the person receiving the certificate has received the requisite training for asbestos accreditation under TSCA Title II (40 CFR Part 763).

(10) Other information as may be required by the Department.

(c) The provider shall submit the following information to the Department, for each student who has met the qualifications for a training certificate, within 30 days of the conclusion of the course:

(1) The student's name.

(2) The student's address.

(3) The student's telephone number, if available.

(4) The student's unique identification number.

(5) The name of course completed.

(6) The date of the course.

§ 401.20. Recordkeeping requirements.

(a) *Training course materials.* A training provider shall retain copies of all instructional materials used in the delivery of the classroom training such as student manuals, instructor notebooks and handouts.

(b) *Instructor qualifications.* A training provider shall retain copies of all instructors' resumes and related documentation. Records shall accurately identify the instructors that taught each particular course for each date that a course is offered.

(c) *Examinations.* Training providers shall document that each person who receives a certificate of training for an initial training course has achieved a passing score on the examination. These records shall clearly indicate the date upon which the exam was administered, the training course and discipline for which the exam was given, the

name of the person who proctored the exam, a copy of the exam, and the name and test score of each person taking the exam. The topic and dates of the training course shall correspond to those listed on that person's certificate of training.

(d) *Certificates of training.* Training providers shall maintain records that document the names of the persons who have been awarded certificates, their certificate numbers, the disciplines for which certificates were conferred, training and expiration dates and the training location. Training providers shall maintain the records in a manner that allows verification by telephone of the required information.

(e) *Verification of certificate information.* Training providers of refresher training courses shall confirm that their students possess valid initial training certificate before granting course admission. Training providers offering the initial management planner training course shall verify that students have met the prerequisite of possessing valid inspector training certificates at the time of course admission.

(f) *Records retention and access.* Training providers shall maintain required records for a minimum of 3 years. Training providers shall allow reasonable access to the records required by the EPA Model Accreditation Plan (MAP), and to other records which may be required by the Department for the approval of asbestos training providers or the accreditation of asbestos training courses, to both the EPA and to the Department, on request. When a training provider ceases to conduct training, the training provider shall notify the Department, and give the Department the opportunity to take possession of its asbestos training records.

§ 401.21. Prior accreditation.

Training courses accredited by the Department as of _____ (*Editor's Note:* The blank refers to proposed effective date of adoption of this proposal) shall be deemed to be accredited under this chapter for the remainder of the existing accreditation period, after which the training courses shall be required to undergo renewal of accreditation under § 401.11(b) (relating to accreditation of initial and refresher courses).

CERTIFICATION PROCEDURES AND REQUIREMENTS

§ 401.41. Prior certification.

An individual certified by the Department in an asbestos occupation as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal) is deemed to be certified under this chapter for the remainder of the existing certification period, after which the individual shall renew certification under § 401.43 (relating to renewal of certification).

§ 401.42. Initial certification.

(a) An applicant for initial certification in an asbestos occupation shall submit a completed application on a form provided by the Department, with the appropriate fee designated in § 401.82 (relating to training course accreditation fees) and a copy of the training certificate issued under § 401.19 (relating to issuance of training certificate) or documentation of on-the-job training in accordance with § 401.46 (relating to on-the-job training option). The Department will not process an application that is incomplete or submitted without the proper registration fee.

(b) Pending certification by the Department, an applicant may engage in the asbestos occupation for which

certification is being sought for 60 days from the date the application is mailed if that the applicant has available at the work site a copy of the completed application, proof of payment and documentation of training.

(c) Certification for asbestos occupations shall be valid for 1 year from the date of training except for the following occupations for which certification is valid for 3 years:

- (1) Asbestos Worker (Restricted asbestos handler).
- (2) Asbestos Worker (Operations and maintenance individual).
- (3) Asbestos Worker (Roofing/Siding).
- (4) Asbestos Worker (Resilient floor covering remover).

§ 401.43. Renewal of certification.

(a) An individual shall renew certification by submitting a renewal application, the renewal fee designated in §§ 401.81—401.87 (relating to fees) and a copy of the refresher training certificate issued under §§ 401.18 and 401.19 (relating to training course instructor requirements; and issuance of training certificate) or documentation of on-the-job refresher training in accordance with the requirements in § 401.46 (relating to on-the-job training option). The Department will not process an application that is incomplete or submitted with the proper registration fee.

(b) Pending renewal of certification by the Department, an individual may engage in the asbestos occupation for which certification was initially issued for 60 days from the date the application is mailed if the individual has available at the work site the original of the most recent expired certification and a copy of his initial and current training certificates with a copy of the renewal application and proof of payment of the application fee.

§ 401.44. Multiple asbestos occupations.

Individuals certified in the following occupations may perform the duties of other specified asbestos occupations without obtaining additional certification:

- (1) An asbestos management planner may also perform the duties of an asbestos inspector.
- (2) A certified asbestos project designer may also perform the duties of an asbestos project monitor and an asbestos air sampling technician.
- (3) A certified asbestos project monitor may also perform the duties of an asbestos air sampling technician.
- (4) A certified asbestos contractor may also perform the duties of an asbestos supervisor, asbestos worker, asbestos worker (restricted asbestos handler) and asbestos worker (asbestos operations and maintenance individual).
- (5) A certified asbestos supervisor may also perform the duties of asbestos worker, asbestos worker (restricted asbestos handler) and asbestos worker (asbestos operations and maintenance individual).
- (6) A certified asbestos worker may also perform the duties of asbestos worker (restricted asbestos handler) and asbestos worker (asbestos operations and maintenance individual).
- (7) A certified asbestos worker (asbestos operations and maintenance individual) may also perform the duties of an asbestos worker (restricted asbestos handler).

§ 401.45. Certification requirements and scope of duties.

- (a) *Asbestos management planner.*

(1) An applicant for certification as an asbestos management planner shall possess a high school diploma or a general equivalency diploma (GED), successfully complete accredited asbestos inspector training and asbestos management planner training courses, and possess one of the following experience requirements:

- (i) Six months' asbestos inspection experience and 6 months' asbestos abatement experience which may include asbestos management planning.
- (ii) Six months' experience under the supervision of a certified asbestos management planner in a manner prescribed by the Department.

(2) A certified asbestos management planner may develop and recommend asbestos abatement response actions and operations and maintenance plans.

- (b) *Asbestos project designer.*

(1) An applicant for certification as an asbestos project designer shall meet the following requirements:

- (i) Possession of a bachelor's degree in engineering, architecture, industrial hygiene, or environmental science or a related field.
- (ii) Successful completion of an accredited asbestos project designer training course.
- (iii) Two years' experience in asbestos abatement activities and 6 months' experience in performing air monitoring and sampling.
- (iv) As an alternative to subparagraphs (i)—(iii), an equivalent combination of training and experience as approved by the Department and pass an equivalency examination developed by the Department.

(2) A certified asbestos project designer may design and develop asbestos abatement projects, prepare asbestos abatement specifications, prepare bidding documents and review submittals, and prepare and interpret asbestos abatement drawings.

- (c) *Asbestos project monitor.*

(1) An applicant for certification as an asbestos project monitor shall complete 2 years' college credit or possess an Associate or technical degree, successfully complete an accredited asbestos project monitor training course and possess one of the following experience requirements:

- (i) Six months' field experience performing asbestos abatement activity.
- (ii) Experience in performing air monitoring and sampling. The applicant shall submit a list of equipment used.

(2) As an alternative to paragraph (1), an equivalent combination of training and experience as determined by the Department and passing an equivalency examination developed by the Department will meet the requirements for certification as an asbestos project monitor.

(3) A certified asbestos project monitor may collect air samples, monitor employees' exposure to asbestos, conduct area monitoring, perform final clearance of completed abatement projects, observe asbestos abatement projects for compliance with generally accepted standards of the industry and applicable laws and regulations.

- (d) *Asbestos inspector.*

(1) An applicant for certification as an asbestos inspector shall possess a high school diploma or general equivalency diploma (GED) and successfully complete an accredited asbestos inspector training course.

(2) A certified asbestos inspector may review facility records, perform visual inspections or surveillance of facilities to identify, document or inventory materials suspected of containing asbestos, collect bulk samples for asbestos analysis, prepare inspection reports and related documentation and conduct asbestos assessments.

(e) *Asbestos contractor.*

(1) An applicant for certification as an asbestos contractor shall successfully complete an accredited asbestos contractor/supervisor training course.

(2) A certified asbestos contractor may engage in asbestos abatement as a business and employ persons to perform asbestos abatement work.

(3) A certified asbestos contractor shall designate one of the contractor's employees who is involved in asbestos abatement projects to be responsible for complying with the contractor certification requirements. If the designated employe leaves the employment of the contractor or ceases to be involved in asbestos abatement projects, the contractor shall reapply for certification by designating another employe to comply with the contractor certification requirements and pay the appropriate fee designated in §§ 401.82 and 401.83 (relating to training course accreditation fees; and refresher training course accreditation fees).

(f) *Asbestos supervisor.*

(1) An applicant for certification as an asbestos supervisor shall meet the following requirements:

(i) Successful completion of an accredited asbestos contractor/supervisor training course.

(ii) One year's experience in asbestos abatement activity.

(iii) Current certification in cardiopulmonary resuscitation (CPR) by an agency approved by the Department.

(iv) Current certification by the American Red Cross First Aid "Responding to Emergencies" training course. A first aid training course that is equivalent to this training course may be accepted by the Department.

(2) A certified asbestos supervisor may supervise asbestos workers engaged in asbestos abatement projects.

(g) *Asbestos worker.*

(1) An applicant for certification as an asbestos worker shall successfully complete an accredited asbestos worker training course.

(2) A certified asbestos worker may repair, remove, encapsulate, enclose or load-out ACM.

(h) *Asbestos worker (roofing/siding).*

(1) An applicant for certification as an asbestos worker (roofing/siding) shall successfully complete an asbestos worker (roofing/siding) training course.

(2) A certified asbestos worker (roofing/siding) may engage in roofing and siding activities which result in the installation, removal or disturbance of a nonfriable asbestos-containing material, if the worker's main business is not asbestos abatement. The worker may repair, remove, encapsulate, enclose or load-out nonfriable asbestos-containing roofing or siding material.

(i) *Asbestos worker (resilient floor covering remover).*

(1) An applicant for certification as an asbestos worker (resilient floor covering remover) shall successfully complete an accredited asbestos worker (resilient floor covering remover) training course.

(2) A certified asbestos worker (resilient floor covering remover) may engage in flooring activities which result in the installation, removal or disturbance of a nonfriable asbestos-containing material, if the worker's main business is not asbestos abatement. The worker may repair, remove, encapsulate, enclose or load-out nonfriable asbestos-containing floor material.

(j) *Asbestos worker (restricted asbestos handler).*

(1) An applicant for certification as an asbestos worker (restricted asbestos handler) shall have successfully completed an accredited restricted asbestos handler training course or on-the-job training by a competent person in accordance with in § 401.46 (relating to on-the-job training option).

(2) A certified restricted asbestos handler may enter a contained work area for a limited period of time to perform certain specialized tasks in preparation for or ancillary to the actual abatement for which asbestos worker certification is required.

(k) *Asbestos air sampling technician.*

(1) An applicant for certification as an asbestos air sampling technician shall possess a high school diploma or a general equivalency diploma (GED) and successfully complete an accredited asbestos air sampling technician training course or on-the-job training in accordance with § 401.46.

(2) A certified asbestos air sampling technician may prepare and calibrate air sampling equipment, conduct air sampling, perform recordkeeping procedures and maintain chain-of-custody procedures in the transport of environmental samples.

(l) *Asbestos worker (asbestos operations and maintenance individual).*

(1) An applicant for certification as an asbestos worker (asbestos operations and maintenance individual) shall successfully complete an accredited asbestos operations and maintenance individual training course.

(2) A certified asbestos worker (operations and maintenance individual) may conduct asbestos abatement activities within a facility which may disturb or involve not more than 3 linear or 3 square feet of asbestos-containing material within a distinct or specific work area.

§ 401.46. On-the-job training option.

(a) For certification of asbestos workers (restricted asbestos handlers) and air sampling technicians, the Department may approve on-the-job training conducted by a competent person as meeting the initial training requirements in § 401.45(j)—(l) (relating to certification requirements and scope of duties) and the refresher training required for renewal of certification in § 401.43(b) (relating to renewal of certification).

(b) "Competent person" is defined as follows:

(1) For an asbestos air sampling technician, either a certified asbestos project designer or a certified asbestos project monitor.

(2) For an asbestos worker (restricted asbestos handler), a certified asbestos management planner, asbestos project designer, asbestos project monitor, asbestos contractor or asbestos supervisor.

§ 401.47. Proof of certification.

(a) A person engaged in an asbestos occupation shall have the original training certificate, current refresher course training certificate and valid Commonwealth is-

sued photo certification card. This documentation shall be available for inspection by the Department.

(b) A person whose photo certification card and training documentation is lost or destroyed shall notify the Department in writing within 2 days and shall maintain a copy of the written notification at the work site until the Department issues a new photo certification card.

DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATION OR ACCREDITATION

§ 401.61. Grounds.

(a) The Department may deny a person's application for certification or accreditation, and may suspend or revoke a certification or accreditation issued to a person under the act and this chapter or may reprimand the person for one or more of the following reasons:

- (1) Failing to meet the qualification requirements of the act or this chapter.
- (2) Fraudulently or deceptively obtaining or attempting to obtain certification or accreditation.
- (3) Failing to pay an application or renewal fee.
- (4) Failing to meet applicable Federal requirements including those outlined in the EPA Model Accreditation Plan in 40 CFR Part 763, Subpart E, Appendix C(I)(G) and Subpart E, Appendix C(III)(C) and State and local standards relating to asbestos abatement.
- (5) Failing to notify the Department of abatement projects as required under section 8 of the act (63 P. S. § 2108) and §§ 401.121 and 401.122 (relating to original notification; and changes to original notification).
- (6) Failing or refusing to submit to the Department documentation or information required by the act or this chapter.
- (7) Failing to comply with a provision of this chapter.
- (8) Performing work requiring certification at a job site without being in physical possession of initial and current certificates.
- (9) Permitting the use or duplication of one's training certificate or photo identification card by another to fraudulently or deceptively obtain certification.
- (10) Misrepresentation of the extent of a training course's approval by a state or the EPA.
- (11) Failure to maintain requisite records.
- (12) Falsification of accreditation records, instructor qualifications or other accreditation information.
- (13) Failure to adhere to the training standards and requirements of the EPA Model Accreditation Plan and State Accreditation Program.

(b) The Department may also deny, suspend or revoke any accreditation or certification issued under the act or this chapter for any other reason affecting the responsibility of the applicant, training provider or person possessing the certification or accreditation.

§ 401.62. Notice and hearing.

(a) Actions of the Department related to suspension or revocation will be taken subject to the right of notice hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure). Hearings will be conducted under 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

(b) Within 30 days of the date of notice of denial of an application for certification or accreditation, the applicant

may request in writing that the Department provide a hearing to reconsider the propriety of the denial. Requests for hearings shall be sent to the Director of the Bureau of Occupational and Industrial Safety.

(c) After hearing, the Department by written order may affirm, reverse or modify the denial.

§ 401.63. Civil actions and criminal proceedings.

Denial, suspension or revocation of certification or accreditation does not affect or mitigate a civil action or criminal proceeding permitted by the act or this chapter or by any other law or regulation.

FEES

§ 401.81. General information.

Sections 401.82—401.87 set out the Department's certification and accreditation fees. Fees shall be remitted by check or money order made payable to the "Commonwealth of Pennsylvania." Fees are not refundable.

§ 401.82. Training course accreditation fees.

Providers of training courses shall remit the following initial accreditation and annual renewal fees:

- (1) *Initial asbestos management planner course fee:*
 - (i) Application for initial training course \$1,000
 - (ii) Annual renewal of accreditation for the initial training course \$ 500
- (2) *Initial asbestos project designer course fee:*
 - (i) Application for initial training course \$1,000
 - (ii) Annual renewal of accreditation for the initial training course \$ 500
- (3) *Initial asbestos project monitor course fee:*
 - (i) Application for initial training course \$1,000
 - (ii) Annual renewal of accreditation for the initial training course \$ 500
- (4) *Initial asbestos inspector course fee:*
 - (i) Application for initial training course \$1,000
 - (ii) Annual renewal of accreditation for the initial training course \$ 500
- (5) *Initial asbestos contractor/supervisor course fee:*
 - (i) Application for initial training course \$1,000
 - (ii) Annual renewal of accreditation for the initial training course \$ 500
- (6) *Initial asbestos worker course fee:*
 - (i) Application for initial training course \$1,000
 - (ii) Annual renewal of accreditation for the initial training course \$ 500
- (7) *Initial asbestos worker (roofing/siding) course fee:*
 - (i) Application for initial training course \$ 500
 - (ii) Annual renewal of accreditation for the initial training course \$ 250
- (8) *Initial asbestos worker (resilient floor covering remover) course fee:*
 - (i) Application for initial training course \$ 500
 - (ii) Annual renewal of accreditation for the initial training course \$ 250
- (9) *Initial asbestos worker (restricted asbestos handler) course fee:*
 - (i) Application for initial training course \$ 500

(ii) Annual renewal of accreditation for the initial training course \$ 250

(10) *Initial asbestos worker (asbestos operations and maintenance individual) course fee:*

(i) Application for initial training course \$ 500

(ii) Annual renewal of accreditation for the initial training course \$ 250

§ 401.83. Refresher training course accreditation fees.

Providers of refresher training courses shall remit the following initial accreditation and annual renewal fees:

(1) *Refresher asbestos management planner course fee:*

(i) Accreditation of the refresher asbestos management planner course..... \$ 500

(ii) Annual renewal of accreditation for the refresher asbestos management planner course \$ 250

(2) *Refresher asbestos project designer course fee:*

(i) Accreditation of the refresher asbestos project designer course \$ 500

(ii) Annual renewal of accreditation for the refresher asbestos project designer course \$ 250

(3) *Refresher asbestos project monitor course fee:*

(i) Accreditation of the refresher asbestos project monitor course \$ 500

(ii) Annual renewal of accreditation for the refresher project monitor course..... \$ 250

(4) *Refresher asbestos inspector course fee:*

(i) Accreditation of the refresher asbestos inspector course..... \$ 500

(ii) Annual renewal of accreditation for the refresher asbestos inspector course..... \$ 250

(5) *Refresher asbestos contractor/supervisor course fee:*

(i) Accreditation of the refresher asbestos contractor/supervisor course \$ 500

(ii) Annual renewal of accreditation for the refresher asbestos contractor/supervisor course..... \$ 250

(6) *Refresher asbestos worker course fee:*

(i) Accreditation of the refresher asbestos worker course..... \$ 500

(ii) Annual renewal of accreditation for the refresher asbestos worker course..... \$ 250

(7) *Refresher asbestos worker (roofing/siding) course fee:*

(i) Accreditation of the refresher asbestos worker (roofing/siding) course..... \$ 250

(ii) Annual renewal of accreditation for the refresher worker (roofing/siding) course..... \$ 250

(8) *Refresher asbestos worker (resilient floor covering remover) course fee:*

(i) Accreditation of the refresher asbestos worker (resilient floor covering remover) course..... \$ 250

(ii) Annual renewal of accreditation for the refresher worker (resilient floor covering remover) course... \$ 250

(9) *Refresher asbestos worker (restricted asbestos handler) course fee:*

(i) Accreditation of the refresher asbestos worker (restricted asbestos handler) course..... \$ 250

(ii) Annual renewal of accreditation for the refresher worker (restricted asbestos handler) course..... \$ 250

(10) *Refresher asbestos worker (asbestos operations and maintenance individual) course fee:*

(i) Accreditation of the refresher asbestos worker (asbestos operations and maintenance individual) course \$ 250

(ii) Annual renewal of accreditation for the refresher worker (asbestos operations and maintenance individual) course..... \$ 250

§ 401.84. Fee limitation.

Within any calendar year, cumulative course accreditation fees will not exceed \$5,000 for an individual training provider.

§ 401.85. Initial certification fees.

Applicants for initial certification in asbestos occupations shall remit the following fees:

(1) Asbestos management planner \$ 300

(2) Asbestos project designer \$ 300

(3) Asbestos project monitor..... \$ 300

(4) Asbestos inspector..... \$ 300

(5) Asbestos contractor..... \$ 500

(6) Asbestos supervisor \$ 100

(7) Asbestos worker..... \$ 50

(8) Asbestos air sampling technician..... \$ 50

(9) Asbestos worker (roofing/siding)..... \$ 100

(10) Asbestos worker (resilient floor covering remover)..... \$ 100

(11) Asbestos worker (restricted asbestos handler) \$ 100

(12) Asbestos worker (asbestos operations and maintenance individual) \$ 100

§ 401.86. Certification renewal fees.

(a) Individuals whose certification expires annually shall remit the following renewal fees:

(1) Asbestos management planner \$ 300

(2) Asbestos project designer \$ 300

(3) Asbestos project monitor..... \$ 300

(4) Asbestos inspector..... \$ 300

(5) Asbestos contractor..... \$ 500

(6) Asbestos supervisor \$ 100

(7) Asbestos worker..... \$ 50

(8) Asbestos air sampling technician..... \$ 50

(b) Individuals whose certification expires every 3 years shall remit the following renewal fees:

(1) Asbestos worker (roofing/siding)..... \$ 100

(2) Asbestos worker (resilient floor covering remover)..... \$ 100

(3) Asbestos worker (restricted asbestos handler) \$ 100

(4) Asbestos worker (asbestos operations and maintenance individual) \$ 100

§ 401.87. Additional fees.

The Department may establish certification and accreditation fees for additional occupational and course categories.

ENFORCEMENT PROCEDURES AND PENALTIES**§ 401.101. Inspections.**

An enforcement officer representing the Department has the power to enter any building, structure or facility to determine compliance with the act and this chapter.

§ 401.102. Interference with inspections.

A person may not hinder or delay an enforcement officer of the Department in the performance of his duty, nor refuse or fail to provide information requested to determine compliance with the act and this chapter.

§ 401.103. Civil penalties.

(a) The Department, after a hearing, may levy a civil penalty of not more than \$1,000 a day for an initial violation and a civil penalty of not more than \$5,000 a day for each subsequent violation committed within a 3-year period arising from willful violation of the act.

(b) The Department may, after hearing, find a person who either interferes with the investigation or refuses to provide requested information to an enforcement officer of the Department guilty of a violation of the act and may assess a civil penalty of not more than \$1,000.

(c) Willful violations of the act, including the following, may result in the imposition of civil penalties.

- (1) *Certification violations.*
 - (i) Submitting false information on the application for certification.
 - (ii) Working in an occupation without a current valid certification.
 - (iii) Tampering with, altering or defacing a training certificate or Commonwealth issued photo certification card.
 - (iv) Using fraudulent means to pass an examination.
- (2) *Accreditation violations.*
 - (i) Submitting false information on the application for course accreditation.
 - (ii) Performing as a training provider without receiving Department accreditation.
 - (iii) Failure to perform asbestos training.
 - (iv) Failure to allow a representative of the Department to audit any phase of the course whenever requested.
 - (v) Failure to supply the Department with information relating to, but not limited to, completion of records of attending students as set forth in this chapter.
 - (vi) Failure to properly administer required examinations if the provider is the Department's designee under § 401.15(d) (relating to final examination requirements).

(3) Notification violations.

- (i) Failure to notify the Department regarding asbestos abatement projects as required under this chapter.
- (ii) Submitting false information on the notification form.
- (d) In assessing an administrative penalty under the act, the Department will consider the following factors

when applicable in determining what constitutes an appropriate penalty for the particular violations:

- (1) The degree of hazard posed to human health and the environment.
- (2) The degree of harm posed to the proper administration of the certification and accreditation program.
- (3) The category of culpability evidenced by the violator's action.
 - (i) In determining culpability, violation in ignorance of any legal requirement of the act or this chapter shall constitute a negligent action unless a legal requirement is one of which the violator has constructive notice, in which case the violator's action shall be classified as reckless.
 - (ii) Violation despite actual notice of the legal requirement of the act or this chapter shall constitute a finding of willful action.
- (4) Past history on the part of the violator.
- (5) The economic benefit which the violator accrues as a result of the violation.
- (6) Cooperation of the violator in correcting the violation.

NOTIFICATION REQUIREMENTS**§ 401.121. Original notification.**

The Department and the Department of Environmental Protection have agreed to a single point of notification for all asbestos abatement projects.

(1) An asbestos contractor or operator shall notify the Department of Environmental Protection at Post Office Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105-8468, on forms prescribed by the Department of Environmental Protection, before engaging in any asbestos abatement project.

(2) If notification is provided by the asbestos contractor or operator, a copy of the notification shall be simultaneously submitted to the building owner by the contractor or operator.

(3) The contractor or operator shall postmark or hand deliver two copies of the notification to the Department of Environmental Protection at least 10 business days before the project start date.

(4) In the case of an emergency project, verbal notification shall be given immediately to the Department of Environmental Protection at (717) 787-1663 and written notification shall be provided to the Department of Environmental Protection within 1 business day of the emergency.

(5) The Department of Environmental Protection will transmit all notification information to the Department.

§ 401.122. Changes to original notification.

(a) If there is a change of the information provided on the original notification form, the contractor or operator shall immediately notify the Department of Environmental Protection of the changes in the manner provided in § 401.121(3) (relating to original notification) if:

- (1) In the case of a postponement of the start date, the contractor or operator provides the Department of Environmental Protection with immediate verbal notification and submits written confirmation of the postponement within 1 business day before the original start date.
- (2) In the case of an advancement of the start date, the contractor or operator provides the Department of Envi-

ronmental Protection with written notification of the advancement at least 10 business days prior to the new start date.

(3) In the case of a change of at least 20% of the estimate of the amount of asbestos involved in the project provided on the previous notification as required by section 8 of the act (63 P. S. § 2108), the contractor or operator immediately provides the Department of Environmental Protection with written notification of the changes.

(4) In the case of a change of less than 20% of the estimate of the amount of asbestos involved in the project, no notification is required to be given by the contractor or operator.

(b) Notification to the Department of Environmental Protection does not relieve the asbestos contractor or operator of the responsibility for making written notification as may be required by a municipality, agency of the Commonwealth or agency of the Federal government.

ADMINISTRATIVE MATTERS

§ 401.141. Purpose and scope.

This chapter implements the certification, accreditation and related requirements of the act.

§ 401.142. Application of chapter.

This chapter applies to the following persons:

(1) Persons engaged in asbestos occupations within this Commonwealth.

(2) Persons performing asbestos abatement upon or within a building which they own or occupy who utilize employes, other contractors or workers to perform asbestos abatement.

(3) Training course providers desiring to provide training courses required for employment in asbestos abatement occupations within this Commonwealth.

§ 401.143. Other requirements.

Nothing in this chapter relieves a person subject to the act from a duty or responsibility under another Federal or State statute or regulation, or local ordinance relating to asbestos abatement.

§ 401.144. Federal requirements.

This chapter shall be read in conjunction with Federal statutes and regulations providing for the certification of persons engaged in asbestos occupations and the accreditation of training courses provided for those respective occupations, and are intended to supplement Federal regulations in the interest of protecting the environment and the health and safety of the citizens of this Commonwealth.

§ 401.145. Additional recordkeeping requirements.

(a) The asbestos contractor shall maintain a list of individuals engaged in asbestos occupations or who enter the asbestos abatement project area at each job site. The list shall include the following information:

- (1) Names.
- (2) Certification identification number.
- (3) Job classification or job title.
- (4) Time in.
- (5) Time out.

(6) Other information that may be required by the Department.

(b) These records shall be available to the Department upon request.

§ 401.146. Changes to the Model Accreditation Plan (MAP) by the EPA.

The Department may adopt changes made to the MAP (40 CFR Part 763) in this chapter by publishing notice of the change in the *Pennsylvania Bulletin*.

RECIPROCITY

§ 401.161. Accreditation of other training programs.

(a) The Department may enter into reciprocal agreement with other states and jurisdictions to allow the use of accredited training programs to satisfy Commonwealth training requirements, if the Department finds that the training course meets the requirements under the act and this chapter.

(b) Providers requesting accreditation under this section shall comply with the renewal provisions of §§ 401.11—401.21 (relating to training course accreditation procedures and requirements) including payment of the appropriate fee listed §§ 401.81—401.87 (relating to fees).

§ 401.162. Certification in other jurisdictions.

(a) The Department may enter into reciprocal agreement with other states and jurisdictions to certify for an asbestos occupation a person who has been certified in the other state or jurisdiction which has requirements at least as stringent as those in this chapter.

(b) A person applying for certification under this section shall comply with §§ 401.41—401.47 (relating to certification procedures and requirements) including the payment of the appropriate fee listed in §§ 401.81—401.87 (relating to fees) except as provided by section 5 of the act (63 P. S. § 2105).

[Pa.B. Doc. No. 96-1740. Filed for public inspection October 18, 1996, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Administration of Anesthesia

The State Board of Medicine (Board) proposes to adopt § 16.98 (relating to administration of anesthesia) to read as set forth in Annex A. This proposed regulation establishes the standard of practice in regard to the supervision by medical doctors of the administration of anesthesia by certified registered nurse anesthetists.

This proposal was initiated by a "Petition for the Issuance of Regulations Concerning the Delegation of Medical Services to Nurse Anesthetists" (Petition) filed with the Board on May 17, 1993, by the Pennsylvania Medical Society and the Pennsylvania Society of Anesthesiologists (Societies). Subsequent to the receipt of the Societies' Petition, the Board invited comment from interested parties, including the State Board of Nursing and professional associations.

The Societies' Petition requested the Board develop regulations which would "define the conditions under which a physician may delegate the performance of medical services to a certified registered nurse anesthe-

tist." Specifically, the Petition sought regulations which would require the physical presence, direction and supervision of a physician with graduate training in anesthesia whenever a nurse anesthetist administered anesthesia.

In response to the Petition, the Board received comments in opposition to the development of restrictions to the use of nurse anesthetists from the State Board of Nursing, the Hospital Association of Pennsylvania (HAP), the Pennsylvania Association of Nurse Anesthetists (PANA), the Brookville Hospital and several individual nurse anesthetists. HAP's comments in opposition to the development of additional regulations in this area indicated that the "combined Department of Health Regulations and licensure requirements, regulations of the State Boards of Medicine and Nursing, Joint Commission on Accreditation of Health Care Organizations (JCAHO) requirements, together with each licensed entity's bylaws, protocols, and quality and risk management initiatives, provide the necessary guidance for the safe delivery of anesthesia services in the Commonwealth." The Board does not intend, by this regulation, to restrict the use of nurse anesthetists, but rather provide for appropriate supervision when nurse anesthetists are utilized. When nurse anesthetists are utilized, the regulation provides minimum standards for the supervision of the procedure by the delegating physician who is ultimately responsible. The Board does not view these standards as inconsistent with those standards referenced by HAP.

PANA and the other commentators were concerned that the regulation would require supervision by a Board certified anesthesiologist. They contended that level of supervision was unnecessary. The Board agrees that supervision by a Board certified anesthesiologist is not necessary. However, the Board believes that a physician supervising the administration of anesthesia should possess knowledge sufficient to make the supervision meaningful.

After considering the evidence presented by the various interested parties, the Board determined that there appears to be a need for a uniform standard of practice regarding the delegation of the administration of anesthesia. Specifically, the Board is of the opinion that supervision of a nurse anesthetist by a physician who has graduate training in anesthesia is necessary to safeguard the health, safety and welfare of the citizens of this Commonwealth to whom anesthesia may be administered. The Board's conclusion is supported by the study published in *Medical Care*, July 1992, "Hospital and Patient Characteristics Associated with Death After Surgery." That study suggested that incidence of death was less in hospitals in which the administration of anesthesia was overseen by qualified personnel.

Accordingly, the Board proposes to adopt § 16.98, which would provide for the supervision of the administration of anesthesia by a nurse anesthetist. The regulation would authorize the delegation to a nurse anesthetist of the administration of anesthetic agents to render a patient sedate, unconscious or insensible to pain provided that the supervising medical doctor has successfully completed an approved anesthesia graduate medical training program; the medical doctor specifies the anesthetic plan and signs the anesthetic record; the medical doctor is physically present in the treatment area (unless the medical doctor's presence is needed to address a medical emergency elsewhere in the facility); and the delegation (when occurring in a health care facility) is in keeping with

written policies and procedures approved by the medical staff and governing body of the health care facility.

Finally, the Board makes clear in subsection (b) that the requirements of subsection (a) will not apply to the administration of conscious sedation. Conscious sedation is defined as that state in which the patient retains the ability to independently and continuously maintain an airway and remains responsive to stimuli.

Statutory Authority

This regulation is proposed under the authority of section 17(b) of the Medical Practice Act of 1985 (63 P. S. § 422.17(b)), which authorizes the Board to promulgate regulations which establish criteria under which a medical doctor may delegate the performance of medical services.

Fiscal Impact and Paperwork Requirements

The proposed regulation will have no fiscal impact on the Commonwealth or its political subdivisions. No new paperwork requirements are established.

Executive Order 1996-1

The Board's development of this regulation involved significant public comment during the drafting stage. Although the comments were received prior to the issuance of Executive Order 1996-1, the requirements of the Executive Order pertaining to the solicitation of public comment have been met.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of this proposed regulation on October 8, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulation, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulation.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulation to Cindy L. Warner, Board Administrator, State Board of Medicine, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

CHARLES J. BANNON, M.D.,
Chairperson

Fiscal Note: 16A-493. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter F. MINIMUM STANDARDS OF PRACTICE

§ 16.98. Administration of anesthesia.

(a) A licensed medical doctor may delegate to a licensed registered nurse, who is a certified registered nurse anesthetist, the administration of anesthetic agents or adjunctive agents to render a patient sedate, unconscious or insensible to pain for a surgical, diagnostic or obstetric procedure, if the following conditions are met:

(1) The medical doctor has successfully completed an approved anesthesia graduate medical training program or is certified by his specialty board as appropriately trained and experienced in the properties and use of all anesthetic agents or adjunctive agents and the performance of anesthetic and patient monitoring procedures which are employed.

(2) The medical doctor specifies the anesthetic plan to the certified registered nurse anesthetist and signs the anesthetic record.

(3) The medical doctor is physically present in the treatment area during the administration of anesthesia. The medical doctor may be excused from the physical presence requirement to cover a medical emergency elsewhere in the facility.

(4) Delegation occurring within a health care facility licensed under the Health Care Facilities Act (35 P. S. §§ 448.101—448.901) shall be in accordance with written policies and procedures approved by the medical staff and governing body of the health care facility.

(b) Subsection (a) does not apply to the administration of "conscious sedation," which is defined as a minimally depressed level of consciousness in which the patient retains the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands.

[Pa.B. Doc. No. 96-1741. Filed for public inspection October 18, 1996, 9:00 a.m.]

STATE POLICE

[37 PA. CODE CH. 58]

DNA Detection of Sexual and Violent Offenders Act

As a requirement of the DNA Detection of Sexual and Violent Offenders Act (35 P. S. §§ 7651.101—7651.1102) (act), the State Police is proposing regulations necessary for the general administration of the act. As provided under the act, this proposed regulation will take effect 60 days from the date of this publication or January 1, 1997, whichever is earlier. The proposed regulations set forth the administration, policies and procedures designed to carry out the provisions of this act.

Benefits

The benefits include the identification of repeat offenders by identification of their forensic DNA profile obtained from evidentiary material, the linking of serial offenders within this Commonwealth and across the country, the solving of cases of unidentified perpetrators in sexual assaults and homicides, and the identification of missing persons and victims of mass disasters. These DNA profiles are from regions of the DNA that do not identify physical, sociological or psychological characteristics.

Effect

The proposed regulation will affect various criminal justice agencies.

Paperwork Requirements

The proposed regulation will require the completion of additional forms, reports or other paperwork as prescribed and provided by the State Police.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745(a)), the State Police submitted a copy of this proposed regulation on October 8, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and the Senate Law and Justice Committee. In addition to submitting the proposed regulation, the State Police has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of the material is also available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, it will notify the State Police within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which havenot been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the State Police, the General Assembly and the Governor of objections raised.

Sunset Date

No sunset date has been assigned; however, every facet of these proposed regulation will be continuously reviewed for effectiveness, clarity and whether they are serving the greater interests of citizens of this Commonwealth.

Public Hearings

This proposed regulation has been promulgated in conjunction with the Department of Corrections, Warden's Association, Board of Probation and Parole, District Attorney's Association, Juvenile Court Judges Association and Juvenile Detention Centers Association. Regional meetings to update and inform those affected are in the planning stages.

Public Comment

Interested parties wishing to comment are invited to submit a written statement within 30 days of the publication of this notice in the *Pennsylvania Bulletin*. Each written statement shall include the name, address and telephone number of the interested party and a concise statement with sufficient detail on the subject. Written statements may be directed to the State Police, Attention: Director, Bureau of Research and Development, 1800 Elmerton Avenue, Harrisburg, PA 17110.

Contact Person

The contact person is Trooper R. M. Van Buskirk, State Police, Bureau of Research and Development, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-4898.

COLONEL PAUL J. EVANKO,
Commissioner

Fiscal Note: 17-59. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 37. LAW****PART I. STATE POLICE****Subpart I. DNA DETECTION OF SEXUAL AND VIOLENT OFFENDERS****CHAPTER 58. ADMINISTRATIVE REGULATION REGARDING THE DNA DETECTION OF SEXUAL AND VIOLENT OFFENDERS ACT**

Sec.
58.1. General

§ 58.1. General.

The State Police will establish written policies to carry out the provisions of the DNA Detection of Sexual and

Violent Offenders Act (35 P. S. §§ 7651.101—7651.1102). The written policies shall provide for:

(1) The management and administration of the State DNA identification record system.

(2) The mechanism for collection, submission, analysis, identification, storage, retention, disposition and expungement of DNA samples and for dissemination of DNA information to support law enforcement agencies and other criminal justice agencies.

(3) Liaison with the Federal Bureau of Investigation (FBI) and other criminal justice agencies in regard to the Commonwealth's participation in the combined DNA Index System of the FBI or in any other DNA database.

(4) Procedures compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies and computer software.

(5) Quality assurance guidelines to ensure that DNA identification records meet standards for laboratories which submit DNA records to the State DNA Database.

[Pa.B. Doc. No. 96-1742. Filed for public inspection October 18, 1996, 9:00 a.m.]